

## 2014 Taipei International Arb and Med Conference

CAA, the Asian Center for WTO & International Health Law and Policy, College of Law, National Taiwan University (ACWH), and the Chinese Taipei APEC Engineer Monitoring Committee co-hosted the 2014 Taipei International Arbitration and Mediation Conference on August 30 and 31, 2014. Fifteen arbitration experts from Sweden, Hong Kong, Denmark, Singapore, Germany, United Kingdom, Japan, Mainland China, and Australia delivered their presentations and shared their experience and knowledge of the



latest international arbitration as well as mediation practices. More than 70 scholars, lawyers, corporate in-house counsels, and representatives from various industries participated the conference.

CAA has been holding the international arbitration conference for the last 16 years. The 2014 Conference covered the latest topics on commercial and investment arbitrations, and highlighted the specific topics, such as corporates' disputes resolution and recent arbitral developments in different jurisdictions. The conference papers will be published on next issue of CAA Journal.

## Seminar on ADR for investment disputes

Since the "Agreement between Association of East Asian Relations and Interchange



Association for the Liberalization, Promotion and Protection of Investment" had been signed between Taiwan and Japan in 2011, "Cross-Strait Bilateral Investment Protection and Promotion Agreement" with Mainland China in 2012, alternative dispute resolution had become an essential issue for commercial industries in the Greater China area.

Therefore, for ensuring the rights and interests of Japanese Industries in Taiwan, as well as understanding toward cross-straits disputes resolution mechanisms, CAA held a half-day seminar on 5<sup>th</sup> September, 2014. It was conducted entirely in Japanese, and attracted audiences from related backgrounds.

## The 14<sup>th</sup> Cross-Strait Arbitration Forum between CAA and CIETAC

In order to maintain interactions between CAA and CIETAC (China International Economic and Trade Arbitration Commission), the two institutions co-hosted the 14<sup>th</sup> Cross-Strait

Arbitration Conference on December 23, 2014, in Taipei.

Topics addressed at the conference this year, included issues arise when adopting rules of equity, good faith and change of circumstances in arbitration, also relevant issues related to arbitration procedures. CAA Chairman Nigel N. T. Li, CIETAC Vice Chairman / Secretary-General Jianlong Yu, and Mr. Francis Kuo-Hsin Liang, Chairman of Taiwan External Trade Development Council (TAITRA) respectively delivered the opening remarks. And cross-straits arbitration experts were invited to make presentations on the topics. It is believed all the participants achieved updated knowledge, and the relations between two institutions were well maintained as both expected.



## Publication: CAA Journal 2014, Vol. 7, No.2

The newly published CAA journal collects papers of 2014 Taipei International Arb & Med Conference. Professor Chang-fa Lo of NTU and Professor Jo-Mei Ma of Bond University co-presented the draft of Convention on Cross-Border Enforcement of International Mediated Settlement Agreements. It attempts to raise the awareness of the issue, promote the idea of cross-border enforcement of International Mediated Settlement Agreements (iMSAs), and push forward the adoption of such an international convention.

As for the article "Sports Arbitration in Japan", Professor Dai Yokomizo of Nagoya University first introduced the features of Japan Sports Arbitration Agency (JSAA) which was set up for dealing with sports disputes. It then analyzed several case decisions rendered by national

courts, and examined the tension between courts and JSAA.

Several articles by Dr. Stephan Wilske of Gless Lutz, Dr. Joanna Jemielniak from University of Copenhagen, Prof. Nadja Alexander from University of Hong Kong, and Prof. Louise Parsons & Mr. Jack Leonard of Bond University, were also collected in the volume. For subscription, please refer to [service@arbitration.org.tw](mailto:service@arbitration.org.tw)



## Visits/ Events

### Arbitrator Training Courses

A four-day Arbitrator Training Courses was held on September and October 2014 at CAA. More than 80 selected trainees from different professional fields attended the courses. The lectures provided courses such as the ethic of arbitrators, arbitration law and procedures, and the guidelines to issue an arbitral award. A mock arbitral tribunal training was also provided, which allowed trainees to practice the arbitral procedures under the instruction of senior lectures.



Mock arbitral tribunal training section

## Advanced Mediation Training Courses

In order to promote mediation practices in Taiwan, CAA held advance mediation training courses for mediation practitioners in Taipei on December 26 and 27, 2014. The courses covered the comprehensive guideline of "Facilitative Mediation method" which assists the parties to use their best efforts to work toward a solution with mediators who facilitate the mediation process.



