

LEGAL SERVICES COUNTRY PROFILE

TAIWAN

International Legal Services Advisory Council

Attorney-General's Department

Australia

June 1997

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Introduction

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. General information:	key data, legal language, form of government and economic indicators.
2. Basic legal information:	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. Legal services market:	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. Market access requirements:	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. Australian legal services:	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. References/sources:	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

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**ILSAC Secretariat
Commonwealth Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600
Australia**

**Telephone +61-2-6250 6704
Facsimile +61-2-6250 5952
Email: ilsac.secretariat@ag.gov.au
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1 General information

Official name

'Republic of China (ROC)' or Taiwan.¹

Population

As of January 1996, Taiwan's population was 21.35 million and the population growth rate was 1.0 per cent. Taiwan is one of the most densely populated countries in the world.²

Languages

The official language is Mandarin Chinese. However, Taiwanese (Hokkien) is the first language of approximately 80 per cent of the population. English is taught to all students as their first foreign language, beginning in seventh grade.^{1/2}

Legal language

Mandarin Chinese is the official language of the law and lawyers. According to Article 37 of the Organic Courts Law, only Mandarin can be used in court.⁴

Form of government

Taiwan's political system is based upon the 1947 Constitution and combines elements of both the Cabinet and Presidential systems of government. Prior to 1987, Taiwan existed under a state of martial law. Since that date it has been engaged in a process of rapid democratisation. The first full elections for seats in the Legislative Yuan were conducted in December 1992, the second in December 1995. Taiwan's first direct presidential elections were held on 23 March 1996.

The main opposition parties include the New Party (a group which broke from the Kuomintang (KMT) Nationalist Party and favours re-unification with China) and the Democratic Progressive Party which espouses Taiwan independence, its share of the vote steadily increasing since its founding in 1986. The popularity of the three parties was tested in elections on 2 December 1995, for Taiwan's parliament, the Legislative Yuan. The KMT managed to maintain its majority but by a very narrow margin.

The 1947 Constitution provides for the separation of power into five branches (Yuans) of government and has the features of both cabinet and presidential government. The five Yuans are composed by the Executive, Legislative, Judicial, Examination and Control branches and the functions and powers of these are set out in the Constitution.^{1/3/5/16}

Outline of the constitution

- National Assembly: The National Assembly is an elected body which meets to amend the Constitution, or to vote on proposed constitutional amendments submitted by the Legislative Yuan. The National Assembly is also involved in confirming the appointment of members of the Control Yuan and the Examination Yuan. Elections for a four-year term of the National Assembly were held in March 1996.
- President: A series of constitutional amendments enacted in August 1994, set the basis for the first direct popular elections for Taiwan's president on 23 March 1996. That election legitimised the position of President and encouraged the tendency towards a presidential system. The current President is Dr Lee Teng-hui. Incumbent President Dr Lee Teng-hui was re-elected by a convincing majority on 23 March 1996.

Final executive power rests with President Dr Lee Teng-hui, who must sign all acts of Parliament into law. He also enjoys final authority over the military and security apparatus.

- Executive Yuan (Cabinet): The Executive Yuan, headed by a Premier and Vice-Premier, is Taiwan's Cabinet. Its members are not elected representatives but appointed officials in the US style. The Premier's appointment, however, must be approved by the Legislative Yuan. The current Premier is Dr Lien Chan, who also holds the office of Vice-President. The Executive Yuan comprises eight ministries—Defence, Foreign Affairs, Finance, Economic Affairs, Transport and Communications, Interior and Justice.
- Legislative Yuan (Parliament): The Legislative Yuan is the highest legislative organ, comprising popularly elected representatives who serve for 3 years and are eligible for re-election. It is empowered to decide, by resolution, upon statutory or budgetary bills, bills concerning martial law, amnesty, declarations of war, conclusions of peace and other important affairs of the state.
- Judicial Yuan: The Judicial Yuan is the highest state judicial organ and includes four sub-entities, each with a discrete judicial function. The Council of Grand Justices interprets the Constitution and reviews the constitutionality of legislation. The Supreme Court over which the Yuan has jurisdiction and which is the appellate body for civil and criminal cases, reviews only matters of law, not fact, and the Administrative Court deals with appeals against administrative rulings. The Committee on the Discipline of Public Officials fulfils the function its name suggests.

