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CHALLENGES IN CONSTRUCTING TAIWAN'S COMMERCIAL COURT AND CHANGING THE TRIAL PROCESS

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Given the global spread of the internet and international agreements, the legal regulations and systems of various countries are gradually integrating. Taiwan's legal system is based on civil law but is heavily influenced by common law, especially in the area of commercial law. This article introduces the second tier specialized commercial court of second instance, established in Taiwan to explain the types and scope of cases they receive, and the special trial procedures tailored by the legislator. The special trial procedures are comprised of the mandatory representation by an attorney, a trial plan modeled after the U.S. legal system, a party inquiry system (also called an interrogatory procedure), and even expert witness collaboration—which is based on the Australian and English systems. Further, the article introduces the current interaction between the Securities Investor and Futures Trader Protection Center, the Commercial Court and Financial Supervisory Commission. Finally, the feasibility plus advantages and disadvantages of mandatory mediation in commercial matters in Taiwan are briefly discussed. Hopefully, the efforts of the Taiwanese government in improving the domestic business environment will attract foreign investors.

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INTRODUCTION

If a major business dispute is not handled promptly through judicial channels, it will not only affect the rights of shareholders and creditors but also the investing public. It may even affect the overall business environment and reduce the country's competitiveness. Recently, there have been such major incidents in Taiwan, including corporate operators' breach of trust, competition for management rights, corporate mergers and acquisitions disputes, and securities market fraud. In addition to unsound corporate governance, which is the root cause of these issues, another important reason is that both commercial matters and general civil matters are addressed in the civil division of the general court. Therefore, judges are unable to consider the professional and time-sensitive nature of commercial matters, given their huge caseload. The National Conference on Judicial Reform, convened by the President of Taiwan on May 22, 2017, resolved to promote the establishment of commercial courts so that the adjudication of commercial disputes can meet the requirements of professionalism, promptness, predictability, and consistency of decisions. Subsequently, the Judicial Yuan held a meeting on June 22, 2017, to promote the establishment of the commercial court and concluded that the commercial court and the intellectual property court should be merged; further, the commercial court was designated to be at the level of the high court and its scope of jurisdiction to be major civil commercial cases. The Commercial Case Adjudication Act ("CCAA")¹ was to be enacted separately. On August 1, 2018, Taiwan's Company Act was significantly amended to facilitate new business start-ups in raising capital and securing operating rights, strengthen corporate governance, and improving board operations and management mechanisms. In addition, the amendment implemented the protection and exercise of shareholders' rights. Moreover, it was reaction to international anti-money laundering regulations. These changes in Taiwan's Company Act are aimed at providing a friendly innovation and entrepreneurial environment without significantly increasing the cost of compliance with Company Act and its regulations and establishing Taiwan as a suitable investment venue.

On December 17, 2019, the CCAA was passed by the Legislative Yuan of Taiwan and promulgated by the President on January 15, 2020, to take effect on July 1, 2021.² The intellectual property court was reorganized and renamed the

¹ Com. Case Adjudication Act (CCAA), which was passed in 2019 and took effect in 2021. §19 states: "The Commercial Court hearing and adjudicating commercial cases shall be governed by the provisions of this Act. Where such matters are not stipulated in this Act, the provisions of TAIWAN CODE OF CIV. PROC. shall apply to commercial litigation cases, and the Non-Litigation Case Act shall apply to commercial non-litigation cases." Therefore, the CCAA is a special procedural provision of the TAIWAN CODE OF CIV. PROC. and the Non-Litigation Matters Law.

² *See* generally, CCAA, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010071> (last visited Jan. 18, 2023).

intellectual property and commercial court (hereinafter “Taiwan commercial court”) on the same day, and the Taiwan commercial court was thus officially established.

I. CONSTRUCTION OF THE TAIWAN COMMERCIAL COURT

A. *Independent Professional Courts at the High Court Level*

Developed countries have either established independent commercial courts, such as The Dubai International Financial Center Courts, or commercial divisions within general courts, such as the Delaware Superior Court’s Complex Commercial Litigation Division. In Taiwan, if a special unit or division is established in the first instance general court, it is bound to be scattered in the civil, criminal, and administrative divisions of the 22 district courts. On the contrary, if a commercial court can be established to coordinate the handling of the case, the judges could serve for a long time and handle numerous commercial disputes, accumulating trial experience that would make them more capable of speedy, appropriate, and professional trial purposes. By integrating the commercial court with the intellectual property court, the intellectual property court’s administrative resources could be harnessed while relying on the court’s experience with a confidentiality preservation order. Furthermore, although the commercial court of Taiwan is the first trial court in commercial matters, it is at the high court level and conducts collegial trials. Its appeals are heard by the Supreme Court.³ The level of second instance⁴ is used to resolve business disputes in an expeditious and efficient manner, considering the requirements of both substantive and procedural justice.⁵

B. *Specialized Jurisdiction for Major Civil Matters Involving Commercial and Financial Disputes*

In Taiwan, judicial cases arising from the capital market and corporate governance can be categorized into two groups. The first is criminal cases of corporate evasion and fraud, which are usually investigated and prosecuted by the prosecutor through search and seizure of evidence. Victims often file a supplementary civil action for compensation in the criminal process,⁶ but

³ COM CASE ADJUDICATION ACT § 71 (2020) (“The judgment of a commercial case, unless otherwise prescribed, is appealable or interlocutory appealable to the Supreme Court.”).

⁴ In principle, civil and criminal litigation cases in Taiwan are tried at three levels, with the first and second instances being factual trials and the third instance being legal trials.

⁵ The Taiwan commercial court is modeled after the Delaware Court of Complex Commercial Litigation, United States, but instead of being a division of the Superior Court, it is combined with a specialized court that hears intellectual property cases.

⁶ TAIWAN CODE OF CRIM. PROC. §487 (“Those who are injured by an offence may bring an ancillary civil action along with the criminal procedure to request compensation from the defendant and those who may be liable under the Civil Code.”).

because of the professional separation of civil and criminal judges in Taiwan, criminal court judges usually transfer civil lawsuit to the civil court only when entering an adjudication of criminal cases;⁷ therefore, the civil relief process is relatively slower. The second category is disputes over the validity of internal authority and resolutions, such as disputes over the management rights of a company and the convening procedures of the board of directors and shareholders' meetings, disputes over the legality of the method or content of resolutions, and the effects of defective merger and acquisition procedures. These disputes require immediate enforcement by a judge within a short time period for smooth business competition. These cases may not involve criminal offenses—even if they do, they are less relevant to the civil legal relationship—and the civil courts can lead the case without waiting for the outcome of the criminal case.

