

New phase begins: CAA's planning in Hong Kong

Chinese Arbitration Association, Taipei (CAA) held its annual Members' Assembly on December 27, 2013. Chairman Nigel N. T. Li announced that ROC government has appointed CAA as the Official Cross-Strait Investment Disputes Settlement Institution, and supports CAA's plan to establish its first overseas branch office in Hong Kong.

Hong Kong is an international venue for arbitration in the region. Since Hong Kong International Arbitration Center's (HKIAC) founding in 1985, ICC International Court of Arbitration (ICC) and China International Economic and Trade Arbitration Commission (CIETAC) have established their branch offices in Hong Kong in recent years. In response to the need of Taiwanese enterprises in Greater China, CAA is planning to establish an overseas branch office in Hong Kong. Upon Hong Kong government's approval, CAA would strengthen its arbitration services in the region.



More than 400 delegates attended 2013 CAA Members' Assembly to discuss the future prospect. Chairman Nigel N. T. Li reported annual performance to the delegates.

Upcoming Event: 2014 Taipei International Arb and Med Conference

CAA and the Asian Center for WTO & International Health Law and Policy of the National Taiwan University College of Law (ACWH) will co-host the 2014 Taipei International Conference on Arbitration and Mediation in Taipei, Taiwan on 30 and 31, August.

The conference will invite over 15 distinguished

guests from Europe and Asia to present papers, and will cover a wide range of topics: Fundamental issues of arbitration and mediation enhancement; Recent Developments in Cross-Strait arbitrations; Investment arbitration; Investor-State investment arbitration; Sports arbitration and media arbitration.



On behalf of CAA, Mr. Nigel N.T. Li (Left) appreciated Dr. Chang-fa Lo's (Right) dedication to CAA.

Annual Lecture

CAA invited Dr. Chang-fa Lo, Grand Justice of the ROC Constitutional Court to give a speech at the CAA annual lecture entitled "Interpretation of Constitution and its value" on April 25, 2014. Dr. Lo is a distinguished professor at the National Taiwan University. He was appointed as a panelist in WTO's Dispute Settlement Body in 2006, and was a member of WTO Permanent Group of Experts from 2008 to 2010. Over 150 participants attended the event and exchanged their thoughts and ideas on the topics concerned.

The Way Forward: Arbitration Practicing in Taiwan

In response to potential disputes arising from the digitalization of media and the developing of telecommunications, the ROC Satellite Television Broadcasting Association (STBA) and CAA co-hosted a half-day seminar in March this year. Mr. Patrick Chu (朱百強, Partner, Lee and Li) and Mr. Wei-Ke Chien (簡維克, Attorneys-at-Law, Lee and Li) were invited to deliver a speech entitled "Disputes settlement mechanism of media and communication industry". The event attracted more than one hundred participants, mainly were in-house legal counsels coming from related industries. It is a great hope that arbitration mechanism will be beneficial to media and communications industry in Taiwan.



Seminar for Media and Communications Industry of 2014

APRAG 10th anniversary conference in Melbourne

APRAG held its 10th anniversary conference on 26-28 March 2014 in Melbourne to celebrate its achievement since 2004. As a founding member of APRAG, CAA attended the event. Mr. Nigel N. T. Li, CAA's Chairman, and Dr. Pi-Song Tsai, CAA's Board Director, represented CAA to join the pageant. During the panel discussion, Dr.

Tsai shared the current development of Arb-Med methods in Taiwan with delegates. As for the future reforming of APRAG, many delegates are considering to establish a standing Secretariat for APRAG. However, the proposal may need further discussion in next year's conference.



The conference attracted around 200 delegates from 18 countries and regions. Mr. Li (in the middle, first picture) and Dr. Tsai (first from left, second picture) exchanged the ideas with delegates.



Publication: CAA Journal 2013, Vol.6, No.2

The new issue of Contemporary Asia Arbitration Journal (CAA Journal) collects papers of the 2013 Taipei International Arb & Med Conference. Two interesting articles, among others, were introduced as follows: Dr. Stephan Wilske of Gleiss Lutz discussed "Legal Challenges to Delayed Arbitral Awards". He analyzed whether a significant delay to render an arbitral award could affect the legal validity and enforceability of the award. The other article, "Making Arbitration Effective-Expedited Procedures Emergency Arbitrators and Interim Relief" presented by Mr. Chan Leng Sun S.C.

and Ms. Tan Weiyi from Singapore. That paper seeks to compare the expedited procedure and emergency arbitrator mechanism under various institutional rules and explore the legal issues that may arise, as well as how well they have worked since they were introduced.

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Events/Visits



Chairman Li's presentation on the seminar held by Macau University of Science and Technology



Mr. Tim H.T. Liu (in the middle), Secretary-General of CAA, called on Dongguan(東莞) Taiwanese Businessmen Association

The Suitable Arbitral Institution and Place under the Cross-Strait Bilateral Investment Protection and Promotion Agreement

Jeffrey Chien-Fei Li*

The Arbitration Mechanism under the BIA

The Cross-Strait Bilateral Investment Protection and Promotion Agreement ("BIA") was agreed and signed between China and Taiwan on August 9, 2012, and was effective on February 1, 2013. The purpose is to reinforce the safety and personal freedom of investors between two sides.

