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ASIA ARBITRATION GUIDE

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NOTICE

The information provided in this Arbitration Guide has been researched with the utmost diligence, however laws and regulations in the Asia Pacific Region are subject to change and we shall not be held liable for any information provided. It is suggested to seek updated detailed legal advice prior to commencing any arbitration proceedings.



16. TAIWAN

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16.1 Which laws apply to arbitration in Taiwan?

Arbitration conducted in Taiwan is governed by the so-called “Arbitration Law”. The Law replaced its predecessor, the “Commercial Arbitration Act” of 1961, and rendered the Republic of China (hereinafter Taiwan) arbitration regime more consistent with international standards. The Arbitration Law became effective in 1998, and was last amended in December, 2009. It applies to both domestic and international arbitrations conducted in Taiwan.

In addition to the Arbitration Law, the Rules on Arbitration Institution, Mediation Procedures and Fees also regulate arbitrations conducted in Taiwan. This set of rules sets forth requirements and procedures for the setting up of an arbitration institution and provides a default method for the calculation of arbitration fees, which applies to both institutional and *ad hoc* arbitration.

16.2 Is the Taiwanese Arbitration Law based on the UNCITRAL Model Law?

The Arbitration Law was drafted with reference to the UNCITRAL Model Law on International Commercial Arbitration, as well as a view to legislation in the U.S., UK, Germany and Japan. Unlike most national arbitration laws, however, Taiwan’s Arbitration Law contains detailed arbitrator qualification requirements and requires training of arbitrators, which appears inconsistent with international norms.

16.3 What constitutes an arbitral agreement?

Article 1 of the Arbitration Act defines an arbitral agreement as an agreement between the parties to submit to arbitration any dispute that has arisen or may arise in connection with a defined legal relationship between them.³⁸⁷³⁸⁸ The definition is worded similarly to

³⁸⁷ See YANG, CHONG-SEN (楊崇森) ET AL., On Arbitration (仲裁法新論), pp. 56 (3rd ed. 2008).

³⁸⁸ See LIN, JYUN-YI (林俊益), The Practical Benefit of Arbitration Law (仲裁法之實用權益), pp. 61-62 (1st ed. 2001).



Article 7 of the Model Law on International Commercial Arbitration.³⁸⁹

In addition Article 1 limits arbitral disputes to those which may be settled in accordance with the law. In other words, parties may not enter into an agreement to arbitrate criminal matters or domestic relations disputes.

Article 1 further provides that an arbitral agreement must be in writing. Written documents, documentary instruments, correspondence, facsimiles, telegrams, or any other similar types of communication between the parties that may evince the parties' mutual intention to arbitrate may all constitute an arbitration agreement.³⁹⁰

16.4 Separability of Arbitral Clauses

Article 3 of the Arbitration Law provides that the validity of an arbitration clause which forms part of a principal contract between the parties shall be determined separately from the rest of the principal contract. Therefore, even if in the case that the principal contract is nullified, invalid, revoked, rescinded or terminated, the validity of the arbitral clause is determined separately, so as to facilitate arbitration.³⁹¹

16.5 Force of Arbitral Agreement

The main force of an arbitral agreement is to suspend court proceedings when disputes can be referred to arbitration. If one of the parties to an arbitral agreement commences a legal action in conflict with the arbitral agreement, the court shall, upon petition by the adverse party, suspend the legal action and order the suing party to submit to arbitration within a specified time, unless the counter party has already proceeded to respond to the legal action. After the suspension, the legal action shall be deemed to have been withdrawn when an arbitral award is made. If the suing party fails to submit to arbitration within the specified time period ordered by the court, the court shall dismiss the legal action.³⁹²

16.6 Principle of Clarity and Definiteness and the Right of Procedural Choice

The clarity of an arbitral agreement may not only affect the validity of the agreement but also essentially influences the ensuing arbitral proceedings. For example, in the civil ruling

³⁸⁹ See Arbitration Law of R.O.C. Article 1, Paragraph 3 and 4; the sorts of “writing form” include and not limited to written documents, documentary instruments, correspondence, facsimiles and telegrams. See also UNCITRAL Model Law on International Commercial Arbitration (hereinafter UNCITRAL Model Law) Article 7 (2) and 16 (1).

³⁹⁰ See Arbitration Law of R.O.C. Article 1.

³⁹¹ See Arbitration Law of R.O.C. Article 3 and UNCITRAL Model Law Article 16 (1).

³⁹² See Arbitration Law of R.O.C. Article 4 and UNCITRAL Model Law Article 8 (1).



of Taiwan Supreme Court 87 Tai-Kang-Tzu No. 88, an arbitral agreement stated that certain disputes “may,” instead of “shall,” be submitted to arbitration; the agreement was deemed valid by the Supreme Court. However, the ruling also dismissed the legal action brought by the plaintiff (who argued that the dispute should be arbitrated) because the court interpreted the arbitral agreement to be not binding.³⁹³

In addition, the court has ruled that an agreement to either arbitrate or litigate entitles the parties to choose either course of action. If a party pursues legal action, the other party may no longer be able to submit the dispute to arbitration. Likewise, when a party commences arbitration, the other party will not be able to sue in court.

A clear and definite arbitration agreement should also stipulate the following procedural factors:

- (1) **The place of arbitration:** The place of arbitration is important because it determines which country’s *lex arbitri* will govern the arbitration process. In addition, whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the country where the arbitration takes place and the country or countries where the award may have to be enforced is important to the arbitration. In the absence of an agreement, the place of arbitration is to be determined by the arbitral tribunal.³⁹⁴
- (2) **The arbitrator(s) and arbitral institution:** In the absence of an appointment of an arbitrator or a method of appointment in an arbitral agreement, each party shall appoint an arbitrator for itself. The appointed arbitrators shall then jointly designate a third arbitrator to be the chairperson. The parties are free to submit their dispute to an arbitral institution of their own choice.³⁹⁵
- (3) **The language of the proceedings:** Parties to a trans-national dispute may designate a language or languages to be used to conduct the arbitral proceedings. Interpreters shall, however, be provided under the direction of the arbitral tribunal in the event that a party or an arbitrator is not familiar with the language of arbitration. In addition, it is also advisable to make an agreement beforehand on how those translation costs are to be split and paid by the parties along with the other arbitration costs. In practice, if the parties fail to designate the language to be used in the arbitration proceedings, the arbitral tribunal would select one for the parties. Most frequently the language chosen by the arbitrators will be Mandarin Chinese.³⁹⁶
- (4) **The arbitration rules:** In the absence of an agreement on the procedural rules governing the arbitration, the arbitral tribunal shall apply the Arbitration Law. Where the Arbitration Law is silent, the arbitral tribunal may apply the Code of Civil Procedure *mutatis mutandis* or such other procedural rules it deems proper.³⁹⁷ In practice, parties may agree on certain arbitral rules or guidelines issued by arbitral institutions or international organizations, such as The Arbitration Rules of the Chinese Arbitration Association (Taipei) or the UNCITRAL Model Rules.