- Examination Yuan: The Examination Yuan is responsible for the examination, employment and management of all civil service personnel.
- Control Yuan: The Control Yuan, which meets once a month, can impeach or investigate the work of the Executive Yuan and the Ministries and Executives, equating in some respects to the role of the Ombudsman in Australia. Members of the Control Yuan are nominated by the President with the consent of the National Assembly and serve six year terms.^{3/5/7/14}

Local government

The KMT claimed until recently to be the government of all China, and still claims sovereignty over China. This has left Taiwan with a complicated three-tier system of government, blurring the central government and provincial levels. Above the local (county/city) level lies a provincial and a central government whose jurisdictions are almost identical (the exceptions being the two main cities, Taipei and Kaohsiung, and the two outer islands, Matsu and Kinmen, which come directly under the central government).

Controls are exercised largely by the central and provincial governments, whose powers often overlap. The opposition Democratic Progressive Party (DPP) has proposed an amalgamation of some of the county/city administrations to strengthen their powers, and abolition of the provincial level altogether. This is unlikely to occur however.^{1/6}

Economic information

Basic indicators	1993	1994	1995	1996
GDP (NT (New Taiwan) \$bn)	5.9	6.4	6.9	
Real GDP growth (%)	6.3	6.5	6.0	
Consumer price inflation (%)	2.9	4.1	3.7	
Exports (US\$bn)	84.3	92.2	110.7	
Imports (US\$bn)	77.1	85.5	103.6	

Source: Country Report, 3rd Quarter 1996. Taiwan, The Economist Intelligence Unit, London.

In 1995, the percentage origin of the GDP was: agriculture, forestry and fishing 3.5; mining 0.3; manufacturing 28.2; utilities 2.6; construction 5.2; transport, storage and communications 6.6; commerce 16.1; and finance, insurance and real estate. The principal exports for 1995, were machinery and electrical equipment, comprising 48.8 billion \$US. It is expected, however, that computer products will, in the next 12 months, surpass textiles and other electronic products as Taiwan's leading export category.

The slow down in real GDP growth, experienced in 1995 and continued into 1996, is attributable to the depressed property market and a slump in investment arising from the Chinese

campaign of military exercises in the run-up to the March 1996, presidential election.^{6/3/8/10}

The services sector

The services sector has been expanding rapidly in recent years, and accounts for over 50 per cent of Taiwan's total economic activity. However, due to over-regulation, formal and informal barriers and the sector's recent emergence, services remain uncompetitive at the international level, accounting for approximately 13 per cent of Taiwan's total exports. The government has recently taken some measures to push ahead its application to join the World Trade Organisation (WTO), and has pledged that by 2000, Taiwan's financial markets will be 'completely liberalised'.^{6/9}

Several piecemeal reforms have been proposed. On 18 July 1996, the cabinet approved a proposal allowing foreigners to trade and rent real estate and follows the decision to permit foreigners to invest in real estate. The Central Bank which is the Central Bank of Taiwan, has allowed banks to set their own foreign exchange trading position on 1 July 1996, although the positions still require approval by the Central Bank of China. In addition, the Securities and Exchange Commission (SEC) said it would permit shares of Taiwan Stock Exchange-listed stocks to be purchased with foreign exchange in May 1996. The measure requires approval by the Central Bank.^{6/12}

Total two-way trade with Australia (1995–96 A\$ million)	6,013.5
as % of total Australian trade	3.9
rank in total Australian trade	8
Value of Australian exports (1995–96 A\$ million)	3,446.5
as % of Australian exports	4.5
market ranking in Australian exports	7
% growth (five-year trend)	11.1
Value of Australian imports (1995–96 A\$ million)	2,585.1
as % of Australian imports	3.3
market ranking in Australian imports	8
% growth (five-year trend)	0.6

Source: Comparative Economic Indicators: Taiwan and Australia, 1995–1996, Trade Development Branch, Department of Foreign Affairs and Trade, December 1996. Please note that the above information concerns merchandise trade only as services data was not available for 1995–96. For 1994–95, Australian services exports to Taiwan were valued at A\$m566 and imports from Taiwan, at A\$m202.

