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Overview of Legal Systems in the Asia-Pacific Region (2004)

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## Overview of Legal Systems in the Asia-Pacific Region: Republic of China, Taiwan

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# OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By
THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION
and LL.M. ASSOCIATION

## Saturday, April 10, 2004 Harriet Stein Mancuso Amphitheater (G90) Myron Taylor Hall ~ Cornell Law School

Presented By

## Ms. Peggy (Pei Yi) Wen





Red with a dark blue rectangle in the upper hoist-side corner bearing a white sun with 12 triangular rays

REPUBLIC OF CHINA, TAIWAN (Capital: TAIPEI)

In 1895, military defeat forced China to cede Taiwan to Japan. It reverted to Chinese control after World War II. Following the Communist victory on the mainland in 1949, 2 million Nationalists fled to Taiwan and established a government using the 1947 constitution drawn up for all of China. Over the next five decades, the ruling authorities gradually democratized and incorporated the native population within the governing structure. In 2000, Taiwan underwent its first peaceful transfer of power from the Nationalist to the Democratic Progressive Party. Throughout this period, the island prospered and became one of East Asia's economic "Tigers." The dominant political issues continue to be the relationship between Taiwan and China - specifically the question of eventual unification - as well as domestic political and economic reform.

- GEOGRAPHIC DATA total: 35,980 sq km; water: 3,720 sq km; land: 32,260 sq km; slightly smaller than Maryland and Delaware combined
- RACE Taiwanese (including Hakka) 84%, mainland Chinese 14%, aborigine 2%
- LANGUAGE AND LITERARCY Mandarin Chinese (official), Taiwanese (Min), Hakka dialects; age 15 and over can read and write
- GOVERNMENT TYPE Multiparty democratic regime headed by popularly-elected president and unicameral legislature
- ADMINISTRATIVE DIVISIONS the central administrative divisions include the provinces of Fuchien (some 20 offshore islands of Fujian Province including Quemoy and Matsu) and Taiwan (the island of Taiwan and the Pescadores islands)
- LEGAL SYSTEM Based on civil law system; accepts compulsory ICJ jurisdiction, with reservations
- ECONOMY Taiwan has a dynamic capitalist economy with gradually decreasing guidance of investment and foreign trade by government authorities. The trade surplus is substantial, and foreign reserves are the world's third largest. Because of its conservative financial approach and its entrepreneurial strengths, Taiwan suffered little compared with many of its neighbors from the Asian financial crisis in 1998. Growing economic ties with China are a dominant long-term factor. Exports to China mainly parts and equipment for the assembly of goods for export to developed countries drove Taiwan's economic recovery in 2002.

## OVERVIEW OF THE LEGAL SYSTEM OF TAIWAN, REPUBLIC OF CHINA

## I. Legal System:

## A. General Background:

- Civil law system
- Separation of Power: Five branches:
  - o Administrative Yuan ( )
  - o Legislative Yuan
  - o Judicial Yuan
  - o Examination Yuan
  - o Control Yuan
- President
- National Assembly: Modification of the Constitution
  - o No fixed sitting, only when necessary

## B. Sources and Origin of Law:

- Constitution:
  - Written and Rigid Constitution
  - o Procedural provisions mainly derived from France
  - o Substantive provisions mainly derived from US (ex. Freedom of speech)
- Civil Code & Civil Procedure:
  - o Combination of civil law and business law.
  - Basic Civil Law:
    - General Principles
    - Contract Law General provisions includes Formation of Contracts, Agency, Benefit Conferred, Unjust Enrichment, Torts, etc.
    - Contract Law Specific provisions
    - Property
    - Domestic Relation Law
    - Inheritance Law (Wills and Intestate Succession)
  - o Commercial Law:
    - Corporations
    - Law of Promissory Notes
    - Maritime Law
    - Insurance Law
- Criminal Law & Criminal Procedure:
  - o Original provisions derived from Germany and Japan
  - o Current provisions derived from Germany
- Administrative Law:
  - o Promulgated in 1999
  - o Derived from Germany
- Others:
  - o IP regulations are strongly influenced by US
  - o Regulation concerning relations between Taiwan and Mainland China

### Precedents:

- o No principle of Stare Decisis
- o Precedents are selected by Supreme Court Precedent Council annually
- Precedents do not have *de jure* binding force; only the Constitution and law have *de jure* binding force
- Precedents are *de facto* binding: if the lower courts make decision contrary to the precedents, such decisions will very likely be reversed by superior courts

## C. Courts System:

- <u>District Courts</u> and <u>High Courts</u>:
  - o General: Three-level and three-instance system
  - o Exception: Three-level and two-instance system
  - o Jurisdiction over Civil and Criminal cases
  - High Courts have the power to make factual findings eve after material facts have been established by District Courts

## • Supreme Court:

- o Deals with issues of law only
- o Jurisdiction over Civil and Criminal cases
- Special Courts: Family Court, IP Court, Small Claims Court, etc.
- Constitutional Court:
  - Members: Constitutional Court is constituted of 15 Grand Justices of Judicial Yuan
  - o Justices are nominated by the President and approved by Legislative Yuan
  - No fixed sitting
  - Deals with cases concerning dissolution of political parties in violation of the Constitution
- The Council of Grand Justices of the Judicial Yuan:
  - o Similar to US Supreme Court
  - o Exclusive authority to interpret Constitution, law and legal orders.
  - o Eligible Applicants: Administrative Organs, Legislative Organs, Judges

