

# Special Project

## A Research Guide to Taiwan (ROC) Law

LIANE NEWTON\* AND WANG JONG\*\*

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\* Liane Newton, J.D. 1990 Yeshiva University, Cardozo School of Law.

\*\* Wang Jong, Associate, Lee & Li Attorneys-at-Law, admitted in the ROC, 1989 Judge and Bar Examinations; LL.B. 1985, National Chengchi University.

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## I. INTRODUCTION

### A. *Selection of Materials and Comments*

The materials gathered here are intended to serve as a basis for further research on ROC law generally, with particular emphasis on business-related topics. Although our listing is by no means exhaustive, we have tried to include the principal works under each heading, from the practitioner's as well as the scholar's viewpoint.

To aid in evaluating the weight of authorities, we include comments on legislative and case law hierarchy and on the backgrounds of authors or editors where relevant. Two interesting sources for additional reading on these subjects are the following:

Fa Jyh-pin, *Ta-fa-kuan chih hsüan-jen chi ch'i pei-ching chih pi-chiao* (The Appointment of Justices and Their Backgrounds: A Comparative Survey) in HSIEN-FA CHUAN-

LUN (Selected Essays on the Constitutional Law) 288-325 (dist. San Min Books 1985).

Yao Jui-kuang, *Lun p'an-li* (Commentary on Precedents), [53]9 FA-LÜ P'ING-LUN (Chao Yang Law Review) 2-15 (1987). (See discussion of precedent authority *infra* section III.D., summarizing former Justice Yao's argument).

### B. Citation Form and Peculiarities of Form

Suggested full and short citation forms precede the comments on each bibliographic entry. To the extent practicable we recommend conforming citation to *A Uniform System of Citation* (14th ed. 1986) [hereinafter *Bluebook*]. However, because of the lack of coordination among ROC sources, the large number of unofficial sources, and peculiarities of the ROC publishing system, some modifications are suggested.

Because of the relatively small market for ROC law books, many are published by the author. Nonetheless, they may have real influence where, as is often the case, the author, compiler, or editor is a judge or an important official within an agency having authority regarding the subject matter. These works frequently present materials that are otherwise difficult or impossible to find and give a glimpse of judicial or administrative processes otherwise unavailable to the public. However, specific publications may be difficult to find. Therefore, in citing books and compilations, editor, publisher, or distributor may be included to facilitate location of the source. When the editor and publisher are the same, the full citation includes the editor/publisher once, signalled "ed.," in the date parenthetical. When there is no separate publisher, there may be a distributor, signalled "dist.," in the same parenthetical. When there is a separate publisher, it and the publication date are cited without signal.

Given the small number of Chinese family names, the inclusion of at least two initials in authors' and editors' names cited is helpful to those searching for sources. Full names are included in the bibliographic entries that follow, family name placed first, according to Chinese custom. Romanization of names also presents difficulties. Some authors have adopted a particular romanization for their names, or an English name for convenience. Thus, author's preferences are respected even when they do not conform to Wade-Giles conventions.<sup>1</sup> For example, Wang Jong, one of the authors of this

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1. Although the KUO-YÜ CHU-YIN FU-HAO TI ER SHIH (Mandarin Phonetic Symbols II)

piece would be "Wang Chung" in Wade-Giles. Because of the unavoidable ambiguities, we have added an appendix listing the Chinese characters for selected authors, editors, and publishers cited.

For statutes and regulations, volume and initial page number are given, in addition to the article number, to further facilitate location.

Decisional materials are generally identified by a serial number. The serial number includes one or more characters indicating the source of the item (e.g., "Shih" for Council Interpretations, "T'ai-Shang" for Supreme Court decisions). The year may also be indicated. Note that years are counted from the end of the Ch'ing dynasty in 1911; therefore, add eleven to get the A.D. year. The first two digits of a Judgment or Precedent number represent the year rendered, and the numbers are sequential for that year. To simplify citation form, we have chosen to omit the date of decision when the serial number already provides it.

## II. STATUTORY MATERIALS

### A. *Legislative Process*

The Legislative Yuan<sup>2</sup> was established by the Constitution, and organized according to its own Organic Law.<sup>3</sup> The Constitution provides for two legislative sessions annually, February to May and September to December, with adjournment permissible where necessary.

In theory members serve a three-year term.<sup>4</sup> However, because the legislature was designed to be the representative body for the Mainland as well as for Taiwan, there have been implementation problems. Notably, the original class of legislators elected in the Mainland remained in office. Representatives were replaced when necessary, without new elections, by the candidate who obtained the second greatest number of ballots in the original election. Only a small number of seats were reserved for Taiwan itself.<sup>5</sup> The elderly

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(Committee for Mandarin Promotion of the Ministry of Education ed. 1988), includes a table of romanization of popular names, the system has not been widely adopted.

2. The five branch government structure designed by Dr. Sun Yat-sen comprises the Executive, Control, Examination, Legislative, and Judicial Yuans.

3. CHUNG-HUA MIN-KUO HSIEN-FA (Constitution of the Republic of China) (promulgated Jan. 1, 1947, effective Dec. 25, 1947) art. 62 [hereinafter ROC CONST.] 1 COLLECTION OF CURRENT LAWS AND REGULATIONS OF THE REPUBLIC OF CHINA 1 [hereinafter CCLRRC] (CCLRRC is the primary source of ROC codes, *see infra* section II.C.2); Li-fa yüan tsu-chih fa (The Organic Law of the Legislative Yuan) (promulgated Mar. 31, 1947, last amendment July 28, 1989) 33 CCLRRC 19501 [hereinafter Organic Law of the Legislative Yuan] (for amendment text see 5120 TSUNG-T'UNG FU KUNG-PAO (Presidential Palace Gazette) 1 (July 28, 1989) [hereinafter PRESIDENTIAL PALACE GAZETTE]).

4. ROC CONST. art. 65.

5. Tung-yüan k'an-luan shih-ch'i lin-shih t'iao-k'uan (Provisional Articles Effective Dur-

legislators still outnumber newly elected legislators.<sup>6</sup> However, a redistricting effected before the 1989 elections raised the number of representatives for Taiwan and retirement of elderly legislators is encouraged under a statute passed in 1989.<sup>7</sup>

Bills, usually drafted by ministries of the Executive Yuan, are reviewed by a plenary session of the Executive Yuan (all ministers, the president, and the vice-president), which may add modifications and a recommendation before sending the completed bill to the legislature. The Examination, Control, and Judicial Yuans may also advance legislative bills within their respective jurisdictions.<sup>8</sup>

Once it reaches the legislature, a bill is subject to a process of three readings.<sup>9</sup> At the first reading, the chairman of the legislature announces the heading for each provision of the bill to the plenary session, which may resolve to move directly to the second reading, or to send the bill to one of the fifteen committees for review before the second reading. The second plenary session reading consists of an article by article discussion of the bill in conjunction with any committee comments. Motions for substantial modification are allowed at

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ing the Period of Mobilization and Pacification of Insurrections) (promulgated Apr. 18, 1948, last amendment Mar. 23, 1972) 1 CCLRRC 21 [hereinafter Provisional Articles] (provides the basis for original legislators' continued exercise of power); Li-fa yüan li-fa wei-yüan hsüan-chu pa-mien fa (The Law for Election and Recall of Legislators of the Legislative Yuan) arts. 29, 45, 2 CCLRRC 697 (provides the replacement procedure); Council Interpretation Shih-31 of Jan. 29, 1954, SSU-FA YÜAN TA-FA-KUAN HUI-YI CHIEH-SHIH HUI-PIEN (Compilation of Interpretations of the Council of Grand Justices, Judicial Yuan) [hereinafter CIC] 55 (4th ed. 1984) (ratified prolonged retention of power by original legislators). However, Executive Yuan Letter T'ai-40-Nei-2337 condemns the use of the replacement procedure to fill vacancies occurring after May 7, 1951, when the original term would have expired. The Letter argues that the replacement procedure was intended to fill vacancies occurring during the term only and that Shih-31, while recognizing the impracticability of new elections including the Mainland, did not thereby imply the extension of the term itself. The Executive Yuan's interpretation was upheld in Council Interp. Shih-150 of Sept. 16, 1977, CIC 12 (Supp. II 1984).

6. Of the original seats filled in the Mainland, 152 are still held by the original legislators or their replacements. There are 130 more recently elected legislators. Following the 1989 election, 283 legislators were enrolled. Party representation following the 1989 elections was 233 Nationalist Party (KMT), 21 Democratic Progressive Party (DPP). See *China Times*, Feb. 3, 1990, at 2.

7. *Ti-yi-chieh tzu-shen chung-yang min-yi tai-piao tzu-yüan t'ui-chih t'iao-li* (Statute on Voluntary Retirement of First-Term Senior Congressmen of the Central Government) (promulgated Feb. 3, 1989) 2 CCLRRC 1024-13 [hereinafter Retirement Statute]. Thirty-seven legislators retired between the promulgation of the Retirement Statute and Feb. 12, 1990 (telephone inquiry of Feb. 12, 1990 to the Legislative Yuan).

8. ROC CONST. art. 87 (Examination Yuan); Council Interp. Shih-3 of May 21, 1952, CIC 25 (4th ed. 1984) (Control Yuan); Council Interp. Shih-175 of May 25, 1982, CIC 39 (Supp. II 1984) (Judicial Yuan).

9. *Li-fa yüan yi-shih kui-tse* (Rules for the Conference Process of the Legislative Yuan) arts. 29-37 (promulgated May 20, 1948, last amendment July 13, 1989), 33 CCLRRC 19541 (for text of last amendment see [78]56 LI-FA YÜAN KUNG-PAO (Legislative Yuan Gazette) 155 (1989) [hereinafter LEGISLATIVE YUAN GAZETTE]).

this stage. Following the second reading, the session may resolve to withdraw the bill, to send it back to committee, or to move to the third reading. Ordinarily, only minor modifications in wording are permitted at the third reading, which terminates in legislative passage or the death of the bill.

Ministers and other officers may be invited to the committee and plenary meetings to present and defend a draft bill. Public interest groups may be invited to comment during committee hearings. Public hearings, however, are not a prerequisite of passage, though they are becoming more common.

Resolutions of both committee and plenary meetings are passed by simple majority vote of the legislators present, provided quorum requirements (one-fifth of the total members for committee meetings, one-third of members registered and enrolled at the beginning of the session for plenary meetings) are met.<sup>10</sup>

After passage by the legislature, the president signs the bill into law within ten days. Though he may refuse to sign, he has no veto power to prevent the law from taking effect.

### *B. Standardization of Central Government Laws*

Certain legal nomenclature and other fundamentals of legislation and regulation are standardized by statute.<sup>11</sup> Article 4 of the Standardization Law states that "laws" (*fa-lü*) are those bills passed by the Legislative Yuan and promulgated by the president.<sup>12</sup> Article 2 requires that each law include in its title one of the following terms:<sup>13</sup>

<i>fa</i>	law, code	rules for nation-wide or perpetual application, or in the nature of general principles
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10. Organic Law of the Legislative Yuan, *supra* note 3, arts. 5 (quorum), 12 (vote); Li-fa yüan ko wei-yüan hui tsu-chih fa (Organic Law of the Committees of the Legislative Yuan) arts. 5 (quorum), 10 (vote) (promulgated Dec. 25, 1947, last amendment Nov. 27, 1973) 33 CCLRRRC 19505.

11. Chung-yang fa-kui piao-chun fa (Law for Standardization of Central Government Laws and Regulations) 33 CCLRRRC 19565 (promulgated Aug. 31, 1970) [hereinafter Standardization Law]. Article 1 of the Standardization Law states: "Unless otherwise provided in the Constitution, enactment, enforcement, application, amendment, and repeal of laws and regulations of the central government shall be subject to this Law." Application of this law to regulations is discussed *infra* section IV.A.1.

12. ROC CONST. art. 72.

13. The descriptions of terms are drawn from the Hsing-cheng chi-kuan fa-chih tso-yeh ying chu-yi shih-hsiang (Guidelines for Legislative Tasks of Administrative Agencies), Executive Yuan Letter T'ai-66-Kui-1008 of Feb. 8, 1977 (amended by Executive Yuan Letter T'ai-73-Kui-4821 of Apr. 2, 1984), *reprinted in* Huang Shou-kao, Lin Chuan-ch'en, Chiang Yu-fen, Chou Hsiao-ming, WO-KUO HSIEN-HSING FA-CHIH YUNG-TZU YUNG-YÜ CHI KE-SHIH CHIH YEN-CHIU (Research on the Current Usage of Legal Terms, Nomenclature, and Forms in the ROC Legal System) 227-37 (Judicial Post 1986) [hereinafter Guidelines for Legislative Tasks].

<i>lǜ</i>	act	rules governing special matters within the jurisdiction of military agencies during war-time
<i>t'iao-li</i>	statute	rules of a local, expert, specialized, or temporary nature
<i>t'ung-tse</i>	law	rules generally applicable to all matters of a similar nature, or rules on organization

Article 9 provides the organizational structure of laws and regulations; article 8 provides the organizational structure of articles.

Organizational structure and proposed translations:

book, volume, part	<i>pien</i>
chapter	<i>chang</i>
section	<i>chieh</i>
sub-section	<i>k'uan</i>
item	<i>mu</i>
article	<i>t'iao</i>
paragraph	<i>hsiang</i>
sub-paragraph	<i>k'uan</i>
item	<i>mu</i>

There is no publication requirement to bring ROC laws or regulations into effect. The controlling text of a law or regulation is that published in the appropriate branch or agency gazette. Sources for "official" text are, in order of preference, as follows below.

For statutes:

*Presidential Palace Gazette*  
*Special Collection of Legislation*  
*Legislative Yuan Gazette*  
 Gazette of a relevant agency  
*Laws Compiled or A Collection of Current*  
*Laws and Regulations of the Republic of*  
*China (CCLRRC)*

For regulations:

Gazette of a relevant agency  
 CCLRRC

### C. *Compilations of Laws*

This section lists the most widely accepted standard reference books.

## 1. Session Laws

Cite to:

LI-FA CHUAN-K'AN (Special Collection of Legislation) (Secretariat of the Legislative Yuan, ed.) [hereinafter SPECIAL COLLECTION OF LEGISLATION].

Note:

The Legislative Yuan publishes session laws, compiling statutes passed by the legislature and promulgated by the president during the coverage period. Publication occurs generally about two months after the end of each session. These volumes include an index of the titles compiled, the dates of passage, and the dates of promulgation by the president. Certain international agreements and important treasury regulations are also included.

## 2. Current Laws and Regulations of the Republic of China

Cite to:

CHUNG-HUA-MIN-KUO HSIEN-HSING FA-KUI HUI-PIEN (A Collection of Current Laws and Regulations of the Republic of China) (Directorial Committee on Editing and Printing of a Collection of Current Laws and Regulations of the Republic of China ed. 1981) [hereinafter CCLRRC].