2 Basic legal information

Legal system

Taiwan has a civil law system. The contents of the codes were drawn from the laws of other countries with similar codified systems of law e.g. Germany, Japan, France and Switzerland. Also as a result of the close relationship with the United States, particularly since 1949, those laws related to commercial activities such as tax law, company law and the law of negotiable instruments, were generally fashioned after their American counterparts. The supreme law of Taiwan is its Constitution.^{7/16}

Sources of law

The major current laws of Taiwan were promulgated around 1930. The main sources of law are:

- Japan, Germany, Switzerland and France;
- Traditional Chinese customary law which is still reflected in some aspects of the family and criminal laws of Taiwan; and
- Tax law, company law, the law of negotiable instruments and other law related to commercial activity which were generally adapted from corresponding American and European law.^{5/7/20}

All the laws of Taiwan are codified, but it is not possible for them to cover every case, prior to its occurrence. Therefore, in civil matters including commercial affairs, if the law is silent on a particular issue, Article 1 of the code provides that it shall be decided according to custom. If no such custom exists, the issue will be decided in accordance with the general principles of law. Relevant foreign laws may be applied to ascertain general principles of law.^{5/16}

Structure of the legal profession

The highest representative legal professional organisation in Taiwan is the National Bar Association comprising all registered lawyers in Taiwan. Lawyers practising in the same area under the jurisdiction of the same district court form their own local bar associations, such as the Taipei Bar Association and the Kaohsiung Bar Association.⁵

A lawyer who does not register with, and become a member of, the local bar association is not allowed to practise in that area. Such registered lawyers are restricted to appearing in up to four District Courts and the High Court that hears that appeal from them.¹⁴

The profession is fused.^{5/6}

Regulation of the legal profession

Lawyers' law and related regulations.⁷

Law-making bodies

The Legislative Yuan (Parliament) is the highest law-making body in Taiwan. It is empowered to decide by resolution upon statutory or budgetary bills and other bills involving declarations of war, conclusions of peace or treaties, and other important affairs of the state. The power to establish or amend the Constitution, however, is vested in the National Assembly which is also elected popularly in separate elections.^{1/21}

Law derived from Australia

None.

Court structure

The court system of Taiwan follows the German civil law model. Procedures are inquisitorial rather than adversarial. The courts are organised into three levels: District Courts, generally the fora of first instance; the High Court, generally the first appellate level dealing with both law and fact, and in some cases the court of first instance; and, the Supreme Court, the final appeal level. All three levels are under the Judicial Yuan.

Judicial powers are also exercised by the Administrative Court which is the final resort in cases brought against government agencies and the Committee on the Discipline of Public Functionaries which sentences persons impeached by the Control Yuan. Both of these come under the jurisdiction of the Judicial Yuan.^{7/16}

Other

The Ministry of Justice handles legal affairs for the Executive Yuan. It includes the following Departments: Prosecution, Prison and Detention; Rehabilitation and Civil Liberties; Legal Affairs; and General Affairs. The Ministry of Justice also has jurisdiction over the Bureau of Investigation.⁷

Professional legal education

Primarily trained

Taiwanese legal practitioners are primarily trained locally, however many are trained in Germany, Japan, Europe and the United States.⁷

Qualifications for practice

Candidates for admission to one of Taiwan's university or college law departments must first obtain a non-law university Bachelor of Arts degree, however some outstanding high school graduates may also be admitted. All applicants must pass the Law University/College Entrance Examination.

Graduates must then pass a Bar examination for admission to the Taiwan Bar Association. The pass rate for this exam has traditionally been very low—around one per cent. It has been observed, however, that this rate is increasing steadily, and has reached as high as 16 per cent in the past few years. Graduates must then complete a six month internship with certified institutions before a licence to practise is issued from the Ministry of Justice.^{2/4/7/14}

Principal universities

There are approximately ten law schools in the ROC, including the National Taiwan University, National Chung Hsing University, National Taiwan Ocean University, National Cheng-Chi University, Soochow University, Chinese Culture University, Fu Jen Catholic University, Tung Hai University, Chung Yuan University and Min Chuan Management College.^{2/4/7/14}

Other domestic training institutions

None known to authors.

