Going global through Taipei: 2012 Taipei International Conference

On September 3-4, 2012, the CAA and National Taiwan University College of Law (NTU) jointly hosted the 2012 Taipei Arbitration and Mediation Conference in Taipei, Taiwan. The conference has drawn more than 60 practitioners from the region and local in-house counsels, lawyers and academics. Chairman Nigel N.T. Li of the CAA delivered the opening remarks noting the conference’s contribution in providing a forum for scholars and practitioners to exchange their knowledge and ideas of international arbitration in Taiwan. The conference explored issues relating to ICSID arbitration, Cross-Strait arbitration, investment arbitration, and several fundamental issues concerning arbitration and mediation, including challenges of arbitrator and enforcement of mediation settlement. Most papers presented in this year’s conference are expected to be published in the November 2012 issues of the CAA Journal, which is also jointly published by the CAA and the NTU. For more details regarding the conference, please check our website: http://www.arbitration.org.tw/english/index.php

The key speakers of the 2012 CAA conference

The Big Picture of CAA and CIETAC Arbitration rules

CAA and China International Economic and Trade Arbitration Commission (CIETAC) successfully co-hosted the arbitrator training course on October 27 and 28 at the CAA’s Taipei office. The workshop was led by 12 arbitration experts from Taiwan is recognized as a valuable platform facilitating interaction between China and Taiwan’s arbitral practitioners. The workshop was well received and participants were interesting giving legal advice on several cross-strait transaction issues. Through interaction, practitioners gained better understanding on both sides of arbitration rules, as well as the solution to solving business dispute under the rules.
Forward-looking strategy to Cross-strait dispute resolutions

Cross-strait Bilateral Investment Protection and Promotion Agreement (Cross-strait BIA) is an important initiative to strengthen cross-strait economic cooperation between China and Taiwan. In the meantime, the growth of Cross-strait business opportunities and disputes will certainly drive the expansion of the legal services. On October 26, 2012, the CAA and China International Economic and Trade Arbitration Commission (CIETAC) jointly held the conference on Cross-strait arbitration development in dealing with the new challenges after Cross-strait BIA was signed. Looking ahead, Speakers all highlighted that the CAA’s important role as an arbitration center is to develop alternative dispute resolution method to assist parties of either side of The Straight to resolve disputes.

Promoting the construction arbitration mechanism in Public sector

In order to promote the construction of arbitration mechanism in the Public sector, CAA held four conferences for government institutions in October in Taipei, Taichung, Kaohsiung, and Taitung respectively. The conferences drew over 700 participants in total and feedbacks from the participants were all positive.

Visiting by the KCAB delegation

A KCAB (The Korean Commercial Arbitration Board) delegation comprised of 6 members from KCAB and Ministry of Unification, Korea, visited CAA on December 6, 2012. Mr. James C. C. Ku, Standing Director of CAA, hosted the meeting. The KCAB delegates and CAA representatives exchanged their views on the cooperation in arbitration services between Taiwan and China.
International Arbitration on Intellectual Property Disputes

Celeste Yang 1

1. Development of international arbitration on intellectual property right

In matters concerning intellectual property (IP) right disputes, arbitration has not been the priority option as the dispute resolution body. Most of the firms believe resorting to legal litigation is the most effective way. However, many failed to realize arbitration in certain circumstances can be more appropriate and efficient in dealing with IP dispute. Arbitration has not always been recognized to be an appropriate dispute resolution method. Take patent disputes in the United States for example, its courts were reluctant to enforce arbitration awards due to the “public interest” nature of patent and held that they cannot be handled by non-judges 2. The view has changed in 1982 when the U.S. amended its Patent Law Amendments Act and accepted private resolution of patent disputes. In 1985, United Nations Commission on International Trade Law (UNCITRAL) established Mode Law on International Commercial Arbitration, which sets out the consensus on recognizing the value of arbitration and aims to improve legal frameworks in international trade by providing legislature text for use by States 3. The resolution on Mode Law on International Commercial Arbitration was a milestone for international trade, including IP agreements. In 1994, WIPO set up Arbitration and Mediation Center that concentrated in solving IP related disputes through arbitration and mediation, which further proliferated the number of international arbitration over IP disputes. WIPO explained that arbitration can better address IP dispute for it relies heavily on expertise from the technology fields rather than legal 4. Furthermore, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Convention” ensures that arbitral awards rendered in a foreign country will also be enforced in another member state. It currently has 146 member states as of 2011 5. Unfortunately Taiwan has not been able to become a member in the New York Convention, which adds one uncertainty factor to Taiwan’s enforcement of arbitral awards.

