



中華民國仲裁協會

# CAA News letter

December 2010

Published by the Chinese Arbitration Association, Taipei

[www.arbitration.org.tw](http://www.arbitration.org.tw)

## Nigel N. T. Li Re-elected as CAA Chairman

The Chinese Arbitration Association, Taipei (CAA) held a members meeting on October 14, 2010 to elect a new board of directors and board of supervisors. The members meeting was held at the Taipei Howard Plaza Hotel's grand ballroom and was attended by more than 600 delegates.

Prior to the voting, Chairman Nigel N. T. Li and Secretary-General Chih-Hsing Wang delivered the Association's annual performance report to the delegates and provided an outlook on the future development of the Association. Both were optimistic that the Association would continue to be the leading arbitral institution in Taiwan and would succeed in becoming an important international arbitration center.

After all ballots were counted, 31 members were elected to the new CAA board of directors and 9 to the board of supervisors. Most directors from the previous board of directors were re-elected. The board elected 9 directors to serve as the new standing directors. The newly elected standing directors then re-elected Chairman Li to lead the CAA for four more years.

Chairman Li thanked the board members for their trust and outlined his goals for the new term. He

## CAA Opened Liaison Office in Dongguan, China

The CAA liaison office in Dongguan opened on December 16, 2010 with an inauguration ceremony held at the Regal Palace Hotel, which was attended by officials of the Dongguan People's Government, representatives from the Taiwanese Investors' Association in Dongguan, and CAA Secretary-General Chih-Hsing Wang and Director Pi-Song Tsai.

Kaunzheng You, Director of the Bureau of Taiwan Affairs of the Dongguan People's Government, Xiao Nan, Deputy Director of the Economic Division, Taiwan Affairs Office of the Guangdong Provincial Government, Li Feixiao, Chairman of the Guanzhou Arbitration Commission, Chun-Rong Yeh, President of the Taiwanese Investors' Association in Dongguan, and CAA Secretary-General Wang unveiled the official plaque of the liaison office.



Chairman Nigel N. T. Li addressed the members before they cast their ballots during the members meeting in October, 2010

called for the CAA to strengthen the public's trust in its alternative dispute resolution services, forge closer ties with international and Chinese arbitral institutions, and further promote the Association's mediation and dispute review board services both domestically and abroad.

In addition to serving as Chairman of the CAA, Mr. Li is the managing director of Lee and Li Attorneys-at-Law and teaches at National Taiwan University's Department of Political Science and Soochow University's College of Law.

Speaking at the inauguration ceremony, President Yeh welcomed the CAA to the city and said that the liaison office would provide an excellent alternative for Taiwanese investors to address their disputes. Director Tsai and Secretary-General Wang followed and encouraged Taiwanese investors to consider resolve their disputes by arbitration or mediation because litigation is often costly and time-consuming.

The Dongguan office is the second liaison office the CAA has opened in China in 2010. In July, the CAA opened its first liaison office in Xiamen, which like Dongguan, has a large population of Taiwanese expatriates. The new China liaison office will



Secretary-General Wang and distinguished guests unveiled the Dongguan Liaison Office official plaque

## Chartered Institute of Arbitrators Held First Training Course in Taipei

The CAA supported the Chartered Institute of Arbitrators (East Asia Branch) in hosting its first ever training course in Taipei on December 11 and 12, 2010. Mr. Richard Leung, Ms. Mary Thomson, Mr. Christopher To, and Mr. Colin Wall led the two-day training course, which was attended by more than 40 participants coming from all parts of Taiwan and from Hong Kong and Japan.

The course, held at the CAA hearing rooms, was organized into lectures and tutorial sessions. The instructors took turns introducing the fundamentals of international arbitration to the participants, including drafting an arbitration clause, writing statements of claim and defense, conducting an arbitral hearing, and the various recourses against awards and enforcement.

Most participants found the course to be informative and well-organized. A cocktail party, sponsored by the Formosa Transnational Attorneys-at-Law, was held following the conclusion of the two-day session, allowing the participants and the lecturers a chance

to be organizing road-shows introducing the CAA to Taiwanese businessmen in China, hosting symposiums and forums to promote arbitration, and running mediator or arbitrator training courses.

For more information about the location and services of the CAA's China liaison offices, please visit [www.arbitration.org.tw](http://www.arbitration.org.tw)

to chat and network and providing participants with an opportunity to thank the instructors for coming to Taipei and the CAA secretariat for supporting the Chartered Institute of Arbitrators course.

