

Taiwan

by

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Taiwan

I. PRESENT ATTITUDE AFFECTING ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

A. Describe any identifiable attitude of your government (including courts) toward enforcement of foreign money judgments.

Domestic law governs the enforceability and enforcement of foreign money judgments by Taiwan's courts without treaty influence or obligations, Article 402 of the Code of Civil Procedure sets out the substantive grounds for recognizing the validity of a judgment by a foreign court. In practice, the courts of Taiwan will recognize the judgments of foreign courts if the Taiwanese defendant has been properly served (judicial assistance through diplomatic channels being best practice), if the judgment does not contradict public policy in Taiwan, and if the foreign court would recognize a money judgment from its Taiwanese counterparts.

Taiwan and the People's Republic of China maintain, however, a unique political and legal relationship that sees the enforcement of money judgments from the courts of the People's Republic of China governed by the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area. It should be noted though that e, money judgments from the courts of both Macau and Hong Kong fall under Article 402 of the Code of Civil Procedure by virtue of the Act Governing Relations with Hong Kong and Macau wherein Hong Kong and Macau are treated as ordinary foreign jurisdictions for most purposes.

The Code of Civil Procedure provides clear guidance to parties seeking to enforce a foreign money judgment in Taiwan. Enforcement has, however, been rooted in the principle of reciprocity. Taiwan has not entered into treaties governing the reciprocal enforcement of foreign money judgments. The receptiveness of a court in Taiwan to enforcement will, therefore, depend on the receptiveness and capacity of the courts in the originating jurisdiction to extend reciprocity under their laws. There has been and continues to be reciprocal enforcement of money judgments by and between the courts of the United States and the courts of Taiwan.

The failure to seek advice from counsel in Taiwan before filing the original foreign action can often lead to problems later in enforcing the foreign judgment. The courts of Taiwan will enforce foreign judgments but the law provides clear circumstances where the courts cannot. Best practice requires clear understanding of and adherence to the requirements in Taiwan before filing the action overseas if a possibility exists of enforcing the judgment in Taiwan.

II. PROCEDURE TO ENFORCE A FOREIGN MONEY JUDGMENT

A. General Summary of Procedure

A civil action for the recognition and enforcement of a foreign money judgment must be filed with the District Court, court of first instance, within the jurisdiction of the defendant's registered household or registered business address. The time frame from filing to a judgment can range from several months for an uncontested matter to twelve months for a contested matter. An unsuccessful party may file an appeal within twenty days of receiving the judgment. Appeals may be made first to the High Court and then to the Supreme Court. Exhausting the entire appellate process may run anywhere from three to six years.

A party who successfully obtains an Enforcement Order for a foreign money judgment must then apply under the Compulsory Execution Act for an Execution Order.

B. Detailed Discussion of Procedure

Taiwan has three tiers to its civil system: the District Court, the High Court, and the Supreme Court. An action for the recognition and enforcement of a foreign money judgment must be filed with the District Court within the jurisdiction of the defendant's registered household or registered business address. The pleading will be relatively straightforward but the filing must include the following:

- (i) A Power of Attorney¹ authorizing local counsel to commence the action on behalf of the client if the client does not appear in

¹ It should be noted that the laws of Taiwan only require representation by an attorney in civil litigation in certain causes of actions or at certain levels: for example, an appeal to the Supreme Court.

person. The POA should be notarized and then legalized by the Taiwanese embassy or, absent diplomatic relations, by the Taiwan Economic and Cultural Office (or equivalent) serving the jurisdiction of the notary;

- (ii) A court certified copy of the original judgment. The judgment must be legalized by the Taiwanese embassy or, absent diplomatic relations, by the Taiwan Economic and Cultural Office (or equivalent) serving the jurisdiction of the court;²
- (iii) A certificate or affidavit issued by the court attesting to the finality and irrevocability of the judgment. It would also be best practice to include a statement that the issuing court would offer reciprocity for the enforcement of the decisions of the courts of Taiwan. This document must also be legalized; and
- (iv) The Court fee.

