



Ten Years of Cooperation between the CAA and the CIETAC

This year marks the tenth year of cooperation between the CAA and the China International Economic and Trade Arbitration Commission ("CIETAC"). To commemorate the occasion, the two institutions agreed in June to organize a series of seminars and conferences on September 1 and November 13-16, 2010.

The two institutions will first hold an arbitration forum in Changchun, Jilin Province, China, on September 1st to discuss issues relating to resolving commercial and investment disputes between Taiwan and China by arbitration or mediation. CAA board members Ms. Lillian Chu, Mr. Yung-Ran Lee and Dr. Pi-Song Tsai will be going to Changchun on the CAA's behalf to deliver presentations on the measures of protecting Chinese investors in Taiwan.

In November, the CIETAC members will fly to Taipei for a week-long event. First on the agenda is an arbitrators training workshop that will be co-hosted by the two institutions on November 13th and 14th. The workshop will introduce Taiwan's arbitration laws and the CAA arbitration rules to the visiting Chinese arbitrators, scholars and participants. In addition, the workshop will address issues regarding recognition and

enforcement of Chinese awards and discuss the recent development of mediation in Taiwan.

Next, the two will host a conference discussing the impact of the Economic Cooperation Framework Agreement ("ECFA"), to be signed between China and Taiwan, on cross-strait investment and trade, focusing on the roles arbitral institutions can play to assist Taiwanese businessmen in China and Taiwan on November 15th. CIETAC Secretary-General Jianlong Yu and CAA Chairman Nigel N. T. Li are expected to deliver the opening remarks. A gala dinner will follow the conclusion of the conference.

The last item on the agenda is a conference on November 16th that will compare and contrast the CAA and CIETAC Dispute Review Board rules and discusses future roles dispute review board may play in China and Taiwan. The workshops and conferences in Taiwan are expected to be held at the CAA conference room.

The tenth year anniversary activities promise to leave an unforgettable impression on all of its participants. To sign up, please visit <http://www.arbitration.org.tw> or contact the CAA Secretariat for further information.



The CAA and the CIETAC met in Ningbo for the 9th cross-strait investment conference last year



Members of the Shanghai Trade Development Council visited the CAA in May

The CAA to Host Arbitration Moot Court Competition

The CAA, Lee and Li Foundation, Fu Jen Catholic University School of Law, and the International Law Society of the Republic of China will jointly host the 2010 Lee and Li Cup moot court competition from October 25th to 30th in Taipei. The Arbitration

Moot is designed to foster the study of arbitration and mediation, encourage the resolution of business disputes through arbitration, and to train the next generation of Taiwanese lawyers in methods of alternative dispute resolution.

The moot competition has invited every law school in Taiwan to compete. Each school can send a team consisting of three to five undergraduate or graduate school law students. So far, most law schools that are invited have agreed to send a team to compete in this year's moot court.

The Arbitration Moot is divided into two phases: the writing of memoranda and the hearing of oral arguments. This year's question is based on a hypothetical highway tunnel construction project that ran into a series of problems requiring students to address several procedural and substantive issues including: amendments

of contract, delay of time of completion, fundamental change of circumstances, and price adjustment. The governing substantive law is the law of the Republic of China and the dispute is submitted to the CAA for arbitration.

First Prize winner will be awarded NT\$120,000 and win a trip to compete against the winner of the Lee and Li Cup Moot Court of China at Tsinghua University in Beijing, China. In addition to awarding team placement awards, the competition will also award prizes for best individual oralist and best memorandum for the claimant and respondent.

Arbitrator Lecture: Guide to the Arbitral Tribunal

Written by Adam Shapiro (Editor, CAA Newsletter)

James Ku, managing partner of Formosan Brothers Attorneys-at-Law, and C.C. Lee, president of the Taipei Bar Association, held a lecture on May 15, 2010 giving guidance on how to lead an arbitral tribunal. More than 80 arbitrators attended the Saturday morning lecture.



Arbitrator training workshop, May, 2010

In their presentation, Mr. Ku and Mr. Lee divided arbitration procedures into pre-hearing, hearing, and post-hearing stages and provided a detailed and informing look at how an arbitral tribunal works in each.

First, before beginning any arbitration case, the arbitral tribunal should hold a meeting to discuss how everything will be conducted during the arbitration proceedings. This meeting, known as a case management conference ("CMC"), is an essential part of the arbitration proceedings. Most of the major matters of an arbitration proceeding are discussed during the CMC.

Questions such as when and where will the arbitration hearings be held, what will the arbitrators' compensation be, what language will the arbitration be held in, and what are the applicable arbitration rules and substantive law must be raised at the CMC.

Next, the arbitral tribunal must discuss and determine the amount in dispute in accordance

with rules and procedures pursuant to Article 27 of the Arbitration Act of the Republic of China. If any party objects to the amount in dispute determined by the tribunal, the party may ask the CAA's Arbitration Fees Determination Committee to provide the tribunal with an adjustment recommendation pursuant to Article 21-1 of the CAA arbitration rules.

