

TAIWAN COUNTRY REPORT

1. Country Background

1.1 Nature of the Legal System

The judicial process in Taiwan can be broadly divided into civil, criminal and administrative procedures, and public service disciplinary proceedings. The Taiwanese legal system is a well-developed statutory law system which was deeply influenced by German civil law. However, due to frequent trading activities with the United States over the years, it has also been influenced by common law principles. Nowadays, although caselaw does not carry the direct force of law in Taiwan, it has an indirect effect of generally binding the opinion of the Court.

1.2 Population

According to the Ministry of the Interior, Taiwan's total population was 22,958,360 in 2007, 23,037,031 in 2008 and 23,119,772 in 2009. Although the overall trend shows a slight growth, the ratio of the population aged 0-14 has declined every year, making Taiwan a place with the highest ageing population in the world.

1.3 Gross Domestic Product (GDP)

The statistical data of the Ministry of Economic Affairs shows that in 2007, Taiwan's GDP was 3,931 million U.S. dollars, averaging around US\$17,154 per person. In 2008, Taiwan's GDP increased to 4,001 billion U.S. dollars, averaging around US\$17,399 per person. In 2009, due to the financial tsunami, Taiwan's GDP fell to 3,774 million U.S. dollars, averaging about US\$16,353 per person.

2. Overview of the Legal Aid Providers in Taiwan

This report attempts to give an account of the diversified public and private sector legal aid providers in Taiwan.

2.1 Public Sector Legal Aid Providers

2.1.1 Government Agencies:

Until the establishment of the Legal Aid Foundation in 2004, there was no single government agency responsible for the provision of legal aid. Instead, depending on the nature of their usual business, government agencies offered legal services during the course of their normal business activities. The paragraphs below explain the existing services available in Taiwan.

Labor: where it is necessary to claim damages for unlawful dismissal or occupational injuries against employers through court proceedings, the Council of Labor Affairs of

the Executive Yuan subsidizes legal fees for filing lawsuits if the plaintiff worker meets certain conditions. In addition, some county and city governments make their own conditions for providing subsidies. For example, under the “Taipei City Labor Rights Fund Subsidy Guidelines” stipulated by the Taipei city government, upon application by a worker, the Taipei city government pays legal fees and living costs incurred during court proceedings.

Foreign labor: currently the number of foreign labor working in Taiwan exceeds 370,000 people. To provide complete assistance, city and county governments have set up the Foreign Labor Consultation Service Center, which provide legal, taxation, living, residential, and psychological consultation services.

Women: victims of domestic violence who are on low-income and are unable to afford the costs of litigation may apply to county or city governments for subsidies.

Suspects of crime and the accused: to ensure that every citizen has equal protection of the basic right to a fair trial, Article 31 of the *Code of Criminal Procedure* provides that the Court must appoint defence counsel for the accused in the following circumstances: (1) crimes that attract a minimum sentence of three years imprisonment; (2) crimes which the High Court has jurisdiction at first instance; (3) where the accused is unable to state fully due to mental disability; (4) where no defense attorney has been retained by an accused with low income and a request for appointing one has been submitted, and (5) other cases which the court considers necessary. Although the courts may appoint a private practitioner to act as defence counsel, they have, on considerations of costs and convenience, established “Public Defenders” within the organisational structure to defend these cases. However, as the public defender is part of the court structure and is paid by the State, both its role and function have been questioned. Since the establishment of the Legal Aid Foundation, the policy is that no more public defenders will be recruited in the future. Instead, the Legal Aid Foundation will gradually take over the role as the sole provider of defence counsel in compulsory defence cases (ie, the five situations listed above).

Victims of crime: the legal system in Taiwan traditionally lacks systematic and institutionalized protective measures for crime victims. The resulting lack of proper respect and care for victims has created all kinds of social problems. For this reason, the Ministry of Justice established the Crime Victims Protection Association in 1999. The Association provides social assistance, psychological counselling and emergency assistance, as well as legal advice, legal counsel, and subsidies for related legal costs.

General public: most city and county governments run legal consultation desks which offer free legal advice to the public. There are no restrictions on the types of legal problems that advice may be sought, but services are limited to verbal advice. Further assistance in drafting court documents or court representation services is not available.

2.1.2 The Legal Aid Foundation:

The various types of legal aid services described above concern particular types of legal problems or certain categories of applicants rather than financially disadvantaged people in general. Some kinds of assistance are available only after the conclusion of court proceedings. This is unsatisfactory in terms of protecting the rights of the disadvantaged during litigation.

The Judicial Yuan established the Legal Aid Foundation in 2004 and continues to sponsor and supervise the work of the Foundation. Any person whose case is not clearly unreasonable and who meets the financial eligibility criteria may apply for legal aid regardless of the type of legal problem or his/her background and identity. To date, 21 branch offices have been established around Taiwan, serving the population in Taiwan and offshore islands.