Note:

This is the most comprehensive compilation of ROC laws and regulations. It is widely accepted as an official published source. The members of the Directorial Committee, who edited and published this work, were drawn from the National Assembly, the Presidential Palace, and the five branches of government (Yuans).

*CCLRRC* is a loose-leaf set originally published in 34 volumes and expanded to 37 volumes in 1988. It is updated quarterly. Indexed by stroke order, materials are distributed among volumes first by relevant government authority, then by topic. Supplements replace pages or are inserted beside existing materials so that the original index continues to function.

Although updates continue to be published regularly, the original complete set is currently out of print. Efforts are underway to have it republished.<sup>14</sup>

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14. A telephone inquiry of Feb. 12, 1990, to the authorized distributor, Hua-hsing wen-hua shih-yeh ch'u-pan kung-ssu, indicates that the *CCLRRC* will not be republished before the end of 1990.



### 3. Compilation of Statutes of the Republic of China

Cite to:

CHUNG-HUA-MIN-KUO FA-LÜ HUI-PIEN (Compilation of Statutes of the Republic of China) (Review and Editorial Committee on the Compilation of Laws of the Republic of China ed., Secretariat of the Legislative Yuan 4th ed. 1988) [hereinafter LAWS COMPILED].

Note:

Coverage of this official compilation is not as comprehensive as that of the *CCLRRC*. It gathers only laws passed by the Legislative Yuan and promulgated by the president, and regulations regarding the organization of certain agencies, issued pursuant to the Provisional Articles Effective During the Period of Mobilization and Pacification of Insurrections.

First published in 1958 and revised in 1962, 1968, 1980, and 1988, *Laws Compiled* is updated semi-annually. The latest edition consists of ten loose-leaf volumes, consecutively paginated, covering constitutional law, the National Assembly, the five Yuans, the local government system, regulations promulgated under the Provisional Articles, and laws repealed. Volume 10 contains a general table of contents, but the compilation lacks an index.

### 4. Complete Book of the Six Laws

Cite to:

HSIN-PIEN LIU FA TS'AN-K'AO FA-LING P'AN-CHIEH CH'ÜAN-SHU (Current Complete Reference Book of the Six Laws, Decisions, and Interpretations) (Wu-nan t'u-shu kung-ssu) [hereinafter BOOK OF THE SIX LAWS (WU-NAN)].

TSUI HSIN TSUNG-HO LIU FA YAO-CHIH TSENG-PIEN P'AN-CHIEH CHIH-YIN FA-LING YÜAN-YIN SHIH-HSIANG YIN-TO CH'ÜAN-SHU (Most Recent Complete Six Laws with Synopses, Guide to Decisions and Interpretations and References to the Statutes) (San-min shu-chü) [hereinafter BOOK OF THE SIX LAWS (SAN-MIN)].

Note:

Page citation to either of these annotated compilations is unnecessary because of their frequent updates and ease of use. However, either edition of this handy book provides an excellent ready reference on ROC law and is the most up-to-date general compilation at any given time. Two major publishers, San-min and Wu-nan, compete to produce the most current and most comprehensive volume. Each produces a new edition quarterly.

Each edition includes a stroke order index by law and by subject.

Comparison charts of old and new versions of recently amended statutes are occasionally included as appendices. Other materials included vary with the edition or the publisher.<sup>15</sup>

The Wu-nan edition of September 1989, for example, contains a stroke order index of law titles reprinted. An index of legal terms cross-references relevant articles of laws. Judicial Yuan Interpretations, Supreme Court Civil and Criminal Precedents, Administrative Court Precedents, and legislative reasons for certain basic laws annotate the text. Further annotations refer the reader to other articles of law, official Precedent Synopses, and excerpts of Symposium Opinions using or explaining the same legal terms. Supreme Court Judgments chosen by the publisher from the Selected Judgments,<sup>16</sup> and covering the years 1979 to the present, are reprinted as an appendix and indexed by law. All Council Interpretations are reprinted in the official synopsis form as an appendix. Charts showing the 1982 revisions to the Civil Code, General Principles, and the 1985 revisions to the books of Family and Succession are also included.

## 5. A Compilation of Laws of the Republic of China

Cite to:

A COMPILATION OF LAWS OF THE REPUBLIC OF CHINA (David C.C. Kang, ed. 1974).

Note:

This three volume translation, first published in 1967, is the most comprehensive published translation of ROC laws. However, the translations are occasionally awkward and sometimes flatly inaccurate. Furthermore, it has not been updated since 1971. Nonetheless, it may be useful for codes that have not been significantly amended.

## III. JUDICIAL AUTHORITIES

### A. *The Courts and Procedure*

The Judicial Yuan is the supreme judicial organ, in charge of civil, criminal, and administrative litigation, as well as the imposition of sanctions on public officials.<sup>17</sup> However, the courts themselves are established under the following independent constitutional or legislative bases:

#### a) three-tiered court (Supreme, High, and District Courts)

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15. Materials mentioned in this section are discussed individually under the appropriate headings *infra* section III.

16. See *infra* section III.E.1.b.

17. ROC CONST. art. 77.

has general jurisdiction over civil and criminal litigation, and over non-litigious matters (e.g., notary public, registration of matrimonial property contracts, and incorporation of juristic persons);<sup>18</sup>

b) the Administrative Court and its jurisdiction are established under a separate Organic Law, as is the Committee on the Sanctioning of Public Officials;<sup>19</sup>

c) under the present Constitution, the power to interpret the Constitution lies with the Council of Grand Justices.<sup>20</sup>

Thus, as a matter of law, the Judicial Yuan is responsible for judicial administration,<sup>21</sup> but has no control over the exercise of jurisdiction by the courts or other authorized organs. The effective power of the Judicial Yuan lies in its authority to review lower court symposium opinions and to promote junior judges.

Prior to the present ROC Constitution, the Judicial Yuan held the powers now held by the Council of Grand Justices.<sup>22</sup> The Judicial Yuan's early constitutional interpretations still retain binding force.<sup>23</sup> Preceding the Judicial Yuan, the Court of Grand Review (*Ta-li Yuan*) bore these responsibilities, as well as those assigned to the Supreme Court today. Vestiges of its work also remain in force.<sup>24</sup>

Procedure is governed by separate codes of civil, criminal, and administrative procedure and by other relevant laws and regulations.<sup>25</sup> Complaint or appeal by a party is required to initiate civil,

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18. ROC CONST. art. 82; Fa-yüan tsu-chih fa (Organic Law of the Courts) art. 2 (promulgated Oct. 28, 1932, effective July 1, 1935, last amendment June 29, 1980) 33 CCLRRRC 19579 [hereinafter Organic Law of the Courts] (for text of last amendment see 5184 PRESIDENTIAL PALACE GAZETTE).

19. ROC CONST. art. 82; Hsing-cheng fa-yüan tsu-chih fa (Organic Law of the Administrative Court) (promulgated Nov. 17, 1932, last amendment Dec. 12, 1945) 33 CCLRRRC 19595; Kung-wu-yüan ch'eng-chieh wei-yüan hui tsu-chih fa (Organic Law of the Committee on Sanctioning Public Officials) (promulgated June 8, 1931, last amendment Jan. 16, 1985), 33 CCLRRRC 19597; see also ROC CONST. art. 77 (granting the Judicial Yuan jurisdiction over the sanctioning of public officials).

20. See *infra* section III.C. There is some question whether the power to interpret the ROC Constitution is exclusively reserved to the Council.

21. Council Interp. Shih-86 of Apr. 15, 1960, CIC 134 (4th ed. 1984).

22. See *infra* sections III. C. and G.

23. Precedent 60-T'ai-Tsai-170, [1971-74] COMPLETE PRECEDENTS 417.

24. Discussed *infra* section III.D.2.

25. Min-shih su-sung fa (Civil Procedure Law) (promulgated Dec. 26, 1930, last amendment Apr. 25, 1986) 34 CCLRRRC 19935 [hereinafter Civ. Pro.]; Ch'iang-chi chi-hsing fa (Law of Compulsory Execution) (promulgated Jan. 19, 1940, last amendment Apr. 22, 1975) 34 CCLRRRC 20017; Hsing-shih su-sung fa (Code of Criminal Procedure) (promulgated Jan. 1, 1935, last amendment Aug. 4, 1982) 34 CCLRRRC 20271 [hereinafter Code of Criminal Procedure]; Hsing-cheng su-sung fa (Code of Administrative Procedure) (promulgated Nov. 17,

criminal, or administrative court proceedings.<sup>26</sup> Criminal prosecution may be instituted not only by the public prosecutor but by an aggrieved private party.<sup>27</sup>

District Court holdings may be appealed to the High Court. A second appeal to the Supreme Court is available for controversies involving claims over NT\$300,000, or possible sentence of more than three years in prison.<sup>28</sup> The courts of first and second instance each try the case on the facts as well as on the law. However, the Supreme Court limits its review to the law and hears oral argument only in exceptional cases.<sup>29</sup>

Appeal must be initiated by motion of a party (which may include the public prosecutor), except for capital or life imprisonment sentences.<sup>30</sup> Even after final judgment, a case may be reopened and subject to retrial or extraordinary appeal for any of several causes prescribed by law, which include error on the facts or on the law.<sup>31</sup>

In the District Court, cases are tried by a single judge or a three-judge panel, depending on the weight of the case; High Court decisions are rendered by a three-judge panel; Supreme Court Judgments by a five-judge panel.<sup>32</sup> Decisions are by a simple majority vote of a panel.<sup>33</sup>

The Administrative Court accepts cases alleging an illegal administrative act or abuse of power. Oral proceedings are available only in exceptional cases. A five-member panel conducts the proceedings, deciding by majority vote.<sup>34</sup> There is no further appeal.<sup>35</sup>

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1932, last amendment Dec. 12, 1975) 34 CCLRRC 20405 [hereinafter Code of Administrative Procedure].

26. Civ. Pro., *supra* note 25, art. 388; Code of Criminal Procedure, *supra* note 25, art. 303; Code of Administrative Procedure, *supra* note 25, art. 1.

27. Code of Criminal Procedure, *supra* note 25, arts. 264 (prosecution by district attorney), 319 (prosecution by private party).

28. Civ. Pro., *supra* note 25, books 2, 3 (procedure of three instances); *id.* art. 466 (NT\$300,000); Code of Criminal Procedure, *supra* note 25, books 2, 3 (procedure of three instances); *id.* art. 376 (bar on appeal to third instance for lesser sentences); Code of Administrative Procedure, *supra* note 25, art. 3 (no appeal available).

29. Civ. Pro., *supra* note 25, arts. 476 (review of law by Supreme Court), 474 (oral proceedings exceptional); Code of Criminal Procedure, *supra* note 25, arts. 377 (review of law by Supreme Court), 389 (oral proceedings exceptional).

30. Civ. Pro., *supra* note 25, arts. 437 (first appeal), 464 (second appeal); Code of Criminal Procedure, *supra* note 25, art. 344, paras. 1 (party's motion), 4 (appeal without motion for cases of death or life imprisonment), art. 347 (D.A. appeal).

31. Civ. Pro., *supra* note 25, art. 496 (retrial for error in fact or law); Code of Criminal Procedure, *supra* note 25, arts. 420, 421 (retrial for factual errors), 411 (extraordinary appeal for error in law); Code of Administrative Procedure, *supra* note 25, art. 28 (retrial for error in fact or law).

32. Organic Law of the Courts, *supra* note 18, art. 3.

33. *Id.* art. 105.

34. Organic Law of the Administrative Court, *supra* note 19, art. 5 (panel); Hsing-cheng

The Council of Grand Justices interprets only upon motion of a government agency or private party.<sup>36</sup> Petitions to the Council are reviewed for eligibility by a three-member panel.<sup>37</sup> An eligible petition must be based on a dispute regarding application of the Constitution by a government agency, or based on a constitutional question concerning the text or application of a law or regulation. A petition will also be accepted where a petitioner's constitutional right appears to have been impaired and other legal remedies have been exhausted. Once accepted, the case goes before a plenary meeting of the Council (up to seventeen Grand Justices), where procedures laid down in the Law Governing the Council are followed to reach and draft a decision. A three-quarter quorum and three-quarter majority are required for constitutional interpretation, while for interpretation of laws or regulations, quorum and majority are reduced to one-half.<sup>38</sup> The chairman of the Council, who is either the president or vice-president of the Judicial Yuan, casts the tie-breaking vote, though he is not otherwise entitled to a vote.<sup>39</sup>

### *B. Hierarchy of Judicial Authorities*

Although the ROC is a civil law jurisdiction, and as such does not adopt the general concept of binding precedent, judicial authorities are nonetheless widely consulted, and certain of them are considered binding. There are areas of controversy, such as the weight to be accorded Interpretations of the Judicial Yuan, and whether Supreme Court Judgments other than those selected as Precedents are binding. Certain of these issues are discussed briefly in the relevant sections that follow.

#### Hierarchy of Judicial Authorities in Descending Order of Weight:

- Interpretations of the Council of Grand Justices
- Supreme Court Precedents
- Supreme Court Symposium Opinions
- Interpretations of the Judicial Yuan

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fa-yüan ch'u-wu kui-ch'eng (Measures for Administrative Court Processing Matters) art. 10 (promulgated June 24, 1933, last amendment June 19, 1962) 33 CCLRRRC 19669.

35. Civ. Pro., *supra* note 25, books 2, 3; *id.* art. 466; Code of Criminal Procedure, *supra* note 25, books 2, 3; *id.* art. 376; Code of Administrative Procedure, *supra* note 25, art. 3.

36. Ssu-fa yüan ta-fa-kuan hui-yi fa (Law Governing the Council of the Grand Justices of the Judicial Yuan) art. 4 (promulgated July 21, 1958) 33 CCLRRRC 19783 [hereinafter Law Governing the Council].

37. *Id.* art. 9.

38. *Id.* art. 13.

39. *Id.* art. 15.

