

PANORAMIC

ARBITRATION

Taiwan



LEXOLOGY

Arbitration

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LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Taiwan is not a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, nor is it a party to any multilateral conventions relating to international commercial and investment arbitration. However, Taiwan has entered into agreements on mutual legal assistance with China and Vietnam. These agreements encompass provisions for mutual recognition of each other's arbitral awards.

In practice, Taiwanese courts tend to interpret the principle of reciprocity broadly and proactively. In principle, Taiwan will recognise foreign arbitral awards and allow their enforcement in Taiwan.

Law stated - 22 1 2024

Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Taiwan has entered into bilateral investment treaties with [31 countries](#).

Law stated - 22 1 2024

Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The [Arbitration Law](#) constitutes the primary domestic legal framework governing both domestic and foreign arbitral proceedings, and the recognition and enforcement of awards in Taiwan. Any award either issued outside Taiwanese territory or issued in accordance with a foreign law is classified as a foreign award.

Law stated - 22 1 2024

Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

When the Arbitration Law was amended in 1998, it was amended with reference to the provisions of the UNCITRAL Model Law of 1985. The amendment introduced to Taiwan's arbitral system the principle of independence of arbitration clauses and the arbitrator's duty of disclosure.

However, notable distinctions exist between the Arbitration Law and the current UNCITRAL Model Law. In particular, the UNCITRAL Model Law of 2006 added interim measures that the tribunal may order. In contrast, the Arbitration Law does not provide for interim measures.

Law stated - 22 1 2024

Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties have a large degree autonomy to agree on the arbitration procedures they wish to adopt. However, there are a few mandatory arbitration procedures under the Arbitration Law from which the parties may not deviate, including the following:

- the notice of arbitration must be in writing;
- the tribunal must give the parties sufficient opportunities to present their cases;
- deliberations on the arbitral award shall not be disclosed; and
- the arbitral award has the same effect as a binding court judgment.

Law stated - 22 1 2024

Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In practice, it is widely accepted that the parties can decide freely on the law applicable to the merits of the case. Further, the tribunal must render its decision based on the substantive law designated by the parties and may decide *ex aequo et bono* only if expressly agreed by the parties.

The Arbitration Law does not offer any guidance for cases where the parties have not agreed on the applicable substantive law.

Law stated - 22 1 2024

Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

The [Chinese Arbitration Association](#), Taipei (CAA) is the most prominent and leading arbitral institution in Taiwan. Its address is as follows: Floor 14, 376 Renai Road, Section 4, Taipei 106, Taiwan.

The CAA has its own arbitration rules – the [CAA Arbitration Rules](#) (the CAA Rules) – and provides a [list of arbitrators](#) for reference. While arbitrators appointed by the parties must fulfil the qualification requirements outlined in the Arbitration Law, the CAA does not mandate that parties choose arbitrators exclusively from the list. No restrictions exist concerning the place or language of arbitration under the CAA Rules, but arbitration awards are typically rendered in Mandarin Chinese unless the parties specify otherwise.

Arbitration fees are determined based on the amount in dispute. The CAA provides a [fee calculator](#) on its website.

Taiwan's Supreme Court is of the view that domestic arbitral awards that are not made by arbitral institutions recognised by Taiwan's competent authorities have no res judicata effect and are not enforceable.

Law stated - 22 1 2024

ARBITRATION AGREEMENT

Arbitrability

Are there any types of disputes that are not arbitrable?

Any dispute that can be settled legally between the parties is arbitrable. Conversely, arbitration is not permissible if the parties cannot dispose of the right in dispute, the dispute involves a public interest, the dispute involves the exercise of public power, or the dispute is under the exclusive jurisdiction of a court or a competent authority. The following are examples of disputes that are not arbitrable:

- criminal cases;
- disputes involving rights or legal relationships under family or inheritance law;
- disputes regarding the validity of patent and trademark rights; and
- determination of antitrust and unfair competition cases.

