

Country Report - Taiwan

For LAWASIA Annual Council Meeting 2023

Submitted by Taiwan Bar Association

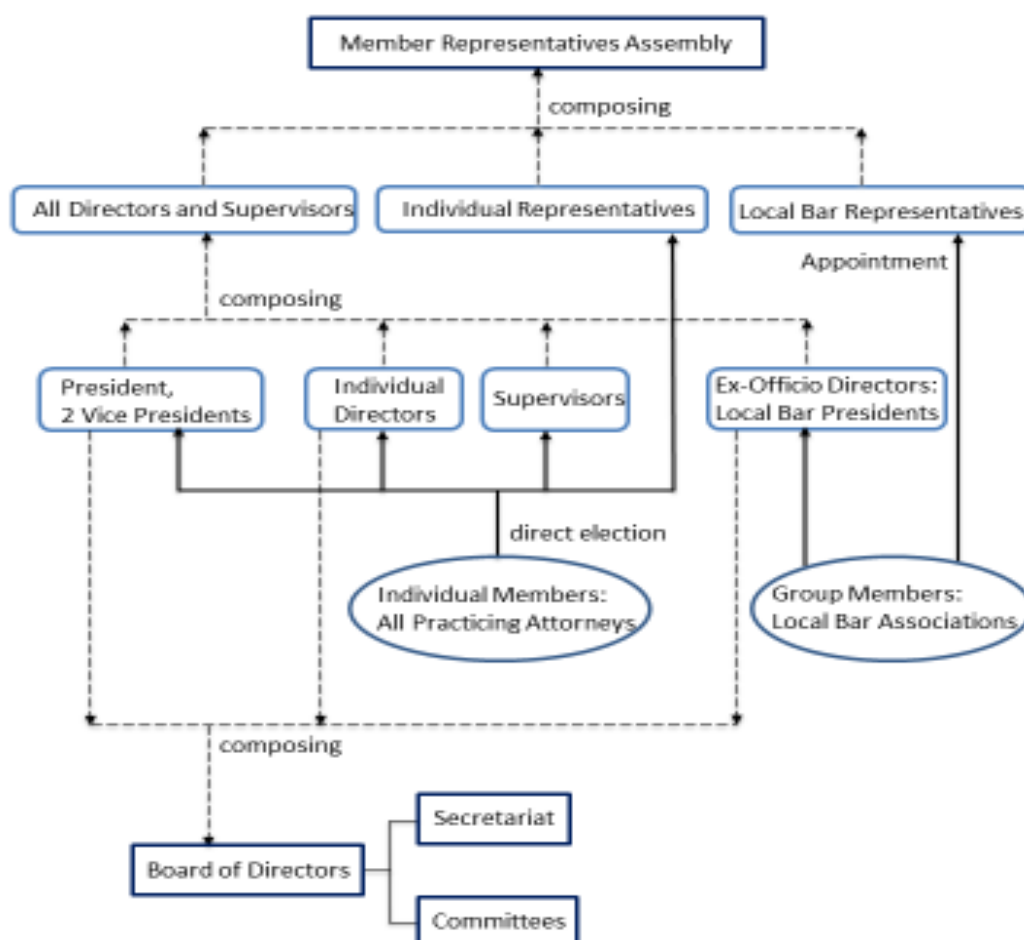
1 Overview of Taiwan Bar Association

1.1 General Introduction of the Taiwan Bar Association

- 1.1.1 In Taiwan, the sole national bar organization is the Taiwan Bar Association.
- 1.1.2 The whole new version of the Attorney Regulation Act came into effect on January 1, 2021. The Chinese name and organizational structure of the Taiwan Bar Association were changed in this new version of the Act.
- 1.1.3 The Taiwan Bar Association was formed based on the old version of the Attorney Regulation Act, which was effective on January 11, 1941. According to the provisions of the old version of the Attorney Regulation Act, the Taiwan Bar Association was composed of local bar associations from various counties and cities of Taiwan. In other words, the members of the Taiwan Bar Association were local bar associations rather than individual attorneys. Therefore, in the past, the Chinese name of the Taiwan Bar Association meant the “National Federation of Bar Associations, Republic of China.” The number of Delegates representing each local bar association varied based on the number of registered lawyers (members) in each local bar. The more member lawyers were registered in a local bar association, the more Delegates it would have. The Directors and supervisors of the Taiwan Bar Association were elected from among the member association delegates, and they selected executive directors. The President of the Taiwan Bar Association was elected from the executive directors.
- 1.1.4 The new version of the Attorney Regulation Act stipulated that a practicing lawyer must choose to join a local bar association, corresponding to her/his practice region, and simultaneously becomes a member of the Taiwan Bar Association. Therefore, the Taiwan Bar Association is composed of two types of members. The group members refer to the local bar associations in various cities and counties (such as the Taipei Bar Association, the Taichung Bar Association, and the Tainan Bar Association); the individual members are registered practicing lawyers. Each local bar association is an *ex officio* member

