DISPUTE RESOLUTION IN GREATER CHINA

Greater China comprises the People’s Republic of China, the Hong Kong Special Administrative Region and Taiwan. The region represents the world’s biggest and fastest growing emerging market, attracting capital, goods and services from across the world.

It has long been recognised that in order to retain investor confidence in the region, disputes must be resolved in a fair, transparent and cost-effective manner. With the accession of China and Taiwan into the World Trade Organisation, significant changes are taking place, particularly in Mainland China, with regard to the implementation of internationally accepted rules of business. Even so, dealing with disputes remains a daunting affair for most foreign businesses that may be unfamiliar with the variety of applicable laws and procedures in the region.

Although they share the same cultural heritage, the legal systems in Mainland China, Hong Kong and Taiwan are very different. The manner of dispute resolution also differs in each jurisdiction. However, as trade and investment continue to flow across the region, disputes are no longer confined to one jurisdiction but often involve two or all three. Dealing with cross-border disputes remains a complicated and challenging task for most businesses in the region.

The key to avoiding disputes in the region is a strong appreciation of the business, cultural and regulatory environment where one’s business is conducted. However, when disputes arise, a clear understanding of the legal systems and dispute resolution mechanisms of the region is essential to ensure that these disputes are effectively managed to meet commercial or strategic objectives.
The aim of this guide is to provide an understanding of the legal systems and the dispute resolution mechanisms in Mainland China, Hong Kong and Taiwan.

**JONES DAY'S GREATER CHINA DISPUTE RESOLUTION PRACTICE**

Jones Day has been in the Greater China region for more than 20 years and has offices in each of the gateways of China – Beijing, Hong Kong, Shanghai and Taipei. Commercial dispute resolution is a major part of the Firm’s Greater China practice.

We aim to deliver consistent, top quality and cost-effective dispute resolution service to meet the legal and commercial objectives of our clients. This means making sensible cost/benefit choices, employing aggressive case management procedures and taking a deliberate, proactive approach to the prompt resolution of appropriate cases – steps that contribute significantly to reducing the total costs of resolving disputes in the region.

Our strength lies in our ability to operate as one firm throughout the Greater China region. This enables us to utilize both local and international resources in an integrated manner to provide timely value-added, creative and successful solutions for our clients. Our presence in China, Taiwan and Hong Kong means that we are able to be “on the ground” with clients in the region and still advise senior management no matter where they are located.

As one of the major international disputes practices in the region, we are able to bring a critical mass of commercial excellence to our work. In addition to being leading practitioners in China, Hong Kong and Taiwan, almost all our lawyers are multilingual (conversant in English and Mandarin, Cantonese, Shanghainese and other major Chinese dialects) and have practiced in other major international jurisdictions such as England and Wales, the United States, Australia, New Zealand and Singapore.

We represent international and local corporations, financial institutions, professional bodies, government agencies and people in all facets of commercial dispute resolution, including:
- litigation in local courts;
- international and local arbitration; and
- alternate dispute resolution.

We are experienced in dealing with disputes relating to corporate governance, joint ventures, corporate finance, construction and engineering projects, employment, energy projects, financial institutions, fraud, insolvency, securities regulation and technology. Our lawyers have been involved in some of the largest and most complex litigations and arbitrations in the region.

We also recognize that disputes are better avoided than fought. As such, we work closely with our clients to develop effective compliance, operating procedures and strategies to reduce the risk of disputes.

**JONES DAY WORLDWIDE**

Jones Day is one of the world’s largest law firms, with more than 2,000 lawyers in 29 offices around the globe. We provide commercial and authoritative advice across the full range of legal services required by major corporations. We have nine offices in Asia, seven in Europe and 13 in the United States. We represent approximately half of the *Fortune* 500 companies worldwide.

Jones Day has built one of the largest and most successful dispute resolution practices in the world, comprising more than half of the Firm’s global operations. Unique among global law firms, Jones Day offers the resources and experience of the world’s leading litigation practice, top litigators and local knowledge in the jurisdictions where we operate.

In January 2002, *The American Lawyer* named Jones Day as “Litigation Department of the Year”. According to *The American Lawyer*, Jones Day ranks as both “bigger and better” than any of the other litigation departments which were examined:

“More Supreme Court wins. Thriving practices in securities litigation defense and global arbitration. Marquee clients worldwide. No matter how we judged them, one litigation department consistently stood out as the best last year... Jones Day’s.”

