



# CAA News letter

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## CAA Announces Draft of the Financial Disputes Arbitration Rules

The CAA announced the draft of the CAA Financial Disputes Arbitration Rules in January of 2011. The draft is authored by the members of CAA's Finance, Security, Insurance Dispute Arbitration Committee, which is comprised of representatives from local banks, law firms, and banking law experts.

The Financial Disputes Arbitration Rules were drafted in response to the passage of the Economic Cooperation Framework Agreement ("ECFA") and the Financial Memorandum of Understanding ("MOU") signed between Taiwan and mainland China. The CAA anticipates that with the signing of these two historic agreements, interaction between financial institutions across the Taiwan Strait will grow at an unprecedented pace. With rules governing the mutual recognition and enforcement of arbitral awards now in place, more parties are expected to choose to resolve their disputes by arbitration than ever before. Financial institutions will have an even stronger incentive to resolve their differences more quickly and more cost-effectively. For them, time is of the essence and disputes between investors need to be resolved as quickly as possible. Therefore, the Rules are designed to include several features to speed up and to further reduce the costs of arbitration proceedings.

The Financial Dispute Arbitration Rules will apply to any financial dispute accepted by the CAA for

arbitration in which the parties have explicitly agreed to adopt the Rules. Failing such agreement, the ordinary arbitration rules of the CAA shall apply. Proceedings under the Financial Rules will conclude more quickly than those under regular-track arbitration rules. Regular-track arbitrations in Taiwan normally conclude within nine months, making them faster than proceedings administered following the *lex arbitri* of other countries. Now, the Financial Rules require a proceeding to conclude within 3 months. In addition, the new Rules give the arbitral tribunal the power to consider international norms, industry standards, financial market rules and trade rules, thus making the outcome of the award more equitable and fair.

In the coming months, the CAA will be hosting a number of hearings and symposiums which will provide opportunities for the general public and potential users to give comments and feedbacks regarding the Financial Rules before they take effect. The Finance, Security, Insurance Dispute Arbitration Committee members will meet after the hearings and symposiums to review and, if necessary, to modify the draft Rules to ensure the published Financial Rules conform with internationally accepted practices and norms. The CAA has not set a firm date by which it will announce the Rules, but it is hoped that the Rules can be finalized and made public by the end of 2011.

## Harvard Asian Law Society Pays Visit to CAA

A delegate of twenty-three members of the Harvard Asian Law Society paid a visit to the Association's Taipei office on the morning of March 15. Standing Director James C. C. Ku hosted the welcome reception on behalf of the CAA. In his welcome remarks, Mr. Ku thanked the students for visiting the CAA and wished them much success in their school work and their future legal careers.

The CAA Secretariat proceeded to deliver a presentation on arbitration law and the ADR practice of Taiwan. The students were introduced to the different types of ADRs the CAA administers. After



Delegates of Harvard Asian Law Society and CAA representatives

a fifteen-minute presentation, a lively question and answer session followed. The students asked many good questions, such as whether or not forced arbitration in credit card, banking or cell phone contracts is fair and conscionable and which techniques should be used by dispute review board members to ensure parties comply with their recommendations.

The memorable visit concluded with a quick tour of the office and a luncheon. In addition to visiting the CAA, the Harvard Asian Law Society had the honor of meeting with President Ying-Jeou Ma, who himself is a Harvard Law alumnus. The CAA Secretariat would like to thank Dr. Helena Chen, Ms. Hsiao-Ling Fan, Mr. Justin Li, and Dr. En-Fong Lan for joining us in welcoming the students.