While formulating Taiwan's commercial law, several scholars advocated that commercial criminal appeals for criminal acts and administrative litigation in the first and second instance should be heard by the commercial courts in a unified manner.⁸ However, since the commercial court adopts a two-tier, two-instance system, different from the current three-tier, three-instance system for criminal cases in Taiwan, the inclusion of commercial criminal cases in the same trial would deprive the parties of the benefits of the trial level. In the commercial court, the initial count of judges is only seven and the trial is collegial.⁹ If the court is established to absorb numerous commercial criminal cases, it may affect the efficiency of the trial. Regarding the characteristics and current situation of commercial matters in Taiwan, the commercial court is competent only to handle major civil litigation matters related to the overall soundness of the economy and financial order, excluding criminal cases and administrative litigation matters, where the amount in dispute is more than NT\$100 million in most cases. The matters that come under the ambit of the commercial court include disputes between responsible persons of companies and companies over the execution of their business;¹⁰ disputes arising from financial regulations;¹¹

⁷ TAIWAN CODE OF CRIM. PROC. § 504(1) ("The court may pronounce to transfer a supplement civil action to the civil division of the said court by a ruling of the collegiate bench upon finding such action to be complicated and not resolvable in a short time; provided that where the quorum for a collegiate bench cannot be reached, the president of the court may pronounce such ruling." TAIWAN CODE OF CRIM. PROC. § 504(2): "An action transferred pursuant to the preceding paragraph is exempt from the court costs.").

⁸ Chun-Shan Chen, *An Examination of Major Issues in the Establishment of Commercial Courts*, 21, NAT'L LAW. 58 (2017).

⁹ Com. Case Adjudication Act § 36(1) (2020).

¹⁰ Com. Case Adjudication Act § 2(2)1. For example, damages for breach of duty of care by a director, breach of business prohibition, breach of duty of care, misappropriation of company assets, and damage to the company.

¹¹ Com. Case Adjudication Act § 1(2)2. (Noting how examples of civil damages include securities fraud, presenting false financial reports or financial business documents, failing to deliver a prospectus, providing a false prospectus, making an illegal public acquisition, market manipulation, short-term trading, insider trading, and irregular business transactions).

disputes over the exercise of shareholders' rights of publicly traded companies;¹² disputes over resolutions of meetings of the publicly traded company and its controlled or affiliated companies;¹³ consensual commercial litigation matters between the parties;¹⁴ and commercial litigation designated by the Judicial Yuan.¹⁵ Furthermore, the commercial court handles non-litigation matters, such as appraisal remedies, selection of temporary administrators, and selection of inspectors and their dismissal from public companies.¹⁶ Thus, the exclusive jurisdiction of the commercial court in Taiwan is different from that of the Delaware Court of Complex Commercial Litigation in the United States. In the case of the former, while the jurisdiction is expressly provided by law and the amount in dispute in most cases is limited to NT\$100 million or more, the Judicial Yuan is still given the flexibility to assign jurisdiction.¹⁷ In the case of the latter, the elements of commercial matters are stipulated by administrative order, and subsequently, the President of the Delaware High Court designates several commercial matters that meet the elements for adjudication by the Court of Complex Commercial Litigation.¹⁸

II. CHANGES IN THE TRIAL PROCESS

Five new features have been introduced into the commercial litigation process in Taiwan; these were not available in the previous civil litigation process. The features include mandatory representation by an attorney, case management, the addition of interrogatories to parties, the establishment of a commercial investigator, and the introduction of the expert witness mechanism.

A. Compulsory Representation by an Attorney

Commercial matters are technical and professional in nature, and it is not easy for people without specialized legal education to represent these litigations. To protect the rights and interests of parties and ensure smooth conduct of commercial mediation, litigation, and nonlitigation procedures, Taiwan's CCAA stipulates that the parties should appoint a lawyer as their representative. All procedural acts in principle are performed by lawyers; written statements or

¹² Com. Case Adjudication Act § 1(2)3. For example, the rights of preferred stockholders, the right to make shareholder proposals, the right to nominate candidates for directors, and cease-to-act right.

¹³ Com. Case Adjudication Act § 1(2)4-5 (2020).

¹⁴ Com. Case Adjudication Act § 1(2)6 (2020).

¹⁵ Com. Case Adjudication Act § 2(2)7 (2020).

¹⁶ Com. Case Adjudication Act § 2(3) (2020).

¹⁷ The Taiwan Judicial Yuan has adjusted the amount or value of commercial litigation from NT\$100 million or more to NT\$30 million or more and to designate all lawsuits filed by the Securities and Futures Investors Protection Center under the Securities Investor and Futures Trader Protection Act, regardless of the amount, to the jurisdiction of the commercial court.

¹⁸ Donald F. Parsons, Jr. & Joseph R. Slights III, *The History of Delaware's Business Courts: Their Rise to Preeminence*, 17 BUS. L. TODAY 21, 22-23 (Apr. 2008).

motions made by the parties without appointing a lawyer shall not be considered by the court.¹⁹ If no attorney is appointed or if the appointed attorney is not present while the party is present, the party is still considered absent.²⁰ However, there are exceptions to this rule.²¹

The aforementioned provisions are based on the provisions of the German and Austrian civil procedure laws; however, the German and Austrian non-litigation proceedings, provisional remedies proceedings (e.g., preliminary injunctions), and evidence preservation procedures do not adopt mandatory legal representation in principle.²² Therefore, Taiwanese scholars believe that the comprehensive requirement of compulsory representation by an attorney in Taiwan's CCAA should be further considered in terms of the legislative policy.²³ Since its operation in July 2021, the commercial court of Taiwan has issued preliminary injunctions or temporary restraining orders in several cases to prohibit the convening of shareholders' meetings, and since the shareholders' meeting was held only a few days after the filing of the claim, the opposing party indeed could not choose an attorney. Moreover, there have been instances wherein parties have refused to appoint an attorney to represent them in appraisal remedy cases. This section should be reviewed again for necessary amendments.

B. Agreeing on a Trial Plan and the Effect of Abridgment of Rights in Attacking Defense Methods

Article 39 of Taiwan's CCAA provides that the court shall agree on a trial plan with both parties.²⁴ The specific content of the trial plan shall include (1) the period during which factual and evidentiary issues are sorted out, (2) the period during which witnesses, expert witnesses, and the parties themselves are examined, and (3) the scheduled period during which verbal arguments are

¹⁹ COM. CASE ADJUDICATION RULES § 9.