More recently Chambers and Partners, a leading UK-based publisher of directories to the worldwide legal profession, recognised Jones Day’s litigation practice as the best among all international law firms.
THE PEOPLE’S REPUBLIC OF CHINA

THE LEGAL SYSTEM
At the time the People’s Republic of China (PRC or China) unveiled its open-door policy in 1978, it was operating under what has been described as a legal vacuum. Immense and rapid changes have occurred in China in the last 24 years that have culminated recently in China’s accession to the World Trade Organisation.

China is a civil law jurisdiction which adopts a codified system of law similar to many continental European jurisdictions. The National People’s Congress or its Standing Committee enacts national laws in the PRC.

China has made significant progress in the area of dispute resolution, more than is generally known by the international business community. Its accession to the WTO is stimulating ongoing judicial reforms that will bring China’s dispute resolution system more in line with international practice.

This chapter concentrates on the predominant forms of dispute resolution in China, namely arbitration and civil litigation involving foreign parties.

ARBITRATION
Up to now, foreign businesses have favoured arbitration as a method for dispute resolution in China due to their lack of familiarity with the PRC’s system of civil procedure or lack of confidence in the court system. Arbitration in China is governed by the PRC Arbitration Law.

Arbitral bodies in the PRC comprise the following:

• China International Economic and Trade Arbitration Commission (CIETAC), also known as the Court of Arbitration of the China Chamber of International Commerce (CCOIC Court of Arbitration), and China Maritime Arbitration Commission (CMAC). CIETAC has been established for nearly 50 years. It is based in Beijing and has subcommittees in Shanghai and Shenzhen. It is one of the most widely used arbitral bodies in the world.

• “Local” arbitration commissions established under the PRC Arbitration Law in large and medium sized cities throughout China.

All PRC arbitral bodies may administer both foreign-related and purely domestic arbitrations unless their arbitration rules provide otherwise. There is no geographical limit on their jurisdiction.

Choosing a Panel. An arbitral panel will typically consist of three members, one appointed by each party or the chairman of the arbitration commission at the parties’ request. The third, who acts as chief arbitrator, is appointed jointly by the parties or by the chairman of the arbitration commission. The parties choose arbitrators from lists of arbitrators maintained by the respective commissions. The list maintained by CIETAC, for example, comprises more than 500 arbitrators (including a large number from overseas jurisdictions such as the US, UK, Germany, France, Japan, Hong Kong, Singapore and Italy).

Commencing the Arbitration. The arbitration process commences when the claimant submits an application for arbitration together with the applicable fees to the arbitral commission, the amount of which usually depends on the amount in dispute. Foreign lawyers are permitted to represent clients and appear in the arbitration. Arbitrations in China tend to be quicker and simpler than arbitrations in common law countries. Hearings typically last one to two days. In CIETAC arbitrations involving foreigners, a final award should be made within nine months from the date the arbitral tribunal is formed (typically not more than five to six weeks after the claim is lodged). However, this time limit may be extended by CIETAC in appropriate cases.

Awards and Costs. Arbitral awards are final and binding on the parties and there is no right of appeal. CIETAC has the power to order the unsuccessful party to pay “compensation” in respect of the successful party’s legal costs and other expenses, provided that such compensation does not exceed 10% of the amount awarded.

Enforcement. China is a signatory to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and is therefore obliged to enforce awards made in other Convention countries. For the same reason, Chinese arbitral awards are also enforceable in these countries.
Hong Kong arbitral awards are enforceable in China pursuant to the PRC Supreme People’s Court’s “Arrangement for Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region (HKSAR)”, which took effect on February 1, 2000. Mainland awards are similarly enforceable in Hong Kong by virtue of the Hong Kong Arbitration (Amendment) Ordinance 2000 that took effect on the same date.

Taiwanese Arbitral Awards are also enforceable in the Mainland under the Supreme People’s Court’s 1998 Directive for Recognition of Civil Judgments of the Courts of Taiwan Region (effective May 26, 1998).

