

## Taiwan

Population 23,588,932

GDP US\$589.474 billion

Per capita GDP is

US\$25,004

Approx. Practising lawyers 8,500

Legal Aid expenditure : £39.5 million

### *Mixed Service Model*

The Taiwan Legal Aid Foundation adopts a mixed model for service delivery, which means the legal aid casework is handled by LAF's staff attorneys and private lawyers.

### *Requirements for lawyers wishing to do Legal Aid.*

#### Staff Attorneys

The statutory number of LAF staff lawyers whose roles are to undertake legal aid casework is 30. However, due to budgetary constraints, only 23 posts were allowed in 2018 and currently there are only 20 staff attorneys recruited. Due to the limited number of posts, the proportion of cases handled by staff lawyers is less than 5% of LAF's cases. Staff lawyers are mainly responsible for cases involving major public interest, human rights, class action, and high social profiles involving specific disadvantaged populations (such as migrant workers and indigenous people).

#### Private Lawyers

Private lawyers remain the main work force to undertake legal aid cases. As of the end of 2018, 4,046 private lawyers have registered to undertake legal aid cases. In general, LAF requires private lawyers to have at least two years of legal practice before undertaking legal aid cases although there are one or two exceptions to encourage younger practitioners to enter the market. There is an upper limit of 24 legal aid cases per annum for private lawyers

#### *Pay rates*

The remuneration for the private legal aid lawyers is much lower than market price — averages are only one-third to one-half of that. Since its establishment, the LAF has not undergone comprehensive adjustment for the past 14 years except a slight increase in certain categories (e.g. consumer debt, administrative cases and criminal court proceedings of second instance, etc.).

Private legal aid lawyers therefore have continued to request reasonable wage increases.

The recent amendment of Legal Aid Act 2015 increases the number of remuneration radices for certain types of legal aid (Article 27) and stated legal aid lawyers' rights to ask for increase in remuneration when the cases are extremely complicated.

Accordingly, the LAF has also revised its Legal Aid Remuneration Calculation and Payment Method, which specifies that the base and calculations for remuneration radices shall be reviewed every three years. However, due to the country's financial difficulties and the limited size of the budget, the Foundation is still continuing to research and lobby, fighting for a larger budget and reasonable adjustments to private attorneys' remuneration.

The main funding source is the Judicial Yuan of the central government, while the second is funding from the central government Ministry of Labour and Council of Indigenous Peoples for their specific legal aid programmes for labourers and Indigenous peoples.

### *Managing the Budget*

While there is a statutory obligation for the state to provide legal aid funding, the account of legal aid costs (including court fees, lawyers' fees and other mandatory litigation costs of legal aid cases) are demand led and therefore has an uncapped budget. However, the rest of the expenditure accounts (including operating costs, expenses and capital expenditure) are capped with a general limit, though the budgets can be transferred between accounts.

In practice the uncapped budget is managed by adjusting scope, eligibility, client contributions and lawyers' fee

### *Cost Shifting*

The cost shifting rule (loser pays) does exist in Taiwan, except in the criminal justice system in which no court fees are bore by any parties.

According to the Guidance on Calculation and Payment of Legal Aid Necessary Costs, once the case comes to the end and there is a need for the legal aided client to pay the necessary costs (including the court decided legal expenses), the client can request LAF's assistance for bearing the costs. The client cannot do it on his/her own. Instead, they have to ask their legal aid lawyers to submit an application form with their legal opinions and relevant documents to LAF. LAF will examine the application by an examining committee consisting of

three legal professionals. The decision can be full payment, partial payment or rejection, depending on the cases and clients' circumstances. Most of the time, the decision for the legal aid clients who have been granted partial aid would be partial payment, which means that they would still be liable for 1/3 to 1/2 of the legal expenses.

In 2017, the LAF paid NT\$8,493,195 to the court for 274 cases, where the aided persons lost the litigation and had to pay the legal expenses; in 2018, NT\$4,418,766 for 222 cases.