Post-graduate legal courses

Post-graduate legal courses are offered in Departments of Law and Jurisprudence. Soochow University offers a Master of Laws degree based on the J.D. (Doctor of Jurisprudence) degree in the United States of America.¹³

Other domestic legal qualifications

Not known.

Practical legal training

Qualified graduates are required to complete a six month internship with certified institutions before a licence to practise is issued.²

Foreign legal training

Sources

Overseas training is primarily undertaken in the United States, Japan and Germany.³

Skills obtained

Overseas training is undertaken to obtain post-graduate tertiary qualifications.³

3 Legal services market

Professional associations (law societies/bar associations)

National Bar Association of the Republic of China.

Local legal firms

Local legal firms

Information on the number of local law firms can be derived from the register of law as practising lawyers are required to register before establishing a law firm in accordance with the relevant registration law. The traditional Taiwanese law practice is a one- or two-lawyer operation, serving a small community and handling matters such as inheritance and local land disputes. They may not be equipped to manage the volume and complexity of the sophisticated deals Taiwan's emerging economy requires.¹⁷

Local lawyers

There are approximately 3,000 local lawyers in Taiwan, more than 90 per cent of whom practice as sole practitioners.¹⁵

Per cent in international commerce

The number of local law firms involved in international commerce is estimated to be relatively small. As legal work in Taiwan increasingly involves handling international elements of investment transactions, the smaller practices are finding it harder to survive, losing market share to partnerships which are able to pool resources and specialise.¹⁷

Dollar value of legal services

The average hourly charge out rate for a partner of a law firm in Taipei is approximately NT\$4,500 to NT\$8,000.¹⁴

Local legal firms involved in international work

About twelve local law firms undertake some international work. These law firms are relatively small, with the exception of Lee & Li, and Tsar & Tsai Law Offices which are the largest Taiwanese firms. The main areas of growth in legal work are in very technical fields such as patents and copyright.¹⁷

Practice mix

Taiwanese law firms compete with accountancy firms dealing with international trade and business. Professional knowledge

on international trade and investment, financial markets and corporate law has developed widely. The following local law firms involved in international work are reported to possess particular strengths in the areas listed:

- Alliance International Law Offices, which offers a full range of civil and commercial legal services including foreign investment and intellectual property;
- Lee & Li, whose practice offers a full range of civil and commercial legal services;
- Tsar & Tsai Law Offices is a general practice with particular strengths in insurance, securities, construction, telecommunications, international litigation and arbitration;
- Formosa Transnational, whose practice involves international transactions, corporate law, finance and banking, securities, admiralty, intellectual property, taxation and litigation;
- The Equitable Law Offices (Lee & Associates) whose practice involves foreign investment and intellectual property;
- Liang & Associates, whose practice involves financial services, including securities, investment, insurance and banking;
- Huang & Partners whose practice involves shipping, corporate and commercial work; and
- Reliance International Law Office.^{2/7}

Australian and other foreign legal firms

Australian firms

The following Australian firms are represented in Taiwan:

- Deacons Graham & James has an office in Taipei with international and local lawyers in association with Alliance International Law Offices;³²
- Clayton Utz has an informal association with the Taiwanese law firm of Lee and Li, through the Pacific Rim Advisory Council (PRAC). This firm has a total staff of over 280; and
- Baker & McKenzie has an office established in Taipei, which employs 60 local lawyers and American lawyers.²³

Other Australian law firms are also represented.

Australian lawyers

See *Australian firms* above.

Local lawyers

See *Australian firms* above.

Other foreign legal firms

Foreign law firms practising in Taiwan include:

- Canadian firms: Boughton Peterson Yang Anderson; Bennett Jones Verchere/Weston; Goodman Freeman Phillips & Vineberg; McMillan Bull Casgrain; and Stikeman Elliott;
- United States firms: Jones Day Reavis & Pogue; Russin & Vecchi; McCutchen Doyle Brown & Enersen; Perkins Coie, Graham & James and Qi Ling; and
- Hong Kong firms: Deacons Graham & James in addition to the Australian firms (see above) and the international firm of Baker & McKenzie.²⁴

Status of lawyers employed

Local Lawyers

Information not available.