³⁹³ See also the Taiwan High Court 84 Kang-Tzu No. 753.

³⁹⁴ See Arbitration Law of R.O.C. Article 20.

³⁹⁵ See Arbitration Law of R.O.C. Article 9, Paragraph 1 and 4.

³⁹⁶ See Arbitration Law of R.O.C. Article 25.

³⁹⁷ See Arbitration Law of R.O.C. Article 19.



- (5) **The enforcement of an arbitral award:** An award may not be enforceable unless a competent court has granted an enforcement order. The arbitral award may be enforced without having an enforcement order granted by a competent court, however, if the contending parties so agree in writing and the arbitral award concerns any of the following subject-matters:
- (a) Payment of a specified sum of money or certain amount of tangible things or valuable securities;
 - (b) Delivery of a specified movable property.³⁹⁸
- (6) **The confidentiality of arbitration:** Article 15 of the Arbitration Act requires the arbitrator to “uphold the principle of confidentiality in conducting the arbitration.” Arbitral proceedings cannot be made public unless agreed upon by both parties.³⁹⁹ In addition, Article 32 requires the arbitrators to keep the deliberations of the tribunal confidential.⁴⁰⁰ There is, however, no clear rule regarding the extent to which the parties to the arbitration are under the obligation to keep information relating to the dispute secret. In practice, in Taiwan, parties to the arbitration rarely agree to impose a duty of confidentiality among them.

16.7 What are the main arbitration institutions in Taiwan?

Taiwan neither has a so-called “national arbitration center” nor a default appointing authority. An arbitration institution can only be established if it meets the requirements set forth under the Rules on Arbitration Institutions, Mediation Procedures and Fees. Currently there are four registered arbitral institutions in Taiwan, including:

- (1) **The Arbitration Association of the Republic of China** (also known as the “Chinese Arbitration Association, Taipei” or the “CAA”) is the leading arbitral institution in Taiwan. It is based in Taipei, Taiwan, and has 2 branch offices in Taiwan, and 2 liaison offices in China. In addition to arbitration, it provides a wide range of dispute settlement administration services, including mediation, dispute review board and other alternative dispute resolution proceedings. In 2011, the CAA handled 109 cases.⁴⁰¹
- (2) The **Taiwan Construction Arbitration Association**, established in 2001, specializes in construction disputes.
- (3) The **Chinese Construction Industry Arbitration Association** also specializes in construction disputes.
- (4) The **Association of Labor Dispute Construction Arbitration of the Republic of China** specializes in labor disputes.

³⁹⁸ See Arbitration Law of R.O.C. Article 37, Paragraph 2.

³⁹⁹ See Arbitration Law of R.O.C. Article 15.

⁴⁰⁰ See Arbitration Law of R.O.C. Article 32.

⁴⁰¹ See <http://www.arbitration.org.tw/english/index-1.html> (last visited February 11, 2013).



16.8 How many arbitrators are usually appointed?

Parties are free to agree on the method of appointment of arbitrators and the number of arbitrator(s) as long as a single arbitrator or an odd number of arbitrators is designated and the arbitrators selected meet the qualification requirements listed in Articles 6 to 8 of the Arbitration Law. Article 9 of the Arbitration Law provides that in the absence of an appointment of an arbitrator or an agreed method of appointment in an arbitral agreement, three arbitrators shall be appointed. Each party shall appoint one arbitrator and the appointed arbitrators shall then jointly designate a third arbitrator to be the chair of the arbitral tribunal.

Article 5 of the Arbitration Law requires that only a natural person can be appointed as an arbitrator. The Article further provides that “if the parties agreed to appoint a corporate entity or any other organization other than an arbitration institution as an arbitrator, the selection is null and void and it shall be deemed that no arbitrator was appointed.” In practice, if the parties appoint an arbitral institution as an arbitrator, it is also deemed that no arbitrator was appointed.

In arbitrations administered by a Taiwanese arbitral institution, unless the parties otherwise agree, a similar method of appointment of arbitrators to that laid out in Article 9 of the Arbitration Law applies, the only difference being that if a party fails to nominate an arbitrator or if the two arbitrators fail to nominate the chair arbitrator, the parties shall then ask the arbitration institution to make the appointment on their behalf. The institution shall notify the parties and the appointed arbitrators of all arbitrator appointments in writing.⁴⁰² The process of appointing arbitrators and constituting the arbitral tribunal will usually resemble the following:⁴⁰³

- (1) The claimant submitting the dispute to arbitration chooses an arbitrator and notifies in writing the respondent as well as the appointed arbitrator.
- (2) After the respondent has chosen an arbitrator, it in turn notifies in writing the claimant and the appointed arbitrators.
- (3) The appointed arbitrators then jointly designate a third arbitrator to be the chair and the three arbitrators together constitute the arbitral tribunal, which shall notify in writing both parties of the final appointment.

Pursuant to Article 14 of the Arbitration Law, the appointment of arbitrators made by an arbitral institution or the court shall not be challenged by the parties. Nevertheless, Article 16 of the Arbitration Law provides that the parties may challenge an appointment if “the arbitrator does not meet the qualifications agreed by the parties or if the arbitrator has a conflict of interest with one of the parties”. In addition, if the appointment falls into any of the circumstances listed in Article 40 of the Arbitration Law, a party may still

⁴⁰² See Arbitration Law of R.O.C. Article 9, Paragraph 4 and Article 10, Paragraph 1.

⁴⁰³ See HU, YUAN-JHEN (胡元禎), An Introduction to Arbitration. FT Law Review, Vol. 159, pp. 71.



petition the court to set aside the arbitral award.⁴⁰⁴

In arbitrations administered by the Chinese Arbitration Association, Taipei, if a party wishes to remove an arbitrator from a panel of more than 1 arbitrators, the arbitral tribunal shall determine whether to sustain the challenge with the challenged arbitrator refrained from taking part. On the other hand, if a party wishes to remove a sole arbitrator, the request shall be submitted to the court for determination.