of the Taiwan Bar Association. The new version of the Attorney Regulation Act also changed the Chinese name of the Taiwan Bar Association into one meaning “National Federation of Attorneys.” According to the current bylaws of the Taiwan Bar Association, the Board of Directors consists of the President, two Vice Presidents, 26 elected Directors, and 16 *ex-officio* Directors. The President, two Vice Presidents, and 26 elected Directors are directly elected by individual members through remote voting. Each *ex-officio* Director is assumed by each local bar association’s President. There are 11 Supervisors and 78 individual Member Representatives. They are also directly elected by individual members of the Taiwan Bar Association through remote voting. The terms of the Board Directors, Supervisors, and Member Representatives are all two years.

The new structure of the Taiwan Bar Association is as follows.



1.1.5 Up to November 16, 2023, the Taiwan Bar Association has a total of 11,873 individual members. All of them have passed the bar examination and registered as practicing lawyers. Among them, 7,378 members are male and 4,495 are female. Those aged 70 and above account for 5.58% of the total membership; those aged 70 to 60 for 8.4%; those aged 60 to 50 for 17.64%; those aged 50 to 40 for 26.04%; those aged 40 to 30 for 31.56%; and those aged under 30 for 10.77%.

1.2 Introduction of the Executives

The two-year term of the current Board of Directors is from January 1, 2023, to December 31, 2024. The current President of the Taiwan Bar Association is Madam Yu, Mei-Nu (Dagmar Yu). Madam Dagmar Yu previously served as a legislator (congresswoman) in the Legislative Yuan of the Republic of China (Taiwan) from February 1, 2012, to January 31, 2020. She has focused on promoting the legal protection of human rights and equality. Since assuming the President of the Taiwan Bar Association, she has been dedicated to making the Bar Association a strong advocate for every practicing lawyer in safeguarding human rights, promoting social justice, and advancing democracy and the rule of law.

1.3 The contact information for the Taiwan Bar Association

1.3.1 Address: 7th Floor, Room C, No. 4, Section 1, Zhongxiao West Road, Zhongzheng District, Taipei City, Republic of China (Taiwan)

1.3.2 Phone: +886-2-2388-1707

1.3.3 Email: bartw@ms27.hinet.net

1.3.4 The information above can be found on the official website of the Taiwan Bar Association at <https://www.twba.org.tw>.

2 Legal System

2.1 Lawyer Examination (Bar Examination) System

2.1.1 Examination Format

- (1) According to the regulations of the Lawyer Examination Rules under the Specialized Professional and Technical Personnel Higher Examination, the lawyer examination is held once a year. The examination consists of two stages: the first stage and the second stage, both of which are written exams. Candidates must pass the first stage before proceeding to the second stage.
- (2) The first stage exam is a multiple-choice exam that covers 15

subjects, including Constitutional Law, Administrative Law, Criminal Law, Criminal Procedure Law, International Public Law, International Private Law, Legal Ethics, Civil Law, Civil Procedure Law, Company Law, Insurance Law, Negotiable Instruments Law, Compulsory Enforcement Law, Securities and Exchange Act, and Legal English. The exam is completed within one day.

- (3) The second stage exam is essay-based. Each candidate must take the following subjects: Constitutional Law, Administrative Law, Criminal Law, Criminal Procedure Law, Civil Law, Civil Procedure Law, Company Law, Insurance Law, Negotiable Instruments Law, Securities and Exchange Act, and Chinese Composition. In addition, each candidate must elect one subject from Intellectual Property Law, Labor Law, Tax Law, or Maritime and Admiralty Law. The exam is completed within two days.

2.1.2 Eligibility for Examination

- (1) Firstly, a candidate must hold the nationality of the Republic of China (Taiwan).
- (2) Secondly, a candidate must have graduated from a public or registered private college or higher-level law-related program in Taiwan, or from a foreign law-related program at a college or university recognized by the Ministry of Education of Taiwan.
- (3) If a candidate is not graduated from a law-related program in Taiwan or a recognized foreign law-related program, they may still be eligible to apply for the lawyer examination if they have completed at least 20 credits in courses including Civil Law, Criminal Law, Civil Procedure Law, and Criminal Procedure Law.