Law stated - 22 1 2024

Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be in writing, but the term 'writing' is interpreted broadly: an arbitration agreement is deemed to be established if there is a form of communication between the parties (eg, a letter) that shows their mutual intent to arbitrate. Parties may also include arbitration clauses in their contracts, such as in sales contracts or bills of lading.

Failure to comply with the written requirement is a fatal omission that cannot be resolved by lack of party objection. That aside, the Arbitration Law does not provide formal requirements for arbitration agreements.

Law stated - 22 1 2024

Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The circumstances that make an arbitration agreement no longer enforceable are similar to those of general contracts. These include situation where:

- one party revokes the agreement based on mistakes, fraud or duress;
- both parties collude in deceit, rendering the agreement ineffective;
- termination conditions specified in the agreement have been fulfilled; and
- the parties have mutually agreed to terminate the arbitration agreement.

Law stated - 22 1 2024

Separability

Are there any provisions on the separability of arbitration agreements from the main agreement?

Arbitration clauses can be separated from the main contract under the Arbitration Law; therefore, an arbitration clause can still be valid even if the main contract is invalid or has been revoked.

Law stated - 22 1 2024

Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Non-signatories may be bound by the arbitration clause if:

- they are successors of the parties to the arbitration agreement or the surviving company after a merger involving the parties;
- they are assignees of the main contract containing the arbitration agreement, such as an assignee of rights or a person assuming the debt; or
- the right subject to the arbitration agreement is exercised by a third party based on their right of subrogation.

Law stated - 22 1 2024

Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Arbitration Law does not set out any provisions for the participation of third parties in arbitral proceedings. However, a [prominent arbitration scholar](#) in Taiwan is of the view that the parties to an arbitration may request a third party to join the arbitral proceedings if:

- the third party has signed an arbitration agreement with the parties;
- the third party is a guarantor for one of parties under the contract in dispute, and the third party has signed the contract;
- the third party agrees to join the arbitral proceedings; or
- the third party requests to participate in the arbitral proceedings, and both parties agree to its participation.

Law stated - 22 1 2024

Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Arbitral tribunals in Taiwan rarely extend an arbitration agreement to non-signatories under the group of companies' doctrine. However, under the doctrine of piercing the corporate veil or contract interpretation principles, it is possible that the non-signatory parent company could be interpreted as the true contracting party bound by the arbitration agreement. This would be highly fact specific and depend on case at hand.

Law stated - 22 1 2024

Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Law does not explicitly exclude the possibility of multiparty arbitration agreements, nor does it provide specific requirements for such agreements. Nevertheless, when it comes to the composition of the arbitral tribunal, the Arbitration Law stipulates that if one party comprises two or more persons, and an agreement cannot be reached on the selection of arbitrators, a majority vote will decide the matter; if no majority vote can be reached, the selection of arbitrators is made by drawing lots.

Law stated - 22 1 2024

Consolidation

Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

Neither the Arbitration Law nor the Arbitration Rules of the Chinese Arbitration Association, Taipei contain express provisions on the consolidation of separate arbitral proceedings.

Law stated - 22 1 2024

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

An impartial person with legal or other specialised knowledge or experience and with specific qualifications may be chosen as an arbitrator, for example:

- an individual who previously served as a judge or prosecutor (excluding current ones);
- an individual who has practiced as a lawyer, accountant or architect for more than five years; or
- an individual who has served as an arbitrator of a domestic or foreign arbitration institution.

Article 7 of the Arbitration Law provides a list of facts (eg, involvement in corruption) that may disqualify an individual from acting as an arbitrator.

The Chinese Arbitration Association, Taipei (CAA) provides a list of arbitrators for reference. However, there is no requirement for parties to select arbitrators exclusively from this list.

