

## **QUESTIONNAIRE**

### **1. The Actual Administration and Use**

About your organization or the representative organization in your country.

*Answer:* In Taiwan, the most commonly used arbitration association is the **Arbitration Association of the Republic of China**. There is another one named **Chunghwa Construction Arbitration Association** which was recently established at the end of August 2002. As for the mediations, the **Complaint Review Board for Government Procurement** of the Procurement and Public Construction Committee (under Cabinet) is mediation organization and the court also serve this function under certain circumstances (see below). On the other hand, broadly speaking, there are two commonly referred private organizations handle dispute: **Net Consumer Association, Taiwan** and **Science & Technology Law Center** under Institute for Information Industry. Also, there is a **Secure Online Shopping Association**, which can handle the consumer's dispute with its member, but so far no case has been resolved.

\*(1) Provide the definition and kinds of ADR

*Answer: 1* In Taiwan, legally there is no clear definition for ADR under any laws or legal precedent rendered by any courts, i.e. there is no legally binding definition for so-called alternative dispute resolution. However, the general term of ADR in Taiwan roughly means that any civil dispute between private sectors (parties) can be resolved with legally enforceable/binding effect. Normally the ADR may refer to arbitration and mediation and we do have laws such as Arbitration Law, Civil Procedure Code and Government Procurement Law etc to govern arbitration and mediation (reconciliation).

2As for the definition of arbitration, according to the Article 1 of the Arbitration Law, parties to a dispute arising at present or in the future may enter into an arbitration agreement designating a single arbitrator or an odd number of arbitrators to constitute an arbitral tribunal to determine the dispute. The dispute referred to above is limited to those that may be settled in accordance with the law and the arbitration agreement shall be in writing. Also according to the Article 2, no arbitration agreement shall be valid unless it was entered in respect of a legal relationship or a dispute thereto.

3.With respect to the mediation in Taiwan, we have two kinds of mediation: in-court and out-of court. In accordance with the Article 403 of the Code of Civil Procedure, before instituting legal action with the court, there are several items required to "compulsory mediation"(reconciliation) by the court. This is

in-court mediation which refers disputes between employer and employee, real estate and superfiary, partner and partner, partner and sleeping partner, real estate owners for boundaries, co-owners of real estate, landlord and tenant for rental, disputes of road accident and medical cure, property dispute among spouse, relatives, and any other property dispute under the amount of NT\$100,000. In addition, under the Article 404 of the Code of Civil Procedure, a party to an action not coming within the meaning of provisions of the proceeding article may also apply for mediation before instituting legal proceedings.

The out-of court mediation is mechanism to provide a third party who tries to resolve the civil dispute between the parties. If it is successful, the nature of such mediation is an enforceable settlement. If not, the dispute survives and either party can bring legal action against the other party. Under the Article 74 of the Government Procurement Law, for any dispute between a government agency and a supplier arising out of the invitation to tender, the evaluation of tender, and the award of contract, a protest or complaint may be filed in accordance with this law. However, if any dispute with respect to the performance of the contract fails to be settled by government agency and supplier, the supplier may file mediation with the Complaint Review Board for Government Procurement and the government agency shall not refuse to such mediation. The provision of mediation in the Code of Civil Procedure shall apply mutatis mutandis to the procedure and legal effect of the mediation handled by the Complaint Review Board for Government Procurement.

(2) Provide the number of arbitration and mediation cases accepted and disposed of, with a breakdown as to type, if possible.

***Answer:* 1.The Arbitration Association of the Republic of China—**

Since 1993 the number of arbitration cases has increased drastically. It has more than 100 cases accepted and disposed of each year in Taipei. In addition, it has other 2 branches in the middle and south of Taiwan. So the number of arbitration cases totally has reached 200 each year in the past 3 to 4 years. The type and business of cases accepted and disposed of are categorized as 80%~90% for construction industry and 10%~20% for maritime affairs, security, contract dispute, etc.

