



# CAA News letter

March 2010

Published by the Chinese Arbitration Association, Taipei

[www.arbitration.org.tw](http://www.arbitration.org.tw)

## Message from Chairman Nigel N.T. Li

I would like to take this opportunity to proudly announce the launch of the first issue of the Chinese Arbitration Association, Taipei newsletter. The newsletter fulfils a long-standing need for disseminating news and information to our English-speaking arbitrators, scholars, members, and friends. This newsletter will spotlight our multifaceted activities and events, latest developments and news, and topics of interest.

In recent years, international arbitration has expanded rapidly. More and more businesses have favored and have opted to resolve their disputes by arbitration. Like other major international arbitral institutions, the CAA has been growing at an accelerated pace, no doubt helped by the rapid expansion of trade and commerce in the greater China region, the local construction boom, and trade activities.

In addition to the paper-based publication, our newsletter is also ready for download at our English website. To sign up, please go to <http://www.arbitration.org.tw/> and register your details. I hope you will enjoy the first edition of our newsletter as much as we enjoy publishing it.



Please let me know if you have any suggestions or opinions. If any of you would like to submit a short piece for future newsletters, we would be happy to receive it. Thank you.

Yours Sincerely,

*Nigel N.T. Li*

Chairman  
Chinese Arbitration Association, Taipei

## 2009 Taipei International Conference on Arbitration and Mediation

On October 16 and 17, 2009, the Association and the Asian Center for WTO & International Health Law and Policy of the National Taiwan University College of Law (ACWH) co-hosted the annual arbitration and mediation conference at the Association's conference room. The two-day conference was attended by some 100 practitioners, scholars, and foreign dignitaries. The conference focused on recent developments in commercial arbitration and mediation, the impact of the financial crisis on arbitration, issues relating to recognition and enforcement of arbitral awards, and the relationship between arbitration and international investment and trade. Professor Changfa Lo of National

Taiwan University and Chairman Nigel N.T. Li of CAA delivered the opening remarks, noting the conference's contribution in bringing new arbitration and mediation ideas to Taiwan and providing a forum for scholars and practitioners from Taiwan and abroad to exchange their knowledge and ideas.

Some of 2009 conference's foreign speakers included Yasuhei Taniguchi of Senshu University, Jeff Waincymer of Monash University, Stephan Wilske and Lars Markert of Gleiss-Lutz, Gary Soo of HKIAC, Huangbin Ge of SIAC, Nils Eliasson of Mannheimer Swartling, and Micahel Lee of AAA-ICDR, Singapore. Local participants included Changfa Lo of National Taiwan University, Tsai-Yu Lin of Soochow University, Ding Ji of ACWH, and Chi Chung of Academia Sinica.

The 2009 conference marked the third year of cooperation between the CAA and ACWH. In addition to hosting an international conference annually, the two organizations have also worked jointly to publish the Contemporary Asia Arbitration Journal, the only English language journal in Taiwan focused on international commercial arbitration. Some of the articles presented at the conference have been included in the November edition of the Journal.



Speakers and Moderators of 2009 Taipei International Conference on Arbitration and Mediation

## Third Greater China Arbitration Forum Conference (GACF) and General Meeting

On August 28, 2009, the Chinese Arbitration Association, Taipei hosted the Third Greater China Arbitration Forum Conference at the historic Grand Hotel in Taipei. The conference was attended by more than 100 delegates and practitioners from Mainland China, Macau, Hong Kong, and Taiwan. In his opening remarks, CAA Chairman Nigel N.T. Li lauded GACF's role in promoting the exchange of ideas and information among arbitration institutions and fostering the further development of arbitration law and practice in the region. He went on to discuss the recent amendment to the PRC's "Taiwanese Compatriots Investment Protection Measures," which would allow Taiwanese investors in China to resolve disputes by arbitration submitted to any arbitral institution in the Greater China region.