In most cases, the courts will respect the parties' agreement on the nationality of arbitrators. Although there do not seem to be any Taiwan court judgments that explicitly address the enforceability of requirements on arbitrators' religion or gender, the [Constitution](#) protects religious and gender equality; therefore, it is more likely than not that agreements restricting the religion or gender of an arbitrator would be found invalid on public policy grounds.

Law stated - 22 1 2024

Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

According to the CAA's list of arbitrators, although most of Taiwan's arbitrators are lawyers, academics or engineers, arbitrators come from a diverse range of fields, including finance, maritime, patents, fire safety, construction, reflecting an increasing trend towards diversity in professional arbitrators.

However, there is no clear inclination or trend observed in practice with respect to gender diversity.

Law stated - 22 1 2024

Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The Arbitration Law and the CAA Arbitration Rules (the CAA Rules) both offer the same default mechanism for the appointment of arbitrators: if the parties do not agree on the appointment of an arbitrator or a method of appointment, the number of arbitrators shall be three, with each party choosing one arbitrator. The party-appointed arbitrators then jointly appoint the presiding arbitrator.

The parties may request the courts to appoint an arbitrator if:

- one party has appointed an arbitrator and requested the other party to do the same, but the other party fails to do so within 14 days;
- an arbitral institution is required to appoint an arbitrator but fails to do so within 14 days of being requested;
- the party-appointed arbitrators fail to jointly appoint the presiding arbitrator within 30 days;
- the arbitrator designated in the arbitration agreement fails to perform their duties in a timely manner, and the parties cannot agree on a new appointment; or
- one party's appointed arbitrator fails to perform their duties in a timely manner, and, after being requested by the other party, the party to whom the request was made fails to appoint another arbitrator within 14 days.

Law stated - 22 1 2024

Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be replaced under the following circumstances: death, absence, refusal to act as an arbitrator or a delay in performing their duties.

If the arbitrator lacks the qualifications agreed by the parties or is believed by the parties to be unable to perform their duties impartially, the parties can request for their recusal. The request must be submitted in writing, clearly stating the reasons for the request, to the tribunal within 14 days of the date the requesting party becomes aware of the existence of those grounds. The tribunal will make a decision on the request within 10 days. If a party

disagrees with the tribunal's decision, it may apply to the court for a final ruling within 14 days.

In recent years, the CAA has been inclined to apply the IBA Guidelines on Conflicts of Interest in International Arbitration (the IBA Guidelines). The [CAA arbitrator declaration form](#) also includes content from guidelines such as the IBA Guidelines to regulate the arbitrator's duty to disclose potential conflicts of interest.

Law stated - 22 1 2024

Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

The Supreme Court has expressed divergent, and at times conflicting, views on the relationship between parties and arbitrators. There have been decisions in which it:

- has recognised that a contract of mandate is formed between the parties and the arbitrator;
- has held that in institutional arbitration, there is no contractual relationship between the parties and the arbitrator, but only a contract of appointment between the parties and the arbitral institution; and
- has opined that since arbitrators, once selected, acquire quasi-judicial functions, the relationship between the parties and the arbitrator is not merely a private law contractual relationship, but also a public law relationship.

Regardless of the nature of the contractual relationship between the parties and the arbitrator, the arbitrator, once appointed, is required by law to be independent and impartial in the conduct of the arbitration and must disclose their relationship with the parties.

In the case of institutional arbitration in Taiwan, the arbitration fees are, in principle, allocated to the arbitrators in a specified proportion in accordance with the [Regulation Governing the Organisation, Mediation Procedures and Fees of the Arbitration Institution](#). The Regulation is authorised by the Arbitration Law.

Law stated - 22 1 2024

Duties of arbitrators

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

Both the Arbitration Law and the CAA Rules mandate arbitrators to disclose specific matters, including:

- the existence or history of an employment or agency relationship between the arbitrator and the parties, their representatives or key witnesses; and

- any other circumstances that may give rise to justifiable doubts regarding their impartiality or independence.

In practice, arbitrators often sign a statement to disclose matters or relationships that could undermine their impartiality.

