

RECOGNITION OF FRENCH COURT DECISIONS IN TAIWAN

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In business practice, most French companies tend to include in their commercial agreements clauses which refer to French law as the applicable law and to French courts for the jurisdiction in case of disputes. The aim is to have disputes settled in France, which is perceived to be in favour of the French party.

As are said, this commercial practice supposes a recognition of French court decisions in Taiwan (R.O.C.).

The increase of trade relations between France and Taiwan (R.O.C.) and the needs ever more complex of legal structures for French investment in Taiwan also bring about the issue of the recognition of court decisions between the two countries.

In addition, between France and Taiwan there is currently no bilateral or multilateral agreement governing the issue of mutual recognition.

Therefore, in order to answer the question of recognition of a French court decision in Taiwan, one must look at the internal law of Taiwan.

However, the applicable legal provisions are mainly found in the Code of Civil Procedure of Taiwan, promulgated on February 1, 1935, and revised on February 7, 2003 (hereinafter: CCP), especially its article 402.

According to article 402 CCP, in general Taiwan law allows for recognition of foreign decisions if they fulfill the five requirements contained herein.

As shall be showed below, there is, in principle, no obstacle to a recognition of a French court decision in Taiwan. From a procedural point of view, the French court decision must be recognized by a specific court order in Taiwan courts.

I. JURISDICTION

First, the Taiwan Law requires a check, whether the French court did indeed have jurisdiction over the matter in dispute, from a Taiwanese point of view.

The check of the foreign jurisdiction court often includes both a check of the “international jurisdiction” of the foreign judge and a check of his “internal jurisdiction”.

With regard to the “international jurisdiction”, i.e. of the foreign court was competent from the point of view of the Taiwan Law governing the international jurisdiction for disputes involving foreign elements, i.e. Taiwan International private Law.

However, the respective Taiwanese provisions contained in the “Law governing the application of laws to civil matters involving foreign elements”, promulgated June 6, 1953, are mostly in line with the French laws governing international law (or French international private law).

As a consequence, and for a majority of cases, if the French court has considered itself to be competent, such competence will find the approval of the Taiwanese court.

As an example, the rule of “lex actus loci” is found in Taiwan International private Law as well in French International private Law (this rule gives jurisdiction to the court of the place where the dispute act was carried out). Nevertheless, there are some exceptions to this similarity: for example, so-called “exorbitant” provisions of French Law may not find the approval of the Taiwanese court.

With regard to the internal jurisdiction, the Taiwanese judge shall check the jurisdiction the French court within the French territory itself, and with the French court system. In other words, the French court having rendered the decision must have had jurisdiction from a domestic French point of view.

II. SERVICE OF PROCESS

If the defendant is a citizen of Taiwan, or a company domiciled in Taiwan, the recognition of a foreign court decision by a Taiwanese court requires that the condition of due service has been respected

Due service stands for the condition that the summons for the court proceedings must either have been duly served on the defendant, or the defendant must otherwise have responded to the court proceedings.

The requirement of due service may be fulfilled through service on the Taiwanese party either in the foreign country, or in Taiwan through use of the judicial assistance. In case the summons have not been duly served, but the party has otherwise responded to the action (so-called *submission to the jurisdiction of a court*) the requirement of due service is also deemed fulfilled.

Therefore, the Taiwanese judge shall check the regularity of the procedure followed by the French judge. The defendant summon constitutes the introductory act of proceedings, and a flaw with this court proceeding may render the proceeding in which it occurs null and void.

In practice, the irregularity or otherwise insufficiency of the defendant summons represent the argument of defense most often evoked within court proceedings for recognition of foreign court decisions.

III. MATERIAL PUBLIC ORDER

In order to be recognized by the Taiwan courts, the foreign court decision must be compatible with the “public order” and the “good morals” of Taiwan (so-called *ordre public au fond*).

However, this requirement does by no means signify that the foreign decision must be fully in line and compatible with Taiwanese law. Rather, in order to respect the public order in this sense, it is sufficient that the foreign decision is not in total defiance of the basic legal principles of the country of recognition, i.e. Taiwan.

As an example of the few cases where the public order is not deemed respected, one may cite a foreign court decision ruling on a governmental expropriation without any monetary compensation.

In practice, the argument of defiance of public order is only restrictively admitted by the courts.

IV. FINAL DECISION

A foreign court decision must be irrevocable in order to be recognized in Taiwan. This requirement has two consequences.

First, provisional measures, which are by their very nature subject to change, may not be recognized and therefore may not be executed in Taiwan.

Second, the decision must not be reversible by any ordinary legal means, e.g. through appeal – in other words, the court decision must be final.

In practice, the Taiwanese judge may require a certificate of the French court stating that the decision is irrevocable, i.e. not subject to any appeal.

V. RECIPROCITY

The requirement of reciprocity means for a French court decision that its recognition in Taiwan again depends on the recognition of Taiwanese court decisions in France.

The current absence of treaties between France and Taiwan assuring a reciprocal recognition of court decisions, leads to consider a procedure called *exequatur* as the only means of recognition of a Taiwanese decision by a French court.

The applicable legal provisions for such exception are found in article 2123 of the French New Code of Civil Procedure.

This action allows for the recognition by a French court of a foreign court decision declared binding and enforceable on French territory.

The four requirements set forth within the French *exequatur* are: the jurisdiction of the court rendering the decision to be recognized, the applicable law, public order, and the absence of legal fraud.

Due to the similarity, in principle, of the four requirements of the *exequatur* in France and the international private law in Taiwan, we may conclude that decisions emanating from Taiwanese courts and rendered in accordance with Taiwan law shall, again in principle, be recognized in France (however, special circumstances reserved).

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