Arbitration awards are enforced through the Intermediate People’s Court in the province where the unsuccessful party is situated. Different rules apply to enforcement of foreign-related arbitral awards and purely domestic ones. A foreign-related arbitral award is subject only to procedural review by the PRC courts and, consistent with international arbitration practice and the principles of the New York Convention, the grounds for refusal of enforcement are very limited. The Supreme People’s Court issued a Notice in 1995 stating that a court must seek the approval of the court above it (ultimately to the level of the Supreme People’s Court), if a foreign-related arbitral award is not to be enforced.

CIVIL LITIGATION

Although most foreign businesses are cautious about litigating in the Chinese courts, there is a noticeable increase in the number of foreign entities involved in civil litigation in the PRC. This is inevitable as foreign businesses continue to expand their operations in the PRC or trade with PRC entities.

Civil procedure in the PRC is governed by the PRC Civil Procedure Law and the judicial interpretation of this law made from time to time by the PRC Supreme People’s Court. Civil cases relating to a foreign country or Hong Kong, Macao and Taiwan are subject to distinct rules under China’s civil procedure laws. International treaties concluded or acceded to by China supersede inconsistent provisions of the PRC civil procedure law.

The Courts. China’s court system is established by reference to administrative regions and organized at four levels:

- The District People’s Courts (for city districts, counties and small cities);
- The Intermediate People’s Courts (medium and large cities and autonomous prefectures);
- the High People’s Courts (for each of the 22 provinces, five autonomous regions, four municipalities directly under the control of the Central Government); and
- the Supreme People’s Court situated in Beijing.

Each court is divided into specialized divisions that deal with civil, administrative, criminal and enforcement matters. There are also special courts that deal with maritime, military and railway transportation matters.

All courts have first instance jurisdiction depending on the amount of money in dispute or nature of the case.

The Judges. Apart from summary proceedings in the district courts, which are usually presided over by a single judge, civil trials in courts of all levels are usually presided over by a panel of three judges and cases are decided by a majority vote of the panel. All appellate cases are also usually heard by a panel of three judges.

The National People’s Congress appoints judges in the People’s Supreme Court.

Judges at local levels are appointed by the corresponding local people’s congress of the region in which the court is situated.

Since the early 1990s, China has initiated a process of improving the qualifications and standard of its judges. These reforms include the recent introduction of a single National Judicial Examination for all entry-level judges, prosecutors and lawyers to ensure consistency in legal qualifications. In addition to passing such examination, judges are now also required to have certain academic qualifications and a minimum number of years of practical legal experience.

The Trial Process. Trials are conducted in open court except in special cases, such as those involving state secrets or where the privacy of individuals need to be protected. Cases involving trade secrets may also be conducted in camera at the parties’ request.
Although Chinese courts retain inquisitorial powers, the present trend is towards limiting the exercise of such powers. The burden of producing evidence lies mainly with the parties. The court will on its own initiative collect and introduce evidence where the interest of the state, the public or third parties may be adversely affected. In addition, the court may exercise the power of collecting evidence at a party’s request in relation to material in the possession of government agencies to which such party has no access, material relating to state or trade secrets or personal privacy, or where the parties are unable to do so themselves for good reason. In civil cases, witnesses are expected to give oral evidence in court. Witnesses may be questioned by the presiding judges and, with the consent of the judges (which is liberally granted), by the parties.

Parties to litigation may be represented by PRC lawyers or non-lawyer representatives. Foreign lawyers are not admitted to appear in PRC courts.

There are no time limits for the court to render judgments or otherwise dispose of foreign-related cases (including cases relating to Hong Kong, Macao and Taiwan).

**Appeals.** There is a right of appeal on both legal and factual issues to the court immediately above the trial court.

**Costs.** The courts do not require a party to post a bond or provide other forms of security for costs and expenses. Court fees are borne generally by the losing party, but the prevailing party’s own fees and expenses, including its lawyers’ fees, are not awarded unless parties have specifically agreed otherwise or this is provided by the governing foreign law.

**Enforcement of Judgments.** If the unsuccessful party fails to comply with a judgment, the successful party may apply to the trial court for enforcement. The enforcing court may take various enforcement measures against the judgment debtor. Moreover, a judgment debtor who is able to satisfy the judgment but simply refuses to do so may be subject to a fine, detention or even criminal prosecution.

