

Product Liability Litigation with Non-U.S. Entities:
“Dos & Don’ts” and Recent Trends

By Dr. C. Y. Huang
Tsar & Tsai, Taipei, Taiwan

Numerous issues may be of potential relevance in U.S. product liability litigation involving non-U.S. entities. Where the non-U.S. entity is a Taiwanese person, some of the issues that may arise are discussed herein.

I. RECOGNITION OF FOREIGN JUDGMENTS IN TAIWAN

Under Article 402 of the Code of Civil Procedure of the Republic of China (“ROC”, or Taiwan), certain requirements must be satisfied before a ROC court would recognize a foreign judgment. These requirements are: (A) the foreign judgment is final; (B) the foreign court has proper jurisdiction; (C) service of process was properly effected; (D) the foreign judgment is not contrary to the public order or good morals of the ROC; and (E) the foreign court reciprocally recognizes ROC judgments.

A. “Final” Judgment

1. A foreign judgment is “final” when it cannot be overturned or otherwise altered.
2. Such a “final” judgment does not include, *inter alia*, orders providing for provisional remedies.
3. Such a judgment must be rendered by the court or other similar judicial organs of the foreign country capable of issuing the judgment.

B. Jurisdiction

1. The issue is whether the foreign court issuing the judgment has the jurisdiction to do so.
2. Such a determination is to be made by applying ROC law; *i.e.*, whether the foreign court, if it were an ROC court, would have jurisdiction to hear and decide the matter.

C. Service of Process

1. Service of process must have been properly effected upon the party against whom the foreign judgment was rendered.
2. Taiwan is not a member of the “Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters”.
3. Service may be effected through the applicable laws of the foreign country rendering the judgment, or by judicial assistance under applicable ROC law.
4. Hence, if the defendant is a ROC citizen and cannot be personally served in the foreign jurisdiction, service should be effected via judicial assistance in Taiwan.
5. Requests for judicial assistance should take the form of a letter rogatory issued by the foreign court. The letter rogatory should be sent through diplomatic channels, and should include:
 - a. a request to effect service of the summons and complaint (and the duly certified translations thereof);
 - b. a brief description of the nature of the case;
 - c. a declaration of reciprocity by the foreign court, *i.e.*, the foreign court would provide the same assistance to a Taiwanese court under the same or similar circumstances;
 - d. the name, citizenship, domicile or residence, and office or place of business of the person to be served;
 - e. a duly certified Chinese translation of the letter rogatory and other related documents; and
 - f. reimbursement of costs to be incurred by the Taiwanese court.
6. Sending the letter rogatory through diplomatic channels involves several steps:
 - a. The letter rogatory should be sent to the American Institute in Taiwan (the “AIT”), which is the *de facto* American embassy/consulate in Taiwan.
 - b. The AIT would then forward the documents to Taiwan’s Ministry of Foreign Affairs, which would ensure that the appropriate ROC District Court receive the documents.
 - c. The District Court would actually effect service of the summons and complaint on the person to be served.
 - d. Once the service is complete, the District Court would send to the

Ministry of Foreign Affairs documents relating to the proof of service.

- e. By the time the plaintiff receives the proof of service, the entire process could take up to 8 or 9 months.

D. Public Order or Good Morals

1. There is no settled definition or meaning of “public order or good morals”.
2. Generally, however, the procedural as well as the substantive aspects of the foreign judgment may be relevant. For example, where the foreign judiciary lacks independence, or where the judgment confirms polygamy, the foreign judgment may be deemed contrary to public order or good morals and may not be recognized.

E. Reciprocity

1. An ROC court would only recognize a foreign judgment when the foreign country reciprocally recognizes ROC judgments.
2. However, the foreign country would not be required to have in fact previously recognized an ROC judgment. It is sufficient that an ROC court could reasonably expect that its judgments would be reciprocally recognized.
3. Moreover, it is irrelevant whether the foreign country grants official diplomatic recognition of the ROC.

II. ENFORCEMENT OF FOREIGN JUDGMENTS IN TAIWAN

1. Enforcement of foreign judgments in Taiwan requires that the judgment sought to be enforced be first recognized by an ROC court.
2. The person seeking to enforce the foreign judgment must commence a proceeding in an ROC court to obtain authorization from the court for the enforcement of the judgment.
3. The remedies available are similar to those in American jurisdictions, including execution and seizure, garnishment, foreclosure sale, etc.