## • Administrative Courts:

- o Supreme Administrative Court: 5-judge panel; issues of law
- High Administrative Courts: 3 judges sitting in council; issues of fact and law

#### D. Judges:

- Judicial Examination for Judges and Prosecutors
- Life tenure
- Independent of other branches of government
- <u>Judicial Review</u>: Only the Council of Grand Justices of the Judicial Yuan has the power to review and invalidate the actions of other branch or level of government on the ground of unconstitutionality
- Judges can suspend proceedings only if there is a real likelihood that a law may be unconstitutional and submit this issue to the Council of Grant Justices for constitutional review

## **II. Legal Education:**

## A. Undergraduate Legal Study

- Degree granted: LLB
- Admission Process:
  - o National University Entrance Exam (with High School Graduate or equivalent) (No GPA or LSAT required)
  - Special admission process may be used by some law schools but (tests, essay and interviews) but exceptional
- Years of study: 4 or 5 years
- Number of Law Faculties: 6 public law schoolsand 15 private law schools so far
- Curriculum:
  - o Semester system
  - o Requirement for graduation:
    - 150~180 credits (including 40 credits for non-legal classes)
    - No seminar courses or no writing requirement
- Teaching Methodology:
  - o Lectures
  - o Students to Professor ratio: 50~100 students to 1 professor on average
- <u>Special curriculum</u>: international law, forensic law (conducted at medical school), religious law, racial minorities law
- <u>Tuition</u> (uniformly applied to undergraduate, graduate and PhD students):
  - o Public school: \$1700 per year
  - o Private school: \$ 2900 per year
- Basic Study Tool: Codex of the Six Basic Laws (

**B.** Graduate Legal Study:

	LLM	JD&LLM joint degree
		<new system=""> for students whose</new>
		undergraduate major is not law
		Only two law schools have this program so
		far
Years of Study	2-3 years	3-4 years
Class Size	8-10 students	20-30 students
Teaching	Seminar discussion	Lectures and seminar discussion
Methodology		
Degree	30 Credits & Thesis	100 Credits & Thesis
Requirements		
Admission	Entrance Tests with	Same as JD application process in US
Process	Interviews (occasionally	_
	required)	

## **III. Legal Profession:**

## A. Judges, Public Prosecutors and Lawyers:

- Bar Admission:
  - o Bar Examination is held once a year
- <u>Judicial Examination</u> for Judges and Public Prosecutors:
  - o First stage: Essay test
  - o Second Stage: Interview
  - o Third Stage: Practical/Legal Training
  - Candidate who has passed all three stages can choose to be a judge or a public prosecutor
  - o Passage Rate for the first stage: 2%
- Bar Examination for Lawyers:
  - o First Stage: Essay Test
  - o Second Stage: Traineeship
  - o Passage Rate for the first stage: 8% (250 out of 3125 in 2003)
- Other Legal Qualifications:
  - o Clerk of Court
  - o Notary Public
  - o Scrivener of Real Estate
  - o Foreign Affairs Officer
  - o WTO Trade Representative
  - o Civil Service Examination
  - o There is no continuing legal education required in Taiwan so far, but proposals are made to include this for both judges and lawyers
- Lawyers are required to be registered as a member of the Bar Association

#### **B.** Law Professors

## **IV. Legal Practice: Private Practitioners**

#### A. Law Firms:

- The largest law firm in Taiwan: Lee & Li (150 lawyers approximately)
- The second largest law firm: <u>Baker & McKenzie</u> (100~150 lawyers approximately)
- Law firms are partnerships with unlimited liability; law firms are not allowed to be set up as a corporation
- After WTO (2001):
  - Foreign lawyer can practice in Taiwan, but they are limited to furnish foreign legal advice only

## **B. In-house Counsel:**

• In-house lawyer are very common in Taiwan

- Legal Department of Companies: need NoT necessarily hold legal qualifications
- Many companies with legal departments; tend to have contract with large law firms to deal with legal disputes

## C. Litigation:

No jury system

## D. Legal Fees:

- Average starting salary for first year lawyers: \$10500~13000
- Average years for associate to become partner: from 7 to 10 years
- A fixed price for each stage of trial (about \$1500)
- Advertisement: Legal practitioners are not allowed to advertise their services

## **Legal resources on the internet: (English Websites)**

## A. Legal Research:

- http://www.lawresearch.com/v2/global/ztw.htm
- http://ls.wustl.edu/Chinalaw/taiwan.html
- http://www.taiwanlaw.com/en/c.php?cat=11
- http://lib.law.washington.edu/eald/tres.html

#### **B.** Official Websites:

THE JUDICIAL YUAN OF THE REPUBLIC OF CHINA http://www.judicial.gov.tw/b4/e-index.htm

OFFICE OF THE PRESIDENT, REPUBLIC OF CHINA <a href="http://www.president.gov.tw/index\_e.html">http://www.president.gov.tw/index\_e.html</a>

MINISTRY OF FINANCE, R.O.C.

http://www.dot.gov.tw/en/tax-treatment/index.asp

INDUSTRIAL DEVELOPMENT & INVESTMENT CENTER http://investintaiwan.nat.gov.tw/moea-web/index.htm

Institute for Information Industry http://www.iii.org.tw/e-intro/index.html

SCIENCE AND TECHNOLOGY LAW CENTER http://stlc.iii.org.tw/stlc e.htm