A civil judgment of a foreign court is enforceable only where there exists an applicable international treaty or a basis for reciprocal recognition and enforcement. At the time of writing, the judgments of courts in France, Italy, Russia and Ukraine are recognized and enforceable in China as of right. Judgments of the courts in Taiwan are also recognized and enforceable in the PRC under the Supreme Court’s Directive for Recognition of Civil Judgments of the Courts of Taiwan Region.

**JONES DAY’S CHINA DISPUTE RESOLUTION PRACTICE**

Jones Day has in total more than 10 lawyers who practice in dispute resolution in Mainland China. In addition to English, most of these lawyers are fluent in Mandarin, Cantonese, Shanghainese and other Chinese dialects. Two of our lawyers were formerly judges in PRC courts.

Jones Day’s dispute resolution practice in China is based on lawyers with years of experience acting for foreign financial institutions, multinational corporations, local businesses and state-owned enterprises in dispute matters. We focus primarily on the following types of disputes:

- Construction, engineering and infrastructure
- Commercial fraud
- Information technology
- Intellectual property
- International trade
- Joint ventures
- Power and energy
- Property development
- Financial and investment regulations
- Trade financing
- Winding-up and bankruptcy

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The Basic Law was enacted by the PRC’s National People’s Congress on 4 April 1990 and took effect in Hong Kong immediately after the handover of sovereignty. It is similar to a mini-constitution for Hong Kong, and its most prominent feature is the underlying principle of “one country, two systems”. This guarantees that the existing capitalist system and way of life in Hong Kong will be preserved for 50 years.

Under the Basic Law, the laws previously in force in Hong Kong (the common law, rules of equity, locally enacted legislation, some legislation imported from the United Kingdom, decisions of the local courts and some customary laws) “shall be maintained”. The only exceptions are laws that contravene the Basic Law. All laws are subject to amendment by the Hong Kong legislature.

The Courts. The highest court in the Hong Kong SAR is the Court of Final Appeal, which has replaced the Judicial Committee of the Privy Council in London as the final appellate court for Hong Kong. Cases before the Court of Final Appeal are heard by a panel comprising the Chief Justice, three permanent judges and one non-permanent judge (who is typically a distinguished judge from another common law jurisdiction such as England and Australia). The judges of the Court of Final Appeal are appointed by the Chief Executive, in accordance with the recommendations of an independent commission, and approved by the legislature.

In civil cases, the Court of Final Appeal will only hear appeals from the Court of Appeal if the matter concerns disputes or property or civil rights of the value of HK$1,000,000 (US$128,000) or above or, at the discretion of the Court of Appeal or the Court of Final Appeal, if the matter is of great general or public importance.

Beneath the Court of Final Appeal is the High Court comprising the Court of Appeal and the Court of First Instance. The jurisdiction of the High Court emanates from the High Court Ordinance. Proceedings in the High Court are governed by the Rules of the High Court.

The Court of Appeal hears appeals on all matters, civil and criminal, from the Court of First Instance and the District Court, as well as appeals from the Land Tribunal.

The Court of First Instance has unlimited jurisdiction over both civil and criminal matters. In addition to its general jurisdiction, the Court of First Instance also comprises various specialist courts (or lists) which have specific jurisdiction over certain types of civil disputes: commercial, bankruptcy and winding-up, construction and technology, constitutional and administrative law, admiralty, probate, personal injuries and family. Almost all major commercial litigation in Hong Kong will commence in the Court of First Instance and depending on the nature of the dispute will be listed before one of these specialist courts.

Below the High Court, there is the District Court, the Magistrates Court, the Juvenile Court and the Coroner’s Court. The District Court has limited jurisdiction in both civil and criminal matters. The District Court’s jurisdiction for monetary claims is limited to HK$600,000 (US$77,000).

The court system of Hong Kong also includes various specialized tribunals that include the Labour Tribunal, the Land Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and tribunals established by legislation. The decisions of most of these tribunals can be appealed to a Judge in the Court of First Instance.

The Legal Profession. As a legacy of the English system, the legal profession in Hong Kong is split into two branches: solicitors and barristers. Solicitors have rights of audience in the District Court and hearings in chambers in the High Court. Barristers have these rights and also the sole right of audience in hearings and trials in open court in the High Court and Court of Final Appeal. Barristers are sole practitioners who are appointed by solicitors and do not deal with clients directly.
The Trial Process. The trial process in Hong Kong is adversarial in nature and has similar features as those in many other common law jurisdictions like England and Wales and the United States. In all civil cases, opposing parties in a matter will have to plead their case in writing prior to the commencement of a trial. Opposing parties are entitled to discovery and to serve interrogatories on the other side before trial. In civil cases, evidence is usually admitted in writing as witness statements prior to trial and the opposing side will have the opportunity of cross examining witnesses at trial. A single judge sitting in open court hears all civil trials in the District Court and the Court of First Instance. Depending on its complexity and size, a case may take up to a year and a half to complete.