Supreme Court Judgments  
 High Court Symposium Opinions  
 District Court Symposium Opinions

*C. Interpretations of the Council of Grand Justices*

The Council of Grand Justices, distinct from the Supreme Court, has the authority to interpret the ROC Constitution and to unify discrepancies between interpretations of laws and regulations.<sup>40</sup> Council Interpretations are binding upon all government agencies and private persons as of the date of publication, unless otherwise stated.<sup>41</sup> A Precedent inconsistent with a Council Interpretation is ineffective *per se*.<sup>42</sup> A Council Interpretation rendered in response to private petition has binding force upon the case for which the petition is filed, but does not decide the case directly;<sup>43</sup> where such an Interpretation holds that the Judgment itself was unconstitutional, or that the Judgment contravened the purpose of a law or regulation, it is grounds for extraordinary appeal of that Judgment, or for retrial of the case.<sup>44</sup>

The bulk of Council Interpretations are of laws and regulations.<sup>45</sup> However, without expressly asserting authority over the Supreme Court, in several recent cases the Council has shown an inclination to adopt an "as-applied scrutiny" approach, by reviewing cases within their factual settings rather than exclusively on the law.<sup>46</sup> This has raised a question of whether the Council will function increasingly as a fourth tier of the courts, especially in view of the fact that a Council Interpretation is cause for retrial or extraordinary

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40. ROC CONST. art. 78 (Judicial Yuan empowered to interpret the Constitution, other laws, and regulations); *id.* art. 79, para. 2 (delegating the power of art. 78 to the Council of Grand Justices); Ssu-fa yüan tsu-chih fa (Organic Law of the Judicial Yuan) art. 3, para. 1 (promulgated Mar. 31, 1947, last amendment June 29, 1980) 33 CCLRRC 19569 (the Judicial Yuan shall form the Council consisting of seventeen Grand Justices, which shall exercise the power to interpret the ROC Constitution and other laws and regulations). Law Governing the Council, *supra* note 36, art. 2 (establishing the Council); Nigel N.T. Li, *Constitution, TAIWAN (R.O.C.) BUSINESS LAW* (publication anticipated in 1990) (discusses judicial review and the Council's role in more depth).

41. Council Interp. Shih-188 of Aug. 3, 1984, CIC 1 (Supp. III 1988).

42. Council Interp. Shih-185 of Jan. 27, 1984, CIC 111 (Supp. II 1984).

43. Council Interp. Shih-177 of Nov. 5, 1982, CIC 44-67 (Supp. II 1984).

44. Council Interps. Shih-185, *supra* note 42 (unconstitutional); Shih-188, *supra* note 41 (contrary to purpose).

45. Whether to include Precedents in this category is controversial, as discussed *infra* section III.D.

46. Council Interps. Shih-177 of Nov. 5, 1982, *supra* note 43; Shih-185 of Jan. 27, 1984, *supra* note 42; Shih-188 of Aug. 3 1984, *supra* note 41; Shih-242 of June 23, 1989, [31]8 SSU-FA YÜAN KUNG-PAO (Judicial Yuan Gazette) 1 (1989) [hereinafter JUDICIAL YUAN GAZETTE].

appeal.<sup>47</sup>

Cite to:

SSU-FA YÜAN TA-FA-KUAN HUI-YI CHIEH-SHIH HUI-PIEN (Compilation of Interpretations of the Council of Grand Justices, Judicial Yuan) [hereinafter *CIC*].

Interpretation date:	Volume:
Council Interps. Shih-1 of Jan. 6, 1949 to Shih-147 of Dec. 24, 1976	Fourth ed. 1984
Council Interps. Shih-148 of May 6, 1977 to Shih-167 of Mar. 13, 1981	Supp. I 1981
Council Interps. Shih-168 of May 8, 1981 to Shih-187 of May 18, 1984.	Supp. II 1984
Council Interps. Shih-188 of Aug. 3, 1984 to Shih-217 of July 17, 1987	Supp. III 1988
Thereafter cite to the <i>Judicial Yuan Gazette</i> , described <i>infra</i> section VII.B.1.	

Note:

Council Interpretations are published in full (original application for interpretation, text of interpretation, reason, and dissent with its reason). Council Interp. Shih-80 of Nov. 26, 1958 was the first to include a dissenting opinion, but without identifying the dissenting Justices. Beginning with Council Interp. Shih-149 of June 17, 1977, dissenting opinions are attributed to their authors.

The first volume of *CIC* includes the Law of the Council and its Enforcement Rules as appendices.<sup>48</sup> A third unusual and valuable appendix is a chronological list of statutes and regulations amended or repealed from 1949 to 1975, citing the article numbers amended, the *Presidential Palace Gazette* issue in which the amendment may be found, and the organ making the amendment. Supplement I carries the list forward from 1976 to 1980. Supplement II reprints the list from Supplement I and follows through Dec. 1982. Supplement III extends the list from Jan. 1983 through Dec. 1986.

The first volume of *CIC* contains an index divided into eight categories (Constitution and related law, civil law, criminal law, and each of the five branches of government), with references to specific laws and articles for which Interpretations exist. The index carries summaries of official synopses and dates of the Interpretations for

47. For a discussion of these developments, see Nigel N.T. Li & Joyce C. Fan, *A Bigamy of Uncommon Definition - A Constitutional Interpretation of Uncommon Significance*, 4 JOURNAL OF CHINESE LAW — (Spring 1990).

48. See Law Governing the Council, *supra* note 36.

quick reference. Although the Supplements do not contain indices, there is a separately published index in two volumes:

SSU-FA YÜAN TA-FA-KUAN HUI-YI CHIEH-SHIH KUAN-HSI  
FA-LING CHIEN-CH'A PIAO (Index of Laws and Regulations  
Related to the Interpretations of the Council of Grand Jus-  
tices, Judicial Yuan) (Judicial Yuan 1988).

The first volume covers Council Interps. Shih-1 through 217, adopting the eight-category format used in the first volume of *CIC*. The second volume indexes the Council Interpretations contained in the four *CIC* volumes by Interpretation number and date of publication, with a gist of each Interpretation and the provisions of law to which it pertains.

#### D. Supreme Court Precedents

Prior to the sweeping amendment of the Organic Law of the Courts on December 22, 1989,<sup>49</sup> Supreme Court Precedents were selected among Supreme Court Judgments (discussed *infra* section III.E.) upon periodic review by Supreme Court Symposia. Following approval by the Judicial Yuan, they were compiled into the *Supreme Court Precedent Synopses* for publication. However, there was controversy over both the selection and the authority of Precedents.

The *de jure* binding force of Precedents is supported in the reasoning portion of a Council Interpretation expressly stating that "Precedents" (*p'an-li*) are binding on subsequent Judgments.<sup>50</sup> Furthermore, a Supreme Court Judgment contrary to a Precedent is cause for retrial.<sup>51</sup> However, prior to the amendment, selection of Precedents by Symposia was only impliedly supported by the Organic Law of the Courts, which required only that a reconciliation conference be called to resolve conflicts among "preceding judgments" (*p'an-chüeh hsien-li*).<sup>52</sup>

Yao Jui-kuang, a former Grand Justice, challenged the selection of Precedents, arguing that the Organic Law of the Courts granted equal force to the body of Supreme Court decisions in its entirety,

49. 5184 PRESIDENTIAL PALACE GAZETTE 1-9.

50. Council Interp. Shih-154 of Sept. 29, 1978, *CIC* 64 (Supp. I 1981); see also Shih-242, *supra* note 46.

51. Civ. Pro., *supra* note 25, art. 496; *id.* art. 468 (defining mistake of law as failure to apply law or improper application of law); Sup. Ct. Prec. 60-T'ai-Tsai-170, *supra* note 23 (interpreting Civ. Pro. art. 468 to include existing and valid Supreme Court Precedents).

52. Organic Law of the Courts, *supra* note 18, art. 25.



rather than only to those selected by the reconciliation conferences.<sup>53</sup> However, his position is that Judgments do not have the weight of law or regulation, and that their binding effect on subsequent cases is limited to the *de facto* influence of the system of higher court review.<sup>54</sup>

Former Grand Justice Yao also argued that the Judicial Yuan Rules for Precedent Reconciliation Conferences, enacted pursuant to former article 25 of the Organic Law of the Courts, incorrectly attempted to modify the latter law by limiting the definition of "preceding judgment" to those Judgments approved as Precedents by the Judicial Yuan and compiled into the Precedent Synopses.<sup>55</sup>

Under the recent amendment, which renumbered the articles of the Organic Law of the Courts, the controversial article 25 is now article 57. The amended article clearly allows any Supreme Court Judgment to be selected as a Precedent, replacing the ambiguous term "preceding judgments" with the term "Precedents." Under the new amendment, selections are approved by resolution of a Supreme Court Symposium of either or both the Civil and Criminal Chambers, then filed with the Judicial Yuan for reference only. The change removes Precedent selection from the application of the Precedent Reconciliation Conference Rules, which required Judicial Yuan approval of selections as part of the selection procedure.<sup>56</sup>

While article 57 of the amendment places the selection process firmly in the hands of the Supreme Court Symposia, the Reconciliation Conference Rules have not yet been amended to reflect the change, and the Symposium Rules lack a procedure for Precedent selection.<sup>57</sup> The procedure for overruling a Precedent, provided in article 9 of the Rules for Symposia, does not appear to be applicable to the selection of new Precedents. Therefore, the Judicial Yuan has made the promulgation of rules for selection and overruling Precedents one of its goals for 1990.<sup>58</sup> However, there is no indication whether this will be effected through an amendment to the Rules for Symposia or by an entirely new promulgation.

Though article 57 draws a clearer distinction between Supreme

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53. Yao Jui-kuang, *Lun p'an-li* (Commentary on Precedents), [53]9 FA-LÜ P'ING-LUN (Chao Yang Law Review) 2-15 (1987) [hereinafter CHAO YANG LAW REVIEW].

54. *Id.* at 2-3.

55. Ssu-fa yüan pien-ken p'an-li hui-yi kui-tse (Judicial Yuan Rules for Precedent Reconciliation Conferences) (promulgated Sept. 15, 1952) 33 CCLRRRC 19625.

56. *Id.* art. 2.

57. Tsui-kao fa-yüan ch'u-wu kui-ch'eng (Measures for Supreme Court Processing Matters) art. 32 (promulgated Nov. 10, 1972, last amendment June 20, 1977) 33 CCLRRRC 19639 [hereinafter Measures for Supreme Court Processing Matters].

58. SSU-FA CHOU-K'AN (Judicial Weekly), Dec. 27, 1989, at 1 (referring to a Judicial Yuan meeting of Dec. 21, 1989) [hereinafter JUDICIAL WEEKLY].

Court Judgments and selected Precedents, it does not lay to rest the controversy over their *de jure* authority, since it does not expressly address the question of binding authority.

To date, Precedents have been selected and published from Supreme Court Judgments of 1927 through 1979. The Supreme Court is now in the process of selecting Precedents among later Judgments for possible publication in 1990.<sup>59</sup> Meanwhile, the serial numbers and revised official synopses of new Precedents are published in the *Judicial Yuan Gazette* as they are selected.<sup>60</sup>

Although the Civil Code was enacted between 1929 and 1931, Precedents of the Court of Grand Review (*Ta-li Yüan*, 1911-1927), precursor of the Supreme Court, still may have impact on present day holdings.

Cite to the complete texts published in *Complete Precedents*, or to the appropriate volume listed below. We suggest citing by serial number, as explained *supra* section I.B.

Precedent date:	Cite to:
	GRAND REVIEW
1911-1927	PRECEDENTS
1927-1957	PRECEDENT SYNOPSES
1957-1979	COMPLETE PRECEDENTS

#### 1. Complete Precedents (Precedents 1957 to 1979)

Cite to:

TSUI-KAO FA-YÜAN MIN HSING SHIH P'AN-LI CH'ÜAN-WEN HUI-PIEN (Compilation of the Complete Texts of Supreme Court Civil and Criminal Precedents) (Sup. Ct. Editorial Comm. for Sup. Ct. Precedents) [hereinafter COMPLETE PRECEDENTS].

Volume coverage and publication dates:

[1957-8] published 1985	[1959-60] published 1984
[1961-2] published 1983	[1963-5] published 1982
[1966-70] published 1982	[1971-4] published 1981
[1975-6] published 1983	[1977-9] published 1984

Note:

This is the preferred source for citation of Precedents. Each book contains the complete text of Precedents of the period divided

59. Telephone inquiry to the Judicial Yuan, Feb. 2, 1990.

60. For example, Sup. Ct. Judgment 71-T'ai-Shang-2275, selected as a Precedent by the Sup. Ct. Symposium of Oct. 6, 1987, revised synopsis in [30]1 JUDICIAL YUAN GAZETTE 54 (1988). The original text and synopsis of the former Judgment can be found in *Selected Judgments*.

among four parts covering civil and criminal law, civil and criminal procedure. Each entry includes official synopses, full text, and references to the most relevant provisions of law. A chronological index by case number is included in each volume except 1966-70.

## 2. Grand Review Precedents (Precedents 1911 to 1927)

Cite to:

TA-LI YÜAN P'AN-CHÜEH-LI CH'ÜAN-SHU (Complete Precedents of the Court of Grand Review) (Secretariat of the Judicial Yuan 1978) [hereinafter GRAND REVIEW PRECEDENTS].

Note:

This single volume work was originally compiled in 1931 by Chief Judge Kuo Wei, incorporating the two volumes of Precedents published by the Court of Grand Review itself (1911-18 and 1919-23) and adding other Precedents selected thereafter but never officially compiled. The original preface explains that cases were actually reviewed and selected by the judges of the Court of Grand Review for inclusion as Precedents. Reprinted by the Secretariat of the Judicial Yuan in 1978, the original prefaces and editorial notes as well as a listing of the original editing judges, all of whom were members of the Court of Grand Review, have been retained.

The book includes a list of digests of the official synopses covered, and a list of the cases with references to the most relevant laws of the time. There is an index classified by law and article.

## 3. Precedent Synopses (Precedents 1927 to 1979)

Cite to:

TSUI-KAO FA-YÜAN P'AN-LI YAO-CHIH (Supreme Court Precedent Synopses) (Sup. Ct. Editorial Comm. for Sup. Ct. Precedents ed., Publications Committee for Sup. Ct. Precedents 7th ed. 1983) [hereinafter PRECEDENT SYNOPSES].

Volumes and Coverage:

Vol. 1 Civil Law and Civil Procedure

Vol. 2 Criminal Law, Criminal Procedure, and Miscellaneous (e.g., Constitution, Organic Law of the Courts, Law Governing Attorneys, Law for Central Standardization of Laws and Regulations).

Note:

Precedents from 1927 to 1957 should be cited to this source since the *Complete Precedents* volume covering the period has yet to be published. Indexed chronologically by case number, the 1983 edition

of *Precedent Synopses* is cumulative through 1979. Previous editions covered only through 1974. Annotations are organized by law and regulation, citing relevant Precedent.