## Asian Mediation Association Conference Held in Malaysia

Asian Mediation Association ("AMA") held the 2nd AMA Conference held in Kuala Lumpur on Feb. 24-25, 2011. Vice-chairpersons of the Mediation Center of CAA, Angela Lin, Esq. and Helena Chen, Esq., attended the Conference. In addition to their successful networking with the delegates from major mediation institutions in Asia at the Conference, they expressed the CAA Mediation Center's intention to join AMA to the Chairman of AMA, Datuk Kuthubul Zaman Bukhari, who responded with warm welcome verbally at once. As a follow-up, AMA provided a copy of the Application Form together with a copy of articles in the Charter of the Asian Mediation Association ("Charter") regarding membership. The CAA Mediation Center meets the criteria for associate membership set forth



The Second Asian Mediation Association Conference was held in Kuala Lumpur, Malaysia

in the Charter and plans to file an application in due course.

## Financial MOU: Resolving Cross-Strait Financial Disputes through Arbitration and Mediation

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### I. Significance of the Financial MOU

The Memorandum of Understanding on Cooperation in Financial Supervision ("Financial MOU") across the Taiwan Strait was officially signed on November 16, 2009 and took effect two months later on January 15, 2010. Based on international practice, when banks, securities and futures companies, and insurance companies set up branch offices or subsidiaries in another country, financial supervisory agencies of the two countries involved usually discuss the ways to carry out joint supervision and document the issues discussed in the form of a MOU, which in essence is a "binding agreement." Although a MOU does not have full legal stature, MOUs are binding based on past practices. Therefore, the Financial MOU will govern the terms of cooperation for monitoring banking, securities, futures, and insurance services between Taiwan and mainland China.

The Financial MOU is the first step toward the

opening of cross-Strait financial markets. With the MOU, Taiwan and mainland China will be able to further discuss additional financial measures, such as allowing judicial persons from the mainland to invest in the Taiwanese stock market and permitting the financial institutions of the two sides to cross-hold shares and to set up representative or branch offices on the other side of the Strait.

Currently, eight Taiwan banks: Chang Hwa Bank, Cathay United Bank, Hua Nan Bank, First Bank, Taiwan Cooperative Bank, Land Bank of Taiwan, Chinatrust, and Mega International Commercial Bank, have established offices in mainland China. With the exception of Mega International Commercial Bank, the offices of these banks are permitted to be upgraded to branch offices. In addition, insurance companies and securities companies can now set up offices in the mainland. With the passage of the Financial MOU, there are now fewer restrictions on their joint-investment

partners, allowing them to expand their scope of business operations. Moreover, many stock market investors are looking forward to the influx of mainland Chinese capital, which may help drive up share prices to the benefit of the local stock market.

Since the MOU and the Economic Cooperation Framework Agreement ("ECFA") came into effect, interactions and business transactions between cross-Straits financial institutions have become more frequent. However, there remains the likelihood of disputes involving Taiwanese businesses and mainland-Chinese invested businesses, regardless of whether they are doing business in Taiwan or in the mainland. Thus, dispute resolution becomes an important issue. Taiwan and the mainland have been separated for decades, creating significant differences in the two sides' judicial systems and cultures. Mediation and arbitration, which can help prevent political complications and maintain trust between the two sides, are the ideal methods for resolving cross-Straits financial disputes.

For this reason, directors and supervisors of the Chinese Arbitration Association, Taipei (CAA) have worked closely with the Bankers Association, the Securities and Futures Bureau, and various business associations in Taiwan to establish the CAA Finance, Security, and Insurance Dispute Arbitration Committee, which drafted the CAA Financial Disputes Arbitration Rules. The new Rules are tailor-made to handle future arbitration or mediation matters concerning financial disputes across the Strait. It is hoped that the Committee, along with the Arbitration Rules, will enable the Association to efficiently administer and settle financial disputes under the framework of the Financial MOU.

## **II. The CAA Financial Disputes Arbitration Rules**

1. The Financial MOU, ECFA and Reasons for the Formulation of the Arbitration Rules: The CAA has taken into account that after the Financial MOU became effective and after the signing of ECFA, interactions and exchanges between financial institutions from Taiwan and mainland China would increase. In addition, there remain differences between the judicial systems across the Strait, and trust is also an issue. To resolve financial disputes, the CAA believes that the use of arbitration and mediation is the most fair method and meets the expectations of businesses.

