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# International Arbitration

Taiwan – Trends & Developments  
Contributed by  
Lee, Tsai & Partners

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# TAIWAN

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## TRENDS AND DEVELOPMENTS:

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The ‘Trends & Developments’ sections give an overview of current trends and developments in local legal markets. Leading lawyers analyse particular trends or provide a broader discussion of key developments in the jurisdiction.

## Trends and Developments

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**Lee, Tsai & Partners** is a top-tier IP law firm based in Taipei, Taiwan with more than 160 IP professionals and lawyers. Founded in 1995 by Thomas QT Tsai, the firm boomed with the advent of Taiwan's high-tech industrialisation. Mr Tsai is an eminently respected, leading patent professional in Taiwan, who founded Tsai, Lee & Chen with a cadre of patent professionals specialised in myriad cutting-edge technological areas. He was the president of the Asian Patent Attorneys Association Taiwan Group and the Taiwan Association of Information Technology and Intellectual

Property, as well as the founding president of the Taiwan Patent Attorneys Association. The firm has since developed a full service IP law firm encompassing all areas of IP from prosecution to litigation, garnering tremendous trust from its reputable domestic and international clientele. The firm manages more than 30,000 patents and 18,000 trademarks worldwide and has established a professional network of 1,300 with global IP law firms and associates. The firm's leading lawyers and patent attorneys enjoy diverse technical and legal backgrounds.

### Authors



**Dr Chung Teh Lee** is a founding partner who practises in construction, government procurement, telecommunications, investment, M&A, employment, trade, security transaction, fair trade, consumer protection and the Tobacco Hazard

Prevention Control Act. He is a member of the Arbitration Association of the Republic of China (AAROC) and his related arbitration experience includes representing Sita in a case against the Kaohsiung city government for the equitable adjustment of the terms and conditions of the operation and maintenance contract, and representing SAP Taiwan in an ICC arbitration against a multinational electronics contract manufacturing company to enforce a software licence agreement.



**Pei-Ching Ji**, a partner, practises in public infrastructure projects, commercial transactions, IP rights, general civil/criminal litigations and arbitration, the Security Transaction Act and the Banking Act. She represented SAP Taiwan in an

ICC arbitration against a multinational electronics contract manufacturing company to enforce a software licence agreement and represented the Taipei city government in a construction dispute and arbitration with Farglory Dome in relation to the Large Interior Arena Construction and Operation Project.



**Sean Yu-Shao Liu**, an associate partner, practises in construction, government procurement, investment in start-ups, company law, electronic commerce, fair trade and employment. His cases include arbitration between Farglory group and

the Taipei municipal government in relation to the Taipei Big DORM project (representing the Taipei municipal government) and arbitration between Bor Der Property Development and the Taipei municipal government in relation to the BOT project of the Kuang-tzu care home (representing the Taipei municipal government).



**Elizabeth Pai**, counsel, practises in construction, labour, government procurement, M&A, corporate and inbound foreign investment. A member of AAROC, she conducted a comparative study for American Bechtel on the ICC Rules

of Arbitration and the Republic of China Arbitration Act, and has advised the Bureau of High Speed Rail, Ministry of Transportation and Communications in the Taiwan Taoyuan International Airport Access MRT System Project (ME01) and Ansaldo STS SpA on the arbitration and litigation system in Taiwan.

### The Development and Current Trends of Arbitration in Taiwan

Types of disputes have become more diverse with changes in social and economic activities over time. In order to re-

solve disputes efficiently, Taiwan recognises dispute resolution mechanisms other than the traditional court litigation system, with arbitration in particular as one of the main alternative options for dispute resolution. Taiwan's arbitration system has become more robust in recent times with sev-

# TRENDS AND DEVELOPMENTS TAIWAN

Contributed by Lee, Tsai & Partners **Authors:** Dr Chung Teh Lee, Pei-Ching Ji, Sean Yu-Shao Liu, Elizabeth Pai

eral amendments to the Arbitration Law, particularly a 2015 amendment endowing foreign arbitral awards recognised by Taiwan courts with *res judicata* and enforcement force.

## The State of Arbitration in Taiwan

### Introduction to Taiwan's Arbitration Law

Originally named Business Arbitration Regulations, the Arbitration Law was enacted on 20 January 1961. Its name was changed to the Arbitration Law of the Republic of China with large-scale amendments enacted on 24 June 1998, which came into effect on 24 December of that year.

The 1998 amendments largely relied on the UNCITRAL Model Law on International Commercial Arbitration published by the United Nations Commission on International Trade Law in 1985. The key points of the amendments were: 1) expanding the scope of arbitration to include matters other than commercial disputes and renaming the law as the Arbitration Law of the Republic of China; 2) addressing the independence of the arbitration clause from the rest of the contract, rendering it unaffected by a finding of that a contract is not constituted, or that the contract is void, revoked, rescinded or terminated; 3) revising the demurrer effect of an arbitration contract: the court may, upon application by the defendant, suspend the proceedings and order the plaintiff to submit to arbitration within a specified time if the plaintiff proceeded with litigation despite the existence of an arbitration contract, unless a party has conducted oral arguments in the action; and 4) listing the required qualifications and disqualifying factors of arbitrators in order to enhance the quality of arbitration. The 1998 amendment's emphasis on internationalisation, autonomy of the parties, and the court as providing assistance rather than acting as a supervisor to the arbitration process have brought a new milestone in Taiwan's arbitration system and allow better options for resolving disputes without litigation.

## The Penetration Rate of Arbitration as a Dispute Resolution Mechanism

Currently, the arbitration institutions that are permitted to be established according to Article 54 of the Arbitration Law include the Chinese Arbitration Association the Taiwan Construction Arbitration Association, the Chinese Construction Industry Arbitration Association and the Labor Disputes Arbitration Association of Republic of China. While the Chinese Arbitration Association accepts all civil disputes, the rest are for arbitrations in their specific fields and engage in handling construction projects, labour disputes and/or other kinds of arbitration. According to the Chinese Arbitration Association, there are over 800 arbitrators registered with the institutions listed above, with backgrounds as attorneys, accountants, architects and other professionals, which allow for effective arbitration in a variety of specialised fields. Meanwhile, the Public Construction Commission of the Executive Yuan, which organises and oversees public construction projects, has been promoting a new arbitration policy aimed at leveraging the professionalism, speed and legal force of arbitration, and in June 2012 it amended and promulgated six construction contract templates with additional provisions beneficial to arbitration mechanism and emphasised the process of openness and transparency so as to accelerate the resolution of disputes over the performance of construction contracts.

According to the Chinese Arbitration Association's collected data, there were an average of 139 arbitration cases in Taiwan per year from 2010 to 2014, with construction and engineering matters making up a significant majority of the cases at 62.59%, followed by commercial disputes at 8.03%. Further, the following table shows that slightly more than half of the cases had a government agency as a party, indicating their relative comfort in using arbitration as a dispute resolution mechanism.

Year	Total number of arbitration cases	Number of cases "one of the parties is a government agency"
2010	185	102
2011	109	66
2012	137	61
2013	144	66
2014	119	74

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