

COST AND FEE ALLOCATION IN TAIWAN CIVIL PROCEDURE

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The costs and fees of civil procedure in Taiwan were originally regulated by “The Civil Procedure Fee Act.” However, in 2003, the regulations of this Act were incorporated into the “Taiwan Code of Civil Procedure (hereafter TCCP)” and the original act was abolished. Now the rules for cost and fee allocations of civil cases are all regulated by the TCCP. At the same time, to provide low-income residents with more legal aid and protection, the Legislative Yuan enacted the Legal Aids Act in 2004, which was promulgated by the President on January 7th, 2004, and put into effect on June 20th, 2004.

A. Basic Rules

In Taiwan, the fees for civil procedure should be pre-paid by the party who initiates the litigation, files the motion, or appeals. If the fee is unpaid, the court should order the party to pay it or dismiss the case, motion or appeal. (TCCP Article 249 Paragraph 1 subparagraph 6 (hereafter TCCP § 249 par. 1 (6)), and §442 par.2). Such payment is only a temporary prepayment. Upon entering a final judgment, the court should, on its own initiative, decide the responsibility for litigation expenses (TCCP § 87 par.1). If the court of final instance fails to do so, the party whose temporary prepayment is more than her allocation may file a motion to the court of first instance to affirm the amount of litigation expenses after the court verdict has res judicata. (TCCP §§ 91) The other party must then reimburse her.

The losing party should be responsible for the litigation fee (TCCP § 78). The fee resulting from litigation should include both the losing party’s own expenses and the winning party’s expenses. The losing party must pay all. In cases of a partial victory and a partial defeat, the court should determine the allocation of both parties’ litigation fees; the court may, in its discretion, order the litigation expenses to be borne by both parties in a certain proportion, by a particular party alone, or order both parties separately to bear their respective litigation expenses. (TCCP § 79) It is uncommon that the parties enter a contract on the allocation of litigation fee, if they do so; the court is not bound by their contract.

Because civil procedure resolves civil disputes between parties, the parties who

use the court's resources must pay for them; that makes it fairer for those tax payers who do not use them. At the same time, requiring payment can prevent people from abusing their right to initiate litigation or appeal.

However, to avoid overburdening the parties or obstructing them from claiming their rights; the court fee in the TCCP is based on a progressive-decrease rate, which will be discussed later. To encourage quick settlement of litigation, the party can receive a refund for a certain amount of the pre-paid court fee once the settlement or mediation is reached. The fees for parties who appeal to the second and the third instance are 50 percent higher than those of the court of first instant.

B. Exceptions and modifications

Basically, the litigation fee is paid by the losing party; but there are the following exceptions:

- (a) When a defendant directly admits to a claim presented by a plaintiff and it is established that the litigation is unnecessary, the plaintiff shall bear the litigation expenses. (TCCP § 80)
- (b) When the winning party takes legal act which is unnecessary for asserting or defending her rights, the court may, in its discretion, order the winning party to bear the litigation expenses incurred in full or in part.; (TCCP § 81 par. 1)
- (c) If the losing party performs an act which is necessary for asserting or defending her rights in accordance with the phase of the proceedings reached at the time, the court may, in its discretion, order the winning party to bear the litigation expenses incurred in full or in part for the following. (TCCP § 82 par. 2).
- (d) Where a party has failed to timely present means of attack or defense, or to meet a specified date or period, or otherwise delayed the proceeding by reason of whatever cause imputable to such party, the court may order such party to bear the litigation expenses incurred from the delay, in full or in part. (TCCP § 82)
- (e) For cases arising from a partition or real property demarcation or other matters of a similar nature, where it is manifestly unfair for the losing party to bear solely the litigation expenses, the court may, in its discretion, order the winning party to bear part of the litigation expenses. (TCCP § 80-1)

C. Encouragement or Discouragement of Litigation

Some rules in TCCP are designed to encourage parties to settle their cases or to mediate.

1. Settlement: after agreeing to settle their dispute, the parties shall respectively bear the expenses of the settlement and the litigation expenses, except as otherwise may be agreed upon. (TCCP §84 par. 1) When the aforementioned settlement agreement

is documented into the court record, the agreement may be enforced by the court. To encourage parties to reach settlement, thus lessening the judicial burden and promoting harmony, the settled parties may request a refund in an amount up to two-thirds of the court fee pre-paid during the trial stage within three months from the day of such settlement agreement (TCCP § 84 par. 2).

