

CAA Designated as the Cross-Strait Disputes Settlement Body

R.O.C. Ministry of Economic Affairs (MOEA) has appointed the Chinese Arbitration Association (CAA) as the Official Designated Cross-Strait Investment Disputes Settlement Institution in Taiwan on October 1 of 2013. Pursuant to the Cross-Strait Bilateral Investment Protection and Promotion Agreement (BIA) effective on February 1 of 2013 and MOEA's designation, CAA will provide mediation services for those investors and host parties regarding the Cross-Strait investment compensation disputes.

2013 Taipei International Conference on Arbitration and Mediation

The Chinese Arbitration Association (CAA), the Asian Center for WTO & International Health Law and Policy of the National Taiwan University College of Law (ACWH), and the Chinese Taipei APEC Engineer Monitoring Committee co-hosted the 2013 Arbitration and Mediation Conference at CAA on August 30 and 31. Mr. Nigel N. T. Li, Chairman of CAA, delivered the opening remark pointing out

....continue to page 2



Speakers of the 2013 Taipei International Conference

2013 APRAG Conference held in Beijing

From June 27 to 29, 2013, Asia Pacific Regional Arbitration Group (APRAG) held its 5th annual conference in Beijing, organized by the China International Economic and Trade Arbitration Commission (CIETAC). With the theme "International Arbitration in Asia-Pacific Region in the Next Ten Years--Opportunities and Challenges", the Conference is a platform for prominent arbitration experts and scholars to discuss the arbitration development in Asia Pacific so as to strengthen its foothold in the realm of international arbitration.

The program of APRAG conference 2013 consists of seven sessions, including New Trends and Innovations in International Arbitration Rules, Emergency Arbitrator and Interim Measures, Managing Arbitration Proceedings Offshore, Development of Mediation, Maritime Arbitration in the Region, Enforcement of Arbitral Awards in the Region, Investment Treaty Arbitration, and Cultural Differences and Predictions for Arbitration in the Next Ten Years. It is estimated that around 400 people

....continue to page 2

that the signing of the Cross-Strait Bilateral Investment Protection and Promotion Agreement on August 2012 underscored the importance of arbitration and mediation in resolving disputes. The two-days conference was divided into six sessions covered various topics. More than 20 arbitration experts from Taiwan and around the world presented and shared their experience and knowledge of arbitration and mediation with more than 70 local and foreign participants.

The first session focused on the fundamental issues and quality enhancement. Dr. Sundra Rajoo (Director, Kuala Lumpur Regional Centre for Arbitration) and Mr. Benjamin Hughes (Independent Arbitrator & Mediator) compared the ethical standards on arbitrators among the institutions concerning the concept of impartiality and independence. Dr. Olivier Caprasse (Professor, Universities of Liège and Brussels) introduced the latest IBA guidelines on conflict of interests and rules on taking of evidence in international arbitration. Moreover, with respect to application of the law are always less clear in the international arbitration, Dr. Joshua Karton (Assistant Professor, Queen's University Faculty of Law) clarified the nature and scopes of arbitrator's duty to apply the law. In the second session, Dr. Joseph Lee (Lecturer in law, University of Exeter), Ms. Tan Weiyi (Senior Associate, Baker & McKenzie, Wong & Leow), Dr. Renato Nazzini (Professor, King's College of the University of London), and Dr. Stephan Wilske (Partner, Gleiss Lutz) updated the latest developments of commercial arbitration, including interim measures,

participated in the conference from various countries. Dr. Pi-Song Tsai, Board Director of CAA and Mr. Han-Ting Liu, Secretary-General of CAA, represented CAA in the meeting.

The 5th Bi-Annual General Meeting of APRAG was held ahead of the Conference. In the meeting, Dr. Sundra Rajoo, President of APRAG, appreciated all the members' support and contribution for the past two years, reporting several issues regarding the achievement of APRAG, such as the increasing number of members from 31 to 40 and expansion of the panelists involvement. In the end of meeting, Dr. Rajoo announced the new elected President and Vice President of APRAG. The representatives present

remedies, expedited procedures, and enforcement of arbitral awards.

