

Dr. Ful-Dien Li inaugurated as CAA Chairman

The 16th General Members' Meeting of CAA was held on December 30, 2014. The meeting began with Chairman Nigel N. T. Li's oral annual performance report, followed by election of new Board of Directors and Board of Supervisors. Dr. Ful-Dien Li was elected by members of the Board of Directors as the new Chairman of CAA. The ex-Chairman, Mr. Nigel N.T. Li, was also unanimously designated by the Board of Directors to be its Honorary Chairman.

Dr. Ful-Dien Li holds a Ph.D. in Law and served as Member of the Control Yuan and Legislator of Legislative Yuan for several years. He is also a well-known lawyer, experienced arbitrator, mediator, and law professor of Chinese Culture University, Taipei.



Newly elected Directors, Supervisors, and the Chairman (Dr. Ful-Dien Li, fifth from the right, first row), CAA

CAA's 60th Anniversary Celebration

Chinese Arbitration Association, Taipei (CAA, Taipei) was established in 1955 in Taiwan, resolving various commercial disputes through arbitration and mediation. CAA is also the first non-governmental organization to perform semi-judicial function in Taiwan. To celebrate its 60th Anniversary in 2015, CAA is preparing a series of special activities. In addition to a celebration

reception party, it will also host an international arbitration conference. The celebration reception party and international conference will be held on September 5 and September 6-7, 2015, respectively. For more information regarding the events, please visit <http://www.arbitration.org.tw> or contact us at service@arbitration.org.tw

The 6th Greater China Arbitration Forum

The 6th Greater China Arbitration Forum (6th GCAF) was hosted by Hong Kong Organization of Arbitrators and held in Hong Kong from May 5 to 7, 2015. The Forum was aimed at strengthening mutual cooperation and interaction among arbitration organizations in the Greater China Region. Over 40 guest speakers from arbitration organizations, law firms, counsels and practicing arbitrators delivered valuable speeches.



CAA delegation attended the Forum



Dr. Ful-Dien Li, Chairman of CAA, delivering a speech in the forum

Important topics discussed in those sessions included Development of Arbitration, Mediation Development in the Greater China Region, Judicial Support to Arbitration Proceedings and Enforcement in the Greater China Region. The CAA delegation led by Chairman Ful-Dien Li attended the Forum and many of them presented papers or reports in the Forum.

Seminar on Cross-Strait Arbitration Practice : Retrospect and Prospect

Since closer cross-strait economic relations and commercial ties have been developing rapidly, arbitration as a mechanism to resolve disputes became very crucial.

In order to review past events and look forward to the future in cross-strait arbitration practice, CAA held a seminar on March 24, 2015. Two Attorneys, Ms. Angela Lin (林瑤) and Ms. Helena Chen (陳希佳) spoke in the seminar, and pointed out several current key issues in cross-strait arbitration. The seminar attracted nearly 200 participants and received highly positive feedback.



Q & A session in the seminar

Cross-Strait Arbitration Cases Increasing in CAA

Since the Cross-Strait Bilateral Investment and Protection Agreement (BIA) came into effect on February 1, 2013, more than ten cases involving cross-strait disputes were submitted to CAA for arbitration. From these cases, the trend to

arbitrate cross-strait commercial disputes as a mechanism started to form. It is expected that more and more disputing parties will make use of such an efficient and convenient mechanism in the near future.

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A collection of five excellent articles was published in the recent issue of the CAA journal. Mr. Lars Marker, Associated Partner of Gleiss Lutz (Stuttgart, Germany), introduced several points which arise when more and more corporate disputes were resolved with the use of arbitration in Germany. In another paper, Professor Tsai-Fang Chen of National Chiao Tung University (Hsinchu, Taiwan), discussed functions and limitations of certain suggestions that intended to deter challenges in the Investor-State Dispute Settlement Mechanism (ISDM). Moreover, Professor Chen suggested that certain innovations should deal with the situations occurred. For subscription to the journal, please send request to service@arbitration.org.tw



From E-Court to E-Arbitration

On March 13, 2015, CAA delegation visited Taiwan High Court Tainan Branch Court (THCTBC) and observed its E-Court system. The system has been established since May 2014. Staffs of THCTBC introduced the software

and hardware required for the E-Courtroom, disclosure of evidence in electronic format, the functionality of the extension E-Courtroom to scan the case files and documents into PDF format. They also demonstrated how the E-Court

system works. The visitors were very impressed with the system. "The E-Courtroom system not only enhances transparency and efficiency of the litigation procedures, but also saves costs and manpower" according to a staff of THCTBC. The visitors commended the achievement of



Group photo; CAA Chairman Ful-Dien Li (the third from left, first row), Chief Judge Yu-Shan Cheng, Taiwan High Court Tainan Branch Court (the third from right, first row)

the E-Court system and praised it as a landmark symbolizing an important step of judicial reform in Taiwan. Chairman Ful-Dien Li indicated that CAA will launch a plan for developing E-Arbitration in the future by using such system as a reference.