Foreign lawyers

Demand for foreign lawyers has been increasing despite a lack of clear-cut rules governing foreign lawyers' and law firms' activities. Foreign nationals may take the lawyers examination if their country of origin allows Chinese lawyers to do the same. Due to the language barrier and the intrinsic difficulty of the examination, however, no foreigner has yet been admitted to practise in Taiwan. Despite the absence of foreign attorneys being licensed to practise in Taiwan, foreign lawyers and law firms have entered the market through a variety of means. As transnational activity started to increase from the late 1970s, local firms that emerged as specialists in the international area began to take on foreign attorneys in a variety of capacities. Some local firms have built comprehensive practices by having a core group of Taiwan attorneys who provide advice on local law, as well as a group of foreign or foreign-trained attorneys who can assist in the foreign aspects of a matter and general international practice. Foreign lawyers are not able to advise on local law.²¹

Principal home countries

The principal home country of foreign lawyers who are working as consultants/advisers to local law firms is the United States.²⁴

Practice mix

Foreign law firms operating in Taiwan are predominantly involved in:

- Advising companies on their home country law; and
- Advising home country companies on local law with assistance from local law firms.^{21/24}

Commercial arbitration

Taiwan's legal system had considered commercial arbitration as an alternative to litigation since 1961, when the Commercial Arbitration Statute (*Commercial Arbitration Act*) was promulgated (CAS). The centrepiece legislation of the arbitral framework was not visible until the local business communities became aware of the need for expeditious business discords. The CAS of 1961 had been in accord with prevailing international practice, although it was contended that the legislation missed the paramount objective of arbitration, i.e. to aid trans-border dispute resolution as it lacked the set-up for recognising and enforcing foreign arbitral awards. This shortcoming also hampered the enforcement of Taiwanese awards in those foreign countries in which the enforceability of a foreign award is premised upon mutual recognition. This disadvantage was further compounded by the fact that Taiwan is not a contracting party to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention').

In 1982 the CAS was amended. The amendment was mainly a precipitation of increasing judicial recognition and enforcement of foreign arbitral awards, and five of the seven newly added articles were intended to further aid this development. In 1986 the CAS was further amended to create a mechanism for the commercial arbitration association to intervene, upon request, in foreign trade disputes as a conciliator, in the absence of an arbitration agreement. Such conciliation is conducted by an arbitrator (s) jointly appointed by the parties. The conciliation document has the same effect as an arbitral award and may be enforced upon the court's acknowledgment.

The Commercial Arbitration Association of the Republic of China (CAAROC) was established in 1955, well in advance of the enactment of the CAS. Its purposes were to become an arbitration centre handling both domestic and foreign commercial disputes and to conduct conciliation of foreign trade disputes. The CAAROC also trains and gives accreditation to arbitrators.

CAAROC has concluded a Co-operation Agreement with the Australian Centre for International Commercial Arbitration (ACICA) (refer *Dispute Resolution Services in Australian Legal Services*). CAAROC is understood to be the sole arbitration organisation registered in accordance with Taiwan's *Commercial Arbitration Act*.

Taiwan has a number of experienced, internationally accepted arbitrators who are members of the Commercial Arbitration Association (CAA), established in 1962 (this is not the same

body as the arbitration centre—the CAAROC). The Association has over 130 arbitrators comprising noted ROC lawyers, accountants and business leaders. In 1989, the CAA passed its own rules for conducting arbitration proceedings – ‘Enforcement Rules for the Arbitration Procedure of the Commercial Arbitration Association of the Republic of China’. The rules contain 34 articles dealing with the procedures regarding application for arbitration, selection of arbitrators and rendering of an award.^{7/16/22}

Firms/centres

The Commercial Arbitration Association of ROC (CAAROC)

**The Secretary-General
Commercial Arbitration Association of ROC
15-1 Hang-Chou S. Rd
Sec. 1, 20 Fl
Taipei, TAIWAN**

ROC Commercial Arbitration Association (CAA)²⁹

**Mr G Ling-Lin Wang
Chairman
ROC Commercial Arbitration Association
98 Tun-Hwa S. Rd
Sec. 2, 2 Fl
Taipei, TAIWAN
Telephone: 0011-886-2-704 3516
Facsimile: 0015-886-2-708 8808**

