

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 and Gross Domestic Product

According to the Ministry of the Interior, Taiwan's total population in the last three years was 23,162,123 in 2010, 23,224,912 in 2011 and 23,315,822 in 2012. 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. The statistical data of the Executive Yuan (provided by Director-General of Budget, Accounting and Statistics) shows that Taiwan's GDP in 2010 was USD 428.186 billion, averaging around USD 18,503 per person. In 2011, Taiwan's GDP increased to USD 464.009 billion, averaging around USD 20,006 per person. In 2012, the figure was USD 474.089 billion, averaging around USD 20,378 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

The following paragraphs explain the legal services provided by government agencies in Taiwan.

Labor: the Council of Labor Affairs of the Executive Yuan established the "Labor Rights and Interest Fund" in 2009 to subsidise laborers for the legal fees and costs of filing law suits and their living expenses during the course of litigation (see the "Immediate Support Program for Labor Litigation" below). Some county and city governments provide similar subsidies. For example, the Taoyuan County Government subsidise laborers (who have completed mediation with their employers) for the legal fees and costs of filing civil lawsuits in occupational injuries cases.

Foreign labor: as of December 31, 2012, the number of foreign labor working in Taiwan was 445,579. All major city and county governments have set up Foreign Labor Consultation Service Center, which provide legal, taxation, living, residential, and psychological consultation services. In July 2009, the Council of Labor Affairs set up the “1955 24-Hour Counselling and Protection Hotline for Foreign Workers”. This is a 24-hour toll-free hotline, which provides complaints, counselling and referral (including legal aid and shelter) services for foreign workers and employers. The hotline features a bilingual operator service and an electronic case assignment system which allows expeditious referral of calls involving disputes to local labor authorities.

Women: victims of domestic violence who are on low-income and are unable to afford the costs of litigation may apply to the Domestic Violence and Sexual Assault Prevention Center of county or city governments for subsidies. There is usually a ceiling on the amount subsidized.

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 presiding judge must appoint a public defender or a defence counsel for the accused in trial procedures where: (1) the accused is charged of a crime that attracts a minimum sentence of 3 years imprisonment; (2) cases in which the High Court has jurisdiction at first instance; (3) where the accused is unable to state fully due to mental disability; (4) the accused is of indigenous background and his or her case has been charged or tried under the common procedure; (5) where the accused qualified as low income or mid-low income household and requested the court to appoint defence counsel; and (6) other cases in trial which the presiding judge considers necessary. Under Article 31, Paragraph 5, where the suspect or accused is unable to state fully due to mental disability, or if he/ she is of indigenous background, and has not retained defence counsel during investigation procedures, the Public Prosecutor, a judicial police office or judicial policeman must inform a lawfully established legal aid organization to appoint defence counsel.

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. Currently, the Judicial Yuan’s approach is to allow co-existence of “Public Defenders”, “pro bono defence counsel” and “legal aid defence counsel”, having considered the existing social conditions and resources. Each resource carries its own merits which may complement the other, and the policy is to allow constructive competition between them so that the shortage in defence resources may be improved, and the gap in defence resources between urban and rural areas may be reduced.

Victims of crime: the legal system in Taiwan traditionally lacks systematic and institutionalized protection measures for crime victims. The resulting lack of proper respect and care for victims has created all kinds of social problems. In 1998, the

Crime Victims Protection Act was passed, and the Ministry of Justice established the Association for Victims Support in 1999. The Association provides victims with a range of social assistance, psychological counselling and emergency assistance, as well as legal advice and representation and subsidies for 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. Most of the courts in Taiwan operate their own Litigation Counselling Section which offers general procedural information to the public.

2.2 Private Sector Legal Aid Providers

2.2.1 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.

2.2.2 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. Organizations 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.

2.3 The Legal Aid Foundation

The Legal Aid Foundation provides a comprehensive range of legal assistance to indigent and disadvantaged people in general. The Judicial Yuan established the Legal Aid Foundation in 2004 and continues to sponsor and supervise the work of the Foundation. Generally, anyone 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 or her background and identity. To date, 21 Branch Offices have been established to serve the population in Taiwan and offshore islands. The work of the

Foundation is supervised by the Judicial Yuan and accountable to the Legislative Yuan (the Parliament).