²⁰ COM. CASE ADJUDICATION RULES § 12.

²¹ COM. CASE ADJUDICATION RULES § 8 (“An agent ad item may appear together with the parties or related parties on the court date. After obtaining the permission of the presiding judge or the mediation judge, the parties or related parties may make statements orally in front of the court. In cases referenced in the preceding paragraph, the parties or related parties may act for themselves in the following proceedings:

1. Admission of facts
2. The establishment of a settlement or mediation
3. Withdrawal of action or petition
4. Withdrawal of an appeal or interlocutory appeal.”).

²² MüKo/Pabst, FamFG3 §10 Rn.3; Mayr/Fucik, AußStrV, Rn. 111 f. MüKo/Habersack, AktG⁵, § 99 Rn. 11. Stein/Jonas/Jacoby, ZPO²³, § 78 Rn. 65 f.; König, EV5, Rn. 6.40. MüKo/Schreiber, ZPO⁶, § 485 Rn. 5; Fasching/Konecny/Rassi, ZPO³, § 387 Rn.11. Cited in Wei-You Chen, *On the System of Compulsory Representation in Commercial Matters - Centering on its Scope of Application*, 219 YUEH-DAN L. SCH. 40, 42 (2021).

²³ Wei-You Chen, *On the System of Compulsory Representation in Commercial Matters - Centering on its Scope of Application*, 219 YUEH-DAN L. SCH. 40, 39-40 (2021).

²⁴ Com. Case Adjudication Act § 39(1) (2020).

concluded and judgment is pronounced.²⁵ Furthermore, the trial plan may account for the period during which an attack or defense is proposed on a particular matter as well as other matters necessary to plan the proceedings,²⁶ such as interrogatories to parties and the period of deemed settlement. The court agrees on the trial plan with both parties because it expects both parties to comply with the schedule. The court also has the discretion to deny any late proposal of attack or defense that would materially impede the conduct of the proceedings under the trial plan.²⁷ If the trial plan cannot be agreed upon or the parties fail to cooperate, the court will enter a default case management order (“CMO”) and insert event deadlines. In the alternative, if the parties propose a defense method of attack after the deadline, the effect of the abridgment of rights will be according to the provisions of Article 196 of the Taiwan Code of Civil Procedure.²⁸

The aforementioned law is similar to the CMO promulgated by the Delaware Court of Complex Commercial Litigation, the distinction is that the CMO is strictly enforced²⁹ while the trial plan court may be modified by agreement,³⁰ while this presents for more flexibility, it can also undermine efficiency. This is owed to the particularities of the pretrial pleading stage of Taiwan's legal system. That is, although the parties must present evidence and witness lists³¹ and the court may order the parties or third parties to present documents or objects before trial or have the evidence investigated by the appointed judge before trial.³² Unlike the United States, Taiwan does not have a mandatory

²⁵ Com. Case Adjudication Act § 39(2) (2020).

²⁶ Com. Case Adjudication Act § 39(3) (2020).

²⁷ Com. Case Adjudication Act § 41 (2020).

²⁸ TAIWAN CODE OF CIV. PROC. § 196(2): (“Where a party, attempting to delay litigation through gross negligence, presents an attack or defense in a dilatory manner at the possible cost of a timely conclusion of the litigation, the court may deny the means of attack or defense so presented. The same rule shall apply when the purpose of the means of attack or defense is unclear, and the presenting party fails to provide a necessary explanation after being ordered to do so.”).

²⁹ Joseph R. Slight III and Elizabeth A. Powers, *Delaware Courts Continue to Excel in Business Litigation with the Success of the Complex Commercial Litigation Division of the Superior Court*, 70 BUS. L. TODAY 1039, 1055 (2015).

³⁰ Com. Case Adjudication Act § 39(4) (“[d]epending on the status of the trial and the status of the parties in the proceeding and other matters, the court may discuss amendments to the trial plan with both parties if the court considers this to be necessary.”).

³¹ TAIWAN CODE OF CIV. PROC. § 266(1)(2) (“The plaintiff's pleading made in preparation for oral argument shall indicate the following: 1. The facts and reasons on which his/her claim is based; 2. The evidence proving the disputed facts; in case of multiple evidence, all of them; 3. A statement either admitting or denying the facts and evidence alleged by the opposing party; in the case of denial, the reasons thereof. The defendant's answer shall indicate the following: (1) The facts and reasons for his/her defenses; (2) The matters provided in the second and third subparagraphs of the preceding paragraph.”).

³² TAIWAN CODE OF CIV. PROC. § 269 (“The court may, prior to the oral argument, take the following measures if it considers it necessary to do so in order to expedite the closing of oral argument: (1) Order the parties or their statutory agents to appear in person; (2) Order the parties to produce documents and objects; (3) Notify witnesses or expert witnesses and send for documents or objects, or order a third person to produce documents or objects; (4) Conduct

pretrial disclosure stage, a discovery stage, the possibility of accepting oral or written depositions, or the option of obtaining e-discovery information before the trial for the two parties to grasp each other's discovery information before trial. Consequently, in Taiwan, the trial plan agreed upon at the beginning of the litigation may need to be changed or extended as the litigation progresses because of things that were not envisioned at the time of the agreement happened.

C. New Interrogatories to Parties

Certain business matters must be handled by the courts as quickly as possible.³³ However, it is often difficult for parties outside the company to grasp the relevant facts and evidence. Therefore, to provide an opportunity to the parties to gather information at the pretrial stage to determine the subsequent factual assertions and evidence to be presented, Taiwan's CCAA stipulates that a party may ask the opposing party for a specific explanation of the facts or evidence necessary to prepare its claim or evidence within a period of time specified by the court or before the end of the pretrial stage.³⁴ The scope of interrogatories includes rebuttals or counterevidence to the opposing party's contentions, in addition to the evidence of facts for which the parties bear the burden of proof.³⁵ However, it is noteworthy that interrogatories are only to collect information about facts and evidence and not the investigation itself. Therefore, during the interrogatory procedure, parties can certainly be requested to open the catalog of documents, but to request a party to present the documents, a separate order must be produced in accordance with the Code of Civil Procedure.³⁶ In the case of witnesses, the name and residence of the witness may be inquired about, but the content of the testimony shall not be, and the witness shall be subpoenaed in accordance with the Code of Civil Procedure.³⁷

To avoid the abuse of the interrogatory system, Article 43(2) of Taiwan's CCAA specifies the following grounds for refusal of interrogatories: (1) abstract or noncase related inquiries, (2) insulting or harassing the opposing party, (3) repetition of inquiries, (4) inquiries about opinions, (5) the time and costs required for explanations are disproportionate to the party's request, and (6)

inspections or order expert testimony, or request an agency or organization to conduct an investigation; (4) Require a commissioned judge or an assigned judge to take evidence.”).