16.9 Qualifications of Arbitrators

Unlike in most other countries, in Taiwan not everyone is eligible to be appointed as an arbitrator. According to the Arbitration Law, in order to act as an arbitrator, a person must possess legal or other professional knowledge or experience, a reputation for integrity and impartiality and any of the following qualifications:

- (1) having served as a judge or a prosecutor;
- (2) having practiced as a lawyer, accountant, architect, or mechanic, or in any other commerce-related profession for more than five years;
- (3) having acted as an arbitrator of a domestic or foreign arbitral institution;
- (4) having taught as an assistant professor or higher position in a domestic or foreign college certified or recognized by the Ministry of Education; and,
- (5) being specialized in a particular field or profession and having practiced for more than five years.⁴⁰⁵

Again contrary to international practice, Article 8 of the Arbitration Law allows only a few categories of persons to be listed on the roster of arbitrators of an arbitration association. In addition, the Article stipulates that anyone except those

- (1) having served as a judge or prosecutor;
- (2) having practiced as a lawyer for more than 3 years;
- (3) having taught in a department or graduate school of law as professor for two years, as an associate professor for 3 years; or
- (4) having been registered as an arbitration institution prior to the amendment of the Arbitration Law in 1998 and having arbitrated a dispute

shall receive training and obtain a passing certificate before they can be listed on a Taiwanese arbitration institution's roster of arbitrators.⁴⁰⁶

⁴⁰⁴ See YANG, CHONG-SEN (楊崇森) ET AL., *supra* note 1, pp. 167.

⁴⁰⁵ See Arbitration Law of R.O.C. Article 6.

⁴⁰⁶ However, according to Arbitration Law of R.O.C. Article 8, those who meet both mentioned qualifications and any of the following criteria would be allowed to apply with an arbitration institution for being registered as an arbitrator exempted from training: 1. Having served practically as a judge or prosecutor; 2. Having practiced as a lawyer for more than three years; 3. Having taught with the department of law or graduate school of law of a domestic or foreign university or college



Because of the training requirement, the Chinese Arbitration Association, Taipei, has only been able to register foreign arbitrators, among foreign judges, prosecutors, lawyers, and law professors, to its roster of arbitrators.⁴⁰⁷

16.10 Arbitrator's Independence and Impartiality

The independence and impartiality of arbitrators are the foundation of arbitration. The Arbitration Law takes several measures to assure that disputing parties have a just arbitration:

- (1) **Duty of disclosure:** An arbitrator is obliged to disclose any of the following circumstances to the parties:⁴⁰⁸ (a) the existence of any cause that would require judges to reject themselves from a judicial proceeding in accordance with Article 32 of the Code of Civil Procedure;⁴⁰⁹ (b) an employment or agency relationship now or in the past between the arbitrator and one of the parties; (c) an employment or agency relationship now or in the past between the arbitrator and an agent of one of the parties or between the arbitrator and a key witness; and (d) the existence of any other circumstances which raise any justifiable doubts as to the impartiality or independence of the arbitrator.
- (2) **Withdrawal of an arbitrator:** A party may apply for withdrawal of an arbitrator, if the arbitrator does not meet the qualifications agreed by the parties, or if any of the aforementioned circumstances regarding disclosure obligations exist. A party shall not apply to withdraw an arbitrator whom it had itself appointed, however, unless the cause for withdrawal has arisen or become known after the appointment had been made.⁴¹⁰ In the Arbitration Law, violations of disclosure obligations are causes for withdrawal. By contrast, the UNCITRAL Model Law uses “circumstances ‘likely to give rise to justifiable doubts as to his independence and impartiality’” as a disclosure factor, while it uses “circumstances (exist) that give rise to justifiable doubts as to his independence and impartiality” as a withdrawal factor. It appears that the Arbitration

accredited by the Ministry of Education as a professor for two years, or as an associate professor for three years, while teaching the major legal courses for more than three years; and 4. Having been registered as an arbitrator in any arbitration institution prior to the effectiveness of amendment of this Law, and acted practically as an arbitrator in a dispute.

⁴⁰⁷ See YANG, CHONG-SEN (楊崇森) ET AL., *supra* note 1, pp. 136 note 4. See also UNCITRAL Model Law Article 11 (1).

⁴⁰⁸ See Arbitration Law of R.O.C. Article 15, Paragraph 2.

⁴⁰⁹ Code of Civil Procedure of R.O.C. Article 32 : “Any judge shall voluntarily disqualify himself/herself in the following circumstances: 1. When the judge, or the judge's spouse, former spouse, or fiancée 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 fiancée 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.”

⁴¹⁰ See Arbitration Law of R.O.C. Article 16.



Law has a wider range of causes for withdrawal.

- (3) **Setting aside of an arbitral award:** Unlike the duty of disclosure and the withdrawal of an arbitrator, which protect the independence and impartiality before an arbitral award is made, the revocation of an arbitral award is a remedy for unjust arbitration after an award has been rendered. Article 40 of the Arbitration Law stipulates the grounds on which a party may apply to a court to set aside an arbitral award.

16.11 Does the Taiwanese arbitration law contain substantive requirements for the arbitration procedures to be followed?

The Arbitration Law's Article 19 indicates that the parties can themselves determine the procedural rules governing the arbitration and in the absence of an agreement on the procedural rules, the arbitral tribunal shall conduct the arbitration pursuant to the Arbitration Law. If the Arbitration Law is silent, the arbitral tribunal can follow the procedural rules stipulated in the Code of Civil Procedure or other rules it deems proper. The respect for disputing parties' autonomy on procedural arrangements also becomes obvious in many other stipulations in the Arbitral Proceedings Chapter of the Arbitration Law. For instance:

- (1) Article 18, Paragraph 2, on the commencing date of the arbitral proceedings;
- (2) Article 20, on the place of arbitration;
- (3) Article 21, Paragraph 1: on the appointment of arbitrators;
- (4) Article 23, Paragraph 2: on whether the proceeding shall be made public;
- (5) Article 25, Paragraph 1: on the language used in the arbitral proceeding;
- (6) Article 31: on whether the arbitral tribunal shall apply the rules of equity;
- (7) Article 32, Paragraph 4: on the termination of arbitral proceedings;
- (8) Article 33, Paragraph 2: on whether the relevant facts and reasons for the arbitral decision shall be recorded on the arbitral award; and
- (9) Article 36: on whether to apply the Simplified Procedures prescribed in the Code of Civil Procedure to the arbitral proceedings.