Principal coverage

The use of arbitration is limited to trade and contractual disputes. Arbitration is becoming a more acceptable form of dispute resolution. In practice, an increasing number of disputes are resolved by negotiations between the parties without going through litigation or arbitration. Foreign judgements and arbitration awards will be enforced if they do not contravene ‘public order, good morals or ROC law’ and if the foreign country allows enforcement of ROC judgements and awards.⁵

Foreign restrictions

The parties can engage legal or other representatives to assist in negotiations, though a foreign lawyer who has not passed the Bar Examination would not be recognised as a ‘lawyer’ for the purposes of arbitration proceedings. Nor would the foreign lawyer be able to represent their client in court. The arbitration shall be conducted in Mandarin Chinese, the official language of Taiwan. If an arbitrator or a party involved cannot communicate in that language, a translator may be employed.⁵

International instruments

Taiwan is not a party to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID)*, or the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)*, nor has it adopted the provisions of the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.¹⁶

4 Market access requirements

The rights of foreign lawyers and foreign law firms to practise in Taiwan are the subject of ongoing discussions in the context of Taiwan's application for admission to the World Trade Organisation (WTO). Currently, the situation is that foreign lawyers who are not admitted to the Taiwan Bar Association are not permitted to practice law in Taiwan.

A foreign lawyer is permitted to take the Bar examination only if his/her home country permits Taiwan residents to practice as lawyers in that country. It is to be noted, however, that no foreign lawyers (other than Taiwan citizens or Taiwan residents who are foreign lawyers) have passed the Bar examination, which is conducted in Mandarin Chinese and which has a low pass rate for local citizens. Admission to the local Bar is, however, only a pre-requisite to the practice of Taiwan Law and not foreign or international law.^{15/21}

Foreign lawyer/firm regulation

Body responsible

There are no laws or regulations dealing specifically with the right of foreign lawyers to provide international legal services in Taiwan, with the exception of certain regulations promulgated by the Ministry of Justice under the Employment Services Act, passed in May 1992, whereby Taiwan lawyers are permitted to employ foreign lawyers as assistants or consultants.¹⁵

Laws & regulations

Foreign lawyers are not permitted to employ local lawyers nor form partnerships with local lawyers (Article 51 of the *Lawyers' Law*). The foreign law firms practising local law in Taiwan do so because they are constituted as local partnerships comprising only Taiwan lawyers. Foreign lawyers working in such firms are employed on the basis described above. It is possible for a foreign law firm to form a consulting company provided it does not employ local lawyers or purport to advise on local law.²¹

Taiwanese Attorneys' Hiring of Foreigners regulations were decreed on 28 February 1992 by the Labor Commission of the ROC Executive Yuan and the Legal Department of the Executive Yuan.¹⁵

Foreign lawyer admission to practice requirements

Citizenship

There is no requirement for citizenship.

Educational qualifications

Foreign lawyers must successfully complete the Taiwan Bar examination, which is conducted in Mandarin Chinese, and obtain a licence. However, under Article 45 of the *Lawyers' Law* (qualifications for a foreigner to be a lawyer) a foreigner is only qualified to take the Taiwan Bar examinations if the lawyer's home country permits Taiwan residents to practise as lawyers in their country.²¹

Experience

No requirement.

Pupillage period

No requirement.

Residency requirements

The Employment Services Act, limits the scope of activities of a foreign lawyer and provide for a maximum stay of two years in Taiwan.¹³

Government approvals

In addition to completing the Bar examinations and obtaining a licence, approval from the Ministry of Justice to practise in Taiwan is required (*Lawyers' Law*, article 45, para. 2).²¹

Other

Foreign lawyers, according to Taiwanese Attorneys' Hiring of Foreigners regulations, can be employed as assistants (to consult and/or advise) by Taiwan law firms/attorneys providing the following requirements are met:

- Two years legal experience;
- Provision of the original employment contract between himself or herself and their intended employer;
- Documentation of academic qualifications and professional experience; and
- A valid work permit (see *Additional Requirements*).

The contract, documentation relating to academic qualifications and professional experience must be translated into Chinese

and legalised by either the ROC Embassy, Taiwan Representative Office or a similar agency in their country, or authorised by the ROC Foreign Ministry.