2. The Formulation Process: The Finance, Security, and Insurance Dispute Arbitration:



Mr. Fong-Fu Chen (Left), chairperson of the CAA Financial Arbitration Committee, and Mr. Terry Chih (Right), drafter of the CAA Financial Disputes Arbitration Rules

Committee of the CAA, which took the lead in formulating the Financial Arbitration Rules, is comprised of scholars, experts, and competent authoritative representatives. Thus, the Rules were made by the users for the users.

During the process, the Committee visited relevant agencies, such as the Bankers Association of the Republic of China, the Securities Investment Trust and the Consulting Association of the Republic of China, and the Taiwan Financial Services Roundtable. In addition, the Committee formed a working group comprised of five members to discuss and review the legislation of different countries. Several rounds of discussions were held after the provisions of the Arbitration Rules were drafted, so as to ensure the integrity of its contents.

(1) Comments from the Various Institutions: The CAA Financial Arbitration Rules enjoy special legal stature; they could be applied to financial disputes across the Strait or in Taiwan. Thus, there was the need to solicit comments from financial institutions to understand their needs. For this reason, members of the Finance, Security, and Insurance Dispute Arbitration Committee took the initiative to visit financial institutions and requested the Bankers Association to write to its member financial institutions to solicit comments. All the above efforts were done to meet the expectations of the financial institutions. In addition, the Committee also requested the Taiwan Academy of Banking and Finance to organize workshops to listen to comments from experts and scholars from Taiwan and abroad. In the future, the CAA will continue to organize conferences and invite lawyers, accountants, the Bankers Association, and financial institutions to take part in discussions.

(2) Valuable Comments from the Bankers Association and Banks: During its process of formulating the Financial Arbitration

Rules, the Bankers Association and banks took active participation and offered valuable advice. The Bankers Association organized a workshop where representatives from the CAA were able to present the provisions of the Rules for discussion. The Bankers Association also requested its member banks to offer their comments in writing. All these were valuable during the process of formulating the Arbitration Rules.

- (3) Consistency of the Laws and Regulations: The Committee and working group recognized the importance of the Financial Arbitration Rules because of the special role it plays and because the provisions of the Arbitration Rules should not in any way be inconsistent with existing laws and regulations, such as the Arbitration Act, Securities and Exchange Act, Futures Trading Act, Financial Holding Company Act, and the Business Mergers and Acquisitions Act. The Arbitration Rules should also be consistent with the CAA Arbitration Rules. To ensure consistency, the head of legal affairs at the Financial Supervisory Commission was also invited to help the

Committee and working group carry out a stringent review of the Arbitration Rules.

### **III. Common Expectations of Arbitration Institutions on Both Sides of the Strait**

The signing of the cross-Straits Financial MOU is expected to help increase the competitiveness of Taiwanese financial institutions and increase their profits. In addition, institutions are expected to merge or acquire one another and to cross-hold one another's shares. However, financial disputes are expected to arise. To avoid the drawn-out judicial process on either side of the Strait and adjustments to a different judicial system, arbitration and mediation should come to play an important role in resolving these disputes. In addition, because the international community generally recognizes and enforces the results of such arbitration and mediation and because the judicial systems in both Taiwan and mainland China likewise recognize and enforce awards made in one another's jurisdiction, arbitration and mediation will become the best platform for the resolution of cross-Straits financial disputes and will play a major role for years to come.

## **Up-and-Coming Events**

### **April 8-9, 2011**

Business Negotiation Workshop, Taipei, Taiwan

### **April 14, 2011**

Roundtable on the Recent Court Decisions, Taipei, Taiwan

### **June 11, 2011**

Arbitrators Field-Trip Day, Ilan, Taiwan

### **June 30-July 1, 2011**

Workshop on International Arbitration in Stockholm, Sweden

### **July 8-10, 2011**

Asia Pacific Regional Arbitration Group Meeting, Kuala Lumpur, Malaysia

## **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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