3. Recent Work of the Legal Aid Foundation

3.1 Sources of Income

The Legal Aid Foundation receives most of its funding from the Judicial Yuan, the highest authority overseeing the Courts in Taiwan. The Judicial Yuan is responsible for the Foundation's endowment, and budgets towards the Foundation's annual operational income. In 2012, the endowment has accumulated to about NT\$3,100,000,000, and funding from the Judicial Yuan accounted for 87.03% of the Foundation's total income. Other components of income include subsidies from other government agencies, interest on endowment, contribution payable by recipients of legal aid and private donations.

3.2 Eligibility

Generally, legal aid may be granted to anyone who is lawfully living in Taiwan, and meets the means and the merits tests under the *Legal Aid Act*. The conditions are:

1. Merits test: the general test is that the matter requiring assistance is not clearly unreasonable. Other conditions are provided under Articles 16 & 17.
2. Means test: the applicant's household disposable income and assets are below the Financial Eligibility Criteria (see Table 1).
3. Applicants exempt from the means test: (a) the applicant's household qualifies as low income or mid-low income under the *Public Assistance Act*; (b) the accused in cases where he or she is charged of a crime punishable by a minimum sentence of not less than 3 years imprisonment, or in cases where a High Court has jurisdiction over the first instance, and the accused has not retained a defense attorney during trial procedures; (c) the accused is unable to state fully due to mental disability and has not retained a defence counsel during investigation or trial procedures; (d) the accused is of indigenous background and has not retained a defense attorney when his or her case is being investigated, charged or tried under the common procedure; (e) the applicant is a juvenile charged of a crime punishable by a minimum sentence of not less than 3 years imprisonment and has not retained a guardian.

3.3 Contribution Paid by Recipients of Legal Aid

Legal aid is not provided completely free of charge in Taiwan. In 2012, the total amount of contribution paid by recipients was NT\$12,838,889. This includes NT\$312,736 paid at the commencement of legal aid, and NT\$ 12,526,153 paid at the conclusion of cases. At the conclusion of the case, if the recipient is awarded compensation which exceeds legal fees and costs by an amount of NT\$1,000,000 or more, he or she is required to refund the whole of the legal fees and costs expended by the Legal Aid Foundation. If that amount is between NT\$500,000 ~NT\$1,000,000,

he or she is required to refund 50%. If he or she is receiving compensation by instalments, and the total amount is expected to exceed NT\$500,000 in 2 years, he or she is required to repay legal fees and costs after 2 years.

3.4 Service Delivery

3.4.1 Legal Aid Lawyers

Legal aid applications are received and processed by local Branch Offices. Branch Offices then assign approved cases to listed lawyers in private practice. As of December 31, 2012, a total of 2,711 lawyers have been listed with the Foundation, which is about 38.7% ($2711/7000=38.7\%$) of the practising lawyers in Taiwan. A total of 2,190 legal aid lawyers on the list have conducted cases assigned by the Foundation.

Approved cases may also be assigned to staff attorneys. As of December 2012, the Foundation has recruited 14 staff attorneys. The Northern Legal Aid Staff Attorneys Center was recently established on December 22, 2012. The Center is located in the Head Office building, staffed by 6 attorneys and 4 paralegals, and managed by one Regional Director. Other staff attorneys are stationed in the following Branch Offices: 3 in Taipei, 2 in Banciao and 2 in Tainan. Staff attorneys also advocate major or complicated cases, and participate in law reform on issues such as consumer debt clearance and human trafficking prevention.

3.4.2 Use of Technology and Innovation

The Legal Aid Foundation has made extensive use of the world-wide-web to inform the public of legal aid services and to provide general legal information. The Foundation maintains and regularly updates an official website, blog and Facebook. By November 30, 2012, the Foundation's official website was viewed 7,299,126 times, and received 9,914 subscriptions for LAF e-news. Special web pages were also set up to inform people of the Foundation's special programs, including the First Interrogation Program, the Labor Litigation Scheme and the Consumer Debt Clearance Program.

