

# RECIPROCITY PROJECT

## WHITE PAPER:

The Principle of Reciprocity in Taiwan Civil Courts  
2019



LIN & PARTNERS

恆業法律事務所

**LIN & PARTNERS  
TAIPEI, TAIWAN**

[WWW.LINANDPARTNERS.COM.TW](http://WWW.LINANDPARTNERS.COM.TW)

Lin & Partners

Offices: Taipei, Taiwan

Tel: +886 2 2771 5929 Fax: +886 2 2731 2896

Email: [attorneys@linandpartners.com.tw](mailto:attorneys@linandpartners.com.tw)



**Dr. George Lin**  
Managing Partner  
[attorneys@linandpartners.com](mailto:attorneys@linandpartners.com)



**Franco Ho**  
Senior Counsel  
[attorneys@linandpartners.com](mailto:attorneys@linandpartners.com)



## The Principle of Reciprocity in Taiwan Civil Courts

by Dr. George Lin, Managing Partner - Lin & Partners  
and Mr. Franco Ho, Senior Counsel - Lin & Partners



LIN & PARTNERS

恆業法律事務所

### Introduction

The Principle of Reciprocity refers to the rule that a national court should recognize and enforce the judgment or ruling of a foreign court because the foreign court's jurisdiction reciprocally recognizes and enforces the national court's judgment. The application of the Principle of Reciprocity by the local court, nonetheless, is often conditional, and generally has to fulfill certain requirements set forth in its domestic law.

Independent from bilateral or multilateral international relations and international comity, civil courts in Taiwan have broadly adopted the Principle of Reciprocity by recognizing and enforcing foreign judgments pursuant to its domestic law.

The application of the Principle of Reciprocity by Taiwan civil courts has enhanced judicial protection afforded to the parties that wish to enforce their rights in Taiwan through foreign judgments and/or cross-border rulings.

### Legal Basis for the Principle of Reciprocity in Taiwan Civil Courts

Generally, in Taiwan there are 3 main sources of law under which the Principle of Reciprocity is recognized and applied by Taiwan civil courts.

- I. General principle:** The *Civil Procedure Code* of Taiwan affirmatively adopts the Principle of Reciprocity by positively recognizing final and binding judgments and rulings of a foreign court subject to certain exceptions.

Pursuant to Article 402, paragraph 1 of the *Civil Procedure Code*, there are 4 exceptions to this general principle: (i) where pursuant to R.O.C. (Taiwan) laws the foreign court lacks jurisdiction, (ii) where the judgment sought to be recognized is a default judgment against the losing defendant (albeit with caveat on service of summons), (iii) where the foreign judgment or litigation procedure is contrary to Taiwan's public policy or public morals, and (iv) where no mutual recognition exists between the foreign country and the R.O.C. (Taiwan).

Cases and administrative interpretation letters over the last decade have revealed that civil courts in Taiwan have adopted the Principle of Reciprocity by establishing that the *prima facie* case for recognition and enforcement of a foreign judgment or ruling can only be rebutted by proving the existence of any one of the above exceptions.

- II. Cross-strait Taiwan-China:** For cross-strait Taiwan-China judgments and rulings, the Principle of Reciprocity is also recognized, albeit under special law rather than the *Civil Procedure Code*. The application of the Principle of Reciprocity between Taiwan and China is governed by the *Act Governing Relations between the People of the Taiwan Area and the Mainland Area* (the “**Act**”). For final judgments or rulings rendered by a PRC court, the Act recognizes the Principle of Reciprocity and subjects it to only one exception.
- III. Cross-strait Taiwan-Hong-Kong / Macau:** For cross-strait Taiwan-Hong Kong / Macau judgments and rulings, the Principle of Reciprocity is governed by the *Laws and Regulations Regarding Hong Kong and Macau Affairs* (the “**HKMO Laws**”). For final judgments rendered by Hong-Kong or Macau courts, the HKMO Laws apply Article 402 of the Civil Procedure Code *mutatis-mutandis*.

### Position of the Taiwan Supreme Court and related cases

Given the statutory provisions recognizing and applying the Principle of Reciprocity, Taiwan courts broadly apply the general principle. The Supreme Court also expressly recognizes the Principle of Reciprocity and has provided a clear standard to the local courts for the recognition of final judgments entered into by foreign courts.

In a 2011 Supreme Court decision, the court recognized a Hong Kong court’s judgment, and stated that “mutual recognition” as provided in Article 402 of the Civil Procedure Code referred to the reciprocity in the recognition of judgments between courts of different jurisdictions. If a foreign jurisdiction has not expressly denied the effect of a judgment rendered by a court in Taiwan, the Taiwan courts “shall, based on reciprocity, leniently and proactively recognize foreign judgments from such jurisdiction.” In a subsequent Supreme Court decision in 2016, the AmerAsia Alliance court recognized a judgment made by the District Court of Rome, Italy and stated that a final and binding judgment or ruling delivered by a foreign court, if absent of any exclusions set out in Paragraph 1 of Article 402 of the Civil Procedure Code, is “automatically recognized in Taiwan.”

### Enforcement

Generally speaking, recognition of a foreign judgment allows for its enforcement in Taiwan. An important distinction, however, exists between the enforcement of judgments and the enforcement of rulings/court orders for demand of payments. The former is subject to the Principle of Reciprocity stipulated in the Civil Procedure Code, while the latter requires additional application for court approval to compulsorily enforce the ruling/court orders under the Taiwan *Compulsory Enforcement Act*. Furthermore, the exclusions set forth in the Civil Procedure Code to bar the recognition of a foreign judgment is also applied by the court during its review of the application for enforcement of foreign ruling/court orders for demand of payments.

An example of the latter is a 2014 Supreme Court decision, which involved the enforcement of a decision of a U.S. court. Plaintiff sought to enforce a foreign judgment made by the U.S. District Court for the Eastern District of Virginia for monetary payment against the defendant’s

property in Taiwan. The court approved the enforcement under the Compulsory Enforcement Act after thoroughly scrutinizing the plaintiff's claim against the conditions set forth in Article 402 of the Civil Procedure Code.

## Conclusion

In conclusion, recognizing and enforcing foreign judgments in Taiwan civil courts is possible through the statutory application of the Principle of Reciprocity under Taiwan law. Although a few exceptions may apply to bar recognition and enforcement in Taiwan, in practice, courts in Taiwan have already recognized and enforced judgments from the U.S., China, Australia, France, Japan, Korea, New Zealand, U.K., and Singapore.



**LIN & PARTNERS  
TAIPEI, TAIWAN**

[WWW.LINANDPARTNERS.COM.TW](http://WWW.LINANDPARTNERS.COM.TW)

Lin & Partners  
Offices: Taipei, Taiwan  
Tel: +886 2 2771 5929 Fax: +886 2 2731 2896  
Email: [attorneys@linandpartners.com.tw](mailto:attorneys@linandpartners.com.tw)



**Dr. George Lin**  
Managing Partner  
[attorneys@linandpartners.com](mailto:attorneys@linandpartners.com)



**Franco Ho**  
Senior Counsel  
[attorneys@linandpartners.com](mailto:attorneys@linandpartners.com)

[www.reciprocityproject.org](http://www.reciprocityproject.org)

### OUR MISSION

Support, Develop and Promulgate the international "Principle of Reciprocity" in and across jurisdictions globally.