³³ Wang-Ruu Tseng, *Improvement of Trial and Judgment of Commercial Matters—Expectations for Commercial Case Adjudication Act*, 310 YUEH-DAN L. J. 28, 36-37 (2021).

³⁴ Com. Case Adjudication Act § 43(1) (2020).

³⁵ Shih-Huan Hsu, *New Changes in Commercial Litigation Procedures (II)*, 214 YUEH-DAN L. SCH. 33 (2020).

³⁶ TAIWAN CODE OF CIV. PROC. § 342(1) (2018), (“Where the document identified to be introduced as documentary evidence is in the opposing party's possession, a party shall move the court to order the opposing party to produce such document.”).

³⁷ TAIWAN CODE OF CIV. PROC. § 298 (2018), (“The identity of a witness and the matters to be examined shall be specified when such witness is introduced.”).

matters that the witness may refuse to testify pursuant to the laws.³⁸ The court may intervene only when necessary to impose sanctions on the violator. The sanction is that the court may, in its discretion, consider the request to inquire into the party's assertion of the matter or the matter that the evidence should prove to be true; however, the parties involved shall be given the opportunity to present their arguments before a ruling is made.³⁹

Although the interrogatory procedure is based on the provisions of the U.S. Federal Rules of Civil Procedure regarding the discovery system, Taiwan's CCAA only specifies the scope, manner, and procedures of party inquiries; the grounds for refusal of inquiries; and the court's intervention in the dispute resolution mechanism, in general. In contrast, the U.S. Federal Rules of Civil Procedure provide detailed information on the design and regulation of discovery obligations in general,⁴⁰ the number and scope of questions to be asked to the opposing party,⁴¹ the procedures for answering and objecting to questions,⁴² the penalties for failure to cooperate with the opposing party in discovery,⁴³ and the penalties for failure to comply with court orders.⁴⁴

Under the U.S. law, discovery is defined as any matter related to the case that is not privileged, and the scope of discovery of expert information is also clearly regulated by Rule 26(b)(4) of the U.S. Federal Rules of Civil Procedure.⁴⁵ In the United States, there is a complete list of rules for objections to interrogatories⁴⁶ under the interpretation of statutes and precedents. Although the six grounds provided in Taiwan's CCAA are not identical, they still have reference value in the legislative and interpretive theory. Furthermore, the Act does not provide that the subject party shall file an affidavit. Moreover, the sanction for refusing an inquiry without cause may only be based on the truth of the inquirer's claim or the facts to be proved by the evidence, contrary to the U.S. Federal Rules of Civil Procedure, which require the subject party to file an affidavit, and Rule 37(d)(3) of the Rules, which applies the compulsion and flexibility of the seven types of sanctions available under Rule 37(b)(2)(A)(i)–(vi).⁴⁷ Thus, the current practice in Taiwan's commercial matters is to use the pretrial stage to grasp the full picture of the case as soon as possible and to determine the object and scope of the investigation of the issues

³⁸ COM. CASE ADJUDICATION R. § 43(2) (2020).

³⁹ COM. CASE ADJUDICATION R. § 45 (2020) (If the party being queried refuses to explain the inquiry matters, as supported by facts or evidence, without justifiable cause, the court may weigh the situation and take the truth of the opposing party's allegation with regard to such evidence or the disputed fact to be proved by such evidence.”).

⁴⁰ See Fed. R. Civ. P. 26(a).

⁴¹ See Fed. R. Civ. P. 33.

⁴² See *id.*

⁴³ See Fed. R. Civ. P. 37.

⁴⁴ See Fed. R. Civ. P. 37(b).

⁴⁵ See Fed. R. Civ. P. 26(b)(1).

⁴⁶ Reasons for dissent include attorney-client privilege, attorney work product protection, premature disclosure of experts, and irrelevance.

⁴⁷ See Fed. R. Civ. P. 37(d)(3); Fed. R. Civ. P. 37(b)(2)(A)(i)–(vi).

and evidence, rather than using the system to investigate the facts.⁴⁸

III. COMMERCIAL CONCILIATION COMMISSIONERS, COMMERCIAL INVESTIGATION OFFICERS, AND EXPERT WITNESSES

A. Commercial Mediation Committee Participation in Consultation

The majority of Taiwan's judges come from college of law graduates who take the national exam. Few have other expertise except law. The current response is establishing professional courts or tribunals. However, judges are unable to comprehend in highly specialized cases even if expert witnesses are questioned in court. Taiwan's commercial court has introduced an additional mechanism of expert assistance. Taiwan's CCAA stipulates that the court may appoint commercial conciliation commissioners to participate in the consultation during the pretrial stage.⁴⁹ Currently, there are 32 conciliation commissioners appointed by the commercial courts in Taiwan from diverse backgrounds, including lawyers, accountants, professors, officers of stock exchanges and insurance companies, directors of financial institutions, officers of banking associations and business associations, and retired judges.⁵⁰ This enables the conciliation commissioners to not only participate in the preliminary conciliation process⁵¹ but also be consulted by the judges of the commercial court. In 2000, the Taiwan Judicial Yuan established the "Important Points for Court Consultation with Experts (Gist for Court Consultation with Experts)," which was amended in 2021.⁵² This enabled judges to appoint experts to consult their opinions when trying professional cases, such as commercial, securities trading, and banking and financial regulation litigation. However, the experts who thus work together only provide professional opinions for the court's reference and do not participate in the factual determination and legal judgment of specific cases, which is different from the role of the commercial investigation officer, or the expert witness mechanism established by the CCAA.⁵³

B. Commercial Investigation Officer's Collaboration

⁴⁸ Com. Case Adjudication Act § 43(1) ("In preparation for making assertions or providing proof, the parties may request the opposing parties to make specific explanations of necessary matters relating to facts or evidence within the time period designated by the court or before the end of the preparatory proceedings.").

⁴⁹ Com. Case Adjudication Act § 38 (2) (2020).

⁵⁰ Available at <https://ipc.judicial.gov.tw/tw/cp-8661-373678-a1c5b-091.html> (last visited Jan. 18, 2023).

⁵¹ Com. Case Adjudication Act § 20(1) ("Commercial litigation cases shall be subject to mediation by the court before an action can be initiated. However, such a rule does not apply where a counterclaim is initiated or where the notification to the opposing party shall be served by constructive notice.").