Unless otherwise ordered, the losing party is usually required to pay a substantial part of the legal costs incurred by the successful party. These costs are usually reviewed by a Master in a process called taxation before they are payable by the losing side. In Hong Kong, lawyers are not permitted to enter into contingency fee arrangements in litigation matters.

Enforcement of Judgments. Foreign judgments can be enforced in Hong Kong in two ways: at common law, and through registration. At common law, the judgment creditor has to commence proceedings by way of a writ action in Hong Kong for the judgment debt. Through the registration procedure, certain foreign monetary judgments can be registered in Hong Kong pursuant to the Foreign Judgments (Reciprocal Enforcement) Ordinance. Once registered, these judgments can be enforced in the same way as a judgment obtained in the courts of Hong Kong. The disadvantage of enforcement at common law is the cost and uncertainty of having to establish liability for the debt.

Reciprocity allows a foreign judgment to be enforced through registration in Hong Kong. Countries like Australia, Belgium, France, Germany, Israel, New Zealand and Singapore have confirmed that judgments of the Hong Kong SAR are recognized and enforceable in their respective countries. Therefore, monetary judgments from these countries can be enforced by way of registration in Hong Kong. The list of countries that are willing to recognize and enforce Hong Kong judgments is not closed. The Department of Justice is still waiting for clarification from numerous other countries as to the status of Hong Kong judgments in their respective jurisdictions.

The United Kingdom has indicated that Hong Kong SAR judgments are not enforceable in the same way as they were prior to July 1, 1997 and therefore judgments from the United Kingdom may only be enforceable in Hong Kong at common law. Similarly, judgments emanating from countries like the US, Japan, Korea and the PRC, which traditionally do not have reciprocal enforcement of judgment arrangements with Hong Kong, have to be enforced through common law principles.

The Hong Kong Court of Final Appeal recently allowed the enforcement of a Taiwanese judgment in Hong Kong at common law.

Arbitration and ADRs. Arbitration is a popular method of dispute resolution in the Hong Kong SAR especially for construction, technology shipping and international trade disputes. Arbitration in the Hong Kong SAR is governed by the Arbitration Ordinance, which provides for separate regimes for domestic and international arbitrations. The domestic regime is derived from English law and the international regime is based on the model law drafted by the United Nations Commission on International Trade Law (UNCITRAL).

The Hong Kong International Arbitration Centre (HKIAC) was established in 1985 to administer and support arbitrations in Hong Kong. The Arbitration Ordinance empowers the HKIAC to appoint arbitrators in the absence of an agreement between the parties. The HKIAC maintains panels of well qualified international and local arbitrators.

Other forms of dispute resolution process are also becoming very popular in Hong Kong especially in the construction, engineering or technology industries. These processes include mediation, conciliation, adjudication and expert appraisal or determination. Amongst these, mediation is one of the most widely used and the HKIAC maintains a panel of mediators in various specialisations.

The Hong Kong SAR is a party to the New York Convention by virtue of the People's Republic of China being a signatory of the New York Convention. Arbitral awards made in the Hong Kong SAR can therefore be enforced in any of the jurisdictions that are signatories to the Convention. Likewise, the Hong Kong SAR recognizes foreign arbitral awards from Convention countries. Arbitral awards made in Mainland PRC are enforceable in Hong Kong and vice versa.
JONES DAY’S DISPUTE RESOLUTION PRACTICE

Jones Day’s Hong Kong Office was established in 1986 to serve the legal needs of mainly international clients with strategic and business presence in Hong Kong and China. In 1996, the office became one of the first US-based law firms to be permitted to practice Hong Kong law. Our office has since grown into a complete multidisciplinary practice comprising more than 35 lawyers who are focused on serving international and local corporations, business people, financial institutions and government organizations. Dispute resolution is a major part of our Hong Kong practice.