**2.Net Consumer Association, Taiwan—**

The number of mediation cases accepted and disposed of is around 20. They are all disputes with regard to the consumer protection on the Internet. The most common user of this ADR services is mainly categorized into 3 lines of business: real estate broker, ISP telecom and travel agency; the rest includes information and electronics, communications and transportation, banking and financial service, insurance, security maintenance and convenient store and so on.

**3.Science & Technology Law Center under Institute for Information Industry—**

The number of mediation cases accepted and disposed of is 15. It has served a role, among others, as the Industrial Property Arbitration Center (工業所有權仲裁中心) which deals with the dispute regarding Domain Name before the JPNIC in Japan. Cases are handled for companies such as Michelin, UPS, SK-II, Boss, and M & M etc.

(3) Generally, what is the frequency of hearing of other procedure and how long is the elapsed time for an arbitration award or a mediation? Are the answers different for different types of cases?

**Answer: 1. The Arbitration Association of the Republic of China—**

The frequency of hearing for each arbitration case can be at least once and at most 10 times, but 6~8 times usually are the most frequent. The elapsed time can reach 6 months and be allowed to extend another 3 months. The answers will not be different for different types of cases.

**2. Net Consumer Association, Taiwan—**

The frequency of hearing is once and the elapsed time for a mediation can be about 2~3 hours. In other words, it only provides one hearing for both parties to settle the case each other. The answers may be different for different types of cases depending on the degree of complexity. The simple one takes about 1 hour and complicated one takes about 3 hours or even longer. The answers will not be different for different types of cases.

**3. Science & Technology Law Center under Institute for Information Industry—**

Basically there is no hearing at all for the cases. A mediator will decide the dispute between two parties by reviewing documents and briefs provided by both parties and then render his/her decision in writing. The decision from a mediator will usually be made within a month. The answers will not be different for different types of cases.

(4) How many persons, in each field, are listed as candidates or applicants? (Aside from lawyers, what are the qualifications and occupations of such persons?)

**Answer: 1. The Arbitration Association of the Republic of China—**

Currently there are 535 arbitrators in this association from various fields listed as candidates or applicants. Most of them are lawyers and technicians, more than 50% of the total; certified public accounts, professors in university or college and architects share the rest proportion.

**2. Net Consumer Association, Taiwan—**

Three, they are all lawyers.

**3. Science & Technology Law Center under Institute for Information Industry—**

There are 40 persons from various fields are listed as candidates or applicants. Most of them are lawyers, 50% of the total, and others including research members in Institute for Information Industry and professors from law school.

(5) What requisites are necessary to be listed as a candidate? (For example, are certain specified qualifications, career records and specializations necessary?) Who decides this?

**Answer: 1. The Arbitration Association of the Republic of China—**

According to the Article 6 of the Arbitration Law, to act as an arbitrator, a person must possess legal or other professional knowledge or experience, a reputation for integrity and impartiality, and any of the following qualifications:

1. Service as a judge or public prosecutor;
2. Practice for more than five years as a lawyer, accountant, architect, mechanic or in any other commerce-related profession;
3. Act as an arbitrator of a domestic or foreign arbitration institution;
4. Teaching as an assistant professor or higher post in a domestic or foreign college certified or recognized by the Ministry of Education; and
5. Specialist in a particular field or profession and has practiced for more than five years.

According to the Article 7 of the Arbitration Law, on the contrary, a person falling into any of the following categories shall not be an arbitrator:

1. Convicted of a criminal offenses for corruption or malfeasance;
2. Convicted of any offenses other than those in the preceding category and sentenced to serve a prison term of one year or more;
3. Disfranchised;
4. Bankrupt;
5. Interdicted; or;
6. A minor.

The “committee for qualification review of arbitrators” in this Association takes charge of reviewing and deciding a candidate’s qualification and then later should be approved by the board directors meeting; then the candidate can be registered in the list of arbitrators. A copy of the list will be sent to the Ministry of Justice to keep the record. However, registration and being listed in this Association are not required or compulsory procedure and the party may also appoint a candidate who is not in the list but qualified as the above-mentioned qualification.

**2. Net Consumer Association, Taiwan—**

This organization prefers lawyer to handle the mediation so the chairman of this association decides who can be its mediators. In other words, it’s an exclusive organization to a large extent.

