

## 2010 Taipei International Conference on Arbitration and Mediation

The CAA, the Asian Center for WTO & International Health Law and Policy, College of Law, National Taiwan University (ACWH), and the Chinese Taipei APEC Engineer Monitoring Committee hosted the 2010 Arbitration and Mediation Conference at the Taipei International Convention Center on September 17 and 18. Fifteen arbitration experts from around the world delivered their presentations and shared their experience and knowledge of alternative dispute resolution with more than 100 local and foreign participants. The conference focused on several important developments of and challenges to international arbitration, including cost and time effectiveness of dispute resolution, conflict of interests and ethics, arbitration and international trade and investment, impacts of the UNCITRAL model arbitration law on national legislation, and the recent revisions to the UNCITRAL arbitration rules.

The 2010 conference marked the fourth year of cooperation between the CAA and the ACWH. In his opening remarks, chairman Nigel N.T. Li thanked professor Changfa Lo for co-hosting the conference and co-publishing the Contemporary Asian Arbitration Journal, currently being considered for inclusion in the SSCI. Chairman Li acknowledged the Taipei Bar Association, this year's supporting organization, and the four sponsoring law firms, Baker & Mackenzie, Lee and Li, Formosa Transnational, and Formosan Brothers, for their generous supports, and concluded his remarks by commending the CAA secretariat for their hard work and dedication.

The Taipei conference has been gaining increasing prominence. The conference is now listed as one of the major arbitration events by the Journal of



Speakers of the 2010 Taipei Arbitration and Mediation Conference

International Arbitration, and on the International Arbitration Planner website. This year's speakers include Mr. William Slate II of the AAA, Dr. Johan Gernandt of the SCC, Mr. John Bang of Korea's Bae, Kim & Lee, Dr. Toshio Sawada of Japan, Dr. Sekolec of the LCIA, Mr. Hiroyuki Tezuka of Japan's Nishimura & Asahi, Dr. Hong-Lin Yu of University of Strirling of Scotland, Dr. Ilhyung Lee of University of Missouri, and the two returning speakers from Germany's Gleiss-Lutz, Dr. Lars Markert and Dr. Stephan Wilske. This year's local speakers include Mr. Remington Huang of Baker & Mackenzie, Dr. Helena Chen of Formosan Brothers, Dr. Mu-Te Yu of Lee and Li, and finally, Professor Chang-fa Lo of the National Taiwan University, College of Law.

A speakers dinner was held on the evening of September 17 at the Taipei World Trade Center 33rd Floor Club House, attended by the speakers, moderators, and a number of VIPs, including Ms. Chiann Bao of HKIAC and Mr. Ing Loong Yang of Sidley Austin, who was a speaker of the 2008 conference. In sum, the participants and the speakers enjoyed this year's conference, found the presentations useful and memorable and are all looking forward to next year's annual gathering.

## The CAA Signed a Cooperation Agreement with the Arbitration Institute of Stockholm Chamber of Commerce

The CAA and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) held a signing ceremony of a cooperation agreement on September 17, 2010 just prior to the beginning of the 2010 Taipei International Arbitration Conference. Mr. Nigel N. T. Li, chairman of the CAA, and Dr. Johan Gernandt, chairman of the SCC, signed the agreement as the two institutions agreed to work jointly to strengthen their cooperation and to promote arbitration. Mr. Jens Wernborg, representative of the Swedish Trade Council, Taiwan, was invited to come and witness the signing of the first cooperation agreement the CAA has signed with a Scandinavian arbitral institution.

The two institutions agreed to share information and assist each other in publications, advice and other matters related to dispute resolutions in general. The two will also cooperate to promote resolution of disputes by arbitration and other ADR procedures, and all other matters regarding dispute resolution. The agreement will stay in effect for five years, and may be extended for an additional five years if neither side elects to terminate it at the conclusion of the first five-year term.

Commenting on the agreement, chairman Nigel N. T. Li pointed out that the agreement signals a new



Chairman Li and Chairman Gernandt signing the cooperation agreement

era of cooperation between the two institutions and that the exchange of experiences on arbitration will be beneficial to both parties. Chairman Johan Gernandt agreed with his Taiwanese counterpart and added that the SCC is happy to extend its network of cooperation and is particularly happy to strengthen the ties with Taiwan as business relations between the two sides increase.

To date, the CAA has entered into 30 cooperation agreements with arbitral institutions worldwide. The CAA is committed to expand its friendship ties and to promote the resolution of disputes by arbitration, mediation or other types of ADR jointly with its partnering institutions.

## The CAA to Host Dispute Review Board Symposium

Dispute Review Board (“DRB”) is a popular and proven alternative dispute resolution method that has gained widespread acceptance among international construct projects, but it is new for the Taiwanese construction community. In 2009, the CAA announced its Dispute Review Board (DRB) rules and has been working hard to encourage government agencies and private sectors to resolve disputes through the DRB method.



DRB is a useful and cost-effective means to resolve construction disputes

On March 25 and 26 of this year, the CAA held a construction law research forum in the southern port city of Kaohsiung introducing the DRB rules to more than 100 construction project owners and government agency representatives. In addition, the chairman of the CAA DRB Committee, Mr. John Chien-Chung Lee, and the chairman of the CAA Construction Dispute Committee, Mr. C. C. Lee, met with public construction commissioner Mr. Liang-show Fan, recommending government agencies to set up DRBs for future public construction projects.

The last DRB event in 2010 will be the “Development of International Dispute Review Board” Symposium to be held on November 17, 2010 at the CAA conference room. The CAA has invited Mr. Peter Chapman, an expert on dispute boards and a seasoned arbitrator, to discuss why some countries, specifically the United Kingdom and the United States, have encouraged and promoted the use of the DRB when effective and trusted dispute resolution measures have already developed, and to share his experience and knowledge of the DRB system with the participants.