2.1.3 Exemptions from Examination

- (1) A candidate who has graduated from a public or registered private college or higher-level law-related program in Taiwan, or from a foreign law-related program at a college or university recognized by the Ministry of Education of Taiwan, and has served as an assistant professor for at least five years, or an associate professor for at least three years, or a professor for at least two years at a public or registered private college or higher-level law-related program in Taiwan, or at a foreign law-related program at a college or university recognized by the Ministry of Education of Taiwan, teaching subjects including Civil Law, Criminal Law,

Civil Procedure Law, Criminal Procedure Law, Compulsory Execution Law, Bankruptcy Law, International Private Law, Commercial Law, Administrative Law, or related subjects, may apply for exemption from the first stage of the examination.

- (2) A candidate who has graduated from a public or registered private college or higher-level law-related program in Taiwan, or from a foreign law-related program at a college or university recognized by the Ministry of Education of Taiwan and has served as a commissioned military judge or an equivalent military judicial position for at least six years, may apply for exemption from the first stage of the examination.
- (3) A candidate who has passed the military judge examination and has served as a commissioned military judge or an equivalent military judicial position for at least six years may apply for exemption from the first stage of the examination.
- (4) A candidate who has served as a judge or a prosecutor in the Republic of China (Taiwan) may apply for exemption from both the first and second stages of the examination.
- (5) A candidate who has served as a public defense attorney in the Republic of China (Taiwan) for at least six years may apply for exemption from both the first and second stages of the examination.

2.1.4 Pass Rate, Gender Ratio, and Age Distribution

- (1) Overall Pass Rate in the Bar Examination:

Taking the results of the 2022 Bar Examination as an example, in the first stage of the examination, there were a total of 9,342 candidates. The number of candidates who passed the examination was 3,150, resulting in a pass rate of 33.72%. In the second stage of the examination, there were a total of 2,787 candidates. The number of candidates who passed the examination was 913, resulting in a pass rate of 32.76%. If we calculate the pass rate based on the total number of candidates and the final number of candidates who passed the examination, the overall pass rate of the Bar Examination is approximately 9.77%. The overall pass rate of the Bar Examination fluctuates each year; for example, it was 10.31% in 2021, 6.76% in 2020, 6.12% in 2019, and 8.57% in 2018.

- (2) Gender Ratio:

Based on the analysis of the 2022 Bar Examination data, out of the 9,342 candidates, there were 4,891 male candidates, accounting for 52.35% of the total candidates, and 4,451 female candidates, accounting for 47.65% of the total candidates. Among the candidates who passed the Bar Examination, there were 913 individuals, including 489 males, accounting for 53.55% of the total passers, and 424 females, accounting for 46.44% of the total passers. Further analyzing the male candidates, out of the 4,891 male candidates, 489 passed the examination, resulting in a pass rate of 9.99%. Analyzing the female candidates, out of the 4,451 female candidates, 424 passed the examination, resulting in a pass rate of 9.53%.

(3) Age Distribution:

Based on the analysis of the 931 individuals who passed the Bar Examination in 2022:

528 individuals (57.83% of the total) were between the ages of 21 and 25.

209 individuals (22.89% of the total) were between the ages of 26 and 30.

80 individuals (8.76% of the total) were between the ages of 31 and 35.

39 individuals (4.27% of the total) were between the ages of 36 and 40.

26 individuals (2.85% of the total) were between the ages of 41 and 45.

16 individuals (1.75% of the total) were between the ages of 46 and 50.

15 individuals (1.64% of the total) were 51 years old or above.

2.2 Foreign Lawyers Regulation

2.2.1 Registration Qualifications

According to the provisions of the Attorney Regulation Act, foreign lawyers refer to lawyers who have obtained legal qualifications in countries outside the territory of the Republic of China (Taiwan). A foreign lawyer who has obtained permission from the Ministry of Justice of Taiwan and has been approved for membership by a local bar association and the Taiwan Bar Association can practice law in Taiwan and is referred to as a Foreign Legal Practitioner.

2.2.2 Scope of Practice

According to the provisions of the Attorney Regulation Act, Foreign Legal Practitioners are only allowed to handle legal matters related to the laws of their original qualified country or international law. In other words, foreign legal practitioners who obtained their legal qualifications in the United States can only handle matters related to U.S. laws or international laws in Taiwan. Therefore, Foreign Legal Practitioners in Taiwan are unable to engage in the same legal matters as registered Taiwanese Attorneys.

2.2.3 Stakeholders in the Legal Industry

For attorneys, stakeholders in the legal industry include clients, judges, prosecutors, and bar associations. Clients directly affect the volume of cases handled by lawyers. Judges and prosecutors have an impact on the outcome of cases. Bar associations are responsible for the continuing education and ethical supervision of lawyers, and they indirectly influence the development and performance of lawyers in the legal industry.