2. Benefits and Criticism of Arbitration

With the growing need of international arbitration in the realm of IP, it is important to understand the mechanism of arbitration and the benefits of it. The most distinct trait of arbitration is the consensual trait. Unlike traditional court litigation, parties can agree on the law and procedures, the trier and the number of the trier. For example, the UNCITRAL has an ad hoc arbitration procedure 6, and WIPO also has its own rules 7. The number of the trier can be an individual or a panel. A binding arbitration produces a determination that carries with it the full force of law, which is different from mediation where the purpose is to reach a settlement.

On its website, WIPO made a comparison chart that correctly points out the differences between arbitration with traditional court litigation 8. It first talked about the international nature associated with IP disputes. Many of the different domestic laws and procedures make IP litigation uncertain. There is also a concern over the possibility of home court advantage; whereas the arbitration process requires only one procedure with arbitrator of neutral nationality. WIPO further makes the distinction between the triers and points out that the arbitrators can be someone with relevant expertise to the technology in disputes. Some believe this is the principal reason arbitration is ideal for high-tech IP disputes considering the complexity of technology 9. This is not to say that arbitrators cannot be from legal profession. Sometimes, if the case involves multidisciplinary fields, the parties may choose arbitrators from different expertise, such as an engineer, a lawyer and an accountant. Faced with the fast paced technology market, arbitration presents the advantage of shorter time in process and limited option of appeal. One example of shortened process is that arbitration usually shortens the discovery process. It not only saves time but also the

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1 Assistant Professor in National Tsing Hua University, Institute of Law for Science and Technology
9 Raymond G. Bender Jr., Arbitration – an ideal way to resolve high tech industry disputes, Dispute Resolution Journal, 2011.
cost associated with it. Lastly, one of the most acclaimed traits of arbitration is the confidential proceedings and awards that render protection to trade secret and confidential information. However, arbitration is sometimes criticized for the uncertainty in enforcement by domestic courts. Some jurisdictions will only enforce the arbitral awards when local courts have approved them. It coincides with the view that arbitration aggravates the distrustfulness toward foreign legal system, political system and economic structures 10.

3. Intellectual Property Cases in Arbitration

Most of the IP cases involve patent, copyright, trademark and domain names. For patent arbitration, the issue could be the assignment or licensing of patent right, or it could involve the validity and infringement of patent. One disadvantage in patent arbitration is that sometimes the arbitration panel lacks the ability to issue injunction reliefs, which can be a fatal threat to patent holders because the ability to stop the infringer from selling the disputed goods, which has been believed to be the best way to protect patentee’s interest 11. The software development and wide adoption of internet have also contributed to the growing number of disputes on copyright and trademark resolved in international arbitration. There is also a surge of enthusiasm in solving disputes over domain names 12.

4. Conclusion

The international arbitration has provided an alternative method to solve disputes in the realm of intellectual property rights. Even though there are some disadvantages to the arbitration system, but the flexibility and consensual nature provides parties the opportunity to seek for a resolution body that can best be tailor to their needs. This is especially true when firms are not backed with sufficient fund for litigation. Nevertheless if circumstance so requires an immediate relief such as injunction or interim order against the alleged infringer, then the traditional court litigation will probably be the more desired resolution body.

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Up-and-Coming Events

December 20-21, 2012
Conference on PPIP (Private Participation in Infrastructure Projects)

December 29, 2012
Conference on BOT (Build-Operate-Transfer)

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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