



CAA

Newsletter

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CAA Delegation Attends Arbitration Forums in Mainland China

CAA delegation attended “the Seventh Greater China Arbitration Forum” and “China Arbitration Summit” held on 19 and 21 September 2017 respectively.

The former event was held at Guangzhou, coinciding with the launch of the “Rule for Bridging Ad Hoc Arbitration and Institutional Arbitration” hosted by the China Internet Arbitration Alliance. CAA was

one of the most active institutions, participating in four of the five sessions. As an invited speaker for opening remarks, Chairman Fuldien Li’s analysis of the origins and development of ad hoc arbitration led to his insights to the continuing challenges of, and contributions by, institutional arbitration. Director Yun-ran Lee gave a presentation in the session on “The Role and Positioning of Arbitration in One Belt One Road”. His recommendations on using arbitration for dispute resolution and risk management supported his conclusion that CAA and Taiwan are becoming well-equipped for providing such services. Director Pi-song Tsai participated in a seminar on ad hoc arbitration, providing his insight on the issue. In the last session on “The



2017 China Arbitration Summit held in Beijing on 20 September 2017.



Dr. Fuldien Li, CAA Chairman, delivered opening remarks in the 7th Greater China Arbitration Forum on 19 September 2017.

New Normal of Institutional Competition and Fusion in Arbitration”, Deputy Secretary-General, Winnie Jo-Mei Ma demonstrated how the CAAI Arbitration Rules 2017 have combined the attributes and aspirations of both ad hoc and institutional arbitration to achieve the common goal of dispute resolution and termination.

At the latter annual event held in Beijing, CAA Honorary Chairman Nigel N. T. Li gave a speech, focusing on the importance of dispute resolution in “One Belt One Road”. He emphasized that the arbitration mechanism and its strengths would help achieve the Initiative from the perspectives of rapprochement, infrastructure and languages.



Group photo of the 2017 Taipei International Conference.

2017 Taipei International Conference on Arbitration and Mediation

The 11th annual Taipei International Conference on Arbitration and Mediation, co-hosted by CAA and the Asian Center for WTO & International Health Law and Policy, National Taiwan University College of Law (ACWH), was successfully held on 28-29 August 2017.

Over twenty distinguished arbitration scholars and experts from diverse regions were invited to participate. Conference topics included “Defining

the Nature of an Arbitration as Institutional or Ad Hoc”, “Distinctions Between Institutional and Ad Hoc Arbitration in Their Duties/Powers, Quality Assurance and Transparency”, “Distinctions Between Institutional and Ad Hoc Arbitration Concerning Setting Aside

and Their Uses”, “Issues in Mediation” and “Issues in Investment Arbitration”.

Nearly 100 participants attended and actively participated in the conference.

Promotion of CAAI Arbitration Rules 2017

In order to promote the new CAAI Arbitration Rules which came into force on 1 July 2017, CAA held an introductory seminar in Kaohsiung on 29 September



Speakers and moderators of the CAA-KCAB Seminar on 5 December 2017.

2017. It was presented by members of the drafting committee (Winnie Jo-Mei Ma, Helena Hsi-Chia Chen, Jeffrey Chien-Fei Li, Houchih Kuo and Wei-Chun Tsai). Other joint events included: CIArb (EAB) Young Members Group and CAA Joint Evening Talk hosted by Herbert Smith Freehills in Hong Kong on 13 October 2017 (Winnie Jo-Mei Ma, Helena Hsi-Chia Chen); IDRA Masterclass in Beijing on 24 October 2017 (Winnie Jo-Mei Ma) on the comparison between the arbitration rules of CAAI, CAA and UNCITRAL; and CAA-KCAB Seminar in Seoul on 5 December 2017 (Winnie Jo-Mei Ma and Houchih Kuo) on the strategic importance of Taiwan and the benefits of international arbitration for business.

Establishment of CAAI Preparatory Office

CAA is planning to establish CAAI (Chinese Arbitration Association International) in Hong Kong. The CAA Board of Directors and Supervisors has approved the founding directors of CAAI. The CAAI preparatory office has also been set up to provide CAAI-related services. We genuinely invite

all concerning parties to adopt the CAAI model arbitration clause and CAAI Arbitration Rules 2017 in their contracts to resolve their disputes. For further information, please call the CAAI Preparatory Office at + 886-2-27078672 (extension11) or email service@caai-arbitration.org.