Unless otherwise agreed upon by both parties, the arbitral proceedings for a dispute shall comply with the Arbitration Law. In any case, the parties are required to abide by the mandatory provisions of the Arbitration Law. For instance,

- (1) Articles 5-8: on the qualifications of arbitrators;
- (2) Article 9-12: on the right of the parties to request an arbitral institution or a court to appoint an arbitrator after a specified time period;
- (3) Article 21: on the time limit of arbitration;
- (4) Article 27: on the delivery of documents; and
- (5) Article 33: on the time limit for the arbitral tribunal to render an award after the



conclusion of the final hearing.

Request for Arbitration: Article 18 of the Arbitration Law stipulates that the claimant shall provide the respondent with a written arbitration notification (specifying when the dispute is to be submitted to arbitration). The arbitral proceedings commence on the date specified on the written notice of arbitration received by the respondent.⁴¹¹ In institutional arbitral practice, the applicant submits the written notice of arbitration and arbitrator appointment to an arbitral institution. Following the claimant's payment of the arbitration fees⁴¹², the arbitral institution will then deliver the notice of arbitration to the counter party and ask the counter party to appoint its arbitrator. Aside from the arbitral fee, the parties shall also submit the following documents:

- (a) The Request for Arbitration and a sufficient number of copies (usually five) of the Request for each of the arbitrators and the parties against whom a claim is being made. The Request for Arbitration shall contain a statement of claim, including the names and addresses of the parties; the relief or remedy sought; the facts and reasons supporting it; the arbitral institution to administrate the arbitration; the date of the Request for Arbitration; the names and addresses of the legal representatives or the authorized representatives for the arbitration, if any; the subject-matter of the arbitration; and the amount involved.
- (b) The submission agreement or the contract containing an arbitral clause.
- (c) The Power of Attorney for the authorized representative in the arbitration, if any.
- (d) The Letter of Appointment of Arbitrator, in case the appointment has been made. The Statement should include the names and addresses of the appointed arbitrator and the circumstances said arbitrator should disclose.⁴¹³

On the other hand, the respondent may make a counterclaim pursuant to the submission of arbitration. The arbitral tribunal may consolidate the arbitral proceedings related to the

⁴¹¹ See Arbitration Law of R.O.C. Article 18, Paragraph 1 and 2.

⁴¹² The Rules on Arbitration Institution, Mediation Procedures and Fees Article 25, Paragraph 1: "For arbitration regarding property disputes, in addition to the TWD600 net cost for the forms and information for application, the arbitral fee shall be progressively escalated according to the amount or price of the subject matter pursuant to the following standard: 1. Where the amount or price of the subject matter is TWD60,000 or less, the arbitral fee shall be TWD3,000. 2. Where the amount or price of the subject matter is greater than TWD60,000 and up to TWD600,000, the arbitral fee for the amount exceeding TWD60,000 shall be 4%. 3. Where the amount or price of the subject matter is greater than TWD600,000 and up to TWD1,200,000, the arbitral fee for the amount exceeding TWD600,000 shall be 3%. 4. Where the amount or price of the subject matter is greater than TWD1,200,000 and up to TWD2,400,000, the arbitral fee for the amount exceeding TWD1,200,000 shall be 2%. 5. Where the amount or price of the subject matter is greater than TWD2,400,000 and up to TWD4,800,000, the arbitral fee for the amount exceeding TWD2,400,000 shall be 1.5%. 6. Where the amount or price of the subject matter is greater than TWD4,800,000 and up to TWD9,600,000, the arbitral fee for the amount exceeding TWD4,800,000 shall be 1%. 7. Where the amount or price of the subject matter is greater than TWD9,600,000, the arbitral fee for the amount exceeding TWD9,600,000 shall be 0.5%." And Article 26, Paragraph 1: "For arbitration regarding non-property disputes, the arbitral fee shall be TWD9,000."

⁴¹³ See CAA Arbitration Rules, Article 8 and 9.



claim and the counterclaim. Unless otherwise agreed upon by the parties, a counterclaim shall not fall outside of the scope of the agreement to arbitrate. The arbitral tribunal may not allow a counterclaim if it considers the counterclaim to be an attempt by the defendant to delay the arbitral proceedings.⁴¹⁴ During the arbitral proceedings, a party may amend or supplement its submissions as to the relevant parties, the subject matter of the arbitration and the relief or remedies sought, if the other party consents, or if such alteration will not unreasonably prejudice the defense of the other party or terminate the arbitration. The aforementioned restrictions shall not apply, however, before the respondent receives a copy of the Request for Arbitration. In addition, unless otherwise agreed upon by the parties, the arbitral tribunal shall not allow such amendment or supplement if it would fall outside the scope of the agreement to arbitrate.⁴¹⁵

Place of Arbitration: Drafted with a view to the Model Law on International Commercial Arbitration Article 20 Paragraph 1, unless otherwise agreed upon by both parties, the arbitral tribunal shall determine the place of arbitration as well as the time and date for the hearing and notify both parties thereof within ten days upon receipt of notice of the final arbitral appointment.⁴¹⁶

Principle of Confidentiality: Unless otherwise agreed upon by the parties, the arbitral proceedings shall not be made public.⁴¹⁷ This is one of the most important characters of arbitration and very different from the litigation process, which opens the proceedings to the general public unless the law specifies otherwise.⁴¹⁸

Full Opportunity of Presentation and Comprehension: The arbitral tribunal shall ensure that each party has a full opportunity to present its case and the arbitral tribunal shall conduct the necessary investigations of the claims by the parties. Either party may appoint a representative in writing to appear before the arbitral tribunal to make statements for and on its behalf. If the arbitral tribunal fails to give a party an opportunity to present its case prior to the conclusion of the arbitral proceedings, or if any party is not lawfully represented in the arbitral proceedings, a party may apply to a court to set aside the arbitral award.

The requirement for a full opportunity of presentation and comprehension has been a popular ground for parties to set aside an arbitral award in Taiwan. To curb this problem, most arbitral tribunals now ask the parties whether they have had a full opportunity to present their case in the last hearing in order to stop the parties from raising this ground to set aside an award.

International parties may designate a language or languages to be used to conduct the arbitral proceedings. The arbitral tribunal or a party may, however, request that any documents relating to the arbitration be accompanied by a translation in another language. Interpreters shall be provided under the direction of the arbitral tribunal in the

⁴¹⁴ See CAA Arbitration Rules, Article 15.