III. DISCOVERY

A foreign court may request a Taiwanese court to assist in the investigation and gathering of evidence for use in the foreign litigation.

A. Voluntary Interrogation of a Witness

1. With respect to obtaining witness testimony, Taiwanese courts will follow the applicable ROC law and procedure in taking evidence from the witness.
2. If a witness is willing to be deposed, the deposition may be conducted before a properly authorized employee of the AIT.
3. The AIT is a nonprofit corporation incorporated under the laws of the District of Columbia. Acts performed by authorized employees of the AIT are valid and of like force and effect within the United States, as if performed by any other person authorized under the laws of the United States to perform such acts.
4. The AIT may authorize its employees to, *inter alia*, administer oaths and deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States.

B. Involuntary Interrogation of a Witness

1. Unless a witness is willing to voluntarily submit to deposition, involvement of the Taiwanese court will be required.
2. A litigant may request a Taiwanese court, via a letter rogatory, to conduct the interrogation of the witness.
3. The letter rogatory should set forth the names of the parties, the type of evidence required, the person to be deposed and his citizenship, domicile, residence or place of business or office, and the substance of the matters to be investigated or deposed.
4. The Taiwanese court will conduct the questioning itself. A copy of the transcript will be sent to the foreign court.
5. A witness failing to appear in compliance with a summons by a Taiwanese court will be subject to fines, and the court may compel the witness to appear by forcible means.
6. The entire process may take up to 120 days.

IV. RECENT TRENDS

Taiwan has recently (in 2002) adopted amendments to its Consumer Protection Law, under which a product liability regime was established based on the theory of strict liability. Some of the more notable points of the new law are discussed below.

A. Broad Scope of the Strict Liability Law

1. Strict liability is imposed on damages arising from not only defects in “products”, but also defects in “services”.
 - a. The term “products” is defined as including both movable property and immovable property (i.e., real estate). Movable property may include not only final products, but also unfinished products, works-in-progress, materials or components, as well as other “primary” products such as agricultural goods or forestry products.
 - b. The term “services” is not specifically defined, but its scope does not appear to be limited by, for example, being required to be connected to the provision of a “product”. In other words, the provision of a “service” can be independent of the provision of any “products”.
 - c. Indeed, courts in Taiwan have applied the strict liability provisions to various types of service providers, including business operators providing bus services, water services, recreational services, financial services, and professional services such as medical advice or treatment rendered by doctors.
2. The law aims to protect “consumers” and other “third parties”.
 - a. The term “third parties” is not defined. Courts have interpreted “third parties” to include those whom business operators could reasonably foresee may be damaged by defective products or services.
 - b. The term “consumers” is defined as those persons who engage in the transaction or use of products, or the acceptance of services, for purposes of consumption. It may be surmised that consumption purposes do not include, for example, the use of products for re-sale, processing, or other commercial purposes.
3. The strict liability laws apply to a broad array of “business operators”, which is defined as those who design, produce, manufacture, import, distribute or market “products”, or those who provide “services”.

B. Defect Standard

1. The new law provides that business operators shall ensure that products or services conform to “such safety standards as may be reasonably expected under the prevailing technological or professional standards.”
2. In deciding what constitutes “reasonable expectation”, the following three factors are to be taken into account:
 - a. the labeling or explanations of the product or service;
 - b. the product’s expected, reasonable use by the consumer, or the service’s expected, reasonable acceptance by the consumer; and
 - c. the timing or period during which the product or service was provided.
3. Courts have interpreted “reasonableness” on the basis of an objective standard (i.e., what a reasonably prudent consumer in the general society would reasonably expect), not on a subjective standard based on the particular claimant’s expectations.

C. Damages

1. In addition to the broad scope of the strict liability provisions, the law also allows for punitive damages.
2. Where the responsible business operator intentionally or deliberately caused the damage, the claimant may seek punitive damages in an amount not exceeding three times the amount of compensatory damages.
3. Where the responsible business operator negligently caused the damage, the claimant may seek punitive damages in an amount up to the amount of compensatory damages.