Admission authority

The Taiwan Bar Association.⁴

Special admission

Not known.

Additional requirements

Visa restrictions

Under the Foreign Passport Regulations, an entry visa is required for all non-transit visitors to Taiwan. The categories of visa vary, depending on the purpose of the visit, although visitor visas and resident visas are the most common. For purposes such as a general visit or business contact, a visitor visa is available for up to 60 days with a maximum of two extensions of 60 days each. The holder of a visitor visa is not permitted to work in Taiwan. For purposes of staying in Taiwan longer than 180 days, a resident visa is available subject to stringent regulations.¹⁶

Work permits

Since 1 May 1992 when the Employment Services Act became effective, foreigners have been required to obtain valid work permits before they commence working in Taiwan. Depending on the type of invested business, the work permit will be issued by different government agencies. If a foreign lawyer is seeking employment with a Taiwan firm/attorney, the intended Taiwanese employer is responsible for preparing documentation relating to the foreign lawyer's qualifications, work experience and the employment contract, and lodging an application with the Ministry of Justice (Executive Yuan). The application is then reviewed and a work permit issued if all the criteria are fulfilled.¹⁶

Regulation of foreign law firms

Use of firm names

There is no regulation of law firm names in Taiwan. Local partnerships, may, subject to trade mark and intellectual property laws, adopt the name of an international law firm.

If a foreign law firm establishes a representative office in Taipei, the complete name of the firm as registered in Taiwan must appear in the English translation. For example, Sly & Weigall established a joint venture office in Taipei with

Deacons and Graham & James: the English translation of the firm is Deacons Graham & James Sly & Weigall, Taiwan which, however, is registered as a consultancy company rather than a law firm.²³

Employment of local lawyers

Unless the managing partner is admitted to practise law in Taiwan, the employment of local lawyers is not permitted.

Local firm association

Foreign lawyers who have satisfied requirements as listed above under *Foreign Lawyer Admission to Practice Requirements* and obtained permission from the judicial authorities of Taiwan may form partnerships with local lawyers.

Government approvals

Not known.

Other

Not known.

Restrictions on practice

Local law

Foreign lawyers who are not admitted to the Taiwan Bar Association may not practise local law.¹⁶

Representation in court

A foreign lawyer employed by a Taiwan law firm/attorney cannot litigate or represent a client in a court. Effectively they can only be an "assistant" to a local attorney who can appear in court, and they cannot put their name on legal documents prepared on behalf of clients.²¹

Other

Foreign lawyers who have satisfied requirements as listed above under *Foreign Lawyer Admission to Practice Requirements* and who have obtained permission from the judicial authorities of Taiwan may practise in the Taiwan courts. Article 48 of the *Lawyers' Law* states that foreign lawyers should follow Taiwan law and the regulations of the Taiwan Bar Association. Article 49 of the *Lawyers' Law* states that foreign lawyers should speak Mandarin and use the Chinese language in documents presented in court.²¹

Reforms in progress

Reforms in progress

See Prospects for Australian legal services, Section 5.

5 Australian legal services

Australian law firms*

(*Australian law firms and lawyers providing services see 3—*Legal services market* above)

Prospects for Australian legal services

Legal assistance required by Australian businesses

Australian business require a variety of legal assistance including intellectual property law, export law, joint venture agreements, registration of foreign investment approved companies or branch offices and debt recovery.

Areas in which Australian legal services might be of value

Areas of legal assistance which are expected to show growth include foreign investment, corporate law, trade and intellectual property.

Future prospects

Presently, despite the services sector generally being the fastest growing sector of the Taiwan economy, prospects for Australian legal services appear minimal. Over-regulation, formal and informal (e.g. cultural differences) barriers are inhibiting development of legal services. Until now, prospects in Taiwan for Australian legal service providers have been severely constrained by barriers to trade in legal services.

With progress in Taiwan's accession to the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS) and other agreements, Taiwan is set to become a less restrictive market for legal services exporters. In October 1996, Australia concluded bilateral market access negotiations with Taiwan in regard to its WTO accession, having obtained binding commitments from Taiwan in regard to a range of service industries. When Taiwan joins the WTO the concessions made in bilateral negotiations will become available to service providers from Australia and other GATS member countries.