3 Organization's Regular Activities

3.1 Regular activities of the Bar Association

3.1.1 Adjudicating cases involving attorneys' violations of ethical rules and imposing disciplinary measures such as attending 6 to 12 hours of seminars, warnings, admonitions, suspension of duties (from 2 months to 2 years), or disbarment.

3.1.2 Organizing continuing legal education training courses and seminars by various committees for members' professional development.

3.1.3 Establishing an online learning platform, the Lawyers' Academy, for members to engage in professional courses and study materials anytime, anywhere, in various fields.

3.1.4 Expressing opinions and providing insights on socially significant events, highlighting the assistance that the legal profession can offer.

3.2 The implementation of the activities mentioned above by the Taiwan Bar Association relies primarily on the voluntary services of non-full-time lawyers within each committee to promote and facilitate them.

4 Organization's Main Activities, Development, and Challenges

4.1 Recent Major Achievements

One of the main achievements in recent times has been the promotion and

implementation of the revised Attorney Regulation Act, which came into effect on January 1, 2021. This revision allowed for the inclusion of natural persons as members of the Taiwan Bar Association, enabling the Association to engage with every lawyer.

4.2 **Future Major Challenges and Plans**

In 2022, Taiwan marked the “Year of Human Rights” with the establishment of the “Department of Human Rights and Transitional Justice” by the Executive Yuan and the announcement of the “National Human Rights Action Plan.” The government needs to review and reform existing systems and institutions extensively. As a driving force for safeguarding human rights and promoting justice in Taiwanese society, the Taiwan Bar Association will actively participate in the administrative, legislative, and judicial domains during this crucial period. Their focus will not only be on ensuring the implementation of human rights and justice but also on vigorously protecting the rights and professional dignity of all members.

5 **Impact of the COVID-19 Pandemic on the Organization and Legal Community**

- 5.1 Since the outbreak of the COVID-19 pandemic in various parts of the world in late January 2020, the Taiwan Bar Association immediately issued announcements to remind all members to take relevant measures in response. These measures included establishing internal cleaning and disinfection systems, implementing personnel control measures, and ensuring the availability of necessary equipment. Members were advised that if they had a fever or acute respiratory symptoms, they should promptly request rescheduling court hearings, prosecutor’s appointments, or meetings with law enforcement agencies. If rescheduling requests were denied, the Taiwan Bar Association would assist members in communicating with the relevant courts, prosecutors, or law enforcement agencies.
- 5.2 During the period of epidemic alert, the Taiwan Bar Association’s routine activities, including general meetings, board meetings, continuing legal education courses, and exchanges with international bar associations, could not be conducted in person. However, the Taiwan Bar Association did not halt its operations. Instead, it promptly transitioned to online operations. Meetings, courses, and international conferences were conducted through video conferences and virtual platforms to ensure the continuity of essential

functions and maintain communication and engagement with members and international counterparts.

6 Taiwan's Recent Developments and Changes in 2022-23

6.1 Implementation of Citizen Judge System

6.1.1 Origin and Purpose

Taiwan's Citizen Judge Act was enacted in 2021 and took effect on January 1, 2023. It was one of the significant judicial reform goals commonly established in 2017. This new system aims to promote mutual understanding between the people and the courts. Through the participation of layperson judges, the trials become more transparent, and the judicial professionals (especially judges and prosecutors) must dialogue with the outside world so that both sides can communicate and reflect on each other. Taiwan's Citizen judge system follows many aspects of Japan's "saiban-in" system.

6.1.2 Major Content

Under this system, all nationals (citizens) aged 23 and over have opportunities to be randomly selected as "Citizen Judges" in trials for certain severe crimes, like intentional murder. Such citizen judges are not jurors; they investigate the evidence, find the facts, determine guilt, and sentence defendants, together with the professional judges in a trial. Before the hearing, the judges have no access to any evidence of the case. The judicial tribunal is composed of six citizen judges and three professional judges. To determine the defendant guilty needs the two-thirds approval of the tribunal members (i.e., at least six judges), including at least one citizen judge and one professional judge. If the said approval is not satisfied, the tribunal must render a verdict of not guilty or a finding in favor of the.

6.1.3 Implementation and Challenge

The first judgment under the citizen judge system was rendered in July, 2023. Many legal professionals (scholars, attorneys, executives) worry that the defense attorneys' investigation, attack, and defense capabilities are insufficient in such trials due to lack of resources; thus, the verdicts might be unfair to the defendants.