While official fees tend to be quite low in Taiwan compared to other jurisdictions, court fees prove to be an exception. A plaintiff must pay a Court fee of approximately 1% of the amount claimed for litigation at the District Court level. The Court fee increases to 1.5% at both the High Court and Supreme Court for contentious matters. (The actual amount varies slightly based on the amount in the claim.) Some judges, however, accept the recognition of a foreign judgment as a non-contentious matter or as a non-contentious matter depending upon the amount claimed. If a judge considers the case to be a non-contentious matter then the plaintiff would not be required to pay the aforementioned Court fee. A filing fee of between TWD500 and TWD5,000 – based on the amount of the claim – would still have to be paid in such cases.

A successful plaintiff may, however, recover the Court fees from the defendant. It should also be noted that while a successful party cannot recover legal fees at the District Court and High Court, legal fees may be recovered at the Supreme Court level based on a pre-set formula and can be included in the aforementioned security bond.

² Article 356 of the Code of Civil Procedure provides that, the genuineness of a foreign public document is to be decided by the court in accordance with the circumstances of the case, but if it has been authenticated by the Taiwanese ambassador, minister, consul, or similar party in that country as being a legal or official document, it shall be presumed to be genuine. The process of authentication is referred to as ‘legalization’ on many Taiwan government websites.

A court will typically schedule the first hearing in a matter within one to two months from the date of filing. The first hearing will generally see procedural and administrative matters related to the conduct of the case discussed. It would be at this hearing where opposing counsel can raise the posting of a bond by the plaintiff, if applicable, as security for future Court fees – a court may, upon the successful application by an opposing party, require that a plaintiff without a domicile, recognized legal entity, or sufficient assets in Taiwan pay approximately 4% of the total amount claimed as a security bond for future Court fees. The bond serves as security to protect the local counterparty and the actual amount would be determined on the total amount of fees that a defendant could be required to pay through courts of all instances.³ This would include the Court fee at the second and third instance plus the legal fees for the third instance.⁴

A plaintiff would have an opportunity to file a pleading and request a hearing on the opposing party's application. There would be no basis to order the bond if the defendant did not dispute the plaintiff's claim the defendant had already proceeded orally on the merits of the case.⁵ Absent those or residence or a legal entity by the plaintiff in Taiwan⁶ the bond must be posted to continue if sought by the opposing party and so ordered.

A court in a civil case will frequently schedule one hearing per every four to six weeks depending upon the its schedule. Pleadings and evidence will be filed and oral arguments heard on the enforceability of the foreign judgment per Article 402 of the Code of Civil Procedure. A contested action to enforce a foreign judgment can run six to twelve months while a decision in a non-contested matter should be expected within several months of filing.

A successful party will receive an Enforcement Order for the foreign money judgment. A judgment in foreign currency will be exchanged into New Taiwan Dollars at the exchange rate on the date that the

³ Article 99 of the Code of Civil Procedure.

⁴ Supreme Court of Taiwan Civil Decision (2008) Tai-Ke-Zih No. 132.

⁵ Article 96 and 97 of the Code of Civil Procedure,

⁶ A foreign plaintiff may successfully contest the application by establishing that the plaintiff's assets in Taiwan would be sufficient to satisfy the 4% court fees.

foreign court issued the original judgment. Interest will only be awarded if specified in the original judgment.⁷

An unsuccessful party has twenty days after being served the decision to file an appeal. An appeal may be made to the High Court on any grounds or basis while an appeal to the Supreme Court may only be made on the grounds that the original decision had been made in contravention of the law.

A decision on an appeal made to the High Court can be expected in an enforcement case within six months. An appeal to the Supreme Court, however, could run two to three years before a decision. The Supreme Court may render a decision or send the case back to the High Court for reconsideration. If a case has been sent back to the Supreme Court, the subsequent decision of the High Court may again be appealed to the Supreme Court.