For legal services, the concessions represent a significant improvement in market access which will increase the scope of Australian legal firms' activities in Taiwan and enable them to compete more effectively in the provision of services and against other international law firms. Taiwan agreed to allow, under certain conditions, market access to foreign providers of legal services regarding international law and home country

law in force in the jurisdiction where the services provider is a qualified lawyer.

Other key features are that foreign firms will be able to use their firm name in Taiwan and to engage in profit-sharing arrangements with local firms. In international commercial arbitration, both preparation of legal advice and appearance are to be allowed under Taiwan's draft *Lawyers' Law*. A conditional offer was made to allow a transitional period for foreign lawyers currently practising in Taiwan to establish partnerships and employ local lawyers. Some aspects of legal services that Australia raised with Taiwanese officials are still being considered and they will be followed through by Australia. These include a request by Australia that experience gained in other jurisdictions other than Australia be recognised towards the five year legal experience requirement and that a foreign lawyer who meets the requirement would be able to employ more junior lawyers.

Taiwan has undertaken that when it accedes to the WTO, it will not reduce the commitments made in the bilateral negotiation.²⁵

Dispute resolution services

Centres/firms

The Australian Centre for International Commercial Arbitration (ACICA) provides services for the settlement of international commercial disputes of all kinds to the region. The Institute of Arbitrators, Australia, which is closely related to ACICA, has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate disputes and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACICA has Co-operation and Trade Arbitration Agreements with 28 international arbitral centres around the world including those in the world's major trading nations in Asia, Europe, the Middle East and the Americas.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

ACICA concluded arrangements for the mutual enforcement of commercial judgements and arbitral awards and is in regular communication with the Commercial Arbitration Association of the Republic of China in Taiwan (CAAROC).²⁶

For further information on ACICA²⁶ contact:

**The Secretary General
ACICA
Level 1
22 William Street
Melbourne Vic 3000
Telephone: (03) 9629 6799
Facsimile: (03) 9629 5250**

The Australian Commercial Disputes Centre (ACDC) provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the Asia Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres. For further information on ACDC²⁷ contact:

**The Chief Executive Officer
Australian Commercial Disputes Centre
Level 5
50 Park Street
Sydney NSW 2000
Telephone: (02) 9267 1000
Facsimile: (02) 9267 3125**

Legal education and training

Overseas students studying law in Australia

Undergraduate and postgraduate

Five students from Taiwan were recorded as undertaking Law/Legal Studies in Australian public universities in 1996, with two at Bond University (private). Unfortunately, the statistics cannot be broken down to distinguish undergraduate from postgraduate students. It is also possible that the number of Taiwanese studying law at Australian public universities is under-represented as discussions with several universities indicate that there were more than five Taiwanese undertaking legal studies in Australia in 1996. This could be a reflection of the fact that overseas law students undertaking double degrees involving law, e.g. commerce/law, are often recorded as though they were undertaking one degree only, i.e. commerce. Other difficulties with recording have been noted.

The Australian International Education Foundation (AIEF) of the Department of Employment, Education, Training and Youth Affairs (DEETYA), has been working to develop improved counting methodologies as concerns data on international education in Australia.²⁸

Short courses

Not known.

Overseas students studying in Australia

Students overall in higher education institutions

Taiwan is potentially a large market for Australian education services as there are limited places at Taiwan's universities and colleges. However, historically, the United States of America has been the preferred country for Taiwan students.²⁸

Overall, there were 9, 684 students from Taiwan enrolled in Australian education institutions in 1996. Taiwan is the 7th largest source country for overseas students, and in 1996 there was an 18 per cent increase in the numbers studying in Australia.²⁸

Qualifications recognised

Not known.

Australian Education Centre representation

**Australian Education Centre
Suite 2602
26th Floor
No 333 Keelung Rd, Sec. 1
Taipei, TAIWAN
Telephone: 0011-886-2-757 6334
Facsimile: 0015-886-2-757 6489**

Dollar value of educational services

In 1996, the AIEF estimated that \$182 million was generated from Taiwan students studying in Australia. Approximately \$79 million was spent on tuition fees and \$103 million on other goods and services such as rent, food and clothing.²⁸

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