1. THE CODE OF CIVIL PROCEDURE AND THE ARBITRATION LAW

Arbitration has been very active in Taiwan both for domestic and foreign disputes. The Taiwan Government encourages arbitration even to the extent, as one example, of compulsory arbitration procedures for government procurement contracts. There is recognition and enforcement of arbitration awards between Taiwan and China. Taiwan has a civil law system, so there are codified civil procedure and arbitration provisions. The Arbitration Law expressly provides that the Code of Civil Procedure (“CCP”) is to be applied if the arbitral tribunal so decides, and when the arbitration law is silent. Article 19 of the Arbitration Law indicates that the parties may apply the procedures of arbitration if they so agree, and in the absence of such agreement, the Arbitration Law will be applied. If the Arbitration Law is silent, then the CCP will apply. Recently issues have arisen whether and to what extent there are limitations on the application of the CCP to arbitration procedures.

2. ISSUES RELATING TO THE WITHDRAWAL OF AN ARBITRATOR

As to the withdrawal of arbitrators, three questions may arise under the Arbitration Law and indirectly under the CCP. First, if an arbitrator is challenged, who decides if the challenged arbitrator should withdraw. Second, in case of a challenge, should the arbitration proceeding be suspended pending the conclusion of the withdrawal procedure. Third, if the arbitral tribunal decides to continue with the proceeding during the challenge proceeding, will the final arbitral award

1 Article 19 of the Arbitration Law provides “In the absence of an agreement on the procedural rules governing the arbitration, the arbitral tribunal shall apply this Law. Where this Law is silent, the arbitral tribunal may adopt the Code of Civil Procedure mutatis mutandis or other rules of procedure which it deems proper.”
be subject to set-aside in the event that the challenged arbitrator continues to participate in the proceedings?

No definite answers can be found to these questions under the Arbitration Law. To what extent the CCP can resolve these issues is controversial. For example, in the case of challenge against one or more members of the arbitral tribunal, the Arbitration Law is quite vague. The law provides, in Article 17, para. 2, that the arbitral tribunal should make a decision as to withdrawal. The question is whether the challenged arbitrator may participate in the decision-making process. Since the Arbitration Law simply states that the arbitral tribunal should make a decision, it remains unclear which members of the arbitral tribunal may make the decision.

3. CHALLENGE TO A SOLE ARBITRATOR

In case of challenge to a sole arbitrator, the court makes the decision. (Article 17, para. 6 of the Arbitration Law)

4. CHALLENGE TO ONE OR MORE ARBITRATORS IN A PANEL

As noted, in case of an application for the withdrawal of one or more arbitrators of the arbitral tribunal, Article 17, para. 2 of the Arbitration Law provides that the arbitral tribunal shall make the decision. This raises the question whether the challenged arbitrator may participate in the decision-making on the challenge application. That is, does the “arbitral tribunal” referred to in Article 17, para. 2 of the Arbitration Law include the challenged arbitrator? Shall the provisions of the CCP be considered in this context? This has become an issue since the Arbitration Law is silent on the matter.

4.1 Disqualification of Judges under the Code of Civil Procedure

In case of disqualification of a judge in a civil proceeding, the CCP provides that “The ruling on a motion for disqualification shall be made by a panel of judges of the court to which such judge is assigned. When the panel cannot be established due to an insufficient number of qualified judges, the ruling shall be made by the Chief Judge of that court. When the ruling cannot be made by the Chief Judge, it shall then be made by the immediate superior court.”

“The challenged judge cannot participate in any decision concerning the ruling prescribed in the preceding paragraph.” (CCP, Article 35, paras. 1 and 2.)