The Foundation's blog has become an important source of general legal information for the public. Between June 1, 2006 and November 30, 2012, the blog was visited more than 80,000 times and received more than 6,900 messages seeking legal information. The blog is regularly updated, and has become a platform where legal aid lawyers and recipients share their stories. The Banciao, Hualien and Miaoli Branch Offices maintain their own blogs, and the Taipei Branch Office maintains a Legal Aid Volunteers' blog.

To improve the accessibility of advice service, the Foundation has created an online booking function for people to make legal consultation appointments. In 2012, a total of 10,336 appointments were made using the online system.

In 2012, some of the Foundation’s branch offices which serve vast metropolitan or county areas initiated new ways of providing services. One of the metropolitan branch offices (the Banciao Branch) collaborated with the local government in a scheme to provide telephone advice on labor laws. The branch office arranged legal aid lawyers to provide advice free of charge from Monday to Friday, 9am to 12pm and 2pm to 5pm. From February 2012 to date, the service handled 15,727 calls for advice. The branch office also worked with the local government’s social services department in a project to provide telephone advice to social workers who encounter legal problems in the course of handling casework. The hotline advised 125 callers in 2012. Two other branch offices (Nantou and Yilan) which serve indigenous people living in vast and remote rural areas, collaborated with selected local Township Offices to provide assistance using video-conferencing facilities. Applicants in these areas may visit their local Township Offices to receive service or legal consultation without having to travel to branch offices. This has been a cost-effective way of reducing transportation time and costs for applicants and lawyers.

3.5 Scope of Services

The types of legal aid services provided by the Legal Aid Foundation include legal document drafting, legal consultation, mediation and settlement negotiations, and representation in court proceedings or in arbitration (note excluded matters are specified in the Regulation made pursuant to Article 17 of the *Legal Aid Act*). Legal consultation is a face-to-face advice service available at Branch Offices and 80 service stations in metropolitan and remote areas.

The Judicial Yuan has directed that effectiveness management should be implemented at legal consultation service stations, the objective is to balance the need to provide access and to use resources effectively. In 2012, except for service stations located in remote areas, service is discontinued if the usage rate is less than 5 people per month. Although the number of service stations was reduced, the total number of consultation provided has increased by more than 20%.

Statistic of the Total Number of Applications Received in 2012

	No. of Applications	General Cases	Special Program Cases				
			CDCP	1 st Interrogation Program	Expanded Consultation	Labor Litigation Program	1 st Interrogation Program – Indigenous People
Total	127382	41641	6325	579	76034	2572	231

Statistic of the Total Number of Applications Approved in 2012

	No. of Cases Approved	General Cases	Special Program Cases				
			CDCP	1 st Interrogation Program	Expanded Consultation	Labor Litigation Program	1 st Interrogation Program – Indigenous People
Total	88164	26005	4983	533	54427	1991	225

Statistic of the Categories of Applications Received and Approved in 2012

Category	Applications Received		Applications Approved	
	Number	Percentage	Number	Percentage
Criminal	21,720	52.16%	13,723	52.77%
Civil	10,974	26.35%	6,417	24.68%
Family	8,068	19.38%	5,676	21.83%
Administrative	524	1.26%	189	0.73%
Unrecorded	355	0.85%	0	0.00%
Total	41,641	100.00%	26,005	100.00%

Statistic of the Total No. of Applications from July 1, 2004 to February 28, 2013

Total No. of Applications	Period	General Cases	Special Program Cases				
			1 st Interrogation Program	CDCP	Expanded Consultation	Labor Litigation Program	1 st Interrogation Program - Indigenous People
Applications Received	1/7/2004 to 28/2/2013	30,7221	8,339	48,533	24,4115	5,897	552
	1/1/2013 to 28/2/2013	6,456	208	753	7,930	310	321
Applications Approved	1/7/2004 to 28/2/2013	16,3078	2,687	38,862	173,421	4,397	456

1/1/2013 to 28/2/2013	3,777	200	541	5,838	235	320
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3.6 Special Programs

In the last few years, the Foundation has been designing new business processes under Article 2, Paragraph 6 of the *Legal Aid Act* to deliver services under programs to particular groups or communities. The Foundation has also received administrative entrustment from government agencies under Article 10, Paragraph 5 to provide legal aid. The following paragraphs provide an account of the Foundation’s recent programs.