6.2 Amendments to three Acts relating to Gender Equality (Counter Sexual Harassment)

6.2.1 Origin and Legislative Process

Starting from May, 2023, many sexual harassment cases were revealed, including those happening many years ago. Many famous figures stood out to disclose their covered injuries. This “MeToo” movement shook the Taiwan society and pushed the legislative amendments to three Acts relating to gender equality for the purpose of countering sexual harassment. The legislature includes the Gender Equity Education Act (amended on July 28), the Gender Equality in Employment Act (amended on July 31), and the Sexual Harassment Prevention Act (amended on July 31). The President publicized these legislative amendments together on August 16, 2023, and they will take effect on March 8, 2024, Taiwan Women’s Day. Before the effective day, the related government agencies will complete the revisions of associated rules and regulations to implement the amended Acts.

6.2.2 Key Points of Amendments

6.2.2.1 Strengthening the “effective” punishment and treatment to fight perpetrators

- (1) Clearly defining the general power-abuse sexual harassment (such as supervisors) and special power-abuse sexual harassment (such as employers or heads of agencies), and increasing relevant penalties.
- (2) Clarifying the jurisdiction over sexual harassment to avoid disputes where one sexual harassment incident applies to three Acts.
- (3) Differentiating punishment on perpetrators and adding civil punitive damages up to 5 times; increasing the criminal sentence by $\frac{1}{2}$ for those abusing power to commit sexual harassment.
- (4) Allowing the victim to lodge a complaint with the local competent authority when the perpetrator of sexual harassment is the highest responsible person or the victim is dissatisfied with the employer’s investigation results;
- (5) Requiring employers to report sexual harassment complaints and their investigation results to the competent authorities to strengthen external compliance supervision.

6.2.2.2 Consummating interest protection and services “friendly” to victims

- (1) Increasing the budget for victim protection and assistance measures and improving the confidentiality requirement that

the information sufficient to identify victims shall not be reported or disclosed.

- (2) Extending the general statute of limitations for sexual harassment complaints and adding special statutes of limitations for complaints by victims who left their jobs after the harassment, suffered from power-abuse harassment, or were harassed when minors.

6.2.2.3 Establishing a “trustworthy” professional system to prevent and control sexual harassment

- (1) Enacting temporary measures to suspend or adjust the positions/duties of the highest responsible person or supervisors for cases of significant circumstances in order to ensure that the investigation process is independent and fair, not affected by the power of the perpetrator, and encouraging the victim to complain.
- (2) Building a database of professionals, training and selecting those with gender equality consciousness for the committees in charge of gender equality or sexual harassment complaints.

6.3 Change of Administrative Litigation and Administrative Court System

6.3.1 Legislative Process

On June 22, 2022, the President promulgated the legislative amendments to five Acts, including the Administrative Litigation Act, the Enforcement Act of the Administrative Litigation Act, the Administrative Court Organization Act, the Court Organization Act, and the Judges Act. These amendments change the structure of the administrative court system and the administrative litigation proceedings. They became effective on August 15, 2023

6.3.2 Significant Points of New System

6.3.2.1 Changing Structure of Administrative Court System and Jurisdiction of Administrative Litigation

The Administrative Litigation Division under the District Court was abolished. Now, there are the High Administrative Litigation Division and the District Administrative Litigation Division under the High Administrative Court. Each Division exercises its first-instance jurisdiction over different types of cases. The District Administrative Litigation Division is the *de facto* District Administrative Court. The appeal against the judgment/decision

made by the District Administrative Litigation Division should be filed with the High Administrative Litigation Division. The appeal against the judgment/decision made by the High Administrative Litigation Division should be filed with the Supreme Administrative Court. The new legislature provides that the Administrative Court should inquire the party who resides too far from the court and then conduct remote hearings, circuit courts, or other convenient ways for the proceedings.

6.3.2.2 Mandatory Representation by Attorneys

The parties must appoint attorneys as agents to certain types of cases, including:

- (1) Environmental protection matters and land controversy matters of which the first-instance ordinary proceedings are conducted in high administrative courts;
- (2) The matters regarding the review of urban plans;
- (3) Appeals of the ordinary proceedings which are conducted in high administrative courts;
- (4) Matters that are brought before the Supreme Administrative Court.

6.3.2.3 Adoption of Mediation

When a party has the right to dispose of the subject matter of the litigation, and the mediation does not harm the public interest, the administrative court may, at the consent of both parties, move the case to mediation. When necessary, mediation may include matters that are not the subject matter of the litigation.

With permission or order granted by the administrative court, a third party may participate in the mediation.

The administrative court in charge of the case may appoint one to three mediators to mediate without judges. The settlement reached through the mediation above is enforceable.

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