Law stated - 22 1 2024

Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

There are no provisions in the Arbitration Law providing for arbitrator immunity from liability of arbitrators.

Law stated - 22 1 2024

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

If one party acts contrary to an arbitration agreement and initiates a lawsuit against the other party, the other party may raise an objection before it engages in oral arguments in court. The court then suspends the lawsuit and orders the plaintiff to submit the dispute to arbitration within a specified time. Failure to comply within the given time frame will result in the court dismissing the lawsuit.

Law stated - 22 1 2024

Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

A party may raise objections on the jurisdiction of the tribunal before it makes any statements related to the substantive issues in the proceedings. The tribunal has the power to decide whether the party's objection stands. After the arbitral award is made, if the party still disputes the tribunal's jurisdiction, the party may file an action in court to revoke the same.

Law stated - 22 1 2024

Distinction between admissibility and jurisdiction of tribunal

Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

There is no clear procedural distinction under the Arbitration Law regarding challenges to the admissibility of a claim or the jurisdiction of the tribunal. If the parties dispute over admissibility or jurisdiction and an arbitral award is later made, they may file a lawsuit to revoke the award.

Law stated - 22 1 2024

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

In the absence of agreement of the parties, the place of arbitration and the language of the arbitral proceedings are determined by the tribunal. The Arbitration Rules of the Chinese Arbitration Association, Taipei (the CAA Rules) specify that, unless the parties agree otherwise, the arbitral award shall be made in Mandarin Chinese.

The parties are free to decide the substantive law applicable to the dispute, and the tribunal must render its decision based on the law specified by the parties. When expressly agreed by the parties, the tribunal may decide *ex aequo et bono*.

Law stated - 22 1 2024

Commencement of arbitration

How are arbitral proceedings initiated?

Unless otherwise agreed by parties, arbitral proceedings are initiated on the date on which the respondent receives the written notice of arbitration.

Under the CAA Rules, the arbitration notice must include a copy of the request for arbitration and its attachments. The notice serves to inform the opposing party that it should respond with a defence. It also urges them to appoint an arbitrator promptly or to accept the proposed arbitrator.

Law stated - 22 1 2024

Hearing

Is a hearing required and what rules apply?

The Arbitration Law stipulates that the tribunal shall provide each party with ample opportunity to present its case and conduct necessary investigations into the facts of its claims.

Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Without prior agreement between the parties, the tribunal is given broad discretion in making procedural decisions, including the admission of evidence. In practice, it heavily relies on documentary evidence presented by the parties when establishing the facts of the case. It is also common for the tribunal to take testimony from the witnesses and experts.

If a witness refuses to attend before the tribunal, or if a third person refuses to produce documents related to the case as requested, the tribunal does not have the power to impose fines on those persons. Nonetheless, it may seek assistance from the courts to compel testimony or document production.

Law stated - 22 1 2024

Court involvement

In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

The tribunal may request assistance from the courts if assistance is necessary to the arbitral proceedings. The court may exercise its investigative powers under the [Code of Civil Procedure](#) for this purpose. For example, if a witness refuses to appear before the tribunal, the tribunal may request the court to issue a subpoena and compel the witness to do so. Should the witness disobey the subpoena, the court may impose a fine on them; if the witness repeatedly ignores the subpoena, the court may even have the witness apprehended to appear before the tribunal.

At the tribunal's request, the court may also order a third person to produce documents related to the case. If the third person does not cooperate, the court may impose a fine on them. Where necessary, the court may also order compulsory measures.

Law stated - 22 1 2024

Confidentiality

Is confidentiality ensured?

Unless otherwise agreed between the parties, all information presented during the arbitral proceedings and the content of an arbitral award shall, in principle, be kept confidential.