3.6.1 Legal Aid for Consumer Debt Clearance Program (CDCP)

The Foundation worked with NGOs to pass the *Consumer Debt Clearance Act*. The Act became effective in April 2008, and under the new regime a debtor may deal with his or her debt through “negotiation or mediation”, “debt restructuring” or “debt clearance”. To ensure that debtors become aware of the mechanisms provided by the new law and receive assistance from trained legal aid lawyers, the Foundation hosted workshops for debtors, education seminars for legal aid lawyers and various publicity events and activities. The Foundation established a hotline, and set up more than 100 legal advice centers around Taiwan. By December 2012, the Foundation has provided legal advice to 21,085 debtors, and assisted 17,236 debtors in negotiations with their banks and in court proceedings.

3.6.2 First Interrogation Accompanied by Legal Aid Attorney Program

The Foundation launched the “First Interrogation Accompanied by Legal Aid Attorney Program” (the “First Interrogation Program”) on September 17, 2007. This program was initiated to assist suspects who were apprehended or arrested for felony punishable by a minimum sentence of not less than 3 years’ imprisonment, or those who were requested to be interrogated on charges of felony for the first time without summons or notice. Mentally or intellectually disabled people are eligible to apply whenever they were apprehended or arrested, or when requested to be interrogated without a summons or notice. In 2012, the requirement that the offence is felony was removed for indigenous people who wish to apply for assistance under the program.

In this program, most of the Branch Offices work with an external Call Center to provide 24-hour service all year round. Since commencement, the Foundation and its Branch Offices have maintained regular contact with the courts, Prosecutors Offices and Police Departments. By 2011, about 1/3 of the total police precincts in Taiwan are participating in the program.

3.6.3 Immediate Support Program for Labor Litigation

In the recent years, the number of labor disputes has escalated due to depression of the global economy. To ameliorate laborers' difficulties and their financial burden of seeking judicial remedies, the Council of Labor Affairs (an agency of the Executive Yuan) has entrusted the Legal Aid Foundation with running the Immediate Support Program for Labor Litigation ("Labor Litigation Program") since March 2, 2009. The types of disputes covered by the program include: termination of the labor contract and employers' failure to pay severance payments or pension under the *Labor Standards Act*; employers' failure to compensate laborers for occupational injuries; loss caused by employer's failure to take out labor insurance or to provide the truthful insurance salary; and occupational injury caused by employers' breach of the *Labor Safety and Health Act* and laborers wish to file criminal lawsuits against their employers.

In 2012, a total of 2,572 laborers applied for assistance under the program. Similar to the trend in the previous years, most cases concerned dispute over severance payments. A total of 1,991 laborers have obtained the assistance of attorneys in legal document drafting and court representation. As of December 31, 2012, over 80% of legally aided cases have resulted in favorable outcome for labor, and approximately NTD 1,000,000,000 in compensation have been obtained for labor.

3.6.4 Legal Aid for Victims of Human Trafficking Program

In 2007, using an approach similar to the consumer debtors program, the Foundation participated in drafting the civilian version of the *Human Trafficking Prevention Act*. The official version became effective in June 2009. To ensure that victims may access legal aid, the Foundation worked to establish referral with victim identification Agencies and Shelters. The Foundation also resolved that for transnational victims who have been placed in shelters and satisfy both the means and merits tests, legal aid may be granted regardless of their immigration status. From 2008 to 2011, education seminars were hosted to train legal aid lawyers, with particular emphasis on understanding the characteristics and circumstances of victims of trafficking. Also, recognising the importance of the role of interpreters, the Foundation and Branch Offices facilitated trainings between 2010 and 2012, which aimed to improve interpreters' legal capabilities. Interpreters who participated in trainings were mostly migrant brides from Indonesia, Thailand, Vietnam and the Philippines.