A party who obtains a final Enforcement Order for a foreign money judgment may then apply under the Compulsory Execution Act for an Execution Order. The application must be made to the Execution Office of the applicable District Court and include:

- (i) A notarized and legalized Power of Attorney authorizing local counsel to commence the action on behalf of the client;
- (ii) All of the original Taiwan court decisions in the matter;
- (iii) A certificate from the District on the finality and irrevocability of the Enforcement Order;
- (iv) Information on the location of the defendant's assets and property that are to be seized; and
- (v) A Court fee of 0.8% of the amount claimed.

An Execution Order will be issued and then carried out.

Time limitation periods fall under substantive law in Taiwan. The courts in Taiwan will consider foreign substantive law as the governing law of the case but not with respect to procedural law. If the foreign judgment has been issued in a jurisdiction where time limitations fall within procedural rather than substantive law then Taiwan's Code of

⁷ Supreme Court of Taiwan Civil Decision (2006) Tai-Shang-Zih No. 293.

Civil Procedure shall apply, and the Code does not provide a time limitation or expiration for the Execution Order. The Civil Code does, however, provide time bars but these would not be applied to Execution Orders for foreign judgments in which foreign law is the substantive law.⁸

One key issue to keep in consideration will be whether any assets remain by the time a party has obtained an Execution Order. Taiwan does have laws to address the fraudulent transfer of property and assets. The practical issue, however, rests with the potential time that will pass between a defendant first being served with notice of the foreign action and the execution of the Execution Order in Taiwan. Assets and property can have been disposed of and beyond the point of recovery by the time the plaintiff can actually enforce the judgment. A defendant's assets and property, however, may be attached prior to serving notice of the foreign action so as to prevent their disposal.

Provisional relief in the form of an attachment order may be obtained by filing an application with the court serving the jurisdiction of a defendant's registered address. The application is made on an *ex parte* basis. The court does not undertake a substantive review of the grounds on which the application is based and the burden that must be met to obtain the order is minimal. The court will be satisfied if the application states a reasonable basis for seeking the order.⁹ Protection against the abuse of the process is provided for in the law through the requirement that a bond must be posted prior to the execution of an attachment order.

A bond must be posted with the court prior to the execution of an attachment order. The bond is security against any claims for damages by the counterparty arising from the attachment order. A claim may be made by a counterparty where the grounds cited in support of the attachment order fail to be proven in subsequent litigation. That is to say, the counterparty successfully defends against the claims. The calculation of the amount is not clearly specified in the law, however, standard practice is for the court to require that a bond of one third of

⁸ High Court of Taiwan Civil Decision (2007) Zhong-Shang-Zi No. 175.

⁹ The applicant must state how the provisional relief would prevent material harm or imminent danger to the applicant if granted. Courts have in some recent cases started requesting evidence in support of the application.

the value of the order be posted for a provisional attachment.¹⁰ This can make obtaining an attachment order for the full amount of damages sought prohibitive. It would be possible, however, to also seek an attachment order for a lesser amount: for example, the value of a house or property.

Once an attachment order has been obtained an application may be filed with the tax authorities to review the financial information for the defendant. Records obtained from the tax authorities should yield more detailed information than that otherwise available but will obviously only show what a defendant has disclosed/reported.

The original attachment order must be enforced within thirty days. The information from the tax authorities should allow a decision to be made to either let the order expire or enforce it. The former may be done without prejudice to a later application.

Once the attachment order has been executed, the counterparty may petition the court for an order requiring that a civil claim be filed within a specified period. If the party fails to file a civil claim then the court will vacate the order. Proof that an action has been filed in an appropriate overseas jurisdiction should satisfy this requirement. The counterparty may also post a bond of 100% of the value of the order with the court to release the attached assets. If the counterparty does not petition the court or post a bond then the order remains in place until such time as the party applies to have it lifted.

The attachment order not only preserves assets and property to later satisfy a judgment but can serve as an effective means to leverage a settlement prior to the conclusion of the foreign litigation.