The conference also highlighted some important issues of Investor-State Arbitration. In session four and five, Dr. Julien Chaisse (Associate Professor of Law, Chinese University of Hong Kong), Mr. Rahul Donde (Associate, Lévy Kaufmann-Kohler, Attorneys at law), Mr. Chien-huei Wu (Assistant Research Fellow, Academia Sinica of Taiwan), Dr. Tsai-yu Lin (Professor, NTU College of Law and Director of ACWH) and Dr. Chang-fa Lo (Justice, ROC Constitutional Court and Professor of NTU College of Law) discussed many cases regarding recent development of investment arbitration in Asian jurisdiction. In addition to arbitration, Dr. Bobette Wolski (Associate Professor, Faculty of Law,

Bond University) and Dr. Winnie Jo-Mei Ma (Adjunct Assistant Professor, Faculty of Law, Bond University) jointly indicated some new trends of mediation development for mediation settlement agreements (MSAs) and arb-med-arb process in the last session.

Most papers presented in the conference are expected to be published in the November 2013 issues of the CAA Journal in the near future, which is jointly published by CAA and NTU. For subscription information, please check our website: <http://www.arbitration.org.tw/english/index.php>



Mr. Nigel N. T. Li, Chairman of CAA, addressed the participants in the opening ceremony

unanimously agreed Mr. Yu Jian-Long, Secretary-General of CIETAC, to be next President, and Mr. Nigel N. T. Li of CAA, was elected as Vice President.

APRAG will celebrate its 10th anniversary next year, which is an important milestone in both the history of APRAG and international dispute resolution in the Asia Pacific Region. As one of the supporting organizations, CAA is delighted to share that the 10th Anniversary Conference will be held on 26-28 March 2014 in Melbourne, Australia. Please visit the Conference website: <http://www.apragmelbourne2014.org> or CAA website: <http://www.arbitration.org.tw/english/index.php> for more information about registrations, outstanding program, social functions, venue and host city.



From the left to right : Mr. Yu Jian-Long, Vice Chairman of CIETAC; Mr. Sundra Rajoo, President of APRAG; Dr. Pi-Song Tsai, Board Director of CAA and Mr. Han-Ting Liu, Secretary-General of CAA

CAA Mediation Training Courses

To meet the increasing need in Taiwan, CAA held regular mediation training courses for legal practitioners in Taipei, Taichung and Kaohsiung respectively. The courses were held in September, and only opened for 70 participants in total.

In order to maintain the high quality of mediator, the training courses are based on the principle of “facilitate mediation skills” in relation to the methods to instruct the parties, to ensure the compliance with meditation settlement, and to assist the parties to identify the real interest and options. The courses also included mock mediation practicing instructed by professional tutors to demonstrate the effectiveness of mediation to resolve the disputes. The two-day intensive training courses ended with the joining of CAA mediation center by many new well-trained mediators.



Mock mediation practicing instructed by Dr. Lin Chien-Chung (Associate Professor, National Chiao Tung University)

2013 New issues: CAA journal

Contemporary Asia Arbitration Journal (CAA Journal), co-published by CAA and National Taiwan University, aims to encourage the publication of original papers in relation to international arbitration issues. The 2013 issue covers: Relations and Possible Interactions between State-State Dispute Settlement and Investor-State Arbitration under BITs, written by Dr. Chang-fa Lo; The Enforcement of ICSID Awards in the PRC, written by Dr. Julian Ku; Proper Interpretation of Corporate Nationality under International Investment Law to Prevent Treaty Shopping, written by Dr. Xiao Jing Zhang; Determining Damages in ISCID Arbitration: A Problem of Uncertainty, written by Dr. Alex Lo. For subscription, please submit your request to service@arbitration.org.tw