**3. Science & Technology Law Center under Institute for Information Industry—**

A mediator candidate must be specialized in areas of intellectual property related laws and hi-tech related laws, especially in Trademark Law. Science & Technology Law Center under the Institute for Information Industry will decide.

(6) Have policies been devised to improve the quality of arbitrators and mediators?

**Answer: 1. The Arbitration Association of the Republic of China—**

According to the Article 8 of the Arbitration Law in Taiwan, an arbitrator shall have received training or irregular lecturing. The Executive Yuan and the Judicial Yuan shall jointly regulate the guideline of training and lecturing for arbitrator.

**2. Net Consumer Association, Taiwan—**

None.

**3. Science & Technology Law Center under Institute for Information Industry—**

A mediator may receive training or irregular lecturing, attending seminars or conferences held by this organization.

(7) How is the compensation for arbitrators and mediators determined? Also, what are the actual amounts?

**Answer: 1. The Arbitration Association of the Republic of China—**

For arbitration as to property disputes, in addition to the NT\$600 net cost for the forms and information for application, the arbitration fee shall be progressively escalated according to the amount or price of the subject matter pursuant to the following standard:

1. Where the amount or price of the subject matter is NT\$60,000 or less, the arbitration fee shall be NT\$3,000.
2. Where the amount or price of the subject matter is greater than NT\$60,000, the arbitration fee for the amount exceeding NT\$60,000 shall be 4%.
3. Where the amount or price of the subject matter is greater than NT\$60,000 up to NT\$1,200,000, the arbitration fee for the amount exceeding NT\$60,000 shall be 3%.
4. Where the amount or price of the subject matter is greater than NT\$1,200,000 up to NT\$2,400,000, the arbitration fee for the amount exceeding NT\$1,200,000 shall be 2%.
5. Where the amount or price of the subject matter is greater than NT\$2,400,000 up to NT\$4,800,000, the arbitration fee for the amount exceeding NT\$2,400,000 shall be 1.5%.
6. Where the amount or price of the subject matter is greater than NT\$4,800,000 up to NT\$9,600,000, the arbitration fee for the amount exceeding NT\$4,800,000 shall be 1%.
7. Where the amount or price of the subject matter is greater than NT\$9,600,000, the arbitration fee for the amount exceeding NT\$9,600,000 shall be 0.5%.

In case the amount of the arbitration subject matter is denominated in foreign currency, gold or silver, it shall be converted in accordance with prevailing market price exchange rate or price on the date of the application.

In case an applicant of arbitration does not pay the arbitration fee, the arbitration institution shall request the applicant for payment within a time limit.

In case the applicant does not pay within such time limit, the arbitration institution may reject the applicant for arbitration.

For each arbitration, an arbitration institution shall, subject to the amount or price of the arbitration subject matter, give the following percentage of the arbitration fee to the arbitrator(s) participating in the matter, and the remaining arbitration fee shall be kept by the arbitration institution:

1. Where the arbitration fee is NT\$20,000,000 or less, the percentage shall be 60%.
2. Where the arbitration fee is greater than NT\$20,000,000 and up to NT\$300,000,000, the percentage of the amount exceeding NT\$20,000,000 shall be 50%.
3. Where the arbitration fee is greater than NT\$300,000,000, the percentage of the amount exceeding NT\$300,000,000 shall be 40%.

In case the arbitrator(s), without good cause, does not participate in the deliberation or refuses to sign an award, the parties may request to reduce the arbitration fee payment mentioned above.

The arbitration fee kept by the arbitration institution shall not be distributed as profit or be used for profit seeking.

### **2. Net Consumer Association, Taiwan—**

No compensation for mediators, free of charge. But these lawyers are paid by the chairman of this Association i.e. that chairman support it.

### **3. Science & Technology Law Center under Institute for Information Industry—**

Mediator will receive NT\$30,000 out of NT\$40,000 paid by an applicant for each mediation case.

\*(8) When you have a procedure that transfers from the arbitration to the mediation, or from the mediation to the arbitration, do the members of panel change?