⁵² Available at <http://www.rootlaw.com.tw/LawArticle.aspx?LawID=A060020001016100-1100722> (last visited Jan. 18, 2023).

⁵³ Gist for Court Consultation with Experts, point 9(1) (2021).

Furthermore, the CCAA establishes a commercial investigation officer, modeled after the technical examiner in the intellectual property law to handle matters such as (1) analyzing and collating evidence and legal issues in relation to pleadings and information and providing professional explanations or preparing reports; (2) questioning the parties or related parties, agents ad litem, witnesses, expert witnesses, or examiners related to factual and legal issues as necessary to clarify legal and factual relationships; (3) providing assistance to the judge in the examination, identification, preservation of evidence, or preventive proceedings, and (4) other matters assigned by the judge.⁵⁴ Further, in accordance with the rules of intellectual property adjudication regarding the nondisclosure of the technical examination officer's report,⁵⁵ the report prepared by the commercial investigation officer will not be disclosed. A commercial investigator is similar to a technical advisor in the United States. He is neither an appraiser nor a witness but only an auxiliary legal expert. As Judge Selya stated in *Reilly v. United States*, "the advisor's role is to act as a sounding board for the judge—helping the jurist to educate himself in the jargon and theory disclosed by the testimony and to think through the critical technical problems."⁵⁶ Advisors of this sort are not witnesses and may not contribute evidence. Similarly, they are not judges, so they are not allowed to usurp the judicial function.⁵⁷ Moreover, judges are prohibited from employing commercial investigation officers to conduct factual investigations beyond the pleadings submitted by the parties.⁵⁸ To strengthen the procedural protections of the parties and avoid surprise decisions, the commercial court shall provide parties an opportunity to debate or present their opinions before adopting the basis for their decision, which is formed with reference to the specialized expertise provided by the commercial investigation officers.⁵⁹

Unlike technical advisors in the United States, commercial investigation officers in Taiwan are not appointed on a case-by-case basis.⁶⁰ The Taiwan Stock Exchange and Taipei Exchange currently each temporarily send one person to the commercial court. The rule of recusal of judges is applied to eradicate doubts regarding qualifications and fairness or the lack thereof.⁶¹ The

⁵⁴ Com. Case Adjudication Act § 17(1) (2020).

⁵⁵ INTELL. PROP. CASE ADJUDICATION RULES § 16(2) (2021).

⁵⁶ 863 F.2d 149, 158 (1st Cir. 1988).

⁵⁷ *Reilly v. United States*, 863 F.2d 149, 157-58 (1st Cir. 1998).

⁵⁸ *Id.* at 158. ("Neither may a court employ a technical advisor to undertake an independent mission of finding facts outside the record of the case.")

⁵⁹ Com. Case Adjudication Act § 17 (2020) ("The reports prepared by commercial investigators shall remain confidential. However, for the special professional knowledge acquired by the court with the assistance of commercial investigators, the parties or related parties should be given an opportunity to debate or state their opinions before such knowledge is included as a basis for adjudication.")

⁶⁰ *See generally*, Regulations Governing Transfer of Technical Examination Officers and Commercial Investigation Officer of Intellectual Property and commercial Court, available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030228> (last visited Jan 18, 2023).

⁶¹ Com. Case Adjudication Act § 17(3) (2020).

CCAA explicitly regulates the duty of the commercial investigation officer and allows the parties—or related parties—to debate or state their opinions, before such knowledge is included as a basis for adjudication.

C. Introduction of the UK Expert Witness System

In addition to the assistance of commercial conciliation commissioners and commercial investigation officers, to respect the procedural rights of the parties and supplement the deficiencies of the current court-appointed expert system in Taiwan, Taiwan's commercial court has established a new expert witness system based on the British and U.S. legal systems. This is aimed at alleviating the drawbacks of the traditional court-appointed expert system, which cannot take oath at court since professional or academic organizations rarely permit cross-examining court-appointed experts. However, the court-appointed expert system has not been abandoned Taiwan's business events; rather, the two systems coexist.⁶² Further, the expert witness system introduced in Taiwan is more in line with Title 35 of the Civil Procedure Rules of the United Kingdom after the 1998 judicial reform,⁶³ weakening the adversarial litigation model and establishing the expert cooperation model.

An expert in a business matter in Taiwan is a person whose knowledge, skill, experience, training, or education in finance, accounting, corporate governance, science, technology, or other areas of expertise is useful to court in understanding or determining facts, evidence, and rules of thumb.⁶⁴ Further, the parties shall state the name of the expert, relevant academic experience, field of expertise, facts to be testified, and matters to be examined.⁶⁵ Therefore, the court can consider whether the facts to be testified involve the field of expertise, whether an expert witness is required as a method of evidence, and the eligibility of the expert witness. With the court's permission, an expert witness may be presented to provide a professional opinion.⁶⁶ The civil litigation process in Taiwan does not have a jury or trial system, and it is not necessary for a professional judge in Taiwan to play the role of a gatekeeper, as under Rule 702 of the U.S. Federal Rules of Evidence.⁶⁷ Therefore, the question of whether the principles or

⁶² Expert witness is a person employed by the litigant under the common law system. Expert witnesses motioned by both parties are engaged in the same issue. Taiwan's courts usually appoint an expert that both parties agree upon or any of its own choosing under the influence of the civil law system. Experts are usually professional or academic organizations in practice. Court-appointed experts are court auxiliaries and means of proof. In addition to proving the facts, the expert's tasks are providing expertise which the courts lack and reporting the rules of thumb and how they apply to actual situations as well.

⁶³ JUSTICE, *Part 35*, <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35> (last visited Jan 18, 2023).

⁶⁴ Com. Case Adjudication Act § 47(3) (2020).

⁶⁵ Com. Case Adjudication Act § 48 (2020).

⁶⁶ Com. Case Adjudication Act § 47(1) (2020).