Despite the confidentiality of arbitral proceedings and arbitral awards, a domestic arbitral award is enforceable only after obtaining a court's enforcement order, and a foreign arbitral award is enforceable only after obtaining a court's recognition order. The contents of those

orders will be public; therefore, the parties involved, the nature of dispute and the decision of the tribunal may be revealed to a certain extent in those orders.

If a court of any ongoing litigation decides that it is necessary to investigate information related to specific arbitral proceedings or the award, it has the power to request the tribunal to provide the same. This is a noticeable exception to the principle of confidentiality.

Law stated - 22 1 2024

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Interim measures are exclusively ordered by the courts. Typical interim measures include a provisional seizure, a provisional injunction or a provisional injunction to maintain the status quo. A party must petition the court for interim relief. This may be done before or during the arbitral proceedings.

If an applicant obtains a provisional seizure or a provisional injunction to freeze the respondent's assets before filing for arbitration, the respondent may request the court to order the applicant to submit to arbitration within a prescribed time; otherwise, the court may revoke the provisional seizure or provisional injunction against the respondent.

Law stated - 22 1 2024

Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Neither the Arbitration Law nor the Arbitration Rules of the Chinese Arbitration Association, Taipei provide for emergency arbitrators.

Law stated - 22 1 2024

Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The tribunal has no power to order interim measures, nor can it order security for costs. However, the parties may petition the court to grant interim measures, including a provisional seizure, a provisional injunction or a provisional injunction to maintain the status quo, whether before or after the tribunal is constituted.

Law stated - 22 1 2024

Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

The tribunal has no power to order sanctions against the parties or their counsels for using guerrilla tactics in arbitration.

Law stated - 22 1 2024

AWARDS

Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Decisions by the tribunal are determined by a majority vote and do not require a unanimous vote. An arbitrator's dissent will not affect the award made by the tribunal, even if the arbitrator refuses to sign the award.

Law stated - 22 1 2024

Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

There are no specific regulations regarding dissenting opinions under the Arbitration Law. While the Arbitration Rules of the Chinese Arbitration Association, Taipei (the CAA Rules) allow an arbitrator to have their dissenting opinion documented in the record of the deliberations, these records are confidential; therefore, the parties will not be able to find out whether an arbitrator has attached a dissenting opinion to the decision.

In practice, even if there are disagreements among the arbitrators, it is fairly uncommon for an arbitrator to submit a dissenting opinion in writing.

Law stated - 22 1 2024

Form and content requirements

What form and content requirements exist for an award?

The original copy of the award must be signed by all arbitrators who participated in the deliberation. The award must also contain:

- the names and residence of the parties;

- the names and residence of the parties' statutory agents and representatives;
- the names, nationalities and residences of the interpreters during the arbitral proceedings;
- the main text of the decision;
- the relevant facts and reasons for the arbitral award unless the parties have agreed otherwise; and
- the date and place of the award.

Law stated - 22 1 2024

Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Unless the parties have agreed otherwise, the Arbitration Law stipulates that the tribunal shall render the award within six months of the formation of the tribunal. The time limit may be extended by the tribunal for another three months if necessary. If the tribunal fails to render an award in a timely manner, either party may refer the dispute to the courts, and the original arbitration proceedings will be terminated.

For arbitration to which expedited procedures are applicable, the CAA Rules, in principle, require the arbitrator to render the award within three months.

Law stated - 22 1 2024

Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The arbitral award becomes final and binding once it is made. However, in the case of corrections to any typographical errors, computational errors or any obvious mistakes of a similar nature in the award, the tribunal may remedy those errors by notifying the parties at any time. There is no time limit for making such corrections.

Law stated - 22 1 2024

Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Article 40 of the CAA Rules allows the tribunal to make partial or interim awards. However, in practice, the tribunal rarely applies invokes this power and will almost always issue a final award.

Termination of proceedings

By what other means than an award can proceedings be terminated?

The arbitral proceedings may also be terminated under any of the following circumstances:

- the tribunal fails to render an award within the statutory time limit, and either party has referred the dispute to the courts;
- the tribunal cannot reach a majority consensus on the decision;
- the applicant withdraws the arbitral application; or
- the parties have entered into a settlement or mediation agreement.