### E. Supreme Court Judgments

A case decided by the Supreme Court but not selected as a Precedent is a Judgment. Judgments carry a serial number for identification. Published Judgments are found in a variety of sources. In most cases, unpublished civil Judgments can be obtained upon inquiry with the clerks of the court.<sup>61</sup> On April 17, 1989, the Judicial Yuan determined that each court should designate a site for exhibition and public review of its final Judgments.<sup>62</sup> Furthermore, the December 22, 1989 amendment to the Organic Law of the Courts requires the civil and criminal courts of the three instances to regularly publish their Judgments.<sup>63</sup>

A number of scholars and publishing houses have produced unofficial compilations of cases drawn from various sources. The authority of these secondary sources rests on that of the compiler or publisher. It is not deemed improper for a judge to express personal views in his writings or to draw together selected cases in areas of special expertise. Therefore, unofficial compilations by members of the judiciary may provide indications of policy or potential future case results. These are particularly useful for topical research.

#### 1. Preferred Sources

Cite to these sources, in order of preference. If a Judgment cannot be located in the recommended sources, cite to a secondary source. Citation forms and bibliographical notes are placed at the end of this section and in the next section. A selection of secondary and topical sources can be found *infra* sections V, VI, and VII.

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61. Civ. Pro., *supra* note 25, art. 242 (a third party may review an excerpt or copy of documents in court files with the court's permission upon a showing of his legal interest in the case or if the parties to the case agree).

62. Judicial Yuan Letter Yuan-T'ai-T'ing-4-3151 of April 17, 1989, [31]6 JUDICIAL YUAN GAZETTE 35 (1989).

63. Organic Law of the Courts, *supra* note 18, art. 83. Guidelines on compliance with the new requirements are a priority on the Judicial Yuan's 1990 program, JUDICIAL WEEKLY, Dec. 27, 1989, at 1.

Judgment date:	Cite to:
Before 1950	secondary source where reprinted
1950-70	JUDICIAL Y. GAZ. or UNIVERSITY COMPILATION
1971-79	JUDICIAL Y. GAZ. or Topical Compilations of the Supreme Court (official compilations)
1980-present	JUDICIAL Y. GAZ. or SELECTED JUDGMENTS

The *Judicial Weekly*, discussed *infra* section VII.A, occasionally carries Supreme Court Judgments before they are published in the *Judicial Yuan Gazette*. However it is deemed a secondary source and case numbers are often omitted.

*a. Judicial Yuan Gazette*

See discussion *infra* section VII.B.1.

*b. Selected Judgments*

Cite to:

TSUI-KAO FA-YÜAN MIN HSING SHIH TS'AI-P'AN HSÜAN-CHI (Compilation of Selected Civil and Criminal Judgments of the Supreme Court) (Sup. Ct. Editorial Committee for Legal Materials ed.) [hereinafter SELECTED JUDGMENTS].

Note:

This is a periodical published quarterly from 1980-83 (vols. 1 - 4) and semi-annually 1984-86 (vols. 5 - 7). Publication generally lags behind Judgment dates by one to two years.

Divided into *chüan* and *ch'i* (cited as volume and issue or number), each volume after the first arranges complete texts of cases topically by law and article, in the same order as the Six Laws (ROC Constitution is omitted). The first volume merely divides the cases into civil and criminal parts. There is no index.

As mentioned above, the Supreme Court Symposia are in the process of selecting Precedents among the Judgments after 1979. When a case is selected as a Precedent, its official synopsis, which accompanies the full opinion in *Selected Judgments*, becomes the basis for the Precedent synopsis. While full Judgment texts with their official synopses can also be found in the *Judicial Yuan Gazette*, this is the most centralized and complete source for Judgments of the period 1980-86.

## 2. Topical Sources of the Supreme Court

### a. *Supreme Court Compilation on International Trade and Maritime Law*

Cite to:

TSUI-KAO FA-YÜAN KUO-MAO CHI HAI-SHANG P'AN-CHÜEH HSÜAN-CHI (Selected Supreme Court Judgments on International Trade and Maritime Law) (Ministry of Justice ed., Ssu-fa tung-hsün she) [hereinafter SUP. CT. INT'L. TRADE AND MARITIME COMP.].

Volumes and coverage:

Judgments 1971-6	vol. 1 (1978)
Judgments 1974-9	vol. 2 (1979)

In these volumes full texts of cases are grouped by subject, roughly in the sequence of the phases of an international transaction. Each case is accompanied by its official synopsis and references to most relevant articles of law. An index of both volumes by case number is included in the second volume.

### b. *Special Compilations*

Cite to:

TSUI-KAO-FA-YÜAN MIN-SHIH TS'AI-P'AN HSÜAN-CHI, YOU-KUAN . . . CHIH TS'AI-P'AN (Special Compilation of Supreme Court Civil Judgments on . . .) (Sup. Ct. Editorial Committee for Legal Materials ed.) [hereinafter SPECIAL COMP. OF . . . JMTS.].

Coverage:	Volumes:
1970-85	SPECIAL COMP. OF COMMERCIAL LAW (1987)
1961-83	SPECIAL COMP. OF MEDICAL MALPRACTICE (1986)
1970-84	SPECIAL COMP. OF CONSTRUCTION LAW (1985)
1976-85	SPECIAL COMP. OF CRIMINAL LAW (1986), 2 vols.
1976-86	SPECIAL COMP. OF COMPULSORY EXECUTION LAW (1988)

Note:

This recent official series has been very well received in Taiwan though it lacks an index.

The Commercial Law volume compiles cases on the four laws contained in the category: company law, negotiable instruments law, insurance law, and maritime law. Entries are organized simply by law.

The cases in the medical malpractice volume are divided between a civil and a criminal part, each subdivided to treat liability of

licensed and non-licensed health practitioners separately. Within each category the cases are arranged by issue.

The medical malpractice and commercial law volumes use the same presentation format: each case carries full text, synopsis, and references to relevant articles of law. The table of contents includes a further abridgment of the case synopses.

The volume on construction law focusses on cases in which one party provided the land and another the funding for a construction project. Precedents, Symposium Opinions, and Judgments are placed in three separate sections. Full text, synopses, and relevant articles of law are provided for each case entry. However the discussion portions of Symposium Opinions are omitted. The two volumes on criminal law cover the collected cases in a similar fashion.

The compulsory execution volume collects materials from 1976 through 1986. It is divided into Compulsory Execution and Bankruptcy sections and subdivided into Precedents, Symposium Opinions, and Judgments. Each subdivision is arranged by relevant article of law. The Symposium Opinions carry conclusions only, while the Precedents and Judgments, each headed by a digest of the official synopsis, contain the full texts and synopses.

### 3. University Compilation

Cite to:

CHUNG-HUA-MIN-KUO TS'AI-P'AN LEI-PIEN, . . . PU-FEN (Classified Compilation of ROC Judgments, . . . Part) (National Taiwan University and Cheng-chih University Comm. for Research on Precedents ed., Cheng-chung shu-chü 1976) [hereinafter UNIVERSITY COMPILATION . . . PART].

Parts:

UNIVERSITY COMPILATION CIVIL PART (12 vols. plus index)

UNIVERSITY COMPILATION CRIMINAL PART (10 vols. plus index)

UNIVERSITY COMPILATION ADMINISTRATIVE PART (20 vols. plus index)

Note:

This series includes Precedents and Judgments within each Part. The series was financially supported by the National Science Foundation (*Kuo-chia k'e-hsüeh wei-yüan-hui*), a government agency under the Executive Yuan. Materials were selected directly from the files of the Supreme and Administrative Courts. Therefore, this compilation has quasi-official status although it is not a formal official source.

All Precedents for the period 1950-70 are reprinted in full. Though the Judgments compiled date from 1950-70, the preface explains that they were selected to reflect majority opinions from 1911-50, to demonstrate the trend of the law, or to indicate directions for further research.

Cases are chronologically numbered and printed together with a synopsis. Each case is cross-referenced to the most relevant articles of law, Council Interpretations, Grand Review Interpretations, Judicial Yuan Interpretations, Precedents of both the Supreme Court and the Court of Grand Review, Supreme Court Symposium Opinions, and pages of selected academic works.

There is an unusual topical index using a key system to cross reference cases touching on related areas of law; and a particularly useful list of topically relevant academic works is found in the first volume of each section. Another unusual inclusion, an errata adjusting the numbering of certain cases in the *Precedent Synopses*, is now obsolete as the *Precedent Synopses* have since been republished correctly.

#### 4. Supreme Court Civil Judgment Synopses

Cite to:

TSUI-KAO FA-YÜAN MIN-SHIH TS'AI-P'AN YAO-CHIH HUI-PIEN (Compilation of Supreme Court Civil Judgment Synopses) (Ministry of Judicial Administration ed., Ssu-fa tung-hsün she 1977) [hereinafter SUP. CT. CIVIL JMT. SYNOPSES].

Note:

The Ministry of Judicial Administration, editor of this work, is the precursor of the Ministry of Justice. This collection of Judgment synopses from July 1965 to June 1977 lacks an index but may be useful for initial research on the period because entries include the number of the gazette where the full text of each case was originally published. Synopses are arranged by topic according to their sequence within the Civil Code, and under certain other topics (commercial and administrative laws, civil procedure, Organic Law of the Courts, and administrative remedy law). The volume also includes some Judgments, in synopsis form, never published in a gazette.

#### 5. Civil Cases Remanded

Cite to:

MIN-SHIH TS'AI-P'AN FA-HUI KEN-SHEN YAO-CHIH HSÜAN-CHI (Compilation of Selected Synopses of Sup. Ct. Civil Cases Remanded)



(First Dept. of the Judicial Yuan ed., Judicial Weekly) [hereinafter CIVIL CASES REMANDED].

Coverage:	Volumes:
Jan. 1980 - June 1981	vol. 1 (5th ed. 1984)
July 1981 - Dec. 1982	vol. 2 (1983)
Jan. 1983 - June 1984	vol. 3 (1985)
Mar. 14, 1984 - Nov. 17, 1986	vol. 4 (1987)

Note:

This compilation collects Supreme Court Judgments remanding civil cases to the Taiwan High Court. Judgments, arranged by category of law (e.g., civil code, commercial laws, civil procedure, conflict of laws, arbitration, land), are printed in synopsis form with case number and date. Volume 3 adds the topical areas of patent, trademark, copyright, labor, banking, and taxation. Each Judgment carries a digest of its official synopsis for easy issue searches. Where a Judgment concerns more than one law, it appears only under the most relevant law.

An interesting appendix to the first volume comprises copies of Judicial Yuan Letters to the Supreme Court and to the Taiwan High Court, listing the serial numbers of cases remanded in 1980 and the causes for remand, which include: 1) facts remaining to be verified; 2) error in legal reasoning; 3) lack of reasons for the decision; 4) failure to investigate key evidence; 5) contradiction among reasons; 6) failure to demand fulfillment of the burden of proof; 7) significant procedural defect; and 8) factual statement inadequate to form the basis of a legal judgment.

#### *F. Supreme Court Symposium Opinions*

Supreme Court Symposia are principally intended to unify discrepancies among Supreme Court Judgments. The Chief Judges of the civil or criminal chambers, or all members of one or both chambers, may be convoked to unify discrepancies in legal holdings or for "any other significant matters, including the overruling of a Precedent."<sup>64</sup> Symposium Opinions and conclusions, though not carrying

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64. Measures for Supreme Court Processing Matters, *supra* note 57, art. 32; Tsui-kao fa-yüan min hsing shih t'ing hui-i chi min hsing shih t'ing tsung hui-yi kui-tse (Rules for Symposium of Civil/Criminal Chambers and General Symposia of Both Civil and Criminal Chambers of the Supreme Court) art. 9 (promulgated July 17, 1979) [hereinafter Rules for Symposia] 33 CCLRRC 19653-54. The procedure for overruling a Precedent has been used only once. Under the Rules for Symposia, to overrule a Precedent a majority of judges present at a Symposium of the Civil or Criminal Chamber meeting the two-thirds quorum requirement must first approve, then two-thirds of all judges in a General Symposium of Civil and Criminal

the weight of Precedents, are published and serve as the basic reference tool of Supreme Court judges. Thus, they in fact operate to guide the lower courts and the various chambers of the Supreme Court in their decisions.

Former Grand Justice Yao has vigorously criticized the publication of Symposium Opinions as unduly influencing later decisions.<sup>65</sup> He contends that the majority vote approving a Symposium Opinion can resolve only discrepancies among Supreme Court decisions, and that a Symposium Opinion does not necessarily represent the appropriate or correct holding for similar cases to come.<sup>66</sup> In fact, some Symposium Opinions that appeared in an early edition were later withdrawn for unstated reasons,<sup>67</sup> giving rise to a suspicion that they were found to be in error. Former Grand Justice Yao argues that, as expressly stated in the preface of the Supreme Court Symposia Compilation, the Compilation is intended only for Supreme Court judges to use as a reference, and Symposium Opinions are not to be equated with Interpretations and Precedents. Therefore, he maintains, the publication of Symposium Opinions reveals an intention to improperly influence the lower courts.<sup>68</sup>

Cite to:

TSUI-KAO FA-YÜAN MIN HSING SHIH T'ING HUI-YI CHÜEH-YI LU CH'ÜAN-WEN HUI-PIEN (Compilation of Opinions and Conclusions of the Symposia of the Civil and Criminal Chambers of the Sup. Ct.) (Sup. Ct. Editorial Committee for Legal Materials ed. 1985) [hereinafter SUP. CT. SYMPOSIA COMP.].

Volumes and coverage:

Civil cases	vol. 1
Criminal cases	vol. 2

Note:

The first edition was published under the following name:

TSUI-KAO FA-YÜAN MIN HSING SHIH T'ING HUI-YI CHÜEH-YI LU LEI-PIEN (Classified Collection of Civil and Criminal Symposia of the

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Chambers must approve; finally, the president of the Judicial Yuan must be notified to call a Precedent Reconciliation Conference for final passage.

65. Yao, *Lun tsui-kao fa-yüan min-shih t'ing chih chüeh-yi shang* (Commentary on Symposium Opinions of the Supreme Court: Part I), [55]5 CHAO YANG LAW REVIEW 2 (1989) [hereinafter Yao, *Commentary on Symposium Ops.*].

66. *Id.* at 4.

67. For example, Sup. Ct. Symposium Op. of Oct. 3, 1947, TSUI-KAO FA-YÜAN MIN HSING SHIH T'ING HUI-YI CHÜEH-YI LU LEI-PIEN (Classified Collection of Civil and Criminal Symposia of the Supreme Court) 152 (Supreme Court ed., Clerical Department of Supreme Court 1962).

68. Yao, *supra* note 65, at 3.

Supreme Court) (Supreme Court ed., Clerical Department of the Supreme Court 1962) [hereinafter CLASSIFIED COLLECTION].

That edition covered Symposia from 1928 to 1971. The second edition carried forward through 1979. In 1983, the Editorial Committee thoroughly revised the *Classified Collection* for publication, covering Symposia from 1928 through 1982.