2.2 Private Sector Legal Aid Providers

2.1 Bar Associations

Free legal services are also provided by bar associations around Taiwan. Legal services provided by the Taipei Bar Association, for example, include regular, free on-site consultation services. For citizens who meet certain conditions (such as low-income families or those with physical or mental disability), pro bono representation services in court are also provided as needed.

2.2 Social Welfare Groups

Depending on the nature of their business, a number of social welfare groups also provide legal assistance. Due to funding constraints, however, the types of assistance are usually limited to legal consultation. Where there are major cases requiring the professional assistance of lawyers, these groups will seek the pro bono support of appropriate counsel. There are no defined standards for handing cases over to private practitioners, and each case is determined on its own facts. In Taiwan, organizations that provide assistance to foreign workers include the Taiwan International Workers Association, the Hope Workers Center and the Rerum Novarum Center. Organisations that assist foreign brides include the Garden of Hope Foundation, the Vietnamese Foreign Workers and Brides Office, the Taipei Women's Rescue Foundation, the Good Shepherd Social Welfare Services, the Pearl S. Buck Foundation, and the TransAsia Sisters Association, Taiwan.

3. Income and Expenditure

The Legal Aid Foundation receives most of its funding from the Judicial Yuan, the highest authority overseeing the Courts in Taiwan. The work of the Foundation is supervised by the Judicial Yuan and at the same time accountable to the Legislative Yuan. A list of the level of income and endowment received by the Foundation between 2005 ~2011 is shown below in Table 1. It can be added that from 2007 to 2010, around 55%~64% of the total budget was spent on payment of legal fees and costs, while around 32%~39% of the total budget was spent on business and management.

Table 1: Budget from 2005~2011 (in NTD)

	2005	2006	2007	2008	2009	2010	2011
Income	460,000,000	464,693,000	472,848,000	692,392,000	858,312,000	769,142,000	789,544,000
Endowment	500,000,000	500,000,000	500,000,000	300,000,000	200,000,000	200,000,000	200,000,000

4. Service Delivery

According to Article 25 of Taiwan's *Legal Aid Act*, lawyers are required to participate in legal aid work conducted in locations where they have registered with the bar associations to practice law. In another words, practicing lawyers in Taiwan have an obligation to provide legal aid services.

The Legal Aid Foundation has employed staff attorneys to ensure the smooth implementation of the publicly funded legal aid regime, to improve the quality of services, and to respond to the needs of remote areas and other special circumstances. Under the current regulations, the number of staff attorneys is limited to 30, while their caseload is a minimum of 36 cases per person per annum. Such caseload should not exceed 20% of the total number of cases approved by the Legal Aid Foundation.

The balance between private practitioners and staff lawyers employed by the legal aid authorities can be shown as follows:

Table 2

	No. of staff attorneys (A)	No. of private practitioners (B)	Total	Percentage (A/B)
2007	8	2,731	2,739	0.29%

2008	9	2,986	2,995	0.30%
2009	9	2,296	2,305	0.39%

5. The Publicly Funded Legal Aid Scheme in Taiwan

As long as an applicant's income falls below the statutory standard, and his or her legal problem is not clearly unreasonable, the applicant may apply for legal aid regardless of personal identity and the nature of the legal problem. When approved, the Legal Aid Foundation assigns cases to legal aid lawyers and pays their fees. The Courts will defer the obligation to pay adjudication fees. If a claim has highly favorable prospects of success and it is necessary to apply for an injunction over the defendant's property, the Foundation may issue a guarantee certificate to be filed in Court instead of paying the security for the order. This way the rights of the financially disadvantaged to access court proceedings is protected.

5.1 Eligibility (Means and Merits Tests)

Citizens who meet the following conditions may apply for legal aid from the Legal Aid Foundation:

1. The matter is not clearly unreasonable; and
2. The applicant qualifies as a "low-income household" under social security laws, or has income and capital below a prescribed standard (see Table 3).
3. The applicant is not means-tested in criminal compulsory defence cases.

Table 3: Financial Eligibility Criteria

		Taipei City	Kaoshiung City	Other Areas
Single Household or 2 people in the household	Monthly disposable income	Under NT\$28,000	Under NT\$23,000	Under NT\$22,000
	Disposable assets	Under NT\$500,000		
3 people in the household	Monthly disposable income	Under NT \$38,000	Under NT\$33,000	Under NT \$32,000
	Disposable assets	Household total under NT\$500,000		

4 people in the household	Monthly disposable income	Under NT\$48,000	Under NT\$43,000	Under NT\$42,000
	Disposable assets	Under NT\$600,000		

Foreign nationals who are legally living in Taiwan may also apply for legal aid if they meet the criteria above. As the *Legal Aid Act* expressly excludes aid outside the Taiwanese territory, legal aid is not available for citizens travelling overseas. If the need for legal assistance arises, then under the “Guidelines for Providing Emergency Assistance for Citizens Travelling Overseas” a list of local lawyers is available from the Taiwanese Consulate.