The Inaugural 2017 CAA Gong Duan Cup Arbitration Moot

The 2017 CAA Gong Duan Cup Arbitration Moot took place in CAA Taipei office on 4th-5th November 2017. 10 teams and a total of 58 young practitioners participated the event. CAA Arbitrators were invited to serve as arbitrators in the moot hearings, with marked success in encouraging debates and critical thinking by young practitioners regarding the Moot Problem, Arbitration Law of the Republic of China and CAA Arbitration Rules. To further encourage the young generation to participate in arbitration and other alternative dispute resolutions, CAA has decided to hold the CAA Gond Duan Cup Arbitration Moot annually and possibly also in both English and Chinese.



Group photo of Arbitration Moot.

Seminar on Arbitration Practices



Seminar held on 13 November 2017.

On 13th November 2017 CAA and the Judicial Yuan jointly hosted a seminar on strengthening communication between the judiciary and the arbitration institutions. Emeritus Professor Mary Hiscock of Bond University Faculty of Law delivered her keynote speech on “Judicial Support of Arbitration”.

Seminar topics also included arbitration clause, appointment of arbitrators, and the IBA Guidelines on Conflicts of Interest in International Arbitration. CAA and the Judicial Yuan decide to co-host such seminars annually to provide a continuous discussion platform.

Publication

CAA newly publishes a book which is a selective collection of 20 case studies from arbitral awards rendered by CAA arbitrators during the period from 1996 to 2004, which involved the government's promotion of private participation, procurement and leasing contracts, as well as other common disputes arising from the construction, operation and termination of contracts.



Visits



CAA delegates visited China Guangzhou Arbitration Commission on 18 September 2017. Ms. Wang Xiao Li (left), Secretary-General of Guangzhou Arbitration Commission, Dr. Fuldien Li (right), CAA Chairman.



CAA delegations led by Chairman Dr. Fuldien Li (third from right) met with Mr. Singh (third from left), SIAC Chairman of Board of Directors on 2 November 2017.



CAA Chairman Dr. Fuldien Li (left) greeted Emeritus Professor Mary Hiscock (right), Bond University Faculty of Law, on 14 November 2017.

Dispute Adjudication Board (DAB) and Dispute Review Board (DRB): A New Era of ADR

Anna Yan *

Chinese Arbitration Association (CAA) aims to provide comprehensive services of ADR mechanisms. Currently there are arbitration, mediation, Dispute Review Board (DRB) and Dispute Adjudication Board (DAB) rendered by CAA.

The terms DRB (a platform originating in the USA that provides a non-binding recommendation) and DAB (a platform applied by FIDIC and World Bank provides a decision with interim-binding force) sometimes are generically called Dispute Board (DB). DAB and DRB are currently known being operated in numerous countries. According to the data of the Dispute Resolution Board Foundation, there are at least 2800 projects employing DAB/DRB mechanisms over 54 countries in 30 years from 1987 to 2017. In Taiwan, Construction Dispute Review Board (DRB) Rules of the Chinese Arbitration Association (CAA Construction DRB Rules) were in force as of 25 March 2009, and Construction Dispute Adjudication Board (DAB) Rules of the Chinese Arbitration Association (CAA Construction DAB Rules) were in force as of 1 December 2016.

DAB/DRB is ideally suited to the larger projects, or projects which are 'international' (i.e., contracting parties from differing domiciles) and multi-contract projects such as mass transit railways, high speed railways, large power stations and the like. According to the data of the Dispute Resolution Board Foundation, "Highway" projects accounted for 1748, as the highest percentage of the categories among 2800 projects, while "Tunnel" and "Bridge" listed as the second and the third highest percentage, respectively.

DAB/DRB is a panel with experienced, respected,

impartial and independent reviewers. The board is normally meeting with the parties at the construction site periodically. The DAB/DRB members are provided with the contract documents, plans and specifications and become familiar with the project procedures and the participants and are kept abreast of construction progress and developments. The DAB/DRB meets with the Employer's and Contractor's representatives during regular site visits and encourages the resolution of disputes at job level. When any dispute flowing from the contract or the work cannot be resolved by the parties it is referred to the DAB/DRB for recommendation or decision.