Mr. Chapman has served on 35 dispute boards, either as a member or as the chairman. He has also associated with some of the largest construction projects in the world, including the Hong Kong Airport, Dublin port Tunnel, Channel Tunnel Rail Link, and a number of hydropower plants in China and India. He was elected as president of the Dispute Review Board Foundation for 2003-2004, and has authored and spoke on dispute boards worldwide.

The one day, free-of-charge conference is expected

to draw 80 participants. Mr. Chapman's speech will take place in the morning. After a luncheon, Mr. Wei-Song Hsiao and Professor Yu-Ming Yen will introduce the CAA's DRB rules and the symposium will conclude by a discussion on the roles in which the Taiwan High Speed Rail DRB played in reducing costs and preventing unnecessary litigation and arbitration.

To sign up, visit the CAA website at [www.arbitration.org.tw](http://www.arbitration.org.tw) or contact the CAA secretariat for details.

## The New 2010 UNCITRAL Arbitration Rules: A Brief Review

Adam Shapiro\*

CAA  
Newsletter

The revision of the UNCITRAL (United Nations Commissions on International Trade Law) Model Rules was finally completed on June 25, 2010 and the rules went into effect on August 15, 2010. Since the original rules were adopted in 1976, the rules have been indispensable to the arbitration field, particularly for ad hoc arbitrations. To adapt to changes as arbitration progressed over the years, a change in the rules became necessary. Over a period of four years from 2006 to 2010, the rules were reworked. Some of the notable changes include issues with multiple parties, joinder, liability, tribunal-appointed experts, and revisions addressing the replacement of arbitrators and interim measures among many other smaller changes.

### Multiple Parties Arbitrations and Joinder

Article 10 addresses arbitrations with multiple parties and where joinder is desirable. Unless otherwise agreed, where there are "multiple parties as claimant or respondent...the multiple parties shall jointly appoint an arbitrator." Article 17.5 allows a party to request a third party to be joined as long as it is a party to the arbitration agreement, unless the tribunal finds this joinder would cause any kind of prejudice. This new joinder allows the arbitral tribunal to make one or more awards to all the different parties involved.

### Arbitrator Immunity

Article 16 provides big protection to arbitrators by excluding them from any liability which parties may try to impose on them. Except for any kind of intentional wrongdoing, no claim, whether do to act or omission, can be brought against the "arbitrators, the appointing authority ...[or] any person appointed by the arbitral tribunal".

### Experts

Article 29 makes important changes to how experts are handled. There are smaller additions, like 29.1's change from "The arbitral tribunal

may appoint..." to "After consultation with the parties, the arbitral tribunal may appoint..." There are also newly created procedures in 29.2 that require before the appointment of an expert, the submission of all qualifications and a statement of impartiality and independence. The parties are then given time to object to any of the three above categories in which the arbitral tribunal can accept or reject. The expert objections can also be brought after the appointment if the reason for the objection



The UNCITRAL announced the revisions to the Model Arbitration Rules in 2010

arises after the appointment. Later in the arbitration, article 29.4 requires the tribunal to give copies of an expert's reports. Upon request by a party, any documents used to make that report must also be provided as well as an opportunity for that party to express its opinion.

### Replacement of Arbitrators

Article 14 revises the replacement of arbitrators with new detailed provisions. While the original rules only covered death, resignation, failure to act, and similar grounds for replacement, the new article is more general with its language "in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute

arbitrator shall be appointed or chosen..." When an issue arises involving the need for replacement of an arbitrator, depending on the views of the parties and the remaining arbitrators, the appointing authority may appoint a substitute arbitrator or authorize the remaining arbitrators to proceed with the arbitration at the current stage they left off at and eventually make an award.

### Interim Measures

Article 26 vastly expands the important area of interim measures. Interim measures defined under this article are temporary measures which allow a party to maintain the status quo, prevent imminent harm or prejudice, or preserve evidence or assets. The party requesting the interim measures must meet the requirements under Article 26.3-26.6 to show necessity. Even if an interim measure is granted, the tribunal may suspend or terminate it at any time. Since these interim measures can

have a serious impact, to prevent damages that might be caused by them, "the party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted."

Other minor changes are sprinkled throughout the rest of the revised rules including reasonableness of costs, review mechanism of costs, designating an appointing authority, and counterclaims. The goal of improving international economic relationships clearly shines through the new rules, and they should now better reflect the way that arbitration is actually practiced today. While the model arbitration rules are designed with ad hoc arbitration in mind, parties may still adopt the model rules for institutional arbitral proceedings as long as the parties mutually agree.

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## Up-and-Coming CAA Events

### October 14, 2010

2010 CAA General Assembly Meeting and Board of Directors/Supervisors Election

### October 25-30, 2010

The 2010 Lee and Li Cup Arbitration Moot Competition

### November 13, 2010

Joint Arbitrator Training Workshop Co-Hosted by the CAA and the CIETAC

### November 15, 2010

The CAA and the CIETAC Tenth Year Cooperation Anniversary Conference on Cross-straight Investment and Arbitration

### November 17

Dispute Review Board Symposium

### December 4-5, 2010

CAA Advanced Mediator Training Workshop

### December 11-12, 2010

The Chartered Institute of Arbitrators Entry-Level Training Course in Taipei

## Standard Arbitration Clause

"All disputes, controversies, differences or claims arising out of, relating to or connecting with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration referred to the Chinese Arbitration Association, Taipei ("CAA, Taipei") in accordance with the Arbitration Law of the Republic of China and the Arbitration Rules of Chinese Arbitration Association, Taipei. The place of arbitration shall be in Taiwan. The award rendered by the Arbitrator(s) shall be final and binding upon parties concerned."

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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