2. Mediation: To lessen the judicial burden, Article 403, 577, and 587 of TCCP provide that in certain kinds of cases, the court should mediate the dispute before trial. Successful mediation should have the same legal binding effect as a settlement in litigation (TCCP § 416 par. 1) and as a court's final judgment. (TCCP § 380 par. 1) In a successful mediation, the mediator's expenses should be paid by the national treasury (TCCP § 411), the parties shall respectively bear other expenses of the settlement and the litigation expenses, except as otherwise may be agreed upon. The parties may request a refund of the court fee the same as settlement is reached. (TCCP § 423 par.2)

D. The Determination of Costs and Fees

(a)The Scope of Litigation Fee: Court Fee and Additional Fee

The Litigation fee includes the following items:

1. Court Fee: The party should pay a court fee to the national treasury as a payment for the judicial service that she receives from the government. The court fee criterion differs according to whether the litigation involves a property or non-property rights claim:
 - (1) Litigation involving property rights: The court of the first instance should assess the price or value of the claim and charge the court fee based on its assessment. (TCCP § 77-13). The court fee is based on a progressive-decrease rate, which divides the price or value of the claim into New Taiwan Dollar (NTD) 100,000 as a unit; the fee decreases for each additional NTD 100,000 unit in the claim.¹
 - (2) Litigation involving non-property rights: The party has to pay the designated fee (now it is NTD 3,000 for the court of first instance and 4,500 for appeal to the court of second or third instance); and if a property claim is made simultaneously, the two court fees should be paid separately. (TCCP § 77-14).²

¹ TCCP §77-13 provides that for any litigation involving property rights, the court cost shall be 1,000 New Taiwan Dollars [NTD] on the first NTD100,000 of the price or claim's value, and an additional amount shall be paid for each NTD100,000 thereafter in accordance with the following rates: NTD100 on the portion between NTD100,001 and NTD1,000,000; NTD90 on the portion between NTD1,000,001 and NTD10,000,000; NTD80 on the portion between NTD10,000,001 and NTD100,000,000; NTD70 on the portion between NTD100,000,001 and NTD1,000,000,000 ; and NTD60 on the portion over NTD1,000,000,000. A fraction should be rounded up to the nearest ten thousand."

² TCCP § 77-14 provides that any litigation involving non-property rights, the court fee is NTD three thousand.

- (3) Appeal fee: when a party is dissatisfied with the lower court's ruling and has filed for appeal to the court of second or third instant, she should pay an additional fifty percent (i.e. 150%) litigation fee stated above (TCCP § 77-16).
- (4) Retrial litigation fee: when requesting retrial for a final judgment with binding effect, the party should pay a court fee in accordance with the fee schedule described above (TCCP § 77-17).
2. Fees other than the Court Fee: In addition to the court fees described above, there are other fees related to the litigation, such as fees for photocopy, transcripts, translation, publication in official gazettes and newspapers, daily fees or travel expenses of witnesses or expert witnesses, and compensation for expert witnesses (TCCP § 77-23 par. 1 & 2). Furthermore, if the party, by her own, initiates evidence collection (such as expert authentication, collecting scene pictures, obtaining medical certifications from doctors, voice recording, etc.), such related fees should not be included in the litigation fees; however, if the party, during the litigation, requests authentication (expert testimony) and the court has appointed an expert witness to carry out such authentication, then related fees should be included in the litigation fee (TCCP § 338).
3. Attorneys-at-law Fee: Since in Taiwan the party may represent herself at the trial of first and second instance, it is not compulsory for the party to retain an attorney-at-law as her representative. If she does so, the fee for the attorney-at-law in these two stages should not be included in the litigation fee. However, pursuant to Article 466-1 of TCCP, when appealing to the Supreme Court, the party must hire an attorney-at-law as her representative, thus the attorney-at-law's fee in this stage should be included in the litigation fee (TCCP § 466-3 par. 1). There is, however, a maximum attorney fee, prescribed by the Judicial Yuan (the highest judicial organ in Taiwan), that can be included in the litigation expense.³

Currently, there are no available data in Taiwan reflecting how many cases are represented by attorneys-at-law and how many cases are represented by litigants themselves for the cases in the District and High Courts.

There is no statute that regulates attorney's fees. According to the Taiwan Bar Association's standards for lawyer's fees, there are several ways to charge: (1) service item charge,⁴ (2) total charge,⁵ and (3) hourly payment.⁶ Because big law

³ TCCP § 466-3 provides that "Compensation paid to the attorney in the court of third instance shall be included as a part of the litigation expenses and the maximum amount thereof shall be prescribed. The Judicial Yuan shall prescribe rules governing the appointment of an attorney to act as the advocate provided in Article 466-1. The rules provided in the preceding paragraph shall be prescribed by reference to the opinions of the Ministry of Justice and the Taiwan Bar Association."

⁴ It depends on what kind of service the client asks her attorney to provide. For case discussion, it is under eight thousand NTD per-hour; each court appearance is under twenty thousand NTD.

firms are uncommon, the lawyers in Taiwan usually run their own firms and do not use an accounting system. For the purpose of collecting taxes, the National Tax Administration (NTA), an institute supervising income tax, has announced “The Criterion of the Income and Expenses for the Professionals.” According to its 2008 criterion, the attorney fee for each instance of a civil case is respectively forty thousand NTD in the municipal city or the regular city and thirty-five thousand in the county. Nevertheless, the real charge is usually based on a mutual agreement between the client and her lawyer. The charge is more often higher than the presumption set by the NTA but lower than that set by the Taiwan Bar Association.