Law stated - 22 1 2024

Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The arbitration fee is calculated in accordance with rates ranging from 0.5 per cent to 4 per cent of the claimed amount. The applicant must pay the full arbitration fee in advance to the arbitral institution.

The tribunal allocates responsibility for the arbitration fee to the parties in the award. The allocation is usually pro rata depending on how much of the party's claim is awarded. For example, if the applicant makes a claim for US\$1 million from the respondent, and the tribunal awards the applicant US\$800,000, the tribunal will likely decide that the applicant is responsible for 20 per cent of the arbitration fee while the defendant is responsible for 80 per cent.

However, without prior agreement between the parties, the attorneys' fees paid by each party during the arbitral proceedings are not recoverable. By default, each party pays its own attorneys' fees in accordance with the 'American Rule'.

Law stated - 22 1 2024

Interest

May interest be awarded for principal claims and for costs, and at what rate?

Interest may be awarded for costs and principal claims. In the absence of a party agreement on the interest rate, the annual interest rate is 5 per cent.

Law stated - 22 1 2024

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The tribunal may correct any typographical errors, computational errors or other obvious errors of a similar nature in the award *ex officio* by notifying the parties in writing at any time or on a party's initiative. There is no time limit for making such corrections.

On the contrary, for any substantive errors that are not obvious, the tribunal has no power to make corrections once the award is made. It also has no power to interpret the award *ex officio* or on a party's request.

Law stated - 22 1 2024

Challenge of awards

How and on what grounds can awards be challenged and set aside?

The parties may challenge the award at the court within 30 days of delivery of the award. Typical grounds for the setting aside of an award include the following:

- the scope of the award falls beyond the scope of the parties' arbitration agreement;
- the award does not explain its reasoning;
- the award demands a party to conduct unlawful acts; or
- either party was not given an opportunity to present its case before the conclusion of the proceedings.

Law stated - 22 1 2024

Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Most litigation related to the revocation of an award goes through three levels of court in Taiwan: district courts, high courts and the Supreme Court. The court fee at each level is approximately 1 per cent of the value of the claim. The court usually determines the allocation of court fees pro rata based on how much each party wins or loses.

To illustrate, where the plaintiff makes a claim for US\$1 million from the defendant, and the court awards the plaintiff US\$800,000, the court will likely decide that 20 per cent of the court fee should be borne by the plaintiff and 80 per cent by the defendant.

Law stated - 22 1 2024

Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

The Arbitration Law categorises all awards into two categories: domestic awards and foreign awards. Any award either issued outside Taiwanese territory or issued in accordance with a foreign law is classified as a foreign award.

Unless the exceptions under article 37(2) of the Arbitration Law apply, a domestic arbitral award is enforceable only after obtaining a court's enforcement order. The court will issue an enforcement order unless any of the following circumstances are present:

- the scope of the award falls beyond the scope of the arbitration agreement;
- the award does not state its reasoning; or
- the award demands that a party commit unlawful acts.

A foreign award must be recognised by the court before its enforcement. The court will recognise a foreign award unless:

- the enforcement of the foreign award violates Taiwan's public policy;
- the dispute involved is not arbitrable under Taiwan law; or
- the foreign award is issued in a jurisdiction where Taiwanese awards are not recognised, or the governing law applicable to the foreign award does not recognise Taiwanese awards (principle of reciprocity).

If a foreign award violates the principle of reciprocity requirement, the court has the discretion to decide whether to recognise the award.

Law stated - 22 1 2024

Time limits for enforcement of arbitral awards

Is there a limitation period for the enforcement of arbitral awards?

Once an award is issued, the statute of limitations of the applicant's claim resets, and the applicant may apply for enforcement of the award within that period. If the original statute of limitations of the claim is less than five years, the statute of limitations will be extended to five years after receiving the award; therefore, the statute of limitations will, in practice, be at least five years.