Calculating the limitation period is an important function of any arbitral tribunal. The limitation period begins with the appointment of the chair arbitrator. The arbitral tribunal must render the award within six months of the appointment of the chair arbitrator, unless the parties agree or the tribunal rules to extend the limitation period for another 3 months.

During arbitration hearings, the arbitral tribunal should deal with all matters of procedure, maintaining order during the arbitration proceedings. They should confirm the identity of both parties and any agency powers exercised, complying with the confidentiality needs of each

party, and whether the arbitral tribunal was legally formed.

The arbitral tribunal is also presented with many duties that it must manage in a time controlled manner as it smoothly moves along the arbitration schedule. They must manage parties' presentation of witnesses, experts, evidence, and pleadings. They must also make sure the arbitration deliberation and written judgment are given in a timely manner.

At the conclusion of the oral hearings, the tribunal must meet to determine who will write the arbitration award and make sure the award can be

rendered before the end of the limitation period.

Mr. Lee concluded the lecture by reminding the arbitrators that they are put in a very important position of protecting the parties' rights and that it is vital that arbitrators strictly abide by arbitrator ethic rules, upholding impartiality and independence. If an arbitration award is set aside due to an arbitrator's conduct, there is often a major negative impact on the parties involved.

Mr. Ku and Mr. Lee's lecture was well received, as highlighted by the lively and interactive question and answer session that followed the conclusion of their speech.

Does the Dispute Resolution Clause Matter?

Written by Lillian Chu (Partner, Tsar& Tsai Law Firm)

How long will it take to go through the proceedings to solve the dispute? How much will it cost? Does the judge have special knowledge on the industry practice required to render a fair decision on the dispute? Will the information on the dispute become open to the public? Will the proceedings make the parties feel more hostile toward each other and impede future business opportunities? Whenever disputes arise, people seeking resolution will ask these types of questions. The answers to these questions explain why arbitration is preferable to litigation.

Arbitration is more flexible and allows the structure, formalities, and proceedings to be tailored to the specific case. To select arbitration as a dispute resolution mechanism, the contractual parties shall agree on in advance that the arbitration decision will be final and binding and not subject to review by any courts. Failure to properly manage the provisions of dispute resolution beforehand will certainly create procedural problems and become an obstacle to dispute resolution. It is much more difficult for the parties to negotiate and agree on the arrangement of dispute resolution after the dispute has arisen.

A good arbitration clause avoids ambiguity in the parties' agreement to use arbitration as the sole mechanism to settle the disputes, and specifies the name of the arbitration institution, the arbitration procedural rules and the place to conduct the arbitration. There are cases wherein the Taiwan courts adopted the view that an arbitration clause which states "the parties shall refer the disputes to an international arbitration association for resolution" is not a valid agreement for arbitration because no



It is important to draft the arbitration clause right

arbitration body named "international arbitration association" is in existence. There are also cases wherein the Taiwan courts adopted the view that an arbitration clause which states "any disputes shall be settled in good faith and in failing so may be submitted, mutually agreed by both parties, to arbitration" has set a condition for arbitration and the parties can refer the dispute to arbitration for resolution only after the condition "mutually agreed by both parties" is satisfied.

To achieve efficiency, and to avoid the dilemma of getting nowhere in resolving disputes, having a good arbitration clause for dispute resolution matters all parties to the contract. When negotiating a business contract, one should always keep in mind that getting a good arbitration clause for dispute resolution is just as important as getting a good price or business term, and is worth the extra efforts. To prevent the problems, the parties may adopt the model arbitration clause of the arbitration institution where they would like to resolve the disputes.

Simultaneous Interpretation System: Now Available at the CAA

The Association is now equipped with an advanced simultaneous language interpretation system. In anticipation to the growing number of arbitration and mediation proceedings to be conducted in foreign languages, the CAA Secretariat purchased a language interpretation system last month. In addition to use by the arbitral tribunal, the CAA will provide language interpretation at international conferences, symposiums, and workshops it organizes. The system is particularly important for Taiwan because not all government officials, lawyers, and businesspersons are fluent in English. The interpretation system will allow them to participate and raise and answer questions in arbitral proceedings and conferences freely.



The CAA now provides simultaneous interpretation service

Arbitral proceedings administered by the CAA may use the system without charge, but are required to pay for interpreters' fees and other related costs.

Up-and-Coming CAA Events

July 14, 2010

CAA Annual Speech: Public Construction
Commissioner Mr. Liang-Shiow Fan

July 21-22, 2010

Opening Ceremony of the CAA Xiamen Liaison
Office in Xiamen, China

August 13, 2010

Workshop on "How to Draft a Fair Public
Construction Contract"

August 20, 2010 (tentative)

Symposium on Dispute Review Board

September 1, 2010

The CAA and the CIETAC Joint Arbitration Forum
in Changchun, China

September 17-18, 2010

Taipei International Conference on Arbitration and
Mediation at the Taipei International Conference
Center

October 25-30, 2010

The 2010 Lee and Li Cup Arbitration Moot
Competition

November 13-16, 2010

The CAA and the CIETAC Ten Year Cooperation
Anniversary Events

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 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.

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