Under article 14 (2) and (3) of the BIA, when the parties (including parties between private to private, government to government, and private to government) enter into a contract, they can select arbitration to resolve their commercial disputes arising out of the investments. Article 14 (5) further states that "[t]he Parties affirm that the parties to a commercial contract may petition for the recognition and enforcement of arbitration awards in accordance with relevant laws and regulations."

Arbitration is therefore a recognized and available dispute resolution mechanism under the BIA. The relevant questions of the arbitration under the BIA include whether or not should the parties use the arbitration institutions, which arbitration institution should the parties use, where would be the arbitration place, arbitration language, applicable laws, how to ensure the enforcement and recognition of the arbitral awards, and etc.

Instead of clarifying each of the issues, the following observation will be given to the preferred arbitration institutions and places under the context of BIA and cross straits.

The Chinese Arbitration Association as an ideal arbitration institution

Since ad hoc arbitration is not recognized under the People's Republic of China ("PRC") Arbitration Act, we may assume that BIA encourages the parties to use arbitration institutions whenever the arbitration chosen by the parties in resolving their disputes.

According article 14 (4) of the BIA, "[t]he parties to a commercial dispute may designate an arbitration institution of either side of the strait ... If no arbitration clause is included in a commercial contract, the disputing parties may consult with each other to submit a dispute to an arbitration institution of either side of the strait..." It may fairly be inferred that BIA implicitly prefers and suggests arbitration institutions of both sides of the strait as the designated institution in a commercial contract.

In Taiwan, though there are three arbitration institutions, the most historical and leading one is the Chinese Arbitration Association, Taipei ("CAA"). CAA not only provides the bilingual (Chinese and English) service for arbitration, it also adopts simultaneous Chinese transcription services.

A more practical reason for the parties to choose CAA as their arbitration institution is because the cost for arbitration in CAA is significant lower than the other arbitration institutions in Asia.¹

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¹ See, e.g., Article 25 and 28 of the Rules on Arbitration Institutions, Mediation Procedures and Fees.

Using CAA as the arbitration institution can also be expected to more efficient and time-saving, since article 21 of the Taiwan Arbitration Act requires the “arbitral tribunal shall render an arbitral award within six months of commencement of the arbitration,” and “the arbitral tribunal may extend this period an additional three months if the circumstances so require.” An arbitral tribunal of CAA thus has a time limit of 6 or 9 months to make a final arbitral award.

Compared with Singapore International Arbitration Center (“SIAC”) and Hong Kong International Arbitration Center (“HKIAC”), arbitrators registered under CAA generally are more capable of dealing with arbitration cases conducted in Mandarin, since Mandarin is the native language in Taiwan.

As to the China International Economic and Trade Arbitration Commission (“CIETAC”), there are recent concerns with respect to the arbitration in China due to the diversities between different regional arbitration institutions, causing problems of enforcing arbitral awards. Taiwan is thus a more reliable place for arbitration.

In addition, the independency of CIETAC from the government is still an issue. According to the China Arbitration Law, “[a]n arbitration commission may be set up in the domicile of the people's governments of municipalities directly under the Central Government, provinces and autonomous regions or in other places according to needs...An arbitration commission shall be set up by the relevant departments and chambers of commerce under the coordination of the people's governments of the cities.” CIETAC is thus managed by arbitration commission that is controlled by the government.

Another advantage of CAA, compared with arbitral institutions in China, is that parties may have a more flexible choice for selecting arbitrators. Not like the mandatory arbitrator lists established in China's arbitral institutions which limit the scope of parties' choice in selecting arbitrators, CAA wildly welcome worldwide arbitrators appointed by the parties.

Taiwan as an ideal arbitration place

Though Taiwan is not a signatory to New York convention, the ROC Arbitration Act has similar provisions (Chapter VII) for recognizing and enforcing the foreign arbitral awards, and Taiwan courts generally recognized and enforced both foreign and domestic arbitral awards. The recognition and enforcement of arbitral awards between the BIA parties are further endorsed under the Act Governing Relations between the People of the Taiwan Area and the Mainland Area and BIA. Finally, an arbitral awards made in Taiwan can be recognized and enforced in China.

The ROC Arbitration Act is based on the UNCITRAL Model Law of 1985. The CAA Arbitration Rules modeled after arbitration rules of other major institutions, is designed to provide efficient and impartial arbitration, and is regularly updated and revised to incorporate internationally accepted practices and norms.

To agree Taiwan as an arbitration place is an ideal choice in comparing with other regions in Asia. Since most parties under the BIA are investors from China or Taiwan, Mandarin can be expected to be the arbitration language. Not like Hong Kong and Singapore, Mandarin is the native language in Taiwan. Further, like China, Taiwan has a continental law system.

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.

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