Enforcing Arbitral Awards in Taiwan

Ching-Yuan Yeh*

I. Basic Features of Arbitrations in Taiwan

The arbitration in Taiwan can be traced back to the 1950s. In 1955, the "Commercial Arbitration Association of the R.O.C." was established.¹ In 1961, the government promulgated the Act of Commercial Arbitration thus officially recognized the validity and enforceability of arbitral awards. In 1998, the Act of Commercial Arbitration was amended and renamed to "Arbitration Act" in order to expand the scope of arbitration to include all civil disputes, but not merely commercial transactions.² The Commercial Arbitration Association of the R.O.C. therefore changed its name to the Arbitration Association of the R.O.C., a.k.a. Chinese Arbitration Association, Taipei ("CAA").³ Currently, around 834 professionals are registered with the CAA as qualified arbitrators; among them, 462 are lawyers, 109 are engineers, 86 are professors, 63 are architects, 23 are accountants, 19 are medical doctors; only 30 are foreign arbitrators.⁴ In the past five years, the CAA handled 823 arbitrations; among them, 49 (around 5.74%) are international arbitrations.⁵

II. Enforcement of Arbitral Awards: in General

In general, an arbitral award may not be enforced unless a court with competent authority has granted enforcement order. Nonetheless, if the arbitral award concerns any of the following subject-matters: (i) payment of a specified sum of money or certain amount of fungible things or valuable securities; or (ii) delivery of a specified movable property, the prevailing may enforce the arbitral award without an enforcement order issued by the court, if the parties had agreed in writing that the arbitral award is self-executing.⁶

Under three circumstances, the court will reject an application for enforcement: (i) the arbitral award concerns a dispute not contemplated by the terms of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award; (ii) the reasons for the arbitral award were not stated, as required, unless the omission was corrected by the arbitral tribunal; or (iii) the arbitral award directs a party to act contrary to the law.⁷

In the past five years, the Taiwan High Court revoked seven arbitral awards (among 69 litigations). Among the seven arbitral awards, three were revoked as they exceeded the scope of the arbitration agreement,⁸ two were revoked because the court found that there was no arbitration agreement between the parties.⁹ Other reasons that resulted in revocation of arbitral awards include: 1) an arbitrator requested to withdraw by one party failed to do so;¹⁰ and 2) one of the parties to the arbitration was not provided with adequate time to present his claims and evidence.¹¹

III. Enforcement of foreign Arbitral Awards in Taiwan

While Taiwan is not a party to the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards," a.k.a. "New York Convention," Taiwan courts have long recognized and enforced foreign arbitral awards under its Arbitration Act.¹²

* Associate Partner, Lee and Li, Attorneys-at-Law; J.D. & S.J.D., University of Pennsylvania.

1 CAA, *About Us*, at <http://www.arbitration.org.tw/english/about.htm>.

2 LI-LING WANG, THE ADVANCING ARBITRATION SYSTEM OF OUR COUNTRY 115 (1995).

3 CAA, *supra* note 1.

4 *Id.*

5 *Id.*

6 Paragraph 2, Article 37, Arbitration Act (Taiwan).

7 Article 38, Arbitration Act (Taiwan).

8 Taiwan High Court 100 Chong-Shang-Tzi 62 Judgment, Taiwan High Court 99 Chong-Shang-Tzi 501 Judgment, Taiwan High Court 99 Chong-Shang-Tzi 148 Judgment.

9 Taiwan High Court 100 Chong-Shang-Tzi 434 Judgment and Taiwan High Court 98 Chong-Shang-Tzi 13 Judgment. In both cases, the court found that the arbitration agreements were not executed by duly authorized persons.

10 Taiwan High Court 100 Chong-Shang-Geng-(1)-Tzi 107 Judgment (revoking the arbitral award that was rendered while one arbitrator was challenged and the court had not dismissed such challenge -- arbitrators, once challenged, shall excuse himself from the proceeding until such challenge is dismissed).

11 Taiwan High Court 98 Chong-Shang-Tzi 13 Judgment.

12 Paragraph 2, Art. 47, Arbitration Act (Taiwan); The United Nations invited Taiwan to sign the New York Convention in 1958, but Taiwan was not qualified because it had not enacted any arbitration laws. CHUN-YI LIN, THE ROLE OF COURTS IN COMMERCIAL ARBITRATIONS 194-95 (1996).