⁴¹⁵ See CAA Arbitration Rules, Article 14.

⁴¹⁶ See Arbitration Law of R.O.C. Article 20 and Article 21, Paragraph 1.

⁴¹⁷ See Arbitration Law of R.O.C. Article 23, Paragraph 2.

⁴¹⁸ See Court Organic Act of R.O.C. Article 86; exceptions include but not limited to Code of Civil Procedure of R.O.C. Article 195-1, Article 344 Paragraph 2, Article 350 Paragraph 2, Article 410 Paragraph 2, Article 574 Paragraph 4 and Article 600.



event that a party or an arbitrator is not familiar with Mandarin.⁴¹⁹ In practice, the arbitral tribunal makes inquiries into submissions during the hearing, which shall be recorded on camera unless the parties agree otherwise.

During the hearing, each party has the burden of submitting statements in support of the facts and legal arguments addressing the subject of the dispute, and has the burden of proving the facts by producing relevant evidence. In addition, each party shall submit arguments addressing the facts and evidence presented by the other party. The arbitral tribunal may, at the request of a party or on its own motion, order witnesses or experts to testify at the hearing. The arbitral tribunal orders the parties to submit arguments addressing the inquiries requested by a party, and the tribunal arranges for their submissions to be recorded, unless the tribunal considers it unnecessary. The arbitral tribunal also orders the parties to submit arguments addressing the outcome of the aforementioned inquiries and to arrange for their submissions to be recorded. Normally there will be only one hearing. When the arbitral tribunal is satisfied that no future submission or argument shall be made by the parties, an arbitral award shall be made, and the arbitral tribunal shall declare the hearing closed. After the closure of the hearing, however, the arbitral tribunal may notify the parties that the hearing will be reopened before the arbitral award is made, if the tribunal considers this necessary.⁴²⁰

16.12 What are the formalities for arbitral awards?

Time limit for rendering of the Arbitral Award: By law, the arbitral tribunal shall render an arbitral award within six months of commencement of the arbitration. Under the Arbitration Law, the arbitration time period begins on the date of the appointment of the last arbitrator. The arbitral tribunal may extend the decision period up to an additional three months if the circumstances so require.⁴²¹ In other words, the length of the statutory decision period will not exceed nine months. If the arbitral tribunal fails to produce a decision within nine months, both parties may agree to extend the arbitration period instead of commencing an action or filing a motion to litigate. In order to prevent the parties that agreed to extend the time limit from going to court against the agreement, it is advised that the agreement shall be executed in written form before the arbitral tribunal.⁴²² If the arbitral tribunal fails to produce a decision within the deadline, either party may commence an action or file a motion to litigate. Once a disputant has commenced an action or filed a motion to litigate, the arbitral proceedings are deemed terminated thereafter.⁴²³

16.13 On what conditions can arbitral awards be appealed or rescinded?

According to Arbitration Law, Article 29, Paragraph 1 (modeled after the Model Law on

⁴¹⁹ See Arbitration Law of R.O.C., Article 23, Paragraph 1, Articles 24, 25, and 40, Paragraph 1, Item 3.

⁴²⁰ See CAA Arbitration Rules, Article 23, 24, 25, 27, and 34.

⁴²¹ See Arbitration Law of R.O.C., Article 21, Paragraph 1.

⁴²² See YANG, CHONG-SEN (楊崇森) ET AL., *supra* note 1, pp. 212.

⁴²³ See Arbitration Law of R.O.C., Article 21, Paragraph 3.



International Commercial Arbitration, Article 4) a party who knows or may know that the arbitral proceedings have derogated from the provisions of the Arbitration Law, or has not complied with the requirements of the arbitral agreement, yet proceeds with the arbitration without objecting to such non-compliance, shall be deemed to have waived the right to object. In addition, any objections raised shall be considered by the arbitral tribunal. The decisions made with respect thereto shall not be subject to appeal and the assertion and consideration of an objection shall not suspend the arbitral proceedings.⁴²⁴

Rescission of Arbitral Awards: After an arbitral decision has been handed down, recourse to a court against an arbitral award may be made by an application for setting aside to a competent court. Following international norms, the court may never conduct substantive review and can only set aside an award for one of the following circumstances:

- (i) In case of the existence of any circumstances stated in Arbitration Law Article 38.
- (ii) If the arbitral agreement is nullified, invalid, or has yet to come into effect, or has become invalid prior to the conclusion of the arbitral proceedings; a party to the arbitral agreement was under some incapacity; or the arbitral agreement is not valid under the law to which the parties have subjected it; or failing any indication thereon, under the law of this state.⁴²⁵
- (iii) If the arbitral tribunal fails to give any party an opportunity to present its case prior to the conclusion of the arbitral proceedings, or if any party is not lawfully represented in the arbitral proceedings.
- (iv) If the composition of the arbitral tribunal or the arbitral proceedings is contrary to the arbitral agreement or the law.
- (v) If an arbitrator fails to fulfill the duty of disclosure prescribed in Paragraph 2 of Article 15 of the Arbitration Law 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.
- (vi) If an arbitrator violates any duty in the entrusted arbitration and such violation carries criminal liability.
- (vii) If a party or any representative has committed a criminal offense in relation to the arbitration.
- (viii) If any evidence or content of any translation upon which the arbitral award relies, has been forged or fraudulently altered or contains any other misrepresentations.
- (ix) If a judgment of a criminal or civil matter, or an administrative ruling upon which

⁴²⁴ See Arbitration Law of R.O.C., Article 29, Paragraph 2 and 3.

⁴²⁵ See UNCITRAL Model Law, Article 34 (2) (a) (i).



the arbitral award relies, has been reversed or materially altered by a subsequent judgment or administrative ruling.

Items (vi) to (viii) above are limited to instances where a final conviction has been rendered, or the criminal proceedings may not be commenced, or continued for reasons other than insufficient evidence. Item (iv), concerning circumstances contravening the arbitral agreement, and items (v) to (ix), are limited to the extent that the circumstances in question are sufficient to affect the arbitral award.⁴²⁶ However, a party filing such a suit may only cite procedural flaws in the arbitral process as grounds for action; a party may not file a lawsuit seeking voidance of the arbitral decision if its dispute has to do with factual matters, such as whether the reasons for the decision were correct, or whether the decision was contradictory.