The Hong Kong dispute resolution team comprises 11 lawyers, most of whom are qualified in Hong Kong as well as in other jurisdictions like Australia, England and Wales, New York, New Zealand, the PRC and Singapore. Our team of lawyers has been involved in some of the region's largest and most complex litigations and arbitrations and is one of the region's leading disputes practices focusing on the following areas:

- Banking and finance
- Commercial fraud
- Company law
- Construction, engineering and infrastructure
- Defamation
- Employment
- Financial regulation
- Information technology
- Insolvency
- International trade and sale of goods
- Judicial review and administrative law
- PRC joint venture disputes
- PRC debt collection
- Securities

Most of our lawyers are multilingual, fluent in English as well as Chinese Mandarin, Cantonese and other dialects, and capable of advising on disputes connected with the Greater China region. Our strength is our ability to work as one firm, with our Beijing, Shanghai and Taiwan offices, to present clients with a one-stop option for cross-border disputes in the Greater China region.

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“Hence the saying: If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not your enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.”

—Sun Tzu, The Art of War
TAIWAN

THE LEGAL SYSTEM
Taiwan has a codified system of law where the Constitution of Taiwan is the supreme law of the land. The Legislative Yuan enacts laws through powers granted to it by the Constitution. The Executive Yuan may also announce regulations and administrative orders in accordance with the law. The codes of law are traditionally drawn from other countries with similar codified legal systems like Japan and Germany and from traditional Chinese law.

All civil matters including commercial transactions are governed substantively by the Civil Code and procedurally by the Code of Civil Procedure. The Civil Code regulates all aspects of trade, agency, employment, contracts, leases, loans, mandates, partnership, suretyship and tort. All criminal matters are governed substantively by the Criminal Code and procedurally by the Code of Criminal Procedure.

As a civil law jurisdiction, legal decisions are made by reference to judicial interpretation of the codes and precedent, although compared with common law jurisdictions, the extent of reliance on case law may be less.

The Courts. The court system in Taiwan is divided into three levels: the District Courts, the High Courts and the Supreme Court, in ascending authority. These courts have jurisdiction over both civil and criminal cases.

The District Courts are usually the courts of first instance and have jurisdiction over civil cases where the amount involved exceeds NTD500,000 (US$16,000). The District Courts also have jurisdiction over non-contentious bankruptcy, marital property registration, guardianship and adoption, inheritance matters, company dissolution and liquidation. Most commercial disputes will therefore commence in the District Courts.

Appeals from the District Courts lie directly to the High Courts. The Supreme Court is the highest court and is found at the seat of the central government, presently located in Taipei. A High Court decision may be appealed to the Supreme Court in limited circumstances such as when there is improper application of laws and/or regulations. To appeal a civil case, the value of the claim must exceed NTD1,000,000 (US$32,000).

A single judge or a panel of three judges usually presides over a case in the District Courts. At the High Court, three judges preside over each case, and usually five judges will review appeals to the Supreme Court.

Apart from civil and criminal proceedings, a litigant may bring administrative proceedings in the Administrative Court if his rights have been affected by an unlawful or improper act of or an omission to act by a government agency.

The Legal Profession. In both criminal and civil proceedings, only Taiwan-licensed lawyers are permitted to appear in court. Lawyers are admitted to the Taiwanese Bar after passing the national bar examinations and completing five months of internship with a firm in Taiwan and one month in the Legal Training Institute. After Taiwan's accession to the WTO, foreign lawyers with at least five years of experience may apply to become qualified as a foreign-licensed lawyer to practice the law of his or her home jurisdiction in Taiwan.

The Trial Process. Taiwan does not employ a jury system. In most civil cases, the trial process is adversarial in nature and the courts may only render decisions based on claims and evidence submitted by the parties. In criminal cases, however, the judges may on their own initiative take a more active role in the proceedings by investigating facts, questioning witnesses, collecting evidence or defining issues.

Court fees in civil suits must be prepaid by the plaintiff and the appellant upon filing and are usually borne by the losing party at the end of the action. Other court expenses such as expenses for witnesses, translators, mail or stenographers are paid by the party using or requesting such services. Unless otherwise agreed upon or directed by the courts, each party will usually bear its own attorney's fees.