II. REQUIREMENTS TO ENFORCE A FOREIGN MONEY JUDGMENT

A. General Summary of Requirements

Local courts will recognize and enforce foreign judgments where the judgment is final. Article 402 of the Code of Civil Procedure (Taiwan) Part II (Procedure in the Court of the First Instance) Chapter I (Ordinary Procedure) Section 5 (Judgment) sets out the substantive

¹⁰ Supreme Court of Taiwan Civil Decision (2009) Tai-Ke-Zih No. 721.

grounds for a court to assess when determining the enforceability of a foreign judgment. And a court will decline to enforce a foreign judgment where:

- (i) The foreign court had no jurisdiction over the case according to the laws of Taiwan;
- (ii) The unsuccessful defendant did not respond to the action; provided, that this shall not apply where the notification or order to commence the action was served in a timely manner on the party in his country, or was served on him through judicial assistance in Taiwan;
- (iii) The judgment of the foreign court is considered incompatible, in terms of either content or procedure, with public order or good morals in Taiwan; or
- (iv) Taiwan and the country concerned do not grant reciprocal recognition to each other's court judgments.

The case will not be retried on its merits but a defendant may challenge the enforcement of the judgment on the above grounds and a court will accept arguments and evidence for consideration to assess the merit of the challenge.

Civil decisions from the courts of the People's Republic of China fall under Article 74 of the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area. Article 74 does not address jurisdiction nor service.

B. Detailed Discussion of Requirements

A court may not engage in a substantive review of the determination of fact or the application of law made by the foreign court when determining the recognition and enforceability of a final foreign judgment. Taiwan's Supreme Court has affirmed this view and held that such examination should not be a retrial, reexamination, or redetermination of the matter nor should a court concern itself with whether a foreign court's determination of facts or application of law had been made free from defect.¹¹ The court must assess the enforceability of the decision not assess the merits of the decision.

¹¹ Supreme Court of Taiwan Civil Decision (1995) Tai-Shang Tzu No. 2534.

Jurisdiction

A court will refuse to enforce a foreign money judgment where the foreign court had no jurisdiction over the case according to the laws of Taiwan. In determining which court has jurisdiction in civil cases involving foreign elements, a court should consider: domicile, where dispute occurred, governing law of dispute, and the burden on court. A court may apply the principal of forum non conveniens in considering jurisdiction.¹²

Courts will respect the freedom of parties to contract and submit to the jurisdiction of a particular court absent the application of mandatory provisions of the law that grant exclusive jurisdiction to the courts and laws of Taiwan. Similarly, courts will respect a party or parties' choice to submit to the jurisdiction of a particular court as demonstrated by their commencing or defending an action in that jurisdiction in as far as permitted by the laws of Taiwan. Absent explicit or implicit consent to the jurisdiction of the foreign court, jurisdiction in a civil matter under Article 1 of the Code of Civil Procedure to the jurisdiction of the domicile of the defendant absent a cause of action that brings it within one of the other areas where jurisdiction has been set out in the Code.¹³

- (i) Article 3. Jurisdiction may be exercised by the court in the jurisdiction where a defendant has attachable property or where the subject matter of the claim is located in an action concerning property rights against a non-domiciled party.
- (ii) Article 10. Exclusive jurisdiction shall be exercised in an action concerning real rights to immovable property or concerning the partition of boundaries of that property by the court in the jurisdiction of said property.
- (iii) Article 12. Jurisdiction may be exercised by the court in the jurisdiction of the place of performance of a contract where the parties have agreed to that place of the performance in an action concerning contractual rights.

¹² Supreme Court of Taiwan Civil Decision (1992) Tai-Shang-Zi No. 2517.

¹³ Also see the Act Governing the Application of Laws to Civil Matters Involving Foreign Elements.