*Answer:* As long as there exists an arbitration agreement between the two parties, it could not be possible to transfer the case from the arbitration to the mediation. However, practically it did take place that the mediation was transferred to the arbitration when two parties failed to settle each other during the mediation but agreed to accept arbitration at the same time. In this case, the members of panel certainly are different.

## **2. Relationship with the Court System**

Please show any act or law related to the below topics.

(1) When a case is instituted, does the court refer the matter to arbitration or mediation? If so, is it referred to a private sector organization or to an organ of the court? (Here and below, if there is a relevant law or regulation, please provide the text.)

*Answer:* **1. The Arbitration Association of the Republic of China—**

Normally, the court will not refer the matter to arbitration or mediation (private sector or not). However, according to the Article 420-1 of the Code of Civil Procedure, the court in the first instance (most cases is the district court) may refer the case to mediation upon agreed by both parties. In this case, the court will suspend such litigation proceeding. And then the litigation will end if the mediation concludes. If not, the court will continue the litigation proceeding. The mediation here means kind of organ of the court please see above 1.(1)3.

On the other hand, under the Article 4 of the Arbitration Law, in the event that one of the parties to an arbitration agreement commences a legal action (i.e. not go through arbitration proceeding) contrary to the arbitration agreement, the court may, upon application by the adverse party, suspend the legal action and order the plaintiff to submit to arbitration within a specified time, unless the defendant proceeds to respond to the legal action. If a plaintiff fails to submit to arbitration within the specified time period prescribed in the preceding paragraph, the court shall dismiss the legal action. After the suspension mentioned in the first paragraph of this Article, the legal action shall be deemed to have been withdrawn at the time an arbitral award is made.

**2. Net Consumer Association, Taiwan—**

Yes, but in a rare situation the court refer the matter to mediation. For example, very few cases referred from the prosecutor's office in which the complainant brought criminal case but legal basis was civil one. It was referred to a private sector organization like this Association.

**3. Science & Technology Law Center under Institute for Information Industry—**

None.

(2) In a case where the matter is referred to a private sector organization, how is the liability for the costs of the arbitration or mediation allocated?

**Answer: 1. The Arbitration Association of the Republic of China—**

It will follow the general procedure of arbitration handled by this association.

**2. Net Consumer Association, Taiwan—**

Free of charge.

**3. Science & Technology Law Center under Institute for Information Industry—**

None.

(3) Is there court supervision? Also, is there some sort of cooperation between the arbitration or mediation organization and the court? How does the court participate? (For example, does it cooperate in the examination of evidence, in the provision of information or the like?)

**Answer: 1. The Arbitration Association of the Republic of China—**

There is no court supervision; however, there is some sort of cooperation between the arbitration organization and the court, according to the Arbitration Law § 28, the arbitral tribunal, if necessary, may request assistance from a

court or other agencies in the conduct of the arbitral proceedings. A requested court may exercise its investigation powers in the same manner and to the same extent as permitted in a legal action. And it may cooperate in the examination of evidence, in the provision of information or the like.

**2. Net Consumer Association, Taiwan—**

None. There is not any sort of cooperation between this mediation organization and the court.

**3. Science & Technology Law Center under Institute for Information Industry—**

None.

(4) In the event that mediation ends in failure, how is the matter disposed of? For example, how is the issue of extinctive prescription (similar to the statute of limitations) handled?

***Answer:* 1. The Arbitration Association of the Republic of China—**

Basically, arbitral award is required to be made. Just like once a case is instituted with the court, the judgment should be rendered in any event. However, in the event that arbitration ends in failure, how is the issue of extinctive prescription handled? According to the Article 129 of the Civil Code in Taiwan, extinctive prescription is interrupted by and of the following causes:

1. A demand ( for the satisfaction of the claim ) ;
2. An acknowledgment ( of the claim ) ;
3. An action ( brought for the satisfaction of the claim ) .

The following are equivalent to bringing an action:

1. The issuance of an order for payment in a hortatory process;
2. Filing an application for mediation or submitting an application for arbitration
3. ....