Chairman Li's remarks were followed by keynote speeches by founding members of the Forum and updates on the development of arbitration in their respective jurisdictions. The annual general meeting of the Forum followed the conclusion



Delegates and Distinguished Guests Gathered in Taipei, Taiwan for the Third Greater China Arbitration Forum

of the conference. The delegates elected the Hong Kong Institute of Arbitrators to once again chair the GCAF, while CIETAC, CAA and the Guangzhou Arbitration Commission were elected to serve as the Forum's vice chairmen. The Beijing Arbitration Commission and the Wuhan Arbitration Commission were chosen to serve as Honorary Secretary and Honorary Treasurer respectively.

GCAF is a non-political, non-governmental and non-profit organization established in November 2007 for the purpose of enhancing the standards of international arbitration and promoting the use of arbitration in the Greater China region. The Forum meets every two years. The Secretariat of the Forum is located in Hong Kong.

## Recent Development of Mediation in Taiwan - Facilitative Mediation

Gi-Hong Li\*

The most common mediation model in Taiwan used to be "evaluative mediation." Recently, however, the Chinese Arbitration Association, Taipei ("CAA") adopted the "facilitative mediation" model by passing the Mediation Rule for CAA Mediation Center for facilitative mediation. CAA is the first mediation organization in Taiwan to adopt the facilitative mediation model. All mediation models have their proponents. Facilitative mediation, however, is generally recognized as a very successful mediation style with high satisfaction level for the parties involved.

### Current Mediation Practice in Taiwan

The court mediation program, mediation by local government agencies (mediation in counties, towns or cities), and the Public Construction Commission mediation are three common mediation systems in Taiwan. All three are

generally considered evaluative mediation.

In practice, a mediator in Taiwan is usually heavily involved in the mediation process. The mediator assists the parties by providing the parties with an evaluation of the strengths and weaknesses of their case with respect to their legal positions. The mediator may also offer direction towards settlement options in seeking mutually satisfactory solutions. Moreover, the mediator would usually suggest the parties to "compromise" to each other.

In evaluative mediation, mainly a "fairness judgment" or "justice" is expected by the parties of an evaluative mediator. The parties look to the mediator to provide settlement options to reach mutually satisfactory solutions based on the mediator's experience and knowledge in relevant industry practice and legal/commercial profession. Hence, the criteria for being an evaluative mediator

is a thorough understanding of the conflicts and sufficient knowledge to make a judgment on the conflict between the parties.

### Facilitative Mediation

Facilitative mediation is also known as "interest-based" mediation. In a facilitative mediation, the approach for a mediator is to assist the parties to use their best efforts to work toward a solution. The mediator facilitates the mediation process, whilst the parties control the outcome of the mediation.

what their interests are. With the parties' better understanding of the disputes, a mediator will further help the parties explore different options that directly address his/her interests and needs. The parties will then be able to evaluate all the proposals on the table and decide if there are any good options that they may accept for settlement.

Unlike in evaluative mediation, a facilitative mediator leaves decision-making to the parties. Facilitative mediators do not give advice nor share their thoughts on the disputes of the parties.



Mediator Training Workshop, November, 2009

In a typical facilitative mediation procedure, a mediator will help the parties discover their actual "interests," other than their legal or commercial position. Therefore, facilitative mediation is also referred as "interest-based" mediation. When proceeding with a facilitative mediation, a mediator will lead the mediation process to assist the parties to reach a mutually agreed solution by discovering the actual interests of each party involved. A mediator will encourage the parties to express or "share" thoughts on the conflict, rather than making complaints to the mediator.

A mediator will also urge each party to carefully think through its own interest while not limiting itself to its own legal standings. Since the parties will always expect a mediator to be an impartial third party, as a mediator should be, the mediator plays the role in guiding the parties to work toward a settlement that will meet the parties' interests. A facilitative mediator usually asks as many questions as possible during the mediation process to help the parties understand

Facilitative mediators will only preside over the mediation process. Facilitative mediation helps parties in a conflict make their own decisions, in the belief that the parties involved in the situation have the best understanding of what they need for themselves and from each other. The role for a facilitative mediator is to clarify and to enhance communication between the parties.

### Different Mediation Model, Different Approach

Facilitative mediation is new in Taiwan. The reason for CAA to introduce facilitative mediation is to incorporate a common mediation model widely used in international mediation practice, and use a structured process for the parties to work toward mutually satisfactory solutions in an effective and economic manner.