Law stated - 22 1 2024

Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

If the applicant applies for recognition of a foreign award that has already been set aside by the court at the place of arbitration, the respondent may request the Taiwanese court to dismiss the application within 20 days of the respondent receiving the notice from the court.

Law stated - 22 1 2024

Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

Taiwan does not have emergency arbitrators under the Arbitration Law or the Arbitration Rules of the Chinese Arbitration Association, Taipei.

Law stated - 22 1 2024

Cost of enforcement

What costs are incurred in enforcing awards?

To enforce an award, the applicant must first obtain from the courts an enforcement order for a domestic award, or a recognition order for a foreign award. The application fee for these orders ranges from NT\$500 to NT\$5,000, depending on the amount of the award.

To initiate enforcement proceedings at the enforcement court, the applicant must pay an enforcement fee of 0.8 per cent of the claimed amount to the enforcement court.

The application fee and the enforcement fee may later be recovered from the debtor during the enforcement proceedings.

Law stated - 22 1 2024

OTHER

Influence of legal traditions on arbitrators

What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

The conduct of arbitral proceedings is greatly influenced by the way court proceedings are conducted. For example, if the trial is not condensed, the interval between hearings may be up to several weeks or even longer.

US-style discovery is rarely seen in arbitral practice. Although provisions on the production of documents may be found in the Code of Civil Procedure, and the tribunal may request the courts for assistance related to the production of documents, this mechanism does not function effectively because the courts rarely impose sanctions on uncooperative third persons. Further, it is uncommon for the tribunal to accept witness testimonies in writing.

Law stated - 22 1 2024

Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

There are no professional or ethical rules specific to counsels and arbitrators in international arbitration. Counsels and arbitrators in both international and domestic arbitration must comply with the Arbitration Law. For arbitrators, the Arbitration Law requires them to have certain professional qualifications, and they must not have been convicted of criminal offences such as corruption or malfeasance (see articles 6 to 9 of the Arbitration Law).

Although the IBA Guidelines on Party Representation in International Arbitration are not expressly adopted in the Arbitration Law, in practice, some arbitrators believe that the best practice of party representation reflects those Guidelines.

Law stated - 22 1 2024

Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

There are no restrictions on third-party funding of arbitral claims.

Law stated - 22 1 2024

Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

For counsel, there are no qualification restrictions under the Arbitration Law. However, if a foreign practitioner wishes to act as an attorney in Taiwan, a practice permit issued by the Ministry of Justice is required.

The Arbitration Law requires arbitrators to fulfil certain professional qualifications, and they must not have been convicted of criminal offences such as corruption or malfeasance (see articles 6 to 9 of the Arbitration Law).

All practitioner income from professional practice during arbitral proceedings in Taiwan is subject to income tax under the [Income Tax Act](#). Tax rates of between 5 per cent and 40 per cent may apply, depending on the tax brackets applicable to the practitioner's Taiwan source income.

Law stated - 22 1 2024

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

Many provisions in the Arbitration Law do not reflect recent trends in international arbitration as it was last amended in 2015. There have therefore been discussions about amending it.

In 2021, 25 legislators proposed a draft bill to amend the Arbitration Law. The essential amendments included in the proposal are:

- loosening the qualification requirements of arbitrators;
- broadening the types of disputes that are arbitrable;
- specifying the confidentiality obligations of arbitrators, arbitration institutions and third parties who participate in arbitral proceedings;
- explicitly permitting expert witnesses; and
- revising the grounds for challenging an arbitral award to be more similar to those under the UNCITRAL Model Law.

The Chinese Arbitration Association, Taipei is also advocating that the Arbitration Law be amended to make it more similar to the UNCITRAL Model Law in general and thereby align Taiwan's arbitral system more closely with contemporary trends in international arbitration law and practice.

Law stated - 22 1 2024