Nonetheless, the court may refuse to recognize a foreign arbitral award under the following three circumstances:¹³

1. Where the recognition or enforcement of the arbitral award contradicts the public order or good morals of Taiwan;
2. Where the dispute is not arbitrable under the laws of Taiwan; and
3. If the country where the arbitral award is made or whose laws governing the arbitral award does not recognize arbitral awards of Taiwan.

In practice, Taiwan courts have recognized foreign arbitral awards even though the country where the arbitral award was rendered had denied recognition and enforcement of Taiwan arbitral awards.¹⁴ Such ruling was considered a gesture to encourage foreign courts to recognize and enforce Taiwan arbitral awards based on mutual respect.¹⁵

A party may request the court to dismiss an application to recognize and enforce a foreign arbitral award within twenty days from the date of receipt of the notice of the application under the following six circumstances:¹⁶

1. The arbitration agreement is invalid as a result of the incapacity of a party according to the law chosen by the parties to govern the arbitration agreement.
2. The arbitration agreement is null and void according to the law chosen to govern said agreement or, in the absence of choice of law, the law of the country where the arbitral award was made.
3. A party is not given proper notice whether of the appointment of an arbitrator or of any other matter required in the arbitral proceedings, or any other situations which give rise to lack of due process.
4. The arbitral award is not relevant to the subject matter of the dispute covered by the arbitral agreement or exceeds the scope of the arbitration agreement, unless the offending portion can be severed from and not affect the remainder of the arbitral

award.

5. The composition of the arbitral tribunal or the arbitration procedure contravenes the arbitration agreement or, in the absence of an arbitration agreement, the law of the place of the arbitration.
6. The arbitral award is not yet binding upon the parties or has been suspended or revoked by a competent court.

Moreover, if a party to an arbitration "applies for a judicial revocation of a foreign arbitral award or for suspension of enforceability thereof," Taiwan courts, by the request of the respondent, may order the applicant "to pay a suitable and certain security to suspend the recognition or enforcement proceedings prior to issuing any order for recognition or enforcement of the foreign arbitral award."¹⁷ Also, if the foreign arbitral award seeking enforcement has been revoked, the court shall dismiss any application for recognition or upon request, revoke any recognition of the arbitral award.¹⁸

In the past, Taiwan courts recognized and enforced 50 (out of 73) foreign arbitral awards, while 18 out of 73 were rejected. Among the 18 foreign arbitral awards that were denied recognition and enforcement, 9 were resulted from improper service upon the respondents,¹⁹ 2 were resulted from lack of mutual recognition (New York State and Malaysia),²⁰ another 2 were resulted from failure to provide necessary supporting documents under Art. 48 of the Arbitration Act.²¹ Other factors caused denial of recognition include: arbitral award exceeds the scope of the arbitration agreement, the composition of the arbitral tribunal contravened the law governing the arbitration agreement (South Africa), revocation of the arbitral award, and failure to prove the existence of a valid arbitration agreement between the parties.

¹³ Art. 49, Arbitration Act (Taiwan).

¹⁴ Chun-Yi Lin, *Recognition and Enforcement of Foreign Arbitration Awards in our Country*, THE THEORY AND PRACTICE OF PRIVATE INTERNATIONAL LAW (I), 261, 284 (1998) (citing Taiwan High Court 76 Kang-Tzi 696 Ruling that recognized an arbitral award of Hong Kong, with the knowledge that Hong Kong had denied recognition and enforcement of Taiwan arbitral awards).

¹⁵ *Id.*

¹⁶ Art. 50, Arbitration Act (Taiwan)

¹⁷ Paragraph 1, Art. 51, Arbitration Act (Taiwan).

¹⁸ Paragraph 2, Art. 51, Arbitration Act (Taiwan).

¹⁹ Taipei District Court 83 Chong-Sheng-Tzi 11 Ruling (denying recognition as the service procedure violated N.Y. arbitration law), Taiwan High Court 83 Kang-Tzi 2331 Ruling, Tainan District Court 93 Chong-Sheng-Geng-Tzi 1 Ruling, Taipei District Court 93 Chong-Sheng-Tzi 15 Ruling, Taipei District Court 95 Kang-Tzi 71 Ruling, TaoYuan District Court 96 Kang-Tzi 71 Ruling, Taiwan High Court, Kaohsiung Branch, 97 Kang-Tzi 314 Ruling, Taiwan High Court 97 Fei-Kang-Tzi 99 Ruling.