⁶⁷ FED. R. EVID. 702 (If scientific, technical, or other specialized knowledge assists the trier of fact to understand the evidence or to determine a fact in an issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an

methods used by expert witnesses are properly applied to the facts to be proved in Taiwan is a question of probative value judged by a professional judge and not a question of admissibility that should be excluded.⁶⁸

With respect to the manner in which expert witnesses may present their professional opinions, Taiwan's CCAA provides that such opinions shall be presented in writing and submitted to the court with a concluding statement; when the court permits, the expert witnesses may also present their opinions in words and testify under the oath in court.⁶⁹ This is different from the U.S. expert witness system, which requires expert to testify in court and that written expert reports be mandatory in pretrial disclosures.⁷⁰ The role of the expert witness in Taiwan is closer to that presented in Rule 35.5(1) of the English Judicial Reform Rules of Civil Procedure, according to which expert opinions shall be given in writing as a matter of principle.⁷¹ Further, after receiving an expert report, the party may question the opposite expert witness in writing, and the expert witness shall also respond to the inquiry in writing.⁷² The expert witness's answer shall be considered part of their professional opinion.⁷³ However, the court may still notify the expert witness to appear in person to present their opinion in accordance with its authority or upon the request of the parties.⁷⁴

Both parties may file expert reports and cross-examine each other for answers, which are transmitted by the attorney's representative to the other party and to the court via an e-filing transmission system⁷⁵ and then forwarded by the opposite party to its expert witnesses for answers. If both parties declare expert witnesses, the court may, if it deems necessary, appoint the expert witnesses produced by both parties to discuss the relevant matters and issue a joint professional opinion in writing.⁷⁶ The joint professional opinion shall separately state the parts on which consensus is reached and the parts on which consensus cannot be reached and shall include a summary of the reasons for the difference of opinion.⁷⁷ This is similar to Rule 35.12 of the English Rules of Civil

opinion or otherwise if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case).

⁶⁸ Kuan-Ling Shen, *The Multiple Roles of Experts in Civil Trials and the Guarantee of the Right to be heard: Is the Commercial Case Adjudication Act the Last Piece of the Puzzle?*, 50 NTU L. J. 454 (2021).

⁶⁹ Com. Case Adjudication Act § 49(1) (2020).

⁷⁰ See FED. R. CIV. P. 26(a)(2)(B).

⁷¹ CIV. PROC. R. 35.5 (“(1) Expert evidence is to be submitted in a written report unless the court directs otherwise.”).

⁷² Com. Case Adjudication Act § 50(1)(2) (2020).

⁷³ Com. Case Adjudication Act § 50(2) (2020).

⁷⁴ Com. Case Adjudication Act § 50(3) (2020).

⁷⁵ Com. Case Adjudication Act § 14: (“When submitting a pleading to the court, the parties, related parties, interveners or participants, or agents ad litem should transmit the documents via the e-filing transmission system.”).

⁷⁶ Com. Case Adjudication Act § 51(1) (2020).

⁷⁷ Com. Case Adjudication Act § 51(2) (2020).

Procedure,⁷⁸ which is designed to ensure constructive dialogue between experts through the compulsion of public authority. Expert witnesses or commercial investigation officers may question other expert witnesses during the examination period, adopting the Australian Concurrent Expert Evidence⁷⁹ or “hot-tubbing system”⁸⁰ to reduce misunderstandings between the judge, lawyers, and the witness’s professional opinions. Additionally, Taiwan’s CCAA specifies that parties should be provided with an opportunity to debate the joint professional opinion rendered by experts before the decision is made.⁸¹

IV. CHALLENGES FOR TAIWAN’S COMMERCIAL COURT

A. Interaction and Integration with the Securities and Futures Investors Protection Center

To protect the rights of securities investors and futures traders, strengthen the external mechanism of corporate governance, and promote the development of the securities and futures market, the Securities Investor and Futures Trader Protection Act (“SIFTPA”) was enacted in Taiwan on January 1, 2003, establishing the Securities and Futures Investors Protection Center (“SFIPC”), which can file class-action lawsuits or arbitration claims for investors.⁸²

In accordance with the provisions of Article 2 Paragraph 2 Subparagraphs 1 and 3 of the CCAA⁸³ and Article 10-1 Paragraph 1

⁷⁸ CIV. PROC. R. 35.12: (“(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to (a) identify and discuss the expert issues in the proceedings and (b) where possible, reach opinion consensus on those issues. (2) The court may specify the issues which the experts must discuss. (3) The court may direct that following a discussion between the experts, they must prepare a statement for the court setting out the points on which (a) they agree and (b) they disagree, with a summary of their reasons for disagreeing. (4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree. (5) Where experts reach an agreement on an issue during their discussion, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.”).

⁷⁹ See NSW, <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2005-0418#sec.31.24> (last visited Jan. 18, 2023).

⁸⁰ Steven Rares, *Using the “Hot Tub” How Concurrent Expert Evidence Aids Understanding Issues*, Paper Presented at the New South Wales Bar Association Continuing Professional Development Seminar, JUSTICE: FED. CT. OF AUSTR., (Aug. 23, 2010).

⁸¹ Com. Case Adjudication Act § 51 (2020).

⁸² SEC.’S AND FUTURES INV. PROT. CTR., *Introduction*, <https://www.sfipc.org.tw/MainWeb/Index.aspx?L=1> (last visited Jan. 18, 2023).

⁸³ Com. Case Adjudication Act § 2(2)1 (2020) (“Commercial litigation cases, in this Act, refer to the following case: Where the responsible person of a company enters into disputes concerning civil rights and obligations with other companies as a result of business operations, and the price of the value of the claim is equal to or more than one hundred million New Taiwan Dollars.”); Com. Case Adjudication Act § 2(2)3 (2020) (Commercial litigation cases, in this Act, refer to the following cases: “Disputed cases concerning . . . shareholder rights based on their shareholder status and the company or the responsible persons of the company, and complaint cases where institutions protecting securities investors and future traders petition the

Subparagraphs 1 and 2 of SIFTPA,⁸⁴ if the SFIPC finds that a director or supervisor of a listed or over-the-counter company has engaged in market manipulation, insider trading,⁸⁵ futures trading fraud,⁸⁶ or other acts that disrupt the order of the market and trading; has performed business in a manner that is materially detrimental to the company; or has violated laws or bylaws, and the amount or value of the subject matter of the lawsuit is more than NT\$100 million,⁸⁷ the center may file a representative action and an action for the dismissal of the director or supervisor in the commercial court. Furthermore, according to Article 2 Paragraph 2 of the CCAA and Article 28 Paragraph 1 of the SIFTPA,⁸⁸ SFIPC may, based on public interest, file a lawsuit for damages in the commercial court with itself as the plaintiff for a securities or futures event that causes significant damage, after obtaining authorization from 20 or more investors or futures traders.⁸⁹ The mechanism is designed to make up for the high threshold for shareholders to file representative and dismissal lawsuits

court remove the company's directors or supervisors pursuant to the provisions of the Securities Investor and Futures Trader Protection Act.”).