Enforcement of Judgments. Foreign judgments may be recognized and enforced in Taiwan if:
• the foreign court has jurisdiction over the matter according to the laws of Taiwan;
• the defendant was properly served with notice by the foreign courts;
• the judgment of the foreign court does not offend good morals or public policy; and
• there is reciprocal recognition of judgments between Taiwan and the foreign jurisdiction.
Arbitration. Arbitration in Taiwan is a common method of dispute resolution for construction, intellectual property, technology, international trade, securities and other disputes requiring specific or technical knowledge. Taiwan recently amended its arbitration laws to bring it in line with international standards as defined by the UNCITRAL Model Law. Arbitration in Taiwan is now governed by the Taiwan Arbitration Law.

Under the Arbitration Law, an agreement to arbitrate is only valid if it is in respect of a dispute whose resolution through arbitration is legally permissible and the agreement is in writing or expressed in any tangible format showing a common intention for the parties to submit the dispute to arbitration in Taiwan. An agreement to arbitrate may preclude litigation in the courts.

Where the agreement does not specify the number of arbitrators to be appointed, each party may appoint its own arbitrator and the chairman may be appointed by agreement between the two party approved arbitrators. If the parties cannot agree on the selection of the chairman within the specified period, the chairman may be appointed by the court upon one party's petition. The ROC Arbitration Association is the only competent authority for arbitration in Taiwan and is in charge of coordinating all arbitration procedures. An arbitrator may be an attorney, a judge, a prosecutor, an arbitrator in another arbitration institution or an expert specialising in a practice area for at least five years. There are no restrictions as to who may represent the parties at an arbitration.

Thus we may know that there are five essentials for victory;

(1) He will win who knows when to fight and when not to fight.

(2) He will win who knows how to handle both superior and inferior forces.

(3) He will win whose army is animated by the same spirit throughout all its ranks.

(4) He will win who, prepared himself, waits to take the enemy unprepared.

(5) He will win who has military capacity and is not interfered with by the sovereign.”

—Sun Tzu, The Art of War
Awards are usually rendered within a period of six months after the arbitration hearing. A party may apply to the courts to revoke the arbitral award if there are found to be substantial procedural defects or misconduct in the arbitration.

A foreign arbitral award may be enforced in Taiwan once it is recognized by a court in Taiwan. A foreign arbitral award will not be recognized if such an award is contrary to public order and good morals or if the subject matter of the dispute is one that may not be settled by arbitration under the laws of Taiwan. The court may also refuse to enforce due to the lack of reciprocity. The courts in Taiwan have, in the past, recognized arbitral awards rendered in the United States, the United Kingdom, Hong Kong and Korea.

JONES DAY’S TAIWAN DISPUTE RESOLUTION PRACTICE

Jones Day opened its Taipei Office in 1990 to meet the fast-growing needs of the Firm’s international and Taiwanese clients. Since then, the Taipei Office has advised many Asian, US and European businesses and individuals in connection with their investments, acquisitions, joint ventures, technology transfers, financings, securities offerings and dispute resolution matters in and outside of Taiwan.

Lawyers in the Taipei Office are fully qualified to practice both Taiwan and US law. Most of them are multilingual (Mandarin Chinese and/or Taiwanese and English) and are experienced in Taiwan and foreign transactions. The Taipei Office regularly advises clients on a wide range of Taiwan legal issues, as well as on US and other international legal matters.

Dispute resolution is a major practice area of the Taipei Office. Our dispute resolution team comprises eight lawyers experienced in handling all facets of commercial dispute resolution matters, including local and international arbitration, mediation, litigation, enforcement of foreign judgments and service of process. We have extensive experience in construction and engineering disputes, intellectual property infringement, tax and other regulatory litigation. Our practice focuses on the following types of dispute:

- Banking and finance
- Banking and trade financing
- Commercial fraud
- Company law
- Construction, engineering and infrastructure
- Defamation
- Employment
- Information technology
- Insolvency
- International trade and sales of goods
- Judicial review and administrative law
- PRC commercial arbitration
- Financial regulations
- Service of process
- Intellectual property infringement
- Tax litigation
- Regulatory litigation

We work regularly and closely with our colleagues in the Beijing, Shanghai and Hong Kong offices and provide clients with a one-stop option for cross border disputes in the Greater China region.

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古之所谓善戰者，勝於易勝者也

“What the ancients called a good warrior is one who not only wins, but wins with ease.”

—Sun Tzu, The Art of War
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