The participants are required to write a 1,500 to 2,500 words paper on arbitration and demonstrate good understanding of the principles of international arbitration before they can apply to become associate members of the Chartered Institute of Arbitrators.



Participants of the CI Arb Entry-Level Course in Taipei

## Taiwan's Supreme Court Upheld a Procedure Approved by the Arbitral Tribunal Similar to "Vouching-in" under Common Law

Helena H. C. Chen\*

"Vouching-in" refers to a common-law practice of ancient lineage, by which a defendant in an action gives notice of the suit to another person or entity that is presently a non-party but may be liable to the defendant over the matter at dispute.<sup>1</sup> Procedurally, vouching-in allows the third party whom the defendant may claim against to be fully and fairly informed of the claim and its pending actions, with an opportunity to appear and participate in the defense in the present proceeding.

Taiwan's Code of Civil Procedure ("CCP"), inter alia Articles 61, 63, 65-67, allows for a very

similar practice. The differences between the CCP practice and "vouching-in" under the common law are as follows:

- (1) Under CCP Art. 65, both parties to the suit may initiate the procedure and request the court to notify a third party who may have a legal interest if the initiating party loses the suit. With vouching-in, only the defendant has the right to vouch-in a third party.
- (2) Under CCP Art. 66, if any of the parties wishes to initiate the procedure, the party shall file a motion to the court to explain its reasons and the status of the suit, upon which the court will decide whether

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<sup>1</sup> The author thanks Angela Lin, Esq. of Lee and Li, Attorneys-at-Law for her comments.

The term "vouching-in" has its origin in English common-law practice. In the United States, it has been largely replaced by a third-party practice called 'impleader' but remains available under the Federal Rules of Civil Procedure.

to notify the third party or not. In contrast, under vouching-in, the notification shall be issued directly to the third party by the defendant.

Despite the differences above, similarities exist. Under CCP Art. 63 & 67, so long as its notification has been granted and properly served, the third party shall be deemed to have been joined in the action and may not dispute the correctness of the judgment even if the said party refuses to be joined in or fails to join in time. Likewise, in the “vouching-in” practice, should the properly informed third party neglect or refuse to defend against the suit, it will still be bound by the judgment in the same way as if it had actually been made a party of record.

Taiwan’s Supreme Court has validated the legality of an arbitral tribunal’s application of the CCP procedure similar to vouching-in. In *Chan Liang Construction Company Ltd. (“Chan Liang”) v National Museum of Prehistory (“NMP”),*<sup>2</sup> the Supreme Court re-affirmed the judgment of the lower court, Taiwan High Court, Huan-Lian Branch, that, even though Chan Liang appeared and supported Megatrend Eng & Construction Corp. (“Megatrend”) in an arbitration proceeding between Megatrend and NMP after declaring that it should not be bound by the arbitral award, Chan Liang shall nevertheless be bound by the award according to Art. 19, Para. 2 of Taiwan’s Arbitration Act, which recognizes the *mutatis mutandis* application of CCP Art. 61 & 63 in arbitration proceedings.

NMP contracted Chan Liang for the museum’s water and electric system (Phase I), including a fire fighting system. Separately, NMP employed Megatrend to design and construct the display and exhibition windows. On July 24, 2001, the museum experienced a fire resulting from negligence on the part of a Megatrend employee when he was performing assigned work. NMP launched arbitration against Megatrend for damages. In its defense, Megatrend contended that Chan Liang was jointly liable because Chan Liang failed to place the extinguishers and water hoses in their designated location, which constituted a breach of contract and impeded the fire from being controlled at an early stage. Additionally, Megatrend argued that the procedure similar to vouching-in allowed under CCP, *inter alia* Articles 61, 63, 65-67, could be applied *mutatis mutandis* to the arbitration proceeding pursuant to Art. 19, Para. 2 of Taiwan’s Arbitration Act, which provides that, “Where this Act is silent, the arbitral tribunal may adopt the Code of

Civil Procedure *mutatis mutandis* or other rules of procedure which it deems proper” and requested the arbitral tribunal to serve a notice to Chan Liang. Consequently, the arbitral tribunal issued a notice to Chan Liang. Chan Liang declared that it should not be bound by the award, but nevertheless appeared in the arbitration proceeding and submitted oral and written arguments in support of Megatrend’s defense to the tribunal. The tribunal ruled in favor of NMP and found that:

1. Megatrend could have been held liable for the total damage of NTD 82,546,534.
2. However, Chan Liang was also liable and NMP shall assume Chan Liang’s liability as its employer.
3. The tribunal cited Art. 217, Para. 1 of Taiwan’s Civil Code, which provides that “If the injured person has negligently contributed in causing or aggravating the injury, the court may reduce or release the amount of the compensation” and assessed Chan Liang’s liability to be equal to 10% of the total liability. In conclusion, the tribunal held that Megatrend should compensate NMP in the amount of NTD 74,291,881, calculated as follows:  $\text{NTD } 82,546,534 \times (100\% - 10\%) = 74,291,881$ .



Taiwan’s Supreme Court has ruled that a third party who joins an arbitration is bound by the tribunal’s decision even if the party has declared that it should not be bound by the award before its appearance in the proceedings

Since NMP withheld the retention money and the performance bond on Chan Liang’s account, Chan Liang filed a lawsuit against NMP for their release. NMP contended that Chan Liang should be held liable for NTD 8,254,653 as well as the cost of reconstruction, given that the arbitration tribunal recognized Chan Liang’s liability in its award. NMP further argued that after setoff, NMP was still owed a balance by Chan Liang and filed a counter-claim. Chan Liang responded that, because it was not a party in the arbitration proceeding and had declared that it should not be bound by the award before its

<sup>2</sup> The Supreme Court Civil Judgment No. 95 Tai-Shang-Zih 2277.

appearance in the proceeding, CCP Art. 61 and 63 shall not apply and Chan Liang should not be bound by the award. Chan Liang's statements were held untenable by the Taiwan High Court, Hua-Lian Branch on the basis that since the arbitral tribunal granted the joining of the third party, namely Chan Liang, to the proceeding pursuant to relevant provisions under CCP, according to the provisions under CCP Art. 61 & 63, Chan Liang shall be bound by the arbitration award; otherwise, it would result in a partial application of the provisions governing the joining of a third party under CCP, which compromises litigation efficiency and the principle of good faith. Chan Liang appealed but the Supreme Court re-affirmed the judgment of the Taiwan High Court, Hua-Lian Branch.

The Supreme Court's reasoning was that, it was clear that the Supreme Court would not allow a partial application of the provisions governing the joining of a third party under CCP. However, given the limited number of cases so far, we are not certain whether the Supreme Court will continue to hold the same opinion as it did in the Chan Liang case if, upon being notified by a party to an arbitration proceeding, a third party refuses to appear in the

proceeding to support the defense of the party at dispute which requests the notification.

It is also noteworthy that, as shown in a number of other cases, the courts have consistently recognized the arbitral tribunal's authority in determining whether the motion to notify a third party shall be granted. In *Kaohsiung County Government v Swire Sita Waste Services Limited, Taiwan Branch*,<sup>3</sup> the arbitral tribunal did not grant the motion to notify a third party. It was later challenged that the award should be vacated pursuant to Art. 40, Para. 1(4) of Taiwan's Arbitration Act, which stipulates that "the arbitral proceedings did not comply with the law." Taiwan High Court did not support the challenge and found that the tribunal had the authority to determine whether a third party shall be notified and the tribunal's decision of not issuing such a notice would not render the arbitral proceeding incompliant with the law. The Supreme Court re-affirmed this judgment. There have been other cases supporting the same view. See *Lujhou City Office, Taipei County v Ji-Sheng Environmental Protection Co. Ltd.*<sup>4</sup> and *Environmental Protection Administration, Executive Yuan v Mitsubishi Heavy Industries, Ltd. Taipei Branch (Japan)*.<sup>5</sup>

<sup>3</sup> The Supreme Court Civil Judgment No. 97- Tai-Shang-Zih 2094.

<sup>4</sup> Taiwan High Court Civil Judgment No. 97-Chong-Shang-Zih 497

<sup>5</sup> Taiwan High Court Civil Judgment No. 98-Chong-Shang-Zih 554

## Up-and-Coming CAA Events

### December 15, 2010

Dongguan Liaison Office Opening Ceremony

### January 7, 2011

Book Launch Party

### January 15-16, 2011

Introductory Arbitrator Training Course

### January 24, 2011

Ethics Committee Meeting

### January 25, 2011

CAA Chinese New Year Party

### March 25-26, 2011

Business Negotiation Workshop

## 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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