²⁰ Taipei District Court 86 Chong-Sheng-Geng-Tzi 1 Ruling, Taipei District Court 83 Chong-Sheng-Tzi 17 Ruling.

²¹ Tainan District Court 90 Sheng-Tzi 1078 Ruling (Denying recognition for failure to present original copy of the agreement between the parties), Banqiao (New Taipei) District Court 90 Chong-Sheng-Tzi 6 Ruling.

Chart 2: Foreign Arbitral Awards in Taiwan

State	Recognized	Rejected	Withdraw	Pending	Total
U.S.	13	6	1	0	20
U.K.	11	3	1	0	15
H.K.	7	3	0	3	13
Korea	1	2	0	0	3
France	1	0	0	0	1
Switzerland	2	0	0	0	2
Malaysia	1	1	0	0	2
South Africa	1	1	0	0	2
Japan	1	1	0	0	2
Vietnam	1	0	0	0	1
Finland	1	0	0	0	1
Russia	1	0	0	0	1
Singapore	1	0	0	0	1
Latvia	0	1	0	0	1
ICC	8	0	0	0	8
	50	18	2	3	73

IV. Enforcement of Mainland China Arbitral Awards in Taiwan

Due to the special relationship between Taiwan and mainland China, arbitral awards rendered in mainland China are not considered as foreign arbitral awards (vice versa). To deal with such delicate situation, Taiwan government promulgated "The Act Governing Relations between the People of the Taiwan Area and the Mainland Area (「臺灣地區與大陸地區人民關係條例」)." Under Art. 74 of the Act, an arbitral award rendered in mainland China may be recognized and enforced in Taiwan, if:

1. such award does not contravene the public order or good morals of Taiwan; and

2. arbitral awards rendered in Taiwan are recognized and enforced in mainland China.

In 2012, Taiwan and mainland China executed the "Cross Strait Investment Protection Agreement (「兩岸投資保障和促進協議」)." In the Agreement, the two regimes agree that private investment disputes may be resolved through arbitrations by arbitration institutions in Taiwan and mainland China. Moreover, it recognizes that parties to business agreements may apply to recognize and enforce arbitral awards rendered by such institutions. This further guarantees the enforcement and recognition of Taiwan and mainland China arbitral awards in each other's territory.

V. Conclusion

Since the 1950s, arbitration has been an effective alternative dispute resolution mechanism in Taiwan. Although Taiwan is not a party to the New York Convention, Taiwan courts generally recognize and enforce arbitral awards, domestic or foreign. Taiwan Courts do not deem themselves appellate court to arbitral tribunals and only revoke arbitral awards with procedural defects. As 50% of the foreign arbitral awards that were denied recognition and enforcement were resulted from improper service upon the respondents, party initiating an international arbitration where the respondent is a Taiwan corporation or natural person, shall ensure that such respondent is duly served. As Taiwan government is fastening its pace of signing BITs and FTAs with other trade partners, it is expected that more and more investment disputes will be resolved through arbitrations. We look forward to having more foreign professionals to register with the CAA as foreign arbitrators which will help to further improve the quality and credibility of arbitration system in Taiwan.

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.

Chairman: Mr. Nigel N. T. Li
Secretary-General: Mr. Tim H. T. Liu
Editor-in-Chief: Ms. Fang-Ju Yeh
Editor: Mr. Chao-Yi Fang
Editorial Counselor: Dr. Chung-Sen Yang
Editorial Committee:

Mr. David Wen-Tang Su, Ms. Angela Lin, Ms. Helena Chen, and Mr. Pi-Song Tsai

Contact Details

Taipei Main Office
Floor 14, 376 Ren-Ai Road, Section 4, Taipei, Taiwan 106
Tel: 886-2-2707-8672 Fax: 886-2-2707-8462
Email: service@arbitration.org.tw
<http://www.arbitration.org.tw>

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