- (iv) Article 13. Jurisdiction may be exercised by the court in the jurisdiction at the place of payment of a negotiable instrument in an action concerning claims based on said instrument.
- (v) Article 15. The court in the jurisdiction where the tort occurred may exercise jurisdiction in a tort action.

Domicile in Taiwan should be based on a company's registered address or an individual's household registration.

Service

A court will refuse to enforce a foreign money judgment where the unsuccessful defendant did not respond to the action. This shall not, however, apply where the notification or order to commence the action had been served in a timely manner on the party in his or her country, or was served on him through judicial assistance in Taiwan.

Courts in Taiwan will concern themselves with the adequacy of service of foreign process if the defendant does not respond to or completely defend the action and the plaintiff subsequently seeks to enforce the judgment in Taiwan. The inadequacy of a response of defense can be viewed quite broadly. For example, in a 2006 decision, Taiwan's Supreme Court remanded a case to the appellate High Court on grounds that a losing defendant's having submitted briefs to a New Zealand court on the issue of jurisdiction did not constitute a response to an action.¹⁴ In 2007, Taiwan's Supreme Court reaffirmed the principle that "a response to an action shall be deemed such if the defendant's substantive right to make a defense has been afforded ample protection. If the defendant participates in proceedings or acts in ways that are unrelated to the presentation of a defense in a legal action, the defendant has not responded to the action."¹⁵ Under this rule, courts in Taiwan have broad discretion to decide whether foreign proceedings afforded a losing Taiwanese defendant an adequate opportunity to present a defense. Nonetheless, the Supreme Court, in the same breath, also instructed that the lower courts substantively review whether the defendant's right to defense had been duly protected in the foreign jurisdiction and whether the appellant had been afforded ample time to prepare a defense.

¹⁴ Supreme Court of Taiwan Civil Decision (2007) *Tai-Shang-Zi* No. 582.

¹⁵ Supreme Court of Taiwan Civil Decision (2007) *Tai-Shang-Zi* No. 109.

A court will look to see whether the defendant was served in a timely manner in the country of the originating jurisdiction or was served on the defendant in Taiwan through judicial assistance – court effected service and achieved through the Letter Rogatory process. Service abroad must be effected against the defendant or its legal representative. Counsel or a litigation agent duly authorized may accept service abroad provided, however, that the service has been made in accordance with laws of the foreign country.¹⁶

While the Taiwanese courts have in principle affirmed that service can be made by counsel or a litigation agent, service by judicial assistance is strongly recommended where practical as it will result in service by the courts of Taiwan to the Taiwanese defendant's registered address. Taiwan's Supreme Court, for example, expressly rejected the efficacy of service in Taiwan where the service had been effected under the rules of the foreign jurisdiction by Taiwanese counsel retained by the foreign plaintiff.¹⁷

Taiwan's courts serve civil complaints on defendants using Taiwan's household registration system, and often have difficulty assessing the validity of service under the rules of a foreign country. This can particularly be the case if the jurisdiction allows the use of process agents since it may be difficult for the Taiwanese court to understand how a private agent can be legitimately entrusted with this task given that the courts in Taiwan effect serve themselves. Service by judicial assistance will take several months at least in most cases, so in some cases service under the rules of the foreign jurisdiction may be more appropriate if the Taiwanese defendant resides in the foreign jurisdiction. Recognition of foreign judgments often flounders on defects in service.

It should be noted that Taiwan is not a signatory to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil And Commercial Matters. Requests for assistance from foreign courts will be handled pursuant to the Act Governing Extension of Judicial Assistance to Foreign Courts. Taiwan and the United States have not concluded any agreements or treaties governing the service of judicial and extra-judicial documents in commercial cases or the enforcement of foreign money judgments.

¹⁶ Supreme Court of Taiwan Civil Decision (2008) *Tai-Shang-Zi* No. 109.

¹⁷ Supreme Court of Taiwan Summary Civil Decision (1998) *Jian Shang* No. 372.

Defense counsel will frequently challenge service, and always with default judgments. If a plaintiff anticipates enforcing a judgment in Taiwan, best practice will be to ensure that service has been effected through judicial assistance in Taiwan.