\* Committee member, CAA Mediation Center; Associate, Lee and Li, Attorneys-at-Law; Mediator, Circuit Court of Cook County, Chicago, 2007; Certified Mediator, Center for Conflict Resolution, Chicago, 2007; LL.M./Kellogg Certificate., Northwestern University, 2007; LL.M. in Insurance, University of Connecticut, 2006; LL.B., Soochow University, 2004.

## CAA's DRB Rules Announced

Construction industry is a major source of contract disputes. Construction projects, which encompass building, subway systems, commuter rail, highways, dams, tunnels, ports and airports, often involve enormous budget and are of complex technical nature. Construction disputes can therefore be destructively adversarial, and resolution of them punishingly costly. Dissatisfaction with the litigation model of dispute resolution runs deep among practitioners in the industry, and has triggered this Association to

### Tingya Hsieh\*

exert efforts in developing specialized rules and relevant forms of Dispute Resolution Board (or the CAA DRB Suite), as an additional alternative disputes resolution (ADR) mechanism.

The CAA DRB Suite, which was announced in March, 2009 comprises the procedural rule, the model clauses, the fee scale, the board ethic code, and the specialist endorsement standard. The Suite is the fruit of a collaborative effort of more than a dozen construction dispute precursors from

government agencies, academics, prestigious law firms and major construction builders. The gestation and the ultimate announcement of the Suite signals the Association's determination in promoting ADR, and the consensus among construction dispute specialists that ADR shall be the contracting parties' prime choice in mitigating the potential antagonistic relationship in all aspects of the construction process.

While DRB has gained increasing acceptance among international construction projects, the use of DRB in resolving construction disputes still awaits more encouragement from project owners in Taiwan, in particular among government agencies, who collectively form the biggest procurer of construction. According to literature and related statistics, DRB can produce the most glaring success, as the scale and technical complexity of the project is huge. However, a wider adoption of DRB requires that more owners as well contractors be cognizant of the nuts and bolts of this new concept. After the announcement of the CAA DRB Suite, the Association now sees accumulating more lessons learned from actual utilization of DRB as its next pivotal task.

At the juncture in the development and use of DRB, the Association also recognizes that public



CAA DRB Conference in March, 2009

debates concerning the pros and cons of DRB are in due course. For example, DRB is often denigrated as an unnecessary expense, i.e. a duplication of the effort of and a challenge to the author of the contract documents and the creator of the design plan. And, some project owners may even view DRB as a usurpation of their authority as the boss. Thus the Association will join government agencies, the academics and the industry to seek all possible opportunities for rational discussions to take place and for further streamlining the Suite.

\* Professor & Chairman of Graduate Institute of Construction Engineering & Management, National Central University; holds PhD in Construction Management & LL.Ms in Soochow University & University of Pennsylvania; Vice Chairman of Public Construction Commission, Executive Yuan, 2006~2007. He is a seasoned arbitrator and mediator in construction contract disputes, and can be contacted via [tingya@cc.ncu.edu.tw](mailto:tingya@cc.ncu.edu.tw).

## Recent and Up-and-Coming CAA Events

### November 10, 2009

Tenth Cross-Straight Investment Arbitration Conference in Ningbo, China

### December 31, 2009

The 2009 CAA General Assembly

### February 12, 2010

Chinese New Year Party

### March 17, 2010

DRB Committee Meeting

### March 25-26, 2010

Construction Law Research Forum in Kaoshiung, Taiwan

### March 26, 2010

Taichung Mass-Transit System Construction Conference in Taichung, Taiwan

### May 15, 2010

Arbitrator Continuing-Education Workshop

### June 25-26, 2010

Intermediate Mediator Training Workshop

### September 17-18, 2010

Taipei International Conference on Arbitration and Mediation

## 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 both 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.

**Chairman:** Nigel N.T. Li

**Secretary-General:** Chih-Hsing Wang

**Editor-in-Chief:** Houchih Kuo

**Editorial Committee**

Committee Members: David Wen-Tang Su, Angela Lin, C.H. Chen,

Tingya Hsieh, and 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](mailto:service@arbitration.org.tw)

<http://www.arbitration.org.tw>

© Chinese Arbitration Association, Taipei, 2010