Rescission Procedures: An application to revoke an arbitral award may be filed at the district court at the place of arbitration. The Arbitration Law adopted the wording “may” instead of “shall,” which leaves room for parties’ autonomy to choose other competent courts regulated by the Code of Civil Procedure of the Republic of China (Taiwan).⁴²⁷ An application to revoke an arbitral award shall be submitted to the court within the thirty-day statutory period after the arbitral award has been issued or delivered. If, however, any cause in the above-mentioned items 6 to 9 exists, and if sufficient evidence is offered to show that the failure of a party to apply to the court to revoke an award before the end of the limitation period does not arise from any fault on the part of such party, then the thirty-day statutory period commences to run from the time when the party becomes aware of the cause for revocation.

The application to revoke an arbitral award shall be barred in any event after five years have elapsed from the date on which the arbitral award was issued.⁴²⁸ It is noteworthy that the above-mentioned application period is statutory and not subject to parties’ autonomy. In addition, the court may grant an application to stay the enforcement of the arbitral award once the applicant has paid an appropriate and specific security to the court. When setting aside an arbitral award, the court shall, under the same authority, simultaneously revoke any enforcement order which has been issued with respect to the arbitral award.⁴²⁹ Once an arbitral award has been revoked by a final judgment of a court, a party may bring the dispute to the court unless otherwise agreed by the parties.⁴³⁰

16.14 When and under what conditions can courts intervene in arbitrations?

A court may assist with the following aspects of arbitral proceedings:

- (1) **Investigation:** The arbitral tribunal, if necessary, may request assistance with the conduct of the arbitral proceedings from a court or other agencies. A court so

⁴²⁶ See Arbitration Law of R.O.C., Article 40.

⁴²⁷ See YANG, CHONG-SEN (楊崇森) ET AL., supra note 1, pp. 321.

⁴²⁸ See Arbitration Law of R.O.C., Article 41.

⁴²⁹ See Arbitration Law of R.O.C., Article 42.

⁴³⁰ See Arbitration Law of R.O.C., Article 43.



requested may exercise its investigative powers in the same manner and to the same extent as permitted in a legal action.⁴³¹ In addition, the arbitral tribunal may summon witnesses or expert witnesses to appear for questioning. In the event that a witness fails to appear without sufficient reason, however, the arbitral tribunal may apply for a court order compelling the witness to appear.⁴³²

- (2) **Replacement of an arbitrator:** an arbitrator appointed in an arbitral agreement may be replaced if such arbitrator becomes unable to perform as a result of death or any other cause, or refuses to conduct the arbitration, or unreasonably delays the performance of arbitration. In the event that the parties fail to agree upon a replacement, either party may apply to an arbitral institution or the court to appoint the replacement. Should any one of the circumstances mentioned occur with respect to an arbitrator, appointed by an arbitral institution or by the court, such arbitral institution or the court may appoint a replacement, or replacements, upon an application by any party or by its own volition.⁴³³
- (3) **Record keeping:** a certified copy of an arbitral award, along with proof of delivery, shall be filed with a court registry at the place of arbitration for record-keeping.⁴³⁴

16.15 What are the formal requirements for arbitral awards (form; contents; deadlines; other requirements)?

- (1) **Determination of the Arbitral Award:** The deliberations of an arbitral award shall not be made public. If there is more than one arbitrator, the arbitral award shall be determined by a majority vote. When calculating an amount in dispute and none of the opinions of the arbitrators prevail, the highest figure in an opinion shall be averaged with the second-highest figure in another opinion and so forth, until a majority consensus is obtained.

If an arbitrator refuses to sign the arbitral award, the arbitrators who have signed the award shall state the reason for the missing signature(s).

In the event that a majority consensus of the arbitrators cannot be reached, the arbitral proceedings shall be deemed terminated, unless otherwise agreed by the parties, and the arbitral tribunal shall notify the parties of the reasons for failing to reach a majority consensus.⁴³⁵ After notification, both parties may turn to other mechanisms for resolving the dispute.

- (2) **Issuance of the Arbitral Award:** To the extent that a decision on the dispute may be satisfactorily obtained, the arbitral tribunal shall declare the conclusion of the hearing and, within ten days thereafter, issue an arbitral award addressing the claims

⁴³¹ See Arbitration Law of R.O.C., Article 28.

⁴³² See Arbitration Law of R.O.C., Article 26.

⁴³³ See Arbitration Law of R.O.C., Article 13, Paragraphs 1 and 4.

⁴³⁴ See Arbitration Law of R.O.C., Article 34, Paragraph 2.

⁴³⁵ See Arbitration Law of R.O.C., Article 32.



and issues raised by the parties. An arbitral award shall contain the following items:

- Name and residence or domicile of the individual parties. For a party that is a corporate entity or another type of organization or institution, its name(s), administrative office(s), principal office(s) or business office(s) address;
- If any, names and domiciles or residences of the statutory agents or representatives of the parties;
- If any, names, nationalities and residences or domiciles of the interpreters;
- The main text of the decision, which shall include the arbitral decision on disputes submitted by parties, and the allocation of the arbitration fee;⁴³⁶
- The relevant facts and reasons for the arbitral award, unless the parties have agreed that no reasons shall be stated. Because the reasons for the arbitral award are crucial to the subsequent arbitral award enforcement and revocation, if any, it is advised to address relevant reasons in an arbitral award; and
- The date and place of the arbitral award.

The original copy of the award shall be signed by the arbitrator(s) who deliberated on the award. If an arbitrator refuses to or cannot sign the award for any reason, the arbitrator(s) who did sign the award shall state the reason for the missing signature(s).⁴³⁷ The arbitral tribunal shall deliver a certified copy of the arbitral award to each party. The certified copy of the arbitral award, along with proof of delivery, shall be filed with a court registry at the place of arbitration for the record.⁴³⁸ In addition, the arbitral tribunal may correct, on its own initiative or upon request, any clerical, computational, or typographic errors, or any other similar obvious mistakes in the award, and shall provide written notification of this correction to the parties as well as the court. The foregoing is likewise applicable to any discrepancy between a certified copy of the arbitral award and the original version thereof.⁴³⁹

- (3) **Binding force of arbitral awards:** The award shall be binding on the parties and have the same force as the final judgment of a court.⁴⁴⁰ The award binds not only both parties but also the following persons with respect to the arbitration:
- (i) Successors of the parties after the commencement of the arbitration, or those who have taken possession of the contested property of a party or its successors.
 - (ii) Any entity, on whose behalf a party enters into an arbitral proceeding; the successors of said entity after the commencement of arbitration; and, those who have taken possession of the contested property of the said entity or its successors.⁴⁴¹

⁴³⁶ See The Rules on Arbitration Institution, Mediation Procedures and Fees, Article 34, Paragraph 1.