The 1985 edition is renamed and cumulative to 1984. Unlike the earlier editions, which compiled only conclusions, each entry in the 1985 edition consists of a hypothetical issue (usually derived from actual cases), various viewpoints on the appropriate conclusion, and the Symposium Opinion passed by the majority. The opinions are arranged by law and article. Materials are indexed by Symposium date and relevant articles of law. In addition to this formal compiled source, Supreme Court Symposium Opinions may be found in the *Judicial Yuan Gazette* and in the *Judicial Weekly*.

### G. *Interpretations of the Judicial Yuan*

Interpretive powers were first granted to the Court of Grand Review before consolidation of the ROC government.<sup>69</sup> In April 1927, the consolidated government changed the name of this court to the Supreme Court, which was then empowered to interpret laws and regulations.<sup>70</sup> In November 1928, interpretive authority was delegated to the Judicial Yuan on condition that its interpretations be approved by resolution of the president and chief judges of the Supreme Court chambers.<sup>71</sup> The present Constitution, effective since December 25, 1947, assigns this interpretive authority to the Council of Grand Justices under the Judicial Yuan, as explained *supra* section III.B.

From 1927 to 1948, the Judicial Yuan published 4,097 interpretations altogether. Those published prior to April 1945 are referenced as “*Yüan . . . No. . . .*” and those thereafter as “*Yüan-Chieh . . . No. . . .*” Though some Judicial Yuan Interpretations have become obso-

69. Fa-yüan pien-chih fa (Law for Institutionalization of Courts) art. 35, 1 SSU-FA LI-KUI (Laws and Statutes on the Judiciary) 16-30 (Ch'ing dynasty promulgated Dec. 8, 1908, ROC promulgated May 1915).

70. Tsui-kao fa-yüan tsu-chih chan-hsing t'iao-li (Provisional Statute on the Organization of the Supreme Court), reprinted in 2 SSU-FA-YÜAN SHIH-SHIH CHI-YAO (Compendium of the History of the Judicial Yuan) 1236-37 (Editorial Committee on Compendium of the History of the Judicial Yuan ed. 1982).

71. Kuo-min cheng-fu ssu-fa yüan tsu-chih fa (Organic Law of the Judicial Yuan of the National Government) art. 4 (promulgated Oct. 20, 1928, amendment Nov. 17, 1928, repealed May 31, 1947), 1 CHUNG-HUA-MIN-KUO FA-KUI HUI-PIEN (Compilation of Laws and Statutes of the Republic of China) 11 (Editorial and Publication Department of the Legislative Yuan ed. 1933).

lete due to changes of law, binding authority is accorded to those that do remain valid.<sup>72</sup>

## 1. Judicial Yuan Interpretations

Cite to:

SSU-FA YÜAN CHIEH-SHIH HUI-PIEN (Compilation of the Interpretations of the Judicial Yuan) (Secretariat of the Judicial Yuan 1976) [hereinafter *CIJ*].

Note:

The *CIJ* was first published in Dec. 1954 in three volumes. Though it reprinted the full text of interpretations, it omitted applications for interpretation. Inclusion of the applications since the third edition (1973), resulted in an expansion to five volumes.

Volume 1 is all index, categorizing the interpretations into nine subject areas: the Constitution, each of the five branches of government, civil matters, criminal matters, and laws on the organization of local government and people's associations. Indexed by article of law within a subject area, each Interpretation is summarized in digest form. Where an Interpretation addresses more than one issue of law, it is indexed under each relevant article. Interpretations amending or augmenting one another are arranged in chronological order. Three charts included as appendices cross-reference article numbers of "old" and "new" Codes of Civil Procedure, Criminal Procedure, and the Criminal Code.<sup>73</sup>

Volumes 2 through 5 compile the full texts of Interpretations *Yüan*-1 of Feb. 16, 1929 through *Yüan-Chieh*-4097 of June 23, 1948 (except *Yüan*-993, which remains unpublished due to confidentiality), together with the applications for interpretation. Two hundred forty-five Interpretations of the Supreme Court dating from Dec. 15, 1927 to Nov. 20, 1928, and referenced *Chieh*, are appended at the end of vol. 5.

## 2. Interpretations of the Court of Grand Review

Cite to:

TA-LI YÜAN CHIEH-SHIH-LI CH'ÜAN-SHU (Complete Texts of Interpretations of the Court of Grand Review) (Secretariat of the

72. Sup. Ct. Prec. 60-T'ai-Tsai-170, *supra* note 23 (holding that where a final judgment may be retried and revoked if the laws and/or regulations on which it was based were mistakenly applied, the "laws and regulations" (*fa-kui*) include laws, regulations, Judicial Yuan Interpretations then in force, Council Interpretations, and existing Supreme Court Precedents).

73. The "new" Codes of Civil and Criminal Procedure are those as amended Dec. 26, 1945. However the "new" Criminal Code is unspecified.

Judicial Yuan 1978) [hereinafter GRAND REVIEW INTERPRETATIONS].

Note:

This work, like the *Grand Review Precedents*, was originally compiled by Chief Judge Kuo Wei in 1931, covering the Interpretations of the Court of Grand Review from *Tung*-1 of Jan. 15, 1913 to *Tung*-2012 of Oct. 2, 1927 (omitting only *Tung*-151, unpublished due to confidentiality). Each Interpretation is printed in full, sometimes including the application for interpretation.

The book carries three indices. The first, organized in order of interpretation number, lists a digest of each interpretation and relevant provisions of both new and old laws. The other two are organized by category of law, one cross referencing to articles of old law, the other to new law.

#### H. High and District Court Materials

Though Taiwan High and District Court opinions carry no precedential weight in principle, District Courts periodically hold symposia on selected issues.<sup>74</sup> The Taiwan High Court transfers memoranda of these symposia to the Judicial Yuan (First Department) which reviews them and adds comments before compiling the discussions into volumes. The Taiwan High Court has also published the works of its own symposia. These materials do influence holdings in subsequent cases and may illustrate the trend of the courts.

Former Justice Yao again criticizes this influence, maintaining that the Judicial Yuan, as an organ of judicial administration, legally has no power of interpretation and that its First Department has not been granted the power to interpret laws either in the form of comments on review or otherwise.<sup>75</sup> Furthermore, he argues, as First

74. This appears to be changing rapidly, *T'ai-wan kao-teng fa-yüan chi suo-shu ti yi er shun fa-yüan ts'ai-p'an hsüan-chi shih-shih yao-tien* (Guidelines for Selection and Compilation of Judgments of the Taiwan High Court and Its Subordinate Courts of the First and Second Instances) [hereinafter Guidelines for the Selection and Compilation of Judgments], Judicial Yuan Letter Ching-Wen-18 of Jan. 4, 1989 (unpublished), called for compilation, though not necessarily publication to the general public, of lower court final judgments that would enlighten cases to come. However, the Dec. 22, 1989 amendment to the Organic Law of the Courts requires courts to regularly publish their judgments (art. 83). In the wake of the amendment, the Taiwan High Court has begun a comprehensive compilation of all its Judgments from Jan. 1990. Taipei and Keelung District Courts have also prepared sites for exhibit and public review of Judgments in accordance with Judicial Yuan Letter Yuan-Tai-Ting-4-3151, of Apr. 17, 1989, *supra* note 62.

75. Yao, *Lun ssu-fa yüan chih chieh-shih ch'üan yü chieh-shih* (Commentaries on the Judicial Yuan's Power of Interpretation and Its Interpretations) [hereinafter *Commentaries on Judicial Yuan Interpretations*], 124 FA HSÜEH TS'UNG-K'AN (China Law Journal) 1, 2 (1986)

Department personnel are not necessarily more experienced than the judges attending the symposia, there is no assurance of the reliability or appropriateness of their comments on review. Yet, *de facto* authority is granted to those comments because the Judicial Yuan is empowered to review the performance of judges in deciding on promotions.<sup>76</sup> Former Justice Yao considers that the practice of review is likely to deter progress in legal thought in subsequent rulings and should be abolished.<sup>77</sup>

### 1. High Court Symposium Opinions

Cite to:

T'AI-WAN KAO-TENG FA-YÜAN LI-NIEN FA-LÜ TSO-T'AN-HUI-PIEN (Compilation of Works of Legal Symposia of the Taiwan High Court) (1986) [hereinafter HIGH COURT SYMPOSIA COMP.].

Note:

This Compilation, divided into three volumes, encompasses the symposium opinions of the Taiwan High Court and its subordinate District Courts from 1966 through 1985. The first volume covers cases on the Civil Code and its special laws (commercial laws, land, taxation, patent, copyright, labor, conflict of laws, etc.); the second covers cases on the Code of Civil Procedure and its special laws (compulsory execution, bankruptcy, non-litigious matters, notarization, etc.); and the third covers cases on the Criminal Code, the Code of Criminal Procedure and others (*e.g.*, state liability, habeas corpus). The third volume includes an appendix exhibiting thirty-nine decisions, both civil and criminal, not qualified for appeal to the court of third instance.

Each volume is organized according to article of law and legal issue. The hypothetical issues presented usually derive from actual cases. Each issue is followed by the diverse opinions presented at the symposium, the discussion, the symposium conclusion, the comment by the First Department of the Judicial Yuan, the date of the symposium, and the organs that participated. None of the volumes contains an index.

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[hereinafter CHINA LAW JOURNAL]. See Organic Law of the Judicial Yuan, *supra* note 40, art. 12 (listing duties of First Department; power of interpretation is not included).

76. Ssu-fa jen-yüan jen-shih t'iao-li (Statute on Judiciary Personnel) art. 10 (promulgated Dec. 22, 1989) 5148 PRESIDENTIAL PALACE GAZETTE 20 (1989).

77. *Commentaries on Judicial Yuan Interpretations*, *supra* note 75, at 15.

## 2. District Court Symposium Opinions

Cite to:

MIN-SHIH FA-LÜ WEN-T'I YEN-CHIU HUI-PIEN (Compilation of Research on Legal Issues in Civil Matters) (First Department of the Judicial Yuan ed., Judicial Weekly) [hereinafter DISTRICT COURT SYMPOSIA COMPILATION].

Volumes:

Symposia of 1980-1 (152 issues)	vol. 1 (6th ed. 1986)
Symposia of Jan. 1981-Dec. 1982 (214 issues)	vol. 2 (1983)
Symposia of 1983 (152 issues)	vol. 3 (1984)
Symposia of 1984 (197 issues)	vol. 4 (1986)
Symposia of 1985-6 (100 issues)	vol. 5 (1987)
Symposia of 1987 (112 issues)	vol. 6 (1988)

Note:

This series collects High and District Court Symposium Opinions and the review comments by the First Department of the Judicial Yuan. The materials compiled were originally published in the *Judicial Yuan Gazette* or the *Judicial Weekly*. Symposium records are arranged by law. Each entry contains the date of the symposium and the organs that participated, a digest and the full text composed of issue, relevant article of law, diverse viewpoints presented in discussion, conclusion, and review comments. Though it lacks an index, the compilation includes detailed tables of contents, cross-references, articles of law, and relevant digests.

## 3. Seminars

The judges of the High and District Courts attend seminars in addition to the lower court Symposia. The seminars are issue focussed meetings, called by the Judicial Yuan sixteen times since March 1982.

Cite to:

MIN-SHIH FA-LÜ CHUAN-T'I YEN-CHIU (Research on Legal Issues in Civil Matters) (First Department of the Judicial Yuan ed., Judicial Weekly) [hereinafter CIVIL LAW SEMINARS].

Volumes and Coverage:

Penalty and Deposit, Construction Contracts, Right to Person, and Non-property Damages	vol. 1 (1982)
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Conflict of Laws, Corporations, Negotiable Instruments, Admi- nalty, Insurance	vol. 2 (2d ed. 1984)
Labor	vol. 3 (1986)
Trademark, Patent, Copyright, Computer Law	vol. 4 (1987)
Compulsory Execution	vol. 5 (1988)

#### IV. ADMINISTRATIVE MATERIALS

##### A. Central Government Administrative Promulgations

###### 1. Standardization

Under article 7 of the Standardization Law, administrative organs may promulgate regulations based on a grant of statutory authority or based on a delegation of duty under another administrative regulation. Matters enumerated in article 5 of the Standardization Law are subject to control through legislation only, and are not to be regulated by administrative promulgation.<sup>78</sup> In any case, administrative regulations may not conflict with the ROC Constitution, any law, or any regulation of a superior authority.<sup>79</sup>

Article 3 of the Standardization Law lists the nomenclature for administrative regulations (*ming-ling*), which may be described as follows:<sup>80</sup>

<i>kui-ch'eng</i>	regulation, issued pursuant to law or statute, on the organization, personnel or duty of an agency
<i>kui-tse</i>	order or rules, issued pursuant to law, on how to perform the duty of an agency or on how to implement a law
<i>hsi-tse</i>	rule, regulation detailing a provision of law, commonly used for enforcement rules
<i>pan-fa</i>	measure, regulation designating the methods and means of enforcing orders of an agency

78. Standardization Law, *supra* note 11, art. 6; *id.* art. 5 (the following matters shall be regulated and governed by laws: 1) matters expressly reserved for enactment of law under the Constitution or other law; 2) matters pertaining to the rights and obligations of the people; 3) matters pertaining to the organization of government agencies; and 4) other matters so significant or critical that they should be enacted as laws).

79. *Id.* art. 11.

80. Guidelines for Legislative Tasks, *supra* note 13; *see also*, H.Y. T'U, FUNDAMENTALS OF ADMINISTRATIVE LAW 72-73 (H.Y. T'u ed., 2d ed. 1983).



<i>kang-yao</i>	ordinance, regulation explaining fundamental principles of matters covered
<i>piao-chun</i>	standards, specifications, or conditions for carrying out the matters in question
<i>chun-tse</i>	criteria, guidelines, formalities or procedure for enforcing an administrative measure

Government agencies and organs may issue internal rules, directives, or bylaws under a delegation of regulatory authority, or within the scope of their administrative discretion, as long as the contents are not in violation of laws or regulations.<sup>81</sup> They are used to control internal operations or as guidelines for the enforcement of laws or regulations.<sup>82</sup>

These internal materials do not necessarily conform to the Standardization Law's nomenclature, nor to the prescribed organizational hierarchy of articles 8 and 9 of the Standardization Law. Though binding as a matter of supervisory hierarchy on subordinate agencies and their officials, these administrative materials do not bind the courts.<sup>83</sup> However, in practice, they have substantial influence on the performance of agency functions. The following works discuss the nature and application of these materials and how they differ from laws and regulations:

Hu K'ai-ch'eng, *Wo-kuo hsien-hsing fa-chih chieh-kou chi hsing-cheng fa-kui chih chien-t'ao cheng-li* (A Review of the Current Structure of the ROC Statutory Framework and Administrative Regulations), [62] FA-HSÜEH LUN-TS'UNG (Law Journal of National Taiwan University) 105-18 (1977).