Dr. Chung-Sen Yang, CAA senior Counselor, applauding the E-court system

Attending KLIAW 2015

As a leading arbitral organization in Taiwan, CAA has been actively involved in the activities of international organization. To date, CAA has signed cooperation agreements with 29 arbitral organizations around the world. The Kuala Lumpur Regional Centre for Arbitration (KLRC), one of the renowned organizations, held Kuala Lumpur International Arbitration Week (KLIAW) 2015 from May 7 to 9.

CAA Chairman Ful-Dien Li, senior Counselor K. C. Fan, and Secretary-General Han-Ting Liu attended the "sport arbitration" and "sanction" seminar session of KLIAW. In the two-day seminar, the CAA delegation received the latest arbitration information and exchanged ideas and shared experiences with many participants.



From Left to Right, senior Counselor K.C. Fan, Chairman Ful-Dien Li, and Secretary-General Han-Ting Liu of CAA

The Norms in International Arbitration

Chi-Chung Kao *

An international arbitration usually involves three sets of norms, namely, the substantive law, the procedural law, and the arbitration rules. The procedural law, or the so-called *lex arbitri*, is the collective body of legal rules governing important elements regarding the conduct of arbitration. It is usually in the form of an arbitration act promulgated by the state in whose territory an arbitration is held. The exact provisions of arbitration legislation of each state may vary as different attitude towards arbitration may be adopted by individual state. For example, a pre-dispute arbitration clause contained in a consumer contract may be considered invalid under some arbitration legislation in order to protect consumer.¹ However, it is not possible to

introduce the rules of every arbitration legislation in every country here. Instead, reference could be made to the UNCITRAL Model Law on International Commercial Arbitration (hereinafter as the Model Law) as baseline for modern arbitration legislation.² The provisions of the Model Law deal with, for example, the following issues:

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¹ See Nigel Blackaby, et al., *Redfern and Hunter on International Arbitration* (5th ed., Oxford, Oxford University Press, 2009), p.175, fn38 and accompanying text.

² *Ibid*, p.176.

1. the formality of the arbitration agreement;³
2. the composition of the arbitral tribunal and grounds for challenge;⁴
3. the jurisdiction of the arbitral tribunal to rule on its own jurisdiction;⁵
4. equal treatment of the disputants;⁶
5. interim measures;⁷
6. hearings;⁸
7. possible state court assistance;⁹
8. the formality of the arbitration award;¹⁰
9. challenge against the arbitration award.¹¹

Additionally, individual national legislation may cover other equally important issues. For example, the Taiwanese Arbitration Act, has most of its provisions similar to those of the Model Law. It does, however, address certain questions not expressly stipulated by the Model Law. The issue of arbitrability is dealt with in Article 1, which states that a dispute is arbitrable if the parties are allowed to settle such dispute by law.¹² The issue of finality and binding force of the arbitral award is addressed in Article 37, under which a final arbitral award is regarded as having the same legal status with an affirmed court judgment.¹³

According to the 'seat' theory, an arbitration is governed by the law of place in which it is held.¹⁴ This principle is recognized and endorsed by both the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter as the New York Convention) and the Model Law, as arbitration procedure not conducted in accordance with the law of the place of arbitration might result in the refusal of recognition or enforcement of the arbitral award.¹⁵ It might also result in the arbitral award being set aside.¹⁶ Consequently, it is fair to conclude that the *lex arbitri* of a specific country could be seen as the backbone of an arbitration held in that

country because it might contains fundamental elements, as illustrated above, underlying the entire arbitration procedure.

The relevance of *lex arbitri* in international arbitration could be addressed in at least three aspects; first, an arbitration agreement is the foundation of an arbitration as it is the basis of jurisdiction for the arbitral tribunal.¹⁷ Issues affecting the validity of an arbitration agreement, including formality and arbitrability, are generally determined by the *lex arbitri* of the place of arbitration. Secondly, the facilitation of effective arbitration proceedings relies on certain external support from the state court to the arbitral tribunal, such as filling a vacancy in the composition of the tribunal, removing an arbitrator for misconduct, or implementing interim measure ordered by the tribunal.¹⁸ The availability of such assistance usually depends on the *lex arbitri*. Thirdly, a final arbitral award usually decides the merits over the controversies between the disputants. Whether and on what grounds could the parties challenge such an award again depend on the *lex arbitri*.

(to be continued)

³ Article 7 of the Model Law.

⁴ Article 10-13 of the Model Law.

⁵ Article 16 of the Model Law.

⁶ Article 18 of the Model Law.

⁷ Article 17 of the Model Law.

⁸ Article 24 of the Model Law.

⁹ Article 27 of the Model Law.

¹⁰ Article 31 of the Model Law.

¹¹ Article 34 of the Model Law.

¹² Taiwanese Arbitration Act, Article 1, paragraph II.

¹³ Taiwanese Arbitration Act, Article 37, paragraph I.

¹⁴ Nigel Blackaby, et al., supra note 1, p.180.

¹⁵ See Article V(1)(d) of the New York Convention and Article 36(1)(a)(iv) of the Model Law.

¹⁶ See Article 34(2)(a)(iv) of the Model Law.

¹⁷ Nigel Blackaby, et al., supra note 1, p.85. See also Tibor Varady, et al., International Commercial Arbitration: A Transnational Perspective (3rd ed., West, 2006), p.85.

¹⁸ See Smith Ltd v H International [1991] 2 Lloyd's Rep. 127, at 130.

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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