Further, under the Article 133 of the Civil Code, in the case of interruption of extinctive prescription by filing an application for mediation or submitting an application for arbitration, if the application for mediation is withdrawn or dismissed or the mediation fails to be concluded; or the application for arbitration is withdrawn or an arbitral award fails to be rendered by the arbitral tribunal; the prescription is deemed not to have been interrupted.

**2. Net Consumer Association, Taiwan—**

The party should consider bringing a civil legal action to resolve the dispute. The issue of extinctive prescription (similar to the statute of limitations) will not be handled i.e. the statute of limitations still continues and won't be interrupted. This is because that, like above-mentioned, extinctive prescription can be interrupted by a demand. However, according to the Article 130 of the Civil Code in Taiwan, in the case of interruption by the making of a demand, if within six months an action in Court has not been brought for the satisfaction of the claim, the prescription is deemed not to have been interrupted.

**3. Science & Technology Law Center under Institute for Information Industry—**



The mediation definitely will have a decision. However, either party who is not in favor by the decision may still has right to bring a law suit before the court and the court judgment may be different from that mediation.

(5) How is the enforceability of the arbitration award or the mediation agreement ensured? Does the court participate in that process?

***Answer:* 1.The Arbitration Association of the Republic of China—**

According to the Article 37 of the Arbitration Law, the award shall, insofar as relevant, be binding on the parties and have the same force as a final judgment of a court.

An award may not be enforceable unless a competent court has, on application of a concerned party, granted an enforcement order. However, the arbitral award may be enforced without having an enforcement order granted by a competent court if the contending parties so agree in writing and the arbitral award concerns any of the following subject matters:

1. Payment of a specified sum of money or certain amount of fungible things or valuable securities;
2. Delivery of a specified movable property.

The previous paragraph is binding not only on the parties but also on the following persons with respect to the arbitration:

1. Successors of the parties after the commencement of the arbitration, or those who have taken possession of the contested property for a party or its successors.
2. Any entity, on whose behalf a party enters into an arbitration proceeding; the successors of said entity after the commencement of arbitration; and, those who have taken possession of the contested property for said entity or its successors.

**2.Net Consumer Association, Taiwan—**

Unlike arbitration award, the enforceability of the mediation agreement made by this Association is different from an irrevocably final judgment, which means it is only a normal agreement by both parties without any compulsory enforceability. If later on one party fails to perform, the other party still has to bring a lawsuit the court does not participate in that process.

**3.Science & Technology Law Center under Institute for Information Industry—**

None. The enforceability of the mediation is only binding to the TWNIC.

**3. Particular Issues**

(1) Have special rules been established for cases related to intellectual property rights? For example, is it possible to arbitrate with respect to the validity of a patent?

***Answer:* 1.The Arbitration Association of the Republic of China—**

No, there are not special rules established for cases related to intellectual property rights. It is not possible to arbitrate with respect to the validity of a patent.

**2.Net Consumer Association, Taiwan—**

There are no special rules established for cases related to intellectual property rights. It is not possible to arbitrate with respect to the validity of a patent.

**3.Science & Technology Law Center under Institute for Information Industry—**

There are no special rules established for cases related to intellectual property rights if Domain Name cannot be deemed as an intellectual property. It is not possible to arbitrate with respect to the validity of a patent.

(2) Are there disputes when arbitration is rejected?

***Answer:* 1.The Arbitration Association of the Republic of China—**

According to the Article 38 of the Arbitration Law, the court shall reject an application for enforcement in any of the following circumstances where: 1. The arbitral award concerns a dispute not contemplated by the terms of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award; 2. The reasons for the arbitral award were not stated, as require, unless the omission was corrected by the arbitral tribunal; 3. The arbitral award directs a party to act contrary to the law.

**2.Net Consumer Association, Taiwan—**

None.

**3.Science & Technology Law Center under Institute for Information Industry—**

None.

(3) Is there a specialized arbitration or mediation system (or rules) for computer software and the like?

***Answer:* 1.The Arbitration Association of the Republic of China—**

No, there is not a specialized arbitration system (or rules) for computer software and the like.