Kao Ching-yüan, *Lun yao-tien chu-yi shih-hsiang teng chih t'e-chi* (A Discussion on Peculiarities of Directives, Guidelines, etc.), [30]12 CHÜN-FA CHUAN-K'AN (The Military Law Journal) 34-37 (1984) [hereinafter THE MILITARY LAW JOURNAL].

P'eng Shao-chin, *Wei-jen li-fa yü hsing-cheng ming-ling chih li-lun yü shih-yung* (Theory and Practice on the Delegation of the Power to Promulgate Laws and Administrative Regulations), [31]4 THE MILITARY LAW JOURNAL 20-33 (1985).

81. Administrative Court Precedent 58-P'an-252, 2 ADMIN. CT. PREC. SYNOPSIS 1107-8.

82. An example is the Taiwan High Court's Guidelines for the Selection and Compilation of Judgments, *supra* note 74.

83. See Council Interp. Shih-216 of June 19, 1987 CIC 196-208 (Supp. III 1988).

## 2. Sources

While the Standardization Law requires that agency promulgations be forwarded to the Legislative Yuan and published, neither is a condition necessary to bring the regulations into effect. Although there is a committee for centralized publication in the Executive Yuan, it has not taken the lead in publishing to date.<sup>84</sup>

Sources used to research administrative law vary. The *CCLRRC*, cited under Statutes, *supra* section II.C.1, also carries many administrative provisions. Administrative agencies occasionally publish topical compilations of regulations and/or rulings and ordinances. Even if published by a private publisher, a compilation edited by a government organization is nonetheless considered an official compilation. A number of such compilations are included *infra* sections V and VI.

Unofficial compilations are generally private collections of administrative interpretations issued directly to interested parties. Frequently they are the best sources for administrative interpretation where the agency itself has yet to compile an official volume. In addition, an agency may publish a gazette carrying laws, regulations, and other materials; these are listed *infra* section VII.B.

Like statutes, administrative regulations are cited to the *CCLRRC* if possible. Other sources are an official compilation or an agency gazette; where these are unavailable an unofficial compilation or other secondary source may be cited.

### B. Local Promulgations

Since only bills passed by the Legislative Yuan may be called "laws" (*fa-lü*), promulgations of the Taiwan Provincial Government enacted by the provincial council, and promulgations of the governments of Taipei and Kaohsiung enacted by the city councils, technically are classified as administrative regulations. Therefore, compilations of Taiwan and Taipei promulgations are placed here, rather than under Statutory Materials, *supra* section II.

#### 1. Taiwan Province

Under the ROC Constitution each province is empowered to regulate certain matters within its jurisdiction.<sup>85</sup> The Standards for Taiwan Provincial Regulations (Taiwan Standards) parallel, at the local

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84. See Nigel N.T. Li, *Administrative Law* (unpublished manuscript 1989) (also briefly discussing administrative procedure and the resolution of administrative disputes).

85. ROC CONST. art. 109.

level, the enumeration of matters that the Standardization Law subjects to regulation at the central government level.<sup>86</sup> At the same time, the Taiwan Standards state that regulations need not be enacted for matters "requiring neither full-time personnel nor any specific budget, matters concerning internal handling processes, directions from superiors to subordinates, or matters of coordination."<sup>87</sup> In naming provincial regulations, the Taiwan Standards adopts the same seven titles applied to central government regulations under the Standardization Law.<sup>88</sup>

Cite to:

T'AI-WAN SHENG FA-KUI HUI-PIEN (Compilation of Taiwan Provincial Laws and Regulations) (Regulation Committee of the Taiwan Provincial Government ed. 1985) [hereinafter TAIWAN PROVINCIAL COMP.].

Volumes and Coverage:

Organization of the Taiwan Provincial Government (includes bylaws on the organization of provincial financial institutions and other enterprises as appendices)	vol. 1
General Provisions of the Taiwan Provincial Government, Civil Affairs, Finance, Education (includes as appendices, the organic regulations of financial institutions and other business entities subordinate to the Taiwan Provincial Government)	vol. 2
Construction, Farming and Forestry, and Social Welfare	vol. 3
Police Administration and Transportation	vol. 4
Health, Information, Accounting and Auditing, Personnel, Land Administration, Food and Other Supplies, and City Planning (includes a list of repealed regulations as appendix)	vol. 5

Note:

As originally published in Dec. 1974, the Taiwan Provincial Compilation consisted of ten volumes. Three supplements followed: amendments Feb. 1976 through Jan. 1977, amendments Feb. 1977 to

86. T'ai-wan sheng fa-kui chuan-tse (Standards for Taiwan Provincial Regulations) art. 4 (promulgated Apr. 10, 1974, last amendment Dec. 19, 1980) 2 TAIWAN PROVINCIAL COMP. 3 (General Provisions) [hereinafter Taiwan Standards].

87. *Id.* art. 5.

88. *Id.* art. 2.

Jan. 1978, and regulations repealed 1972-74. A new edition was published in 1980 with a single-volume supplement of regulations amended from Apr. 1980 through Mar. 1981.

The 1985 edition collects regulations promulgated and effective before Apr. 1985 in five loose-leaf volumes for easy supplementing. The latest supplement as of this writing was published in Nov. 1989.

Although several topics are compiled in each volume, each topic is separately paginated. Each regulation compiled has a serial number, consisting of digits indicating the promulgating organ, the category of regulation, and the number of times amended. The first volume contains an index by serial number. Each topic begins with its own table of contents, listing the initial page of each regulation within the topic, its serial number, title, promulgating agency, date of promulgation, and date of most recent amendment.

Volume 5 contains a list of repealed and cancelled regulations divided into two parts. The first identifies those regulations repealed before February 1987, giving serial number, title, repealing agency, and reference number of the repealing orders. The second indicates the serial numbers of regulations cancelled. Cancellation may result from events such as merger of agencies, transfer of functions between agencies, or simplification and unification of duplicate regulations.

## 2. Taipei City

As a municipality directly subordinate to the Executive Yuan of the Central Government, rather than to a provincial government, Taipei has the autonomous power to promulgate regulations for the operation of its city affairs.<sup>89</sup>

Cite to:

T'AI-PEI SHIH TAN-HSING FA-KUI HUI-PIEN (Compilation of Special Laws and Regulations of Taipei City) (Regulation Committee of Taipei City Government ed. 1986) [hereinafter TAIPEI COMP.].

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89. ROC CONST. art. 118 (matters related to the autonomy of municipalities directly subordinate to the Executive Yuan are to be regulated by laws); T'ai-pei shih ko-chi tzu-chih chi shih-shih ti-fang tzu-chih kang-yao (Ordinance on Local Autonomy of the Taipei City Government and Its Subordinates) art. 1 (promulgated June 22, 1967, last amendment May 25, 1981) 2 CCLRRRC 845; *id.* art. 11 (the city is empowered to pass regulations effective within Taipei).



appeal and administrative litigation sections. The substantive part contains 40 topical sections (e.g., land, taxation, customs affairs, trademark, patent, construction, banking, communications, forestry, fishery). Within a section, synopses are arranged by law. An index by year and case number is included.

#### D. *Administrative Court Judgments*

Cite to:

HSING-CHENG FA-YÜAN TS'AI-P'AN YAO-CHIH HUI-PIEN (Compilation of Synopses of Administrative Court Judgments) (Third Department of the Judicial Yuan ed., Judicial Weekly) [hereinafter COMP. OF ADMIN. CT. JMT. SYNOPSES].

##### Volumes and Coverage:

Jan. 1978-Dec. 1979 (1,171 Judgments)	vol. 1 (1982)
Jan. 1980-Dec. 1981 (1,293 Judgments)	vol. 2 (1983)
Jan.-Dec. 1982 (962 Judgments)	vol. 3 (1984)
Jan.-Dec. 1983 (1,270 Judgments)	vol. 4 (1986)
Jan. 1984-Dec. 1985 (1,044 Judgments)	vol. 5 (1987)
Jan.-Dec. 1986 (836 Judgments)	vol. 6 (1988)
Jan.-Dec. 1987 (1,081 Judgments)	vol. 7 (1989)
	(in 2 issues)

Note:

This series is edited in a manner similar to that of the *Admin. Ct. Prec. Synopses*, divided into substantive and procedural parts, then sectioned by issues of law. The Judicial Yuan selects Judgments for inclusion though Administrative Court judges participate in the reviewing process.

The selected Judgments are printed in digest form, with facts summarized and the relevant article of law identified for reference. A gist of the holding precedes each Judgment from volume 5 onward. Only the seventh volume provides an index of the Administrative Judgments it covers, organized by year and case number and located at the end of the second issue.

#### V. ANNOTATIONS AND PRIVATE COLLECTIONS

##### A. *Six Laws Annotated Case Reporter*

Cite to:

TSUNG-HO LIU FA SHEN-P'AN SHIH-WU) (Comprehensive Case Materials on the Six Laws) (Chen Chi-kang, Lin Chen-yen, Liang Kai-t'ien eds., Ta-tsui-tsung tsa-chih she) [hereinafter SIX LAWS ANNOT. CASE REP.].

## Volumes and Coverage:

CIVIL CODE (1984)	4 vols.
SPECIAL LAWS ON CIVIL MATTERS (1985) e.g., conflict of laws, Law of State Liability, Chattel Secured Transactions Act	1 vol.
CODE OF CIVIL PROCEDURE (1984) e.g., laws of non-litigious matters, notarization, and lodgement	3 vol.
LAWS ON CIVIL PROCEEDINGS (1985) e.g., laws of administrative appeal, administra- tive litigation, petitions, and county mediation	1 vol.
COMPULSORY EXECUTION LAW (1984) Compulsory Execution Law and Bankruptcy Law	1 vol.
COMPANY LAW (1984)	1 vol.
LAW OF NEGOTIABLE INSTRUMENTS (1984)	1 vol.
MARITIME AND INSURANCE LAWS (1984)	1 vol.
TRADEMARK AND PATENT LAWS (1985)	1 vol.
CRIMINAL CODE (1984)	3 vol.
SPECIAL LAWS ON CRIMINAL MATTERS (1985)	2 vol.
CODE OF CRIMINAL PROCEDURE (1984)	2 vols.
LAWS ON CRIMINAL PROCEEDINGS (1985) e.g., Law on Juvenile Delinquency and its enforcement rules, Law of Habeas Corpus, Law of Pardon, and Law on Enforcement of Reformatory Measures	2 vols.
LAWS AND REGULATIONS ON LAND AND CON- STRUCTION (1986)	3 vols.

## Note:

This loose-leaf service is updated every three months. The updates replace old materials. A new and expanded edition is expected, possibly as early as Jan. 1990. The series is quite a comprehensive and up-to-date source for case materials. Annotations are arranged by law and article number and follow each relevant provision of law.

The service reprints the official digests of Council and Judicial Yuan Interpretations from the official compilations. New Council Interpretations are added as they appear in the *Judicial Yuan Gazette*. Supreme Court and Administrative Precedents are also reprinted in their official digest form. Symposium Opinions of the Supreme, High and District Courts (with full record of discussion), and administrative agency interpretations are also included.

The selection of Supreme and Administrative Court cases for publication is accomplished through private research in addition to the use of published sources. The volume on land and construction has occasionally identified the original source of materials not readily available. However, this practice is not adopted in other volumes.

*B. Six Laws, Judgments, and Interpretations Annotated*

Cite to:

LIU FA P'AN-CHIEH CHING-PIEN (Six Laws, Judgments and Interpretations Annotated) (Yang Chien-hua, Cheng Yu-po, Ts'ai Tun-min eds., Wu-nan t'u-shu ch'u-pan kung-ssu 1988) [hereinafter SIX LAWS, JMTS. & INTERPS. ANNOT.].

Note:

This is a very useful annotation, already in its second printing in October of 1988. Among the editors, Cheng Yu-po is a former Grand Justice (1976-85), and Yang Chien-hua is a present Grand Justice (1982-present).

Only the most frequently used laws are included here (covering the areas of the ROC Constitution, civil code, commercial law, civil procedure, criminal code, criminal procedure and administrative appeal, litigation, and enforcement of ordinances).

This annotation contains a number of indices to Council and Judicial Yuan Interpretations, civil and criminal Supreme Court Precedents, Administrative Court Precedents, Judgments of the Supreme and Administrative Courts selected by the editors, and Supreme Court Symposium Opinions (final conclusions). In addition, there is an index to legal issues raised in the Symposia of the District and High Courts. These are selected from the Judicial Weekly's compilations of lower court Symposium Opinions and seminar proceedings (discussed *supra* section III.H).

*C. Chih-ken Legal Studies, Huang Mao-jung*

1. Chih-ken Legal Studies Collection

Cite to:

HUANG MAO-JUNG, CHIH-KEN FA-HSÜEH TS'UNG-SHU (Chih-ken Legal Studies Collections) (Chih-ken Editorial Office) [hereinafter CHIH-KEN LEGAL STUDIES COLLECTIONS].

Volumes:

GENERAL PRINCIPLES OF THE CIVIL CODE (Min-fa tsung-tse) (1982)

THE LAW OF SALES (Mai-mai fa) (1980)



- THE LAW OF CHECKS (Chih-p'iao fa) (1984)  
 INTERNATIONAL TRADE DISPUTES (Kuo-chi mao-yi chiu-fen) (1984)  
 INTERNATIONAL CARRIAGE DISPUTES (Kuo-chi yün-sung chiu-fen) (1984)  
 OBTAINING AND SECURING CREDIT (Chen-ch'u jung-tse yü ch'üeh-pao chai-ch'üan) (2 vols.) (1979)  
 TRADEMARK LAW (Shang-piao fa) (2 vols.) (1983)  
 PATENT LAW (Chuan-li fa) (1983)  
 CASE COLLECTION ON TAXATION (five vols.)  
     LAND TAX (2 vols.)  
     DEED TAX  
     TAX ON BENEFITS FROM GOVERNMENT SPONSORED MUNICIPAL CONSTRUCTION PROJECTS (1982)  
     HOUSE TAX (1982)  
     ESTATE AND GIFT TAX (1984)  
 COMPILATION OF TAX STATUTES AND REGULATIONS (1982)  
 ADMINISTRATIVE PENALTIES UNDER FINANCE AND BUSINESS LAWS (Ts'ai-ching kung-shang hsing-cheng fa-tse t'i-hsi) (1986)

Note:

Professor Huang teaches at Taiwan University Law School. The scope of subjects covered in his series is similar to that of the *Six Laws Jmts. & Interps Annot.* However, Professor Huang organizes most volumes by topic and issue rather than proceeding according to the structure of the law as written.