The idea behind a DAB/DRB is that it may be called upon early in the evolution of any dispute which cannot be resolved by the parties. The DAB/DRB is required to state opinions or to publish decisions or recommendations on how the matters in issue could or should be settled which includes consistency in decisions and recommendations. What a DAB/DRB does is to provide a regular forum for discussion of difficult or contentious matters which offers the chance to identify ways forward and to create valuable opportunities for the parties to avoid disputes by keeping proactive communication alive.

It is required for the parties to have mutual consent to employ DAB/DRB mechanism in their projects if the parties have any intention to apply in the disputes resolution session of the construction contract.

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Therefore, the Dispute Adjudication/Review Agreement is a tripartite agreement to be signed amongst the parties to the contract on the one hand and the board member on the other. The general provisions of the agreement shall define the composition and the period of the DAB/DRB, which particularly define the start date and the completion date, and the scope of work. The general obligations of the board members are with no financial interest, independence, the disclosure of any previous relationships, the compliance with rules, availability and privacy. On the other hand, the individual tripartite agreement between the parties and the member may define the precise method of payment and the scope of such payments of the member. It is the obligation of the parties too, to warrant the board members are to be paid in the agreed amount and the currency by the agreed time. The parties also undertake not to hold the member liable for any act or omission unless it is shown to have been in bad faith.

The vital difference between DAB and DRB lies on the effects of the outcomes. DRB renders non-binding recommendations to the parties, however for DAB, the parties have empowered the DAB to reach an adjudication decision with which they undertake to comply irrespective of any dissatisfaction with that decision. The adjudication decision may be revised by some later course of action but any future action will not invalidate the necessity to comply with the requirements of the decision promptly.

It has to pay special attention to Article 16 of CAA Construction DAB Rules. It is often for the parties who employs DAB in their construction projects to hesitate if knowing it is likely to get a “binding but not final” adjudication decision eventually. That is to say, the so-called binding adjudication decision is not with statutory enforceability. In this regard, CAA Construction DAB Rules provides the conversion into mediation process in order to strengthen the enforceability of the adjudication decision. It says, “After a party requests dispute adjudication, the Board and CAA may, at a party’s request and with the other

party’s consent, convert the dispute adjudication process into mediation process by recording in the Tripartite Agreement that the members are mediators appointed by the parties. The dispute adjudication process terminates upon conversion into mediation process.

The CAA Mediation Rules and related regulations shall apply to such mediation, whereby the mediators provide settlement recommendations. If the mediators are qualified arbitrators, Article 45 of the Arbitration Law of Taiwan will govern the force and effect of any settlement agreement. If the mediators are not qualified arbitrators, CAA may, at the parties’ request, provide the forum for the notary public to make the settlement agreement into a notary deed in accordance with Article 13.1 of the Notary Act of Taiwan. The Notary Act and other related regulations govern the notarization process and notarial fees.” That is to say, by applying Article 44 and 45 of the Arbitration Law of Taiwan, if the parties reach a settlement in a converted mediation process, the mediated agreement have the same force and effect as that of an arbitral settlement agreement if the DAB members are qualified arbitrators. Hence a settlement agreement under the preceding paragraph has the same force and effect as that of an arbitral award. In the same way if the DAB members are not qualified arbitrators, it is suggested to make the settlement agreement as a notary deed in accordance with Article 13.1 of the Notary Act of Taiwan. The Notary Act and the Enforcement Act of Taiwan governing the notarization will lead to the enforceability.

CAA Construction DAB/ DRB Rules evolved to meet the construction industry’s needs for prompt, informal, cost-effective and impartial dispute resolution. It is believed that the flexibility and enforceability of the comprehensive mechanisms of ADR services provided by CAA will significantly facilitate the parties of construction industry through a neutral third party assists in resolving the dispute. The new era of ADR comes.

Model Arbitration Clause

Any dispute, controversy, difference or claim arising out of, relating to or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration referred to the Chinese Arbitration Association, Taipei in accordance with the Association’s arbitration rules. The place of arbitration shall be in Taipei, Taiwan. The language of arbitration shall be _____. The arbitral award shall be final and binding upon both parties.

The Chinese Arbitration Association, Taipei (“CAA”) is a not-for-profit organization based in Taipei, Taiwan, providing wide-range of dispute settlement administration services, including arbitration, mediation and other alternative dispute resolution proceedings. The Association is the leading arbitration institution in Taiwan and one of the important arbitration centers in Asia-Pacific, handling more than 200 domestic and international cases per year.

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