⁸⁴ Sec. Inv. and Futures Trader Prot. Act, § 10-1(1) (2020) (“When the protection institution carries out matters under paragraph 1 of the preceding article and discovers on the part of a director or supervisors of an exchange-listed, OTC-listed, or emerging stock company any violation of Article 155 or 157-1 of the Securities and Exchange Act, Articles 106 to 108 of the Futures Trading Act, or any conduct in the course of performing his or her duties that is materially injurious to the company or is in violation of laws, regulations, and/or provisions of the company's articles of incorporation, it may handle the matter in accordance with the following provisions:

1. The protection institution may, in writing, request the supervisors of the company to institute an action against the director on behalf of the company, or request the board directors of the company to institute an action against the supervisor on behalf of the company or request the company to institute an action against a former director or supervisor. If the supervisors, the board of directors, or the company fail to institute an action within 30 days after receiving the request made by the protection institution, then the protection institution may institute an action on behalf of the company without regard to the restrictions of Article 214 or 227 of the Company Act applied *mutatis mutandis* through Article 214.

2. The protection institution may institute an action petitioning a court for a judgment or ruling dismissing the given director or supervisor, without regard to the restrictions of Article 200 or 227 of the Company Act applied *mutatis mutandis* through Article 200, and the causes for such dismissal shall not be limited to causes occurring during the term of office coinciding with the time the action is instituted.”).

⁸⁵ Sec. and Exch. Act, § 155, 157-1 (2022)
<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400001>.

⁸⁶ Futures Trading Act, § 106-108 (2019)
<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400100>.

⁸⁷ *Supra* note 17.

⁸⁸ Sec. Inv. and Futures Trader Prot. Act, §28 (“For the protection of the public interest, within the scope of this Act and its article of incorporation, the protection institution may submit a matter of arbitration or institute an action in its own name with respect to a securities or futures matter arising from a single cause that is injurious to multiple securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders.”).

⁸⁹ Com. Case Adjudication Act § 2(2) (2020); *see* Sec. Inv. and Futures Trader Prot. Act, § 28(1).

under Taiwan's Company Act.⁹⁰ There is no incentive for shareholders to file lawsuits in Taiwan; this mechanism is designed to be initiated by the SFIPC, which has filed a number of damage and dismissal lawsuits in Taiwan's commercial courts in accordance with the aforementioned provisions.

B. Interaction Between the Commercial Court and SFIPC

The SFIPC holds 1,000 shares of listed and over-the-counter companies in Taiwan according to the law and has the status of shareholder for these companies.⁹¹ Since 2006, the SFIPC has chosen to attend shareholders' meetings of some listed and over-the-counter companies to ask questions and follow up on important matters concerning shareholders' rights and interests.⁹² In the event that the directors of listed and over-the-counter companies execute their business to the significant detriment of the company or commit acts in violation of laws or bylaws, the company can be monitored in a timely manner and interactively linked with the commercial court in the event of preliminary injunctions. This can aid in resolving the subsequent satellite litigations arising from the scattering of cases across various courts that cannot be handled in a timely manner⁹³ and provide an opportunity for the Financial Supervisory Commission to initiate the amendment of laws.

Several damages and dismissal lawsuits filed by the SFIPC are related to

⁹⁰ Taiwan Company Act, Art. 214 P.1 (Regarding representative lawsuits, provides shareholders who file a lawsuit are subject to restrictions on the percentage of shares they hold and the preliminary procedure for requesting the supervisor to file a lawsuit. Regarding dismissal lawsuits, Article 200 of the Taiwan's Company Act provides shareholders who file a lawsuit are subject to restrictions on the percentage of shares they hold and the time limit for filing).

⁹¹ Securities Investor and Futures Trader Protection Act, § 19(1)2 ("The protection fund shall be customized by means of government bond purchases or deposit with financial institutions. Subject to approval by the competent authority, amounts totaling no more than 30 percent of the net value of the protection fund may be utilized for the following: ... 2. Investment in exchange-listed, OTC-listed, or emerging stock securities."); Securities Investor and Futures Trader Protection Act, § 19(3) ("The amount of original investment in the stock of any exchange-listed, OTC-listed, or emerging stock company pursuant to paragraph 1 subparagraph 2 may not exceed 1,000 shares.").

⁹² *Practitioner of Shareholder Activism, SEC.'S AND FUTURES INV. PROTECTION CENT. (SFIPC)* (2017)

<https://www.sfipc.org.tw/MainWeb/Article.aspx?L=1&SNO=rmZaArXNn9Y4a364yNEwJg=> = (showing statistics on attendance at shareholder meetings over the years.); *see generally* SEC.'S AND FUTURES INV. PROT. CTR., *2022 Annual Summary Report on Attendance of Shareholders' Meeting*, (July 26, 2022), <https://www.sfipc.org.tw/MainWeb/Article.aspx?L=1&SNO=P7DgtsFXtHeG9adaiM+65g==>.

⁹³ The Commercial Court of Taiwan recently accepted a certain preliminary injunction, ruling to prohibit the two independent directors from holding their respective interim shareholders' meetings within a short period of time, but one of the independent directors insisted on holding the meeting. The SFIPC sent its staff to attend the interim shareholders' meeting to make corrections; after the meeting, a lawsuit for dismissal was filed and is now being heard by the Commercial Court. This incident has led to discussions among scholars and concerns among authorities about the appropriateness of granting independent directors the right to convene an extraordinary shareholders' meeting in all counties and to consider amending the law.

criminal liabilities, such as breach of trust, unconventional trading, financial misrepresentation, or insider trading. If the SFIPC files a lawsuit in the commercial court, there is no way to search, seize, or lawfully intercept the evidence because the jurisdiction of the Taiwan commercial court does not include criminal cases. That makes the burden of production a major challenge for the SFIPC. The current practice of the center is waiting until the prosecutor's investigation is completed and then filing a lawsuit for damages or dismissal at the commercial court. Simultaneously, it requests access to the electronic evidence of the criminal case. This approach can avoid the delays owing to criminal proceedings in the district court and the need to wait for the conclusion of the criminal case before transferring the civil part to the civil court for trial. However, the information in the criminal docket is very complicated, and the judgement of the commercial court is affected by how the SFIPC can sort out the case and collate the evidence to make appropriate claims. The commercial court in Taiwan is the only fact-finding court in commercial matters, and the quality and efficiency of a large amount of information available is also a challenge for the commercial court. Further, it remains to be seen whether the Supreme Court can be expected to decide on civil commercial matters before criminal cases undergo three levels of trial.