The series is useful principally because of its indices. Most volumes include indices by statute and article, by legal term, and by Precedent, Judgment, Symposium Opinion, Judicial Yuan Interpretation, Court of Grand Review Interpretation, Council Interpretation or relevant administrative agency interpretation. Professor Huang provides annotation of the cases and interpretations in all volumes except for the last two above-mentioned.

## 2. Chih-ken Legal Studies Series

Professor Huang has also participated as author or editor in the production of a series of annotated topical case collections and textbooks. Three volumes have been published to date.

Cite to:

CHIH-KEN FA-HSÜEH TS'UNG-SHU P'AN-CHIEH P'ING-SHIH PU-FEN (Chih-ken Legal Studies Series, Commentaries on Judgments and Interpretations) (Chih-ken Editorial Office for Legal Material 1984).

*D. Compilation of Judgment Digests on Civil Matters, Tai Sen-Hsiung*

Cite to:

MIN-SHIH FA TS'AI-P'AN YAO-CHIH KUANG-PIEN (Compilation of Judgment Digests on Laws of Civil Matters) (Tai Sen-Hsiung ed.) [hereinafter COMP. OF JMTS.].

Volumes and Coverage:

GENERAL PRINCIPLES AND GENERAL PRINCIPLES OF THE BOOK OF OBLIGATIONS (2d ed. 1985) (first edition published in 1982)

PARTICULAR TYPES OF CONTRACT, PROPERTY RIGHTS, FAMILY AND SUCCESSION (2d ed. 1985) (first edition published in 1982)

CIVIL PROCEDURE (1983)

COMMERCIAL LAWS (1984)

LAWS AUGMENTING THE CIVIL CODE (1984) (Shipping Law, Chattel Secured Transactions, Conflict of Laws), Civil Procedure (Compulsory Execution, Bankruptcy, Notarization, Non-litigious Matters, Commercial Arbitration, Lodgment Law etc.); Constitutional Law (Constitution, Standardization Law, Organic Law of the Courts, Auditing); Land Administration; Military Administration; Interior Affairs (Nationality, Household Registration, Professional and Industrial Associations, Labor, Copyright, Urban Zoning, etc.); Financial Administration (Taxation, Banking etc.); Economic Affairs (Investment, Securities, Trademark, Patent, Power Supply, Forestry, Fishery, Agricultural Administration, Water etc.); Communications (Transportation, Postal Administration, Telecommunications); Education; Government Personnel and Service (Law Governing Attorneys etc.); Administrative Remedies (Appeal and Litigation); Criminal Law.

Two additional volumes, published in 1986, cover all topics for the years 1982-83.

Note:

All volumes cover Precedents, Judgments, Judicial Yuan Interpretations, and Supreme Court Symposium Opinion synopses. The first five volumes cover the period 1949-81. This series covers a broad range of topics, but less deeply than do the works of Huang Mao-jung. It lacks an index.

*E. Wu-Nan Collections, Ts'ai Tun-Min*

Cite to:

. . . LI-FA LI-YOU P'AN-CHIEH CHÜEH-YI LIN-HAN SHIH-SHIH SHIH-WU WEN-T'I HUI-PIEN (Collections of Legislative Reasons, Precedents, Judgments, Interpretations, Symposium Opinions on . . .) (Ts'ai Tun-min ed., Wu-nan t'u-shu ch'u-pan kung-ssu) [hereinafter WU-NAN SERIES OF MATERIALS ON. . .]

Volumes and Coverage:

CIVIL CODE (3rd ed. 1986)	covers to Oct. 1985
CIVIL PROCEDURE (2d ed. 1983)	covers to Aug. 1983
COMMERCIAL LAWS (1983)	covers to Aug. 1983
CRIMINAL CODE (3rd ed. 1986)	covers to Jan. 1986
CRIMINAL PROCEDURE (2d ed. 1983)	covers to Aug. 1983

Note:

Ts'ai Tun-min, a professor at Taiwan University Law School, is the chief editor of this series. The materials in each volume are organized according to current and old provisions of law. Materials include legislative reasoning; Interpretations of the Ta-Li Yuan, the Supreme Court, the Judicial Yuan, and the Council of Grand Justices; Precedents of the Ta-li Yuan and the Supreme Court; synopses of post-1980 Supreme Court Judgments, Supreme Court and lower court Symposium Opinions; and administrative interpretation letters.

Each volume provides indices to the Interpretations, Precedents, Symposium Opinions, and administrative interpretations it cites. The volumes on Civil and Criminal Codes also index the Judgments included.

*F. Wu-nan Judgment Compilation Series*

Cite to:

. . . TS'AI-P'AN HUI-PIEN (Judgment Compilation on . . .) (Wu-nan t'u-shu ch'u-pan kung-ssu) [hereinafter WU-NAN JMT. COMP. ON. . .].

### Volumes and Coverage:

INDUSTRIAL PROPERTY (1985)	1 vol.
REAL ESTATE OWNERSHIP (1985)	1 vol.
REAL ESTATE MORTGAGES, SUPERFICIES, "YUNG-TIEN" AND SERVITUDES (1985)	1 vol.
REAL ESTATE LEASE (1985)	2 vols.
INCOME TAX (1985)	3 vols.

### Note:

The volume on industrial property is divided into patent and trademark parts, each subdivided to cover the relevant laws and administrative remedies. Editor Hsü Huo-min selected Judgments and Precedents of the Supreme and Administrative Courts from 1949 through 1983.

The other four topics are edited by Li Yung-jan, covering Judgments and Precedents of the Supreme and Administrative Courts from 1950 through June 1984. The materials are arranged by article of relevant law. The materials are reprinted from, *e.g.*, *Complete Precedents*, *Selected Judgments*, *University Compilation*, *Admin. Ct. Prec. Synopses*, *Judicial Yuan Gazette*, and *Ministry of Justice Gazette*. While Precedents from 1950 through 1979 are all included, Judgments are selected to represent the pre-1950 majority holdings, or because the editor considers them worthy of further research or likely to enlighten later rulings on similar cases.

The industrial property volume indexes by year and case number only. The other volumes provide, in addition, an index by article of law to which the cases relate.

## VI. TOPICAL SOURCES

### A. *Negotiable Instruments*

1. CHIH-P'IAO-FA AN-LI T'I-HSI (A Collection of Cases on the Law of Checks) (Huang Mao-jung ed., Chih-ken Editorial Office for Legal Material 1984) [hereinafter CASES ON THE LAW OF CHECKS].

2. HUANG MAO-JUNG & CHEN CHING-WEI, CHIH-P'IAO WEN-T'I YÜ WEN-T'I CHIH-P'IAO (Check Problems and Problem Checks) (Chih-ken Editorial Office for Legal Material 1980) [hereinafter CHECK PROBLEMS AND PROBLEM CHECKS].

### B. *Land*

1. TI-CHENG FA-LING HUI-PIEN (Compilation of Laws, Regulations, and Administrative Rulings on Land Administration) (Ministry

of the Interior 1988) [hereinafter MOI COMP. ON LAND ADMINISTRATION].

Note:

First published in May 1984, this compilation gathers selected laws, regulations, administrative rulings, and interpretations on land administration made by central government organs and agencies. The original volume covered the period from 1944 through Dec. 1983. A supplement published in June 1985 added materials for Jan. through Dec. 1984 and pre-1984 materials omitted from the original edition. A second supplement, of Apr. 1986, added materials for Jan. 1985 through Jan. 1986.

The compilation was re-edited, restructured, and republished in July 1988, as changes of law had made some regulations and interpretations obsolete. The new edition selectively includes materials from 1944 through Dec. 1987. Interpretations made by the Ministry of the Interior prior to Dec. 1987 and not compiled into the 1988 edition are not applicable to later cases, unless specifically reviewed and approved by the Ministry. However, the applicability of pre-1987 interpretations made by other central government organs remains for those organs to determine.<sup>90</sup>

Each article of law or regulation cited is preceded by a gist of that article. Each administrative ruling or interpretation is identified by its reference number, attributed to the issuing agency and to the relevant provision of law. A digest of each item precedes its text or the excerpt chosen by the editors. Interpretations were selected to clarify legal provisions currently in effect or to provide a reference for their application, to supplement incomplete laws and regulations, or to illustrate interpretations applicable to later cases.

Materials in the first edition were indexed by issuing agency and date of interpretation. The supplements and the 1988 edition index the interpretations by topic in addition to the index by date.

2. T'U-TI CHENG-SUNG TS'AI-P'AN YAO-CHIH HSÜAN-CHI (Compilation of Selected Judgment Digests on Land Litigation) (Third Department of the Judicial Yuan ed., Judicial Weekly 1989) [hereinafter JUDGMENT DIGESTS ON LAND].

Note:

The 568 Administrative Court Judgments selected for inclusion in this volume are drawn from the period Jan. 1978 through Dec.

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90. TI-CHENG FA-LING HUI-PIEN (Compilation of Laws, Regulations, and Administrative Rulings on Land Administration) (Ministry of the Interior 1988) [hereinafter MOI COMP. ON LAND ADMINISTRATION] preface at 1.

1987. They are classified into seven categories: registration, expropriation, lease of farm land, rezoning, re-measurement of land registry, partition and joint property, and agreements for land use. There is an index by case number.

### *C. Company Law*

TSUI-HSIN KUNG-SSU FA CHIEH-SHIH HUI-PIEN (Compilation of Recent Interpretations on Company Law) (Ministry of Economic Affairs ed. 1984) [hereinafter MOEA COMP. ON COMPANY LAW].

Note:

This compilation, organized by law and article, annotates the Company Law and other relevant laws with administrative interpretations and judicial decisions. The annotations are in digest form and cover through Dec. 1983. A new edition is being prepared, but no publication schedule has been set.

### *D. Securities*

CHENG-CHÜAN KUAN-LI FA-LING HUI-PIEN (Compilation of Laws and Regulations on Securities) (Securities and Exchange Commission 5th ed. 1988) [hereinafter SEC COMP. ON SECURITIES].

Volumes and Coverage:

Laws, administrative regulations, handling procedures, interpretation letters, and administrative rulings on securities	vol. 1
Bylaws and regulations on the organization and functions of the Taiwan Stock Exchange	vol. 2
Bylaws and regulations on the organization and functions of the Fu-Hua Securities Finance Co., Ltd.	vol. 3
Bylaws and regulations on the organization and functions of securities dealers	vol. 4

Note:

First published in 1968, the 1988 edition comprises four loose-leaf volumes. Administrative regulations promulgated under statutory authority are cross-referenced to the statute. There is no index.

### *E. Patent*

CHUAN-LI CHENG-SUNG TS'AI-P'AN YAO-CHIH HSÜAN-CHI (Compilation of Selected Judgment Digests on Patent Litigation)

(Third Department of the Judicial Yuan ed., Judicial Weekly 1988) [hereinafter JUDGMENT DIGESTS ON PATENT].

Note:

Selected Administrative Court Judgments rendered from 1978 through 1985 are distributed among the patent categories "new invention," "new utility model," and "new design." Each entry cross-references the most relevant provisions of law. All amendments to the Patent Law and its Enforcement Rules preceding the date of publication, as well as some Precedents and Interpretations are included as appendices. The compilation lacks an index.

#### *F. Trademark*

1. SHANG-PIAO CHIN-SSU P'AN-CHÜEH YAO-CHIH HSÜAN-CHI (Compilation of Selected Judgment Digests on Similar Trademarks) (Third Department of the Judicial Yuan ed., Judicial Weekly 1986) [hereinafter JUDGMENT DIGESTS ON SIMILAR TRADEMARKS].

Note:

This compilation focuses on Administrative Court Judgments, rendered during the period from Jan. 1982 through June 1985, concerning "similar" trademarks. Digests are categorized as involving issues of similarity in appearance, similarity in idea, similarity in pronunciation, or dissimilarity. Digests are arranged by case number.

Appendices include amendments to the Trademark Law, Judicial Yuan and Council Interpretations, and Administrative Court Precedent Synopses on trademarks. The Review Standards for Trademark Similarity and the Review Standards for Trademarks Misguiding or Attempting to Misguide the Public, as amended by the Executive Yuan Oct. 2, 1985, are also included as appendices. No index is provided.

#### *G. Taxation*

1. SHUI-WU CHENG-SUNG TS'AI-P'AN YAO-CHIH HSÜAN-CHI (Compilation of Selected Judgment Digests on Tax Litigation) (Third Department of the Judicial Yuan ed., Judicial Weekly 1988) [hereinafter JUDGMENT DIGESTS ON TAXATION].

Note:

Collecting Administrative Court Judgments from 1978 through 1985, this volume covers fifteen subjects in the tax area. Judgment digests are cross-referenced to relevant law. There is no index.

2. FU-SHUI FA-LING HUI-PIEN (Compilation of Regulations and Interpretations on Taxation) (Committee for Research on Tax Laws

and Regulations, Ministry of Finance ed.) [hereinafter MOF COMP. OF INTERP. ON . . . TAX].

Volumes:

INCOME TAX (3d ed. 1987)  
BUSINESS TAX (2d ed. 1972); (Supp. 1976)  
REVENUE STAMPS (1976)  
COMMODITY TAX (1972)  
TAXATION FOR THE ENCOURAGEMENT OF  
INVESTMENT (1981)  
LAND TAX (1981)  
CUSTOM DUTIES (1984)  
DEED TAX (1985)  
TAX COLLECTION (1980)

Note:

Administrative interpretations and occasional Judgment digests annotate the relevant articles of law in these volumes. Coverage stops approximately 6-12 months preceding publication and a number of the volumes are now solely of historical interest. Each volume contains an index of annotation materials by the year of determination.

3. SHIH-YUNG SHUI-WU FA-LING HUI-PIEN (Practical Compilation of Regulations and Interpretations on Taxation) (Tai Li-ning, Ho Kuo-hua, Lai San-lang, Chang Wu-yi & Li Chiang-ho eds., Shih-yung shui-wu ch'u-pan she) [hereinafter PRACTICAL TAX REPORTER].

Volumes:

CORPORATE INCOME TAX (12th ed. 1989) 2 vols.  
TAXES UNDER THE STATUTE FOR ENCOURAGEMENT  
OF INVESTMENT (3d ed. 1987)  
CONSOLIDATED INCOME TAX (1985)  
TAX COLLECTION (1980)  
REVENUE STAMPS AND SECURITIES EXCHANGE TAX  
(3d ed. 1985)  
BUSINESS TAX (2d ed. 1982) 2 vols.  
ESTATE AND GIFT TAXES (1981)  
LAND AND HOUSE TAXES (8th ed. 1989) 2 vols.  
COMMODITY TAX (1985)  
ANNUAL SUPPLEMENT (1988)

Note: Though a secondary source, this compilation is more current and comprehensive than official compilations. It covers laws and regulations annotated with administrative interpretations and court deci-





## 2. Presidential Palace Gazette

- May 1911-1915 CHENG-FU KUNG-PAO (Government Gazette)  
(monthly or bi-monthly)
- July 1, 1915-1948 KUO-MIN CHENG-FU KUNG-PAO (National  
Government Gazette) (monthly)
- May 20, 1948- TSUNG-T'UNG FU KUNG-PAO (Presidential  
Palace Gazette) 5/20/48-3/30/49 (daily); 4/4/  
49-12/21/49 (weekly); 1/1/-3/31/50 (monthly);  
4/1/-8/31/50 (bi-monthly); 9/1/50-6/30/53  
(weekly); 7/1/53-7/30/71 (Tue. & Fri.); 8/1/  
71-present (Mon. Tues. & Fri.)