(b) The ruling on the litigation fee

As mentioned before, the court fee is assessed by the court; if the party is dissatisfied with the assessment, she can file an interlocutory appeal to the higher court. (TCCP § 77-1 par.4). When the litigation is ended by court judgment, the court, upon entering a final judgment shall, on its own initiative, decide the responsibility for litigation expenses. (TCCP § 87 par. 1). If the litigation is concluded without court decision--such as if the plaintiff discontinues the lawsuit, or the parties reach settlement or mediation--the court shall on a motion decide by ruling the responsibility for litigation expenses. The motion must be filed within twenty days following the conclusion of the action. (TCCP § 90).

V. Special Issues:

Although the lawyer fee is agreed on by the client and the attorney-at-law, contingency fees are not legal in Taiwan. At the same time, there is no litigation insurance in Taiwan at this time.

The litigation fees depend on the nature of the litigation (whether it involves property or non-property rights) and the value of the claim, regardless of the number of parties. Furthermore, the litigation fee is not influenced by whether the suit is small claim or not, or whether summary or general procedure is applied. It is not allowed to sell claims for purposes of litigation. However, if there are multiple parties who share common interests, one or more persons may be appointed by others to represent the group to sue or to be sued on behalf of the group (TCCP §§ 41~ 44-4).

⁵ The attorney may charge under five hundred thousand NTD for each instance of civil case. If the price or value of cause of action is over five million NTD, the charge should be increased; but the increase should not be more than three percent of the price or value of the cause of action in each instance.

⁶ Lawyers may charge hourly fees of less than eight thousand NTD per-hour, but the charge can be up to twelve thousand NTD if the case is complicated.

Multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by said association's purpose as prescribed in its bylaws, appoint such association to sue on behalf of them. (TCCP § 41-1).

An incorporated charitable association or a foundation may initiate, with the permission of the government and to the extent permitted by the purposes as prescribed in its bylaws, an action for injunctive relief to prohibit specific acts of a person who has violated the interests of the majority concerned. (TCCP § 41-3)

When multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from their group to sue on behalf of them, the court may, with the consent of the appointed party, publish a notice to the effect inviting other persons with common interests to join the action by filing a pleading within a designated period of time. (TCCP § 41-2)

The litigation fees for the abovementioned special lawsuits are based on the total value of the claim when the parties initiate the litigation. If other parties join the case at a later date, the litigation fee should be based on the value of the claim made by the joiners. The calculation itself should be the same as other litigation fee schedules.

VI. Legal Aid

Justice is a fundamental value of modern civil procedure, and the nation should provide her citizens the right to access the court to solve disputes. When the party has financial difficulty and cannot afford the litigation fee, the authorities should adopt any appropriate measure to eliminate the difficulty so that the poor can go to court. It is for this reason that legal aid systems are established; Taiwan is no exception.

In accordance with TCCP, when a party, except who manifestly has no prospect to win the case, suffers financial difficulty in paying the litigation expenses, the court shall, by ruling on a motion, grant litigation aid. The grant of litigation aid has the following effects before the action is concluded: (1) Temporary exemption from paying the court fees and other litigation expenses; (2) Exemption from providing a security for the litigation expenses; (3) Temporary exemption from paying the attorney's fees when the presiding judge, pursuant to the applicable laws, appoints an attorney to advocate the case for the party.

The national treasury shall pay the temporary exemption fees and costs for the aided party. After the court final judgment becomes binding or after the suit is concluded without a court decision, the court of first instance shall, on its own initiative, affirm the amount of the litigation expenses and tax the same against the

party who should bear such costs. (TCCP § 114)

The Legal Aid Act, enacted in 2004, provides more legal aid to low income residents. According to this law, the Judicial Yuan should allocate a set amount in the annual budget to establish and maintain “the Legal Aid Foundation,” which should also be supported by local governments’ budgets, by donations of national or local Bar Associations, and by groups or individuals. The establishment fund is fifty million NTD, and the total fund is up to one thousand million NTD. The Foundation has provided low-income residents with legal consultations, mediations and settlements, drafted legal documents, acted as a representative or defender for litigations or arbitrations, and provided necessary assistance for services and fees incurred from other legal matters.

VII, Examples

The exchange rate between NTD and US Dollar is about 32:1.

The price or Value of the Claim	Court Fee
NTD 32,000 about USD 1,000	NTD 1000 about USD 31.25.
NTD 320,000 about USD 10,000	NTD 3,520 about USD 110.00
NTD 3,200,000 about USD 100,000	NTD 32,680 about USD 1,021.25
NTD 32,000,000 about USD 1,000,000	NTD 293,600 about USD 9,175.00

In case claiming a compensation from the defendant for NTD 3,200,000 (about USD 100,000), the plaintiff needs to pre-pay the court fee NTD 32,680 (about USD 1,021) and the postage⁷. If the defendant petitions for expert testimony, she has to pre-pay the expert’s compensation. If the plaintiff lost this case, she is responsible for all the litigation expense; the defendant may file a motion to the court for affirming the litigation expenses and ordering the plaintiff to reimburse her prepayment of the expert compensation. If the defendant lost this lawsuit, the plaintiff may file a motion

⁷ The amount of postage depends on the number of parties and the times of service of process that the court clerk administrates.

to the court for affirming the litigation expenses and ordering the defendant to repay her the court fee and postage.