Statistic of the Legal Aid for Victims of Human Trafficking Program in 2012 (Transnational victims)

Applications	Approvals					Refusals	Legal Consultation
	Subtotal	Civil	Criminal	Administrative	Family		
312	294	180	111	2	1	5	13

Note:

1. The numbers are based on applications, for example, 3 counts if one person makes 3 applications.
2. Legal aid services provided include: legal consultation, document drafting, representation in criminal and civil (common and summary) proceedings, representation in provisional remedies proceedings and enforcement proceedings.

3.6.5 Expanded Legal Consultation Program

To improve public access to legal assistance, the Foundation launched the Expanded Legal Consultation Program on April 1, 2009. This is a face-to-face legal advice service available (by appointment) at Branch Offices and any of the 80 service stations around Taiwan. The number of applications grew steadily each year, which shows that the availability of the service has encouraged the public to seek professional advice when facing legal problems. As of December 2012, the total number of consultation provided under the program was 54,427, which is about 24% increase from the previous year.

3.6.6 Typhoon Morakot Disaster Service Program

This program was formed shortly after the Morakot Typhoon hit Taiwan on August 8, 2009. It brought the most disastrous typhoon crisis in Taiwan's meteorological history, and caused severe damages to the indigenous settlements in central, southern and south-eastern regions of Taiwan. Some of the disaster areas were re-zoned as "special district" by the responsible authority. The project team visited the settlements to offer consultation and receive applications for legal aid, and formed a team of attorneys to assist villagers claim state compensation and file petition to revoke re-zoning. An administrative lawsuit against the authority was filed in 2010. As the Court dismissed the action in June, 2012, the project team, attorneys and experts met with the villagers, and assisted them to appeal the case to the Supreme Administrative Court.

3.6.7 Legal Aid for Indigenous People Program

The Foundation's latest program is the "Legal Aid for Indigenous People Program", which commenced on April 1, 2013. Similar to the Labor Litigation Program, this is an administrative entrustment from a government agency - the Council of Indigenous Peoples (also an agency of the Executive Yuan). The program aims to provide assistance to indigenous people who have reasonable cases, but do not meet all of the requirements of the *Legal Aid Act* or the Labor Litigation Program. The following assistance are available under the program: legal consultation; legal document drafting; mediation and settlement negotiations; representation in court, arbitration and non-litigious matters; and in exceptional circumstances, the provision of other

services necessary to conduct the legal matter and services for those under special

	1 Person in the Household		2 People in the Household		3 People in the Household	
	Disposable monthly income	Disposable assets	Disposable monthly income	Disposable assets	Disposable monthly income	Disposable assets

conditions.

Table 1: Financial Eligibility Criteria

Taipei City	Under NT\$28,000	Below NT\$500,000	Under NT\$38,922	Household total below NT\$500,000	Under NT\$58,383	Household total below NT\$650,000
New Taipei City	Under NT\$23,000		Under NT\$35,496		Under NT\$53,244	
Taichung City			Under NT\$33,198		Under NT\$49,797	
Tainan City			Under NT\$30,732		Under NT\$46,098	
Kaohsiung City			Under NT\$35,670		Under NT\$53,505	
Other areas in Taiwan or other places	Under NT\$22,000		Under NT\$30,732		Under NT\$46,098	
Financial Eligibility Criteria	Article 3, Paragraph 1 Subsection 1		Article 3, Paragraph 1 Subsection 2		Article 3, Paragraph 1 Subsection 2	
Notes	<p>1. Except for one-person households, in situations not listed above, the standard of disposable income for each additional family member refers to the mid-low income household standard approved by the applicant's local municipal or county (city) competent authority under the <i>Public Assistance Act</i>.</p> <p>2. The calculation of disposable assets does not include the applicant's residence or private agricultural land which has declared present market value below NTD 5,500,000. The total value of disposable assets increases by NTD 150,000 for each additional family member.</p>					