**2.Net Consumer Association, Taiwan—**

There is not a specialized arbitration or mediation system (or rules) for computer software and the like.

**3.Science & Technology Law Center under Institute for Information Industry—**

There is not a specialized arbitration or mediation system (or rules) for computer software and the like.

(4) In the event of a dispute concerning computer software, how is a decision made as to grasping the facts of the technological issues? How are qualified persons selected for that purpose?

***Answer:* 1. The Arbitration Association of the Republic of China—**

In the event of a dispute concerning computer software, an arbitrator will invite expert witnesses with technological background to provide opinions based on which the arbitrator may render an arbitration award. They come from some organizations such as Institute for Information Industry, Industrial Technology Research Institute, universities or research centers etc., which have been generally accepted by the court.

**2. Net Consumer Association, Taiwan—**

There is no this kind of case.

**3. Science & Technology Law Center under Institute for Information Industry—**

None.

(5) What measures are in place for the protection of secrets? (For example, are there methods of controlling records, limiting the scope of disclosure to agents, and so on?)

***Answer:* 1. The Arbitration Association of the Republic of China—**

There are certain measures in place for the protection of secrets. All the records or documents including evidences for the arbitration case shall not be disclosed to any one else who is not in charge of the case, even agents are not entitled to review all the files unless the arbitration association provide them for the purpose of arbitration.

**2. Net Consumer Association, Taiwan—**

The records for the mediation shall be kept in confidence by a specific lawyer in charge of the case and will not be disclosed.

**3. Science & Technology Law Center under Institute for Information Industry—**

The decision of such mediation will be open to the public but all the evidence, file and records for the mediation shall be kept in confidence by this Center and will not be disclosed.

(6) Have some measures been conceived to promote prompt settlements?

***Answer:* 1. The Arbitration Association of the Republic of China—**

Under the Article 44 of the Arbitration Law, parties to arbitration may explore settlement options to their dispute prior to the issuance of an arbitral award. If the parties reach a settlement prior to the conclusion of the arbitration, the arbitrator shall record the terms of settlement in a settlement agreement. A settlement agreement under the preceding paragraph has the same force and effect as that of an arbitral award. However, the terms of the settlement agreement may be enforced only after the court has granted an application by a party for enforcement and issued an enforcement order.

Further, according to the Article 45 of the Arbitration Law, in the absence of any arbitration agreement to the contrary, the parties may choose to submit their

dispute to mediation and jointly appoint an arbitrator to conduct the mediation. Upon the successful conclusion of the mediation between the parties, the arbitrator shall record the results of the mediation in a mediated agreement. Practically, the arbitrator normally may also try to convince two parties in the arbitration of settling with each other at the very beginning of the arbitration proceedings.

**2. Net Consumer Association, Taiwan—**

There are no measures conceived to promote prompt settlements.

**3. Science & Technology Law Center under Institute for Information Industry—**

There are no measures conceived to promote prompt settlements.

(7) How is ADR publicized? How can potential users learn about your ADR organization's system?

***Answer:* 1. The Arbitration Association of the Republic of China—**

Potential users can learn about this ADR organization's system through its web site, seminars or publications that will promote industrial's utilizing the system.

**2. Net Consumer Association, Taiwan—**

The result of the mediation will not be publicized. Potential users can learn about this ADR organization's system through its web site, seminars or publications that will promote industrial's utilizing the system.

**3. Science & Technology Law Center under Institute for Information Industry—**

The decision will be posted on the website of the organization, Science & Technology Law Center under Institute for Information Industry. Potential users can learn about the organization from its promotion on newspaper or the website, conferences, etc.

\*(8) What kind of dispute is suitable for the online ADR? How about the actual use?

***Answer:*** Basically, small amount of disputes between consumer and e-commerce store on the Internet (i.e. B2C) will be suitable for online ADR. However, in Taiwan there is no actual use in this regard. Although there is Secure Online Shopping Association which can handle the consumer's dispute with its member, there is no case resolved by this Association on-line yet.

4. Please attach any court precedents related to the above topics.

(End)