Public Order and Good Morals

A court will refuse to enforce a foreign money judgment where the judgment of the foreign court is considered incompatible, in terms of either content or procedure, with public policy considerations generally referred to by the term of art “public order and good morals.” A court may engage in a limited review of the foreign decision and its merits for purpose of maintaining fundamental public and moral order.¹⁸

Article 25 of the Act Governing the Application of Laws to Civil Matters Involving Foreign Elements identifies the legislative intent of ‘public order’ and ‘good morals’. The term ‘public order’ refers to the concrete expression of the founding ideals and basic national policies, and ‘good morals’ to the basic moral precepts originating from the populace. The Supreme Court has noted that the public order or good morals in Article 402 “refers to where the content of a foreign court judgment orders the performance of some act prohibited by the law of Taiwan, such as delivering contraband; or that according to the social mores of Taiwan is regarded as incompatible with good customs and morals, such as polygamy or gambling.”¹⁹ A court would have to find the foreign judgment in conflict with the basic principles underlying the country’s legal and social order to refuse enforcement on this ground.

One issue that frequent arises for consideration under ‘public order and good morals’ is that of punitive damages. Taiwan has a civil law system with its origins in the systems of Germany and Japan. Damages follow the theory that a plaintiff should only be able to recover or be compensated for actual damages and thus the concept of punitive damages traditionally does not arise in Taiwan’s Civil Code. Astute defense counsel will contest a foreign judgment on ‘public order and good morals’ grounds if that judgment includes punitive damages. The law remains unsettled on the issue but Taiwan’s Supreme Court has found foreign punitive damage awards to be recognizable and enforceable on the grounds that Taiwan has incorporated punitive

¹⁸ Supreme Court of Taiwan Summary Civil Decision (1998) *Jian Shang* No. 372.

¹⁹ Supreme Court of Taiwan Civil Decision (1995) *Tai-Shang-Tzu* No. 2534.

damages into its legal system through such legislation as the Consumer Protection Law, Fair Trade Act and Trademark Act.²⁰

Reciprocity

A court will refuse to enforce a foreign money judgment where Taiwan and the country concerned do not grant reciprocal recognition to each other's court judgments. Taiwan has not entered into treaties governing the reciprocal enforcement of foreign money judgments. The receptiveness of a court in Taiwan to enforcement will, therefore, depend on the receptiveness and capacity of the courts in the originating jurisdiction to extend reciprocity under their laws.

Recognition need not be formal diplomatic recognition but reciprocity of respective court decisions.²¹ Reciprocity can exist, however, if, absent past or current examples of reciprocity, an expectation of future reciprocity exists.²²

Defense counsel will frequently raise a lack of reciprocity or the existence of contrary foreign court decisions on reciprocity with the courts of Taiwan to challenge a foreign money judgment. It would be best practice to include a statement by the court with the certificate or affidavit attesting to the finality and irrevocability of the judgment that the issuing court would offer reciprocity for the enforcement of the decisions of the courts of Taiwan.

People's Republic of China

Article 74 of the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area provides that, "to the extent that an irrevocable civil ruling or judgment, or arbitral award rendered in the Mainland Area is not contrary to the public order or good morals of the Taiwan Area, an application may be filed with a court for a ruling to recognize it." The article does, however, qualify this by stating that this shall not apply until such time as the PRC's courts offer reciprocity to the decisions of the courts of Taiwan. There has been reciprocal enforcement by the courts of Taiwan and the PRC.

²⁰ Supreme Court of Taiwan Civil Decision (2008) Chong Su Tzu No. 835; Supreme Court of Taiwan Civil Decision (2010) Chong Su Tzu No. 2193.

²¹ Supreme Court of Taiwan Civil Decision (2005) Chong Su Tzu No. 107.

²² Supreme Court of Taiwan Civil Decision (2004) Tai-Shang No. 1943.