5.2 Scope of Legal Aid

The types of legal aid services provided by the Legal Aid Foundation include drafting, legal consultation, mediation and negotiation, and representation in litigation or arbitration. The Foundation also operates a program where legal aid lawyers accompany suspects at police stations and prosecutors offices during the first interrogations.

In 2009, the total number of applications received by the Foundation was 83,373, and the number of applications approved for services other than legal consultation was 27,071. In approved cases, a total of 24,561 full grants and partial grants (ie, where applicants were required to pay contribution) were made for general applications (ie, excluding project cases), which accounted for about 29% of the total number of applications. The number of applications for legal consultation approved was 35,852, and accounted for about 43% of the total number of applications. Further details are presented in the following table:

Table 4: Total No. of Applications from 2007~2009

Total Number of Applications								
Year	Total No. of Applications		Total Grant		Partial Grant		Legal Consultation	
	No.	Ratio	No.	Ratio	No.	Ratio	No.	Ratio
2009	83373	100%	24022	28.8%	539	0.6%	35852	43%
2008	40,723	100%	17,247	42%	451	1.1%	6,445	16%
2007	35386	100%	16724	47.26%	485	1.37%	6123	17.30%

In civil, criminal and administration law categories, the statistics between 2007 and 2009 are as follows:

Table 4: Analysis of cases in 2009

Number of Civil, Criminal and Administrative law matters in 2009					
Type		No. of Applications		Legal Aid Grants	
		No.	Ratio	No.	Ratio
Litigation	Civil	11,419	29.32%	7,748	31.54%
	Family	6,656	20.69%	4,884	19.89%
	Criminal	17,842	45.40%	11,162	45.45%
	Administrative	440	1.77%	198	0.81%
	N/A	39	0.11%	25	0.10%
Non-litigious matters		721	2.71%	544	2.21%
Total		37,117	100.00%	24,561	100.00%

Table 5: Analysis of cases in 2008

Number of Civil, Criminal and Administrative law matters in 2008					
Type		No. of Applications		Legal Aid Grants	
		No.	Ratio	No.	Ratio
Litigation	Civil	12,047	29.32%	6,405	26.31%
	Family	8,501	20.69%	5,535	22.74%
	Criminal	18,658	45.40%	11,328	46.54%
	Administrative	728	1.77%	332	1.36%
	N/A	45	0.11%	29	0.12%
Non-litigious matters		1,116	2.71%	713	2.93%
Total		41,095	100.00%	24,342	100.00%
Note: as this table allows multiple selections, the total sum here will be greater than the original total (ie, the figure in Table 4).					

Table 6: Analysis of cases in 2007

Number of Civil, Criminal and Administrative law matters in 2007					
Type		No. of Applications		Legal Aid Grants	
		No.	Ratio	No.	Ratio
Litigation	Civil	17985	50.34%	12130	51.52%
	Criminal	16145	45.20%	10410	44.21%
	Administrative	633	1.77%	357	1.52%
	N/A	25	0.07%	15	0.06%
Non-litigious matters		934	2.62%	634	2.69%
Total		35722	100%	23546	100%
Note: as this table allows multiple selections, the total sum here will be greater than the original total (ie, the figure in Table 4).					

5.3 Contributions

Legal aid in is not provided completely free of charge in Taiwan. A legally assisted person may be required to contribute to legal costs and fees at the commencement of the case, and to refund legal costs and fees at its conclusion.

i. Contribution payable at the commencement of the case:

An applicant whose household income exceeds the criteria prescribed in Table 2 but not higher than 20% is required to pay ½ or 1/3 of the total legal costs and fees if legal aid is approved.

ii. Refund of legal costs and fees after conclusion of the case:

If a legally assisted person is awarded compensation exceeding NT\$1,000,000, he or she is required to refund the whole of the legal fees and costs expended by the Legal Aid Foundation. If the amount of compensation awarded is between NT\$500,000 ~NT\$1,000,000, he or she is required to refund only 50%. Refund is payable after two years if compensation is to be paid by installments and the legally assisted person receives a total of NT\$500,000 in installments after two years.

iii. Costs ordered by the court to be paid by the other party to the litigation are seen as another source of income receivable by the Foundation.

In 2009, the total amount of contributions received by the Legal Aid Foundation was NT\$ 7,644,144. The amount can be analyzed as follows: contribution paid at commencement of legal aid was NT\$226,065, refund at conclusion of legal aid was NT\$5,691,102 and monies ordered by the court to be paid by the other party to the litigation was NT\$1,726,977.