The KCAB delegation visited CAA on August 28, 2014. Mr. Tim H. T. Liu (second from right), CAA Secretary General, greeted Mr. Young-Ho Lee (middle), Executive Director of Planning & Management Dept. and exchanged ideas between the two institutions.

## Attending Cross-Strait Legal Forum in Chongqing



Mr. Nigel N. T. Li (first from left) attended the Cross-Strait Peaceful Developing Legal Forum on August 25 and 26, 2014.



Delegation from Legislative Affairs Office of the State Council, China, visited CAA on December 22, 2014. The head of both side, CAA Chairman Nigel N. T. Li (front row, in the middle, left), and Deputy Director Xia Yong, from China (front row, in the middle, right).

## Free Trade Agreements as a Vehicle to Promote International Commercial Arbitration

Alex Lo\*

Free Trade Agreements ("FTA's") are often discussed in the context of investor-state arbitration and less so in the context of private commercial arbitration. However, the discussion may be overdue as there seems to be a growing number of FTA's which include provisions to promote the use of arbitration for the settlement of international commercial disputes between private parties.

Article 2022 of the North American Free Trade Agreement ("NAFTA") provides that each Party shall, inter alia: (1) to the maximum extent possible, encourage and facilitate the use of

arbitration to settle international commercial disputes; (2) provide appropriate procedures to ensure observance of arbitration agreements and for the recognition and enforcement of arbitral awards (this is satisfied if the Party is in compliance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention")); and (3) establish an Advisory Committee to ensure observance of the above. A number of subsequent FTA's concluded with the United States as a Party, such as the Dominican Republic-Central American-United States

Free Trade Agreement, the United States and Panama Trade Promotion Agreement, and the United States and Korea Free Trade Agreement, also contain this provision (with some variance).

It is perhaps noteworthy that some of Taiwan's recent FTA's also include similar provisions. The Free Trade Agreement between the Republic of China and the Republic of Panama, the Free Trade Agreement between the Republic of China (Taiwan) and the Republic of Guatemala, the Free Trade Agreement between the Republic of China (Taiwan), the Republic of El Salvador and the Republic of Honduras, and the Free Trade Agreement Between The Republic of China (Taiwan) and The Republic of Nicaragua all have identical or similar language as NAFTA with regard to the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties.

In the NAFTA model, Parties to the FTA are required to promote international commercial arbitration by encouraging and facilitating the use of arbitration in the settlement of international commercial disputes. However, it is perhaps possible for FTA's to go even further than the NAFTA model by having more specific language and requirements. For example, for countries that are not party to the New York Convention (and where there may be a barrier to entry), FTA's may serve as a means to include standards of the New York Convention by reference to ensure the recognition and enforcement of arbitral awards between the Parties.

FTA's may be further utilized to require Parties to, inter alia: (1) maintain a certain international standard of ethics and practice; and (2) require measures to be taken to make commercial

arbitration more accessible and available. Jurisdictions where the standards of legal practice may not be at the same level as international standards may benefit from regional or bilateral rules of ethics as well as training programs for counsel, arbitrators and mediators. For some jurisdictions where arbitration is not a very common form of dispute resolution, Parties can endeavor to make arbitration more accessible, available and affordable by adding the necessary facilities and infrastructure.

Given that an FTA's main objective is to liberalize trade, it is perhaps natural and in the Parties' best interest to use FTA's as a vehicle to encourage and facilitate private commercial arbitration (as having a reliable private dispute settlement system generally encourages trade). Although it may be more unusual for FTA's to include provisions with regard to private commercial arbitration, as seen in the above examples, it is certainly possible and has been done in the past. The author is of the view that, using the NAFTA model as a starting point, FTA's could perhaps be further utilized in different ways to promote commercial arbitration in the future.

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\* Alex Lo is a counsel at the Singapore International Arbitration Centre ("SIAC"). Prior to joining SIAC, Alex has completed internships with law firms in Taipei, Shanghai, and Stuttgart. He worked on commercial arbitration cases as well as an investment arbitration case during his time in Stuttgart. He was also one of the Executive Editors of the Contemporary Asia Arbitration Journal.

## 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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