⁴³⁷ See Arbitration Law of R.O.C., Article 33.

⁴³⁸ See Arbitration Law of R.O.C., Article 34.

⁴³⁹ See Arbitration Law of R.O.C., Article 35.

⁴⁴⁰ See Arbitration Law of R.O.C., Article 37, Paragraph 1.

⁴⁴¹ See Arbitration Law of R.O.C., Article 37, Paragraph 3.



16.16 What procedures exist for enforcement of foreign and domestic arbitral awards?

As Taiwan is not a signatory to the New York Convention, the requirements for recognition of foreign judgment are somewhat different from most countries. Articles 47 to 51 of the Arbitration Law govern the recognition and enforcement of foreign arbitral awards. Article 47 defines a “foreign” arbitral award as being an arbitral award which is issued outside the territory of Taiwan or issued pursuant to foreign laws within the territory of Taiwan. The term “foreign laws” in turn is not defined in the Arbitration Law. As a result, a court has even ruled that arbitration conducted in Taiwan under arbitration rules of a foreign arbitral institution is considered a foreign arbitral award.

Unlike a domestic award, a foreign arbitral award may be enforceable only after an application for recognition has been granted by the court.⁴⁴² A party filing motion with a court for recognition of a foreign arbitral decision must submit the following documents:

- (i) The original arbitral award or an authenticated copy thereof;
- (ii) The original arbitral agreement or an authenticated copy thereof;
- (iii) The full text of the foreign arbitration law and regulation, the rules of the foreign arbitral institution, or the rules of the international arbitral institution which applied to the foreign arbitral award.

If the above-mentioned documents have been issued in a foreign language, Chinese translations of the documents must also be submitted to the court. The word “authenticated” mentioned in items (i) and (ii) means the authentication made by the embassies, consulates, representative offices, liaison offices, or any other organizations authorized by the Taiwan government. Copies of the above-mentioned application shall be made, corresponding to the number of respondents, and submitted to the court which shall deliver those copies to the respondents.⁴⁴³

When an application is submitted by a party seeking recognition of a foreign arbitral decision, the court must issue a dismissal if such award contains one of the following elements:

- (1) Where the content of the arbitral award is contrary to public order or good morals of Taiwan.
- (2) Under Taiwan law, the matter in dispute cannot be arbitrated or settled through arbitration.

In addition, the court may also issue a dismissal order with respect to an application for recognition of a foreign arbitral award if the country where the arbitral award was made, or whose laws govern the arbitral award, does not recognize the arbitral awards of Taiwan.⁴⁴⁴

⁴⁴² See Arbitration Law of R.O.C., Article 47.

⁴⁴³ See Arbitration Law of R.O.C., Article 48.

⁴⁴⁴ See Arbitration Law of R.O.C., Article 49.



Apart from the fact that the court can deny recognition of the foreign award, the respondent may also request the court to dismiss the application within twenty days from the date of receipt of the notice of the application, if the counter party applies to the court for recognition of a foreign arbitral award that concerns any of the following circumstances:

- (1) The arbitral agreement is invalid as a result of a party's incapacity according to the law chosen by the parties to govern the arbitral agreement.
 - (2) The arbitral agreement is null and void according to the law chosen to govern said agreement or, in the absence of a law of choice, the law of the country where the arbitral award was made.
 - (3) A party is not given proper notice of the appointment of an arbitrator, or of any other matter required in the arbitral proceedings, or any other situations that give rise to lack of due process.
 - (4) The arbitral award is not relevant to the subject of the dispute covered by the arbitral agreement, or exceeds the scope of the arbitral agreement, unless the offending portion can be severed from and shall not affect the remainder of the arbitral award.
 - (5) The composition of the arbitral tribunal or the arbitral procedure contravenes the arbitral agreement or, in the absence of an arbitral 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.⁴⁴⁵
- (1) **Enforcement Order Application and Exception:** An award may not be enforced unless a competent court has granted an enforcement order on the application of a concerned party. It is noteworthy that to convert the award into a judgment or court order does not involve a factual investigation.⁴⁴⁶ However, the arbitral award may be enforced without an enforcement order if both parties agreed so in writing and the arbitral award concerns only the following:
- (i) Payment of a specified sum of money or a certain amount of fungibles or valuable securities;
 - (ii) Delivery of a specified movable property.⁴⁴⁷
- (2) **Rejection of Enforcement Order Application:** With the exception of the circumstances discussed above, an enforcement order is necessary for the enforcement of the award. The court shall reject an application for enforcement where:
- (i) The arbitral award concerns a dispute not contemplated by the terms of the arbitral agreement, or exceeds the scope of the arbitral agreement, unless the

⁴⁴⁵ See Arbitration Law of R.O.C., Article 50.

⁴⁴⁶ See also Taiwan Supreme Court 87 Tai-Kang-Tzu No. 266.

⁴⁴⁷ See Arbitration Law of R.O.C., Article 37, Paragraph 2.



offending portion of the award may be severed and the severance will not affect the remainder of the award;

- (ii) The reasons for the arbitral award were not stated, as required, unless the omission was corrected by the arbitral tribunal. It is noteworthy that the omission of the required reasons for the arbitral award is the only factor governing the rejection of an enforcement order application among other items which are required in the arbitral award; and
- (iii) The arbitral award directs a party to act contrary to the law.⁴⁴⁸

16.17 Recognition and Enforcement of arbitral awards between China, Hong Kong and Taiwan

The legal frameworks of arbitral systems for the recognition and enforcement of foreign arbitral awards of China, Hong Kong, and Taiwan are either subject to or modeled on the New York Convention,⁴⁴⁹ but with minor variations on implementation.