C. Application and Effectiveness of Mandatory Mediation

Taiwan's CCAA provides that litigation and non-litigation matters before the commercial courts should, in principle, be subjected to mediation procedures.⁹⁴ This alternative dispute resolution has the advantages of speed, economy, confidentiality, flexibility, and professionalism. In Taiwan, following the successful implementation of mandatory mediation in which judges are also involved in labor matters in 2020,⁹⁵ commercial matters are subject to mandatory mediation, but some commercial matters involve a majority of parties and corporate governance disputes. For example, in the case of a defective shareholders' meeting resolution litigation, the shareholders are exercising their common benefit rights under the Company Act. In the case of a shareholders' representative litigation, the shareholders are exercising the rights of the company, and there is no question as to whether it is appropriate for the shareholders suing to enter mediation with the defendant. A judge of the commercial court may notify the interested parties—the subrogated company and other shareholders—to participate in the mediation in accordance with the provisions of the Taiwan Code of Civil Procedure⁹⁶ to encourage the interested

⁹⁴ Com. Case Adjudication Act § 20(1), § 66(2) (2020).

⁹⁵ JUDICIAL YUAN, *Analysis of the result of the "Satisfaction Survey on Labor Mediation and Continuing Litigation System"* (June 30, 2021), <https://www.judicial.gov.tw/tw/lp-1459-1.html>.

⁹⁶ TAIWAN CODE OF CIV. PROC. § 412 ("A third person having an interest in the subject matter of the mediation may, with the permission of the judge, can intervene in the mediation proceeding. The judge may notify the third party of the mediation proceeding and order him/her to intervene.").

parties to participate in the mediation of the dispute. However, in the case of a large public company with a great number of shareholders, it is difficult to involve all shareholders in the mediation process to reach a consensus on the revocation of a shareholder's meeting resolution; further, it may be impractical to coordinate and organize the process with a high level of labor and expense.⁹⁷ As for the representative litigation filed by the shareholders, the mediation mechanism may result in a conspiracy between the two parties to establish an improper settlement. In this regard, Taiwan's commercial law specifically provides that if the judge considers that mediation is not conducive to the effective and proper resolution of the dispute considering the nature of the matter, the status of the parties, or other circumstances, the judge shall deem the mediation to be unsuccessful and inform or notify the parties⁹⁸ that they shall not be required to follow the mediation procedure.

Because of the variations between commercial and labor cases, the subject matter of commercial courts is more extensive than that of general labor cases; further, several commercial issues are of group or common interest. Using the mediation to resolve important commercial disputes without jeopardizing the interests of the parties involved or public interest is a test of the judges of the commercial court.

CONCLUSION

The foundation of Taiwan's commercial court was in response to a desire for professional courts to resolve significant commercial issues swiftly, with trial speed being the most important factor. In commercial cases involving groups fighting for corporate control or hostile mergers and acquisitions, both the corporate and market sides often use the preliminary injunctions that need to be heard expeditiously, which requires that pleadings filed with the court be transmitted using an e-file transmitting system, otherwise the filing will not be effective.⁹⁹ In fact, on February 9, 2000, Taiwan Code of Civil Procedure was amended to allow parties' pleadings to be transmitted to the court by telefax or other technological devices with the same effect as filing pleadings.¹⁰⁰ In addition, the Taiwan Judicial Yuan's electronic litigation service is currently available for the civil litigation law and enforcement matters, intellectual property, and tax administrative litigation.¹⁰¹ Parties or litigants can transmit certain types of pleadings to the court electronically via the internet on the

⁹⁷ Guan-ling Shen, *Extrajudicial Dispute Resolution in Commercial Cases: A Focus on Commercial Court Mediation and Referral to Adjudication*, 218 YUEH-DAN L. SCH. 45 (2020).

⁹⁸ Com. Case Adjudication Act § 28(2) (2020).

⁹⁹ Com. Case Adjudication Act § 14 (2020).

¹⁰⁰ TAIWAN CODE OF CIV. PROC. § 116(3) (2020) ("Parties may submit pleadings to the court by telefax or by any other technological device, and pleadings so submitted shall take full effect as if they were submitted in the original copy.").

¹⁰¹ Hwei-Ru Tsai, *The Reversal of Commercial Case Trials*, 299 YUEH-DAN L. J. 182 (2020).

service platform of the Judicial Yuan and enjoy services such as requesting access to documents, accessing transcripts, paying litigation expenses online, checking case progress, and receiving instant messages. Furthermore, Taiwan has introduced a new provision for remote video trial in the Taiwan Code of Civil Procedure in January 2021,¹⁰² the year when COVID- 19 was the most severe, to alleviate the obstruction of civil cases. Taiwan's CCAA, which came into effect on July 1, 2021, follows the aforementioned technological measures, enabling filing and transmission of pleadings through an e-filing pleadings transmission system¹⁰³ and the use of videoconferencing in the trial of cases.¹⁰⁴

Owing to the influence of the internet and globalization, the institutional norms of the civil law system and common law system are no longer clearly distinguished. Despite Taiwan being a civil law country, its business and securities trading laws are highly impacted by common law and U.S. legal provisions. The substantive laws or procedures resulting from this contact have local features. For example, the business judgment rule under the U.S. law is no longer a standard for judicial review of directors' decision-making process in Taiwan; instead, the standard of conduct for directors, as stipulated in Article 37 of Taiwan's Commercial Case Adjudication Rules ("CCAR"), is applicable.¹⁰⁵ Moreover, scholars are deeply interested in how the commercial court interprets the law of business judgment. Hopefully, the commercial court will contribute to the development of Taiwan's business environment by providing professional, timely, and predictable adjudication.

¹⁰² TAIWAN CODE OF CIV. PROC. §§ 211-1(1) (2020) ("If a party, legal representative, litigation agent, auxiliary, or other related party is located in a place where there is a technology device for voice transmission between the court and the party, the court may, if it deems appropriate, hear the case with the device upon request or under its authority.").

¹⁰³ Com. Case Adjudication Act §§ 14-16 (2020).

¹⁰⁴ Com. Case Adjudication Act § 18 (2020).

¹⁰⁵ COM. CASE ADJUDICATION RULES §37("The following paragraphs may be considered by a court considering a commercial case to assess if the person in control of the business has faithfully carried out the business and exercised due diligence.

1. Whether their action is based on kindness and integrity.
2. Whether there is sufficient information on which to base its judgment.
3. Whether there is conflict of interest, lack of independent judgment, or cause of recusal
4. Whether there is abuse of discretion.
5. Whether it is necessary supervision of the company's operation.").