### Note:

Currently produced by the Third Department of the Presidential Palace, this gazette carries presidential orders (ordinances of the Executive Yuan and personnel orders), the first publication of legislation following the president's signature, Interpretations of the Council of Grand Justices, the Executive Yuan's decisions on administrative appeals, notices of recently registered copyrights, and notices of change of nationality status.

## 3. Legislative Yuan Gazette

### LI-FA YÜAN KUNG-PAO (Legislative Yuan Gazette)

- Jan. 1929-July 1937 monthly (bound in one volume)
- Aug. 1938-Dec. 1944 bi-monthly
- Jan. 1948-Dec. 1952 occasional
- Jan. 1953-present Wednesdays and Saturdays

### Note:

Currently produced by the Secretariat of the Legislative Yuan, this gazette includes minutes of discussions in committee and plenum sessions, records of the "three readings" process required prior to passage of legislation, and publication of finalized statutes. Occasional special editions compile legislative materials on a specific law.

## 4. Ministry of Economic Affairs Gazette

- Jan. 1969-present CHING-CHI PU KUNG-PAO (Ministry of Economic  
Affairs Gazette) [hereinafter MOEA GAZETTE]  
(published the 10th and 25th of each month)

### Note:

Published by the Secretariat of the MOEA, this gazette covers statutes, administrative promulgations and policy statements, including the economic plans, that fall within the scope of MOEA jurisdic-

tion. It also carries relevant administrative rulings, decisions on administrative appeals, and interpretations by the Executive Yuan, as well as those of the MOEA itself.

#### 5. Ministry of Finance Gazette

Jan. 1963-present      TS'AI-CHENG PU KUNG-PAO (Ministry of Finance Gazette) (weekly)

Note:

Coverage is similar to that of the *MOEA Gazette*, within the appropriate jurisdiction.

#### 6. Ministry of Justice Gazette

Apr. 1951-Sept. 1974      SSU-FA CHUAN-K'AN (Judicial Focus) (monthly)

Oct. 1974-June 1980      SSU-FA HSING-CHENG PU KUNG-PAO (Ministry of Judicial Administration Gazette) (monthly)

July 1980-present      FA-WU PU KUNG-PAO (Ministry of Justice Gazette) (monthly)

Note:

Coverage includes selected statutes and regulations, Interpretations of the Council of Grand Justices, Executive Yuan decisions on administrative appeals, and orders regarding aspects of judicial administration within MOJ control.

#### 7. Ministry of Communications Gazette

1951-48      CHIAO-T'UNG KUNG-PAO (Communications Gazette) (monthly)

1960-June 1983      CHIAO-T'UNG FA-LING HUI-K'AN (Collections of Laws and Regulations on Communications) (monthly)

July 1983-present      MINISTRY OF COMMUNICATIONS GAZETTE (monthly)

Note:

Coverage is similar to that of the *MOEA Gazette*, within the appropriate jurisdiction.

8. Executive Yuan Health Administration Gazette

Sept. 1971-present HSING-CHENG YÜAN WEI-SHENG SHU KUNG-PAO (Executive Yuan Health Administration Gazette) (Published the 10th and 25th of the month)

Note:

This gazette carries full texts of Administrative Court decisions and administrative promulgations within the scope of the agency's jurisdiction, notices of product approval, and notices of the licensing or disqualification of medical practitioners.

9. Executive Yuan Environmental Protection Administration Gazette

Jan. 1988-present HSING-CHENG YÜAN HUAN-CHING PAO-HU SHU KUNG-PAO (Executive Yuan Environmental Protection Administration Gazette) (monthly)

Note:

This gazette carries relevant laws and administrative promulgations, full text of agency decisions on administrative appeals, public notices including test procedures, and interpretation letters.

10. Taipei City Government Gazette

July 1, 1967-present T'AI-PEI SHIH CHENG-FU KUNG-PAO (Taipei City Government Gazette) (daily, excluding Sat., Sun., and public holidays)

Note:

Published by the Secretariat of the Taipei City Government, coverage is fairly broad, including selected statutes of the central government, public notices regarding incorporation, dissolution, authorization and registration of companies, and administrative interpretations of central government and local promulgations.

## 11. Taiwan Provincial Government Gazette

- Dec. 1, 1945-May 1947 T'AI-WAN SHENG HSING-CHENG CHANG-KUAN KUNG-SHU KUNG-PAO (Taiwan Provincial Governor's Administration Gazette)
- May 16, 1947-present T'AI-WAN SHENG CHENG-FU KUNG-PAO (Taiwan Provincial Government Gazette) (daily, excluding Sundays and public holidays)

## Note:

Published by the Secretariat of the Taiwan Provincial Government, coverage is similar to that of the *Taipei City Government Gazette*.

## C. Journals

## 1. Law Journals

*Chung-wen fa-lü lun-wen suo-yin* (The Index to Chinese Legal Periodicals) (Soochow University) covers 162 periodicals published in Chinese, however some articles indexed are written in English. The first volume covers 1963-70. Thereafter the Index has been published roughly annually. Seventeen volumes have been published to date.

The Chinese Society of Constitutional Law published *Hsien-fa lun-wen suo-yin* (Index to Periodicals on Constitutional Law), covering at least fifty periodicals published from 1947 to October of 1987 in its initial volume and five supplements.

Journals that often carry works of judges and scholars demonstrating trends in legal thought include the following:

- FA-LÜ P'ING-LUN (Chao Yang Law Review) (monthly)
- CHENG-TA FA-HSÜEH P'ING-LUN (Chengchi Law Review) (semi-annual)
- FA-HSÜEH TS'UNG-K'AN (China Law Journal) (quarterly)
- CHUNG-HSING FA-HSÜEH (Chung Hsing Law Review) (semi-annual)
- SHANG-WU CHUNG-TS'AI (Commercial Arbitration) (quarterly)
- HSING-SHIH FA TSA-CHI (Criminal Law Journal) (quarterly)
- FU-JEN FA-HSÜEH (Fu Jen Law Review) (annual)
- HWA-KANG FA-TS'UI (Hwa Kang Law Review) (annual)
- FA-HSÜEH LUN-TS'UNG (Law Journal of National Taiwan University) (semi-annual)
- TS'AI-SHUI YEN-CHIU (Public Finance Review) (bi-monthly)

HSIEN-CHENG SHIH-TAI (The Constitutional Review) (quarterly)  
I-SHIH FA-HSÜEH (Journal of Law and Medicine) (bi-monthly)  
FA-LING YÜEH-K'AN (The Law Monthly) (monthly)  
CHÜN-FA CHUAN-K'AN (The Military Law Journal) (monthly)  
CHENG-CHUAN KUAN-LI (Securities Regulation) (monthly)  
TUNG-WU FA-LÜ HSÜEH-PAO (Soochow Law Review) (semi-annual)

## 2. Statistical Journals

In addition to legal periodicals, a number of government agencies publish journals of statistics that may be relevant to understanding administrative policy. We include only one of the most important here:

INDUSTRY OF FREE CHINA (Council for Economic Planning and Development, Executive Yuan).

Note:

This is the standard periodical used for official economic statistics on Taiwan. It also includes Chinese and English language papers on various topics relating to development. Monthly issues are separately paginated. There is a table of contents of English and Chinese articles for each semi-annual volume.

## D. Newspapers

Lien-ho pao (United Daily News)  
Published daily since Sept. 16, 1951.

Ching-chi jih pao (Economic Daily News)  
Published daily since Apr. 20, 1967.

Chung-kuo shih pao (China Times)  
Published daily since Oct. 2, 1950.

Kung-shang shih pao (Commercial Times)  
Published daily since Dec. 1, 1978.

Chung-yang jih pao (Central Daily News)  
Published daily since Feb. 1, 1928.

Tzu-li tsao pao (Independence Morning Post)  
Published daily since Jan. 21, 1988.

### *E. English Language Bibliographies*

1. CONSTANCE AXINN JOHNSON, *THE REPUBLIC OF CHINA ON TAIWAN: A SELECTIVELY ANNOTATED BIBLIOGRAPHY OF ENGLISH-LANGUAGE LEGAL MATERIALS* (1988).

2. Takika S. Lee, Cing-kae Chiao & Yu-yeh Wang, *Bibliography, in TRADE AND INVESTMENT IN TAIWAN* 887-946 (1985). This is a selective bibliography of English and Chinese materials on the "legal and economic environment of trade and investment in the Republic of China."

3. TENG AND BIGGERSTAFF, *AN ANNOTATED BIBLIOGRAPHY OF SELECTED CHINESE REFERENCE WORKS* (1971). The brief topical section on law offers two Chinese titles that may be useful for pre-1949 research.

### *F. Information Services*

#### 1. Legislative Yuan Library

The Legislative Yuan Library provides research services, collecting newspaper articles and reports about the legislature. Since July 1985, it has published the monthly *Li-fa pao-chang tzu-liao suo-yin* (Index to Newspaper Materials on the Legislature) (Legislative Yuan Library ed.). The Index covers materials from at least fourteen newspapers on topics such as bills currently under consideration in the Legislative Yuan, draft laws proposed, reports by the Executive Yuan to the Legislative Yuan regarding policies and performance, and session meetings of the Legislative Yuan.

In addition to the Index, the Legislative Yuan occasionally publishes collections of newspaper articles on specific subjects, e.g., ROC-U.S. trade relations or intellectual property protection. It also has established a data base of these materials and provides index services by computer.

#### 2. The Law Information Association (LIA)

Established in April 1986, the ROC Law Information Association (*Chung-hua min-kuo fa-lü tzu-hsün chiao-liu ho-tso tsu-chih*) provides services to facilitate exchange of legal materials and information. In March 1988, the Association published the *Chung-wen fa-kui lien-ho mu-lu* (Union Catalogue of Chinese Laws and Regulations) (Law Information Association 1988), which locates items in LIA member libraries and provides other basic information (e.g., author/editor, publisher, year, and place of publication) on over 1,500 compilations of statutes and regulations, official and private, primary

and secondary. Its coverage includes constitutional law, civil law, criminal law, civil and criminal procedure, administrative law, international law, Precedents and Interpretations, laws of Chinese dynasties, and a “miscellaneous” category. Future researchers will have the benefit of this very worthwhile resource.



## List of Chinese Names

Chang Wu-yi	( 張 五 益 )	
Chen Chi-kang	( 陳 紀 綱 )	
Chen Ching-wei	( 陳 金 圀 )	
Cheng Yü-po	( 鄭 玉 波 )	
Chiang Yü-fen	( 江 幽 芬 )	
Chou Hsiao-ming	( 周 曉 明 )	
Fa Jyh-pin	( 法 治 斌 )	
Ho Kuo-hua	( 何 國 華 )	
Hsu Huo-ming	( 徐 火 明 )	
Hu K'ai-ch'eng	( 胡 開 誠 )	
Huang Mao-jung	( 黃 茂 榮 )	
Huang Shou-kao	( 黃 守 高 )	
Kao Ching-yuan	( 高 靜 遠 )	
Kuo Wei	( 郭 衛 )	
Lai San-lang	( 賴 三 郎 )	
Li Chiang-he	( 李 江 河 )	
Li Yung-jan	( 李 永 然 )	
Liang K'ai-t'ien	( 梁 開 天 )	
Lin Chen-yen	( 林 辰 彥 )	
Lin Chuan-ch'en	( 林 琰 琛 )	
P'eng Shao-chin	( 彭 紹 瑾 )	
Sun Yat-sen (Sun Wen)	( 孫 逸 仙 )	( 孫 文 )
Tai Li-ning	( 戴 立 寧 )	
Tai Sen-hsiung	( 戴 森 雄 )	
Ts'ai Tun-min	( 蔡 墩 銘 )	
Tu Huai-yin	( 涂 懷 瑩 )	
Wang Jong	( 王 仲 )	
Yang Chien-hua	( 楊 建 華 )	
Yao Jui-kuang	( 姚 瑞 光 )	

Chinese Names of Selected Publishers,  
Editorial Committees and Distributors

Cheng-chung shu-chu

正中書局

Chinese Society of Constitutional Law

中國憲法學會

Chih-ken Editorial Office (for Legal Material)

植根法學叢書編輯室

Committee for Research on Tax Laws and Regulations

財政部賦稅法令研究審查委員會

Committee for Mandarin Promotion of the Ministry of Education

教育部國語推行委員會

Council for Economic Planning and Development

經濟建設委員會

Directorial Committee on Editing and Printing of a Collection of Current Laws and Regulations of the Republic of China

中華民國現行法規彙編編印指導委員會

Editorial and Publication Department of Legislative Yuan

立法院編譯處

Editorial Committee for Compilation of High Court Symposia

臺灣高等法院歷年法律座談會編輯委員會

Editorial Committee for Precedent Synopses of the Administrative Court

行政法院判例要旨編輯委員會

Editorial Committee on Compendium of the History of the Judicial Yuan

司法院史實紀要編輯委員會

Judicial Yuan Editorial Committee for Interpretations

司法院解釋編輯委員會

Kuo-chia k'e-hsüeh wei-yüan hui

國家科學委員會

National Taiwan University and Cheng-chi University Committee for Research on Precedents

國立臺灣大學政治大學判例研究委員會

Publications Committee for Supreme Court Precedents

最高法院判例發行委員會

Regulation Committee of Taipei City Government

臺北市法規委員會

Regulation Committee of the Taiwan Provincial Government  
臺灣省政府法規委員會

Review and Editorial Committee on the Compilation of R.O.C. Laws

中華民國法律彙編審訂委員會

San-min shu-chu (San Min Books)

三民書局

Shih-yung shui-wu ch'u-pan she

實用稅務出版社

Ssu-fa t'ung-hsün she

司法通訊社

Supreme Court Editorial Committee for Supreme Court Precedents

最高法院判例編輯委員會

Supreme Court Editorial Committee for Legal Materials

最高法院法律叢書編輯委員會

Ta-tsui-tsung tsa-chih she

大追蹤雜誌社

Wu-nan t'u-shu (ch'u-pan) kung-ssu

五南圖書出版公司