- (1) **Between Taiwan and China:** Article 74 of the People of Mainland China and Taiwan Areas Relations Act stipulates that an application for a ruling to recognize an arbitral award, civil ruling, or judgment, rendered in China, which is not contrary to the public order or good morals of Taiwan, may be filed with a court. An arbitral award of China may be enforceable after recognition has been granted by the court.⁴⁵⁰ The word “may” used above does not compel a court in Taiwan to immediately recognize an award of China. Therefore, the Arbitration Law will still be applicable after notification of an application for recognition of an award of China, and the counter party should still be able to request the court to dismiss the application on the grounds listed in Article 50 of the Arbitration Law.⁴⁵¹

However, in accordance with the same law, it shall not apply until any arbitral award rendered in Taiwan may be filed with a court in China and a ruling to recognize it or permit its enforceability in China is effected.⁴⁵² After the announcement on 16 May 1998 that the PRC Supreme People’s Court had passed the “Regulation of the Supreme People’s Court Regarding the People’s Court Recognition of the Civil Judgments of Taiwan Courts,” Taiwan restored its recognition of China’s arbitral and judgment decisions. In other words, since 1998, both judicial bodies have recognized each other’s judicial judgments and arbitral decisions.

⁴⁴⁸ See Arbitration Law of R.O.C., Article 38.

⁴⁴⁹ See Leyda, José Alejandro Carballo, A Uniform, Internationally Oriented Legal Framework for the Recognition and Enforcement of Foreign Arbitral Awards in Mainland China, Hong Kong and Taiwan? Chinese Journal of International Law, Vol. 6, Issue 2, pp. 345-361, 2007. Available at SSRN: <http://ssrn.com/abstract=1154962> or DOI: jmm021, at Paragraph 64.

⁴⁵⁰ See Act Governing Relations Between Peoples of the Taiwan Area and Mainland Area Article 74, Paragraph 1.

⁴⁵¹ See Leyda, José Alejandro Carballo, *supra* note 64, Paragraph 57.

⁴⁵² See Act Governing Relations Between Peoples of the Taiwan Area and Mainland Area Article 74, Paragraph 3.



Nevertheless, although Article 19 of the “Regulation of the PRC Supreme People’s Court Regarding the People’s Court Recognition of the Civil Judgments of Taiwan Courts” extends the applicability of the regulation to arbitral awards rendered in Taiwan, any application for the enforcement of a recognized Taiwan arbitral award must still be submitted to a competent intermediate court in accordance with the provisions of the Civil Procedure Law of China. At the same time, Article 4 of the “Regulation of the PRC Supreme People’s Court Regarding the People’s Court Recognition of the Civil Judgments of Taiwan Courts” requires that the judgments of Taiwan courts “shall not violate the One-China principle,” and since the grounds for the mutual recognition and enforcement of arbitral awards are based on unilateral legislation, such recognition and enforcement will still depend on cross-strait politics.⁴⁵³

To date, five Chinese awards have been applied for recognition and enforcement in Taiwan. The Taiwanese court recognized four Chinese awards (Taipei District Court 92 Zhong-sheng No. 30, Taichung High Court 93 Zai-Sheng No. 5, and Banchoio District Court 98 Sheng-Zi No. 124, Shihlin District Court 100 Sheng No. 276), but denied one (Taipei District Court 93 Zhong-sheng No. 15) on the ground of failure to give proper notice.

In the latest case, Shihlin District Court 100 Sheng No. 276, the court again analyzed the two criteria to determine if a court should recognize arbitral awards rendered in mainland China. Firstly, the court acknowledged that a 1998 Taiwanese arbitral award was recognized by the People’s Court in PRC China. Secondly, the court believed that recognition of the Chinese award would not offend Taiwan public policy.

In 2004, a Chinese Arbitration Association, Taipei award was applied for recognition and enforcement in the Intermediate People’s Court of Xiamen, China, and was recognized pursuant to China’s Regulation of the Supreme People’s Court Regarding the People’s Court Recognition of the Civil Judgments of Taiwan Courts.

- (2) **Between Taiwan and Hong Kong:** According to the “Act Governing Relations with Hong Kong and Macau,” Article 30 through Article 34 of the Commercial Arbitration Act, instead of Article 47 through Article 51 of the Arbitration Law, shall apply to the validity, petition for court recognition, and suspension of execution proceedings in cases involving civil arbitral awards made in Hong Kong or Macau.⁴⁵⁴ However, since the earlier Commercial Arbitration Act had been amended into the then re-named Arbitration Law, it is obvious that the Arbitration Law shall be applicable under this regulation.

Before 1997, Taiwan awards were summarily enforceable in Hong Kong. However, China resumed its sovereignty over Hong Kong on 1 July 1997, which resulted in a legal vacuum in the enforcement of arbitral awards from China and Taiwan until further amendments to the Arbitration Ordinance of Hong Kong took effect in 2000. These substantially restored the status quo ante.⁴⁵⁵ Therefore, although the 1998

⁴⁵³ See Leyda, José Alejandro Carballo, *supra* note 64, Paragraphs 59 and 60.

⁴⁵⁴ See Act Governing Relations with Hong Kong and Macau, Article 42, Paragraph 2.

⁴⁵⁵ See Morgan, Robert, Enforcement of Chinese Arbitral Awards Complete Once More, but with a Difference. Available at SSRN: <http://ssrn.com/abstract=925211>, p. 2.



“Regulation of the PRC Supreme People’s Court Regarding the People’s Court Recognition of Civil Judgments of Taiwan Courts” is not applicable for Hong Kong, Taiwan awards may still be enforced under the “universal” enforcement provision contained in the modified Section 2GG (2) of the Arbitration Ordinance of Hong Kong.⁴⁵⁶

To date, twelve Hong Kong awards have applied for recognition and enforcement in Taiwan. Eight were recognized, three were denied, and one was recognized in part. The court denied the three Hong Kong awards on procedural grounds, including failure to give proper notice. The three awards were denied recognition by Kaohsiung District Court 80 Zhong-Sheng-Keng No.1, Taiwan High Court 83 Keng No. 2331, and Kaohsiung District Court 90 Zai No.13 decisions.

16.18 Settlement Agreements

Parties to an arbitration dispute may explore settlement options to their dispute prior to the issuance of an arbitral award. If the parties reach a settlement before the conclusion of the arbitration, the arbitrator shall record the terms of settlement in a settlement agreement. A settlement agreement has the same force and effect as that of an arbitral award. However, the terms of the settlement agreement may be enforced only after the court has granted an application for enforcement and issued an enforcement order. The provisions of Arbitration Law, Article 38 and Articles 40 to 43, shall apply mutatis mutandis to the settlement proceedings hereunder.⁴⁵⁷

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⁴⁵⁶ See Leyda, José Alejandro Carballo, *supra* note 64, Paragraph 62.

⁴⁵⁷ See Arbitration Law of R.O.C., Articles 44 and 46.



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