

# **Chinese Arbitration Association, Taipei Construction Dispute Review Board Rules**

Effective as of March 25, 2009

Amended on November 19, 2009

Article 1 (Scope of the Rules)  
Chinese Arbitration Association, Taipei (“CAA”) Construction Dispute Review Board Rules (“DRB Rules”) shall be applied to resolve construction contract disputes when the parties agree to adopt them. In the event that the parties agree to adopt a different set of rules, their agreement shall prevail.

Article 2 (Establishment of the Dispute Review Board)  
Unless the parties have agreed otherwise, the Dispute Review Board (“DRB”) shall be established in accordance with the following rules:

- 1) The DRB shall be comprised of three qualified persons (“the members”);
- 2) Each party shall nominate a member from the CAA DRB member roster at the time of contract or within 28 days after a party has requested to establish a DRB.  
The nomination shall be made in writing and shall disclose the nominee’s education and professional experience and any conflicts of interest.  
A party shall respond in writing within 14 days after receipt of the other party’s nomination.
- 3) In the event that a party fails to nominate a member or to respond whether it accepts the other’s timely nomination, any party may request the CAA to nominate a member from the CAA DRB member roster on its behalf.
- 4) If the DRB is comprised in accordance with the preceding two paragraphs, the members shall nominate the third member within 21 days after the appointment of the second member, and shall promptly inform their nomination to the parties in writing. The nomination shall contain the nominee’s education and professional background and disclose any conflict of interests. The parties shall respond as to whether they agree with the

members' nomination within 14 days of the receipt of the nomination.

- 5) In the event that the two members fail to nominate the third member, a party fails to respond as to whether it agrees with the nomination, or a party rejects the members' nomination, the parties may jointly appoint the third member. If the parties fail to appoint the third member within 14 days, a party may ask the CAA to select one from the CAA DRB member roster on its behalf.
- 6) The third member shall act as the chairman of the DRB, unless the other members and parties agree otherwise.
- 7) If the parties agree the DRB is to be comprised of a sole member, but did not agree on a nomination procedure, the parties shall jointly appoint the sole member within 28 days after the signing of their construction contract. If the parties fail to appoint their sole member within the prescribed time, the CAA may appoint the member on the parties' behalf upon request by any party.

#### Article 3 (Replacement of Appointed Members)

If a member has to be replaced for any reason, including resignation, disability, death, recusal, or termination of appointment by mutual agreement of the parties, the new member shall be appointed in the same manner as the member being replaced, unless the parties agree otherwise.

The replacement procedure shall have no impact on the existing members' capacity to carry out their duty independently.

During the replacement procedure, the existing members may continue to carry out their duties, but shall not have the right to hold hearings or issue Determinations, unless the parties agree in writing that the members shall retain the aforementioned rights.

#### Article 4 (Signing of the Member Agreement)

Every member shall sign with all the parties a member agreement agreeing to the terms of remuneration and performance of the contract, and pledge that he will act independently and impartially.

If a member is replaced, the new member shall sign the same member agreement with all the parties agreeing to be bound by the same terms and conditions.

Article 5 (Independence and Cause for Recusal)

A member shall immediately disclose in writing to the parties and other members any facts or circumstances which may call into question his independence and impartiality in the eyes of the parties.

Should a party wish to challenge a member on the basis of lack of independence, it shall submit to the CAA, within 7 days of learning of the facts upon which the challenge is based, a written request for a decision. The CAA shall decide the challenge within 14 days of receipt of the written request after having given other members and the other party an opportunity to respond to the challenge. The decision rendered by the CAA shall be final and binding.

If a member fails to disclose in writing any facts or circumstances that may call into question his independence, and the CAA determines that he should have been recused, the parties may dismiss the member in accordance with the member agreement.

Article 6 (Termination of Appointment)

The parties may at any time, without cause and with immediate effect, jointly terminate the member agreement, dismiss any member, or disband the DRB, but shall pay each member, in accordance with the member agreement, for the work he has already performed.

Members may terminate the member agreement at any time by giving the parties written notice.

A member shall immediately end his work upon receipt of written notice to dismiss him, to disband the DRB, or to terminate the member agreement.

Article 7 (Confidentiality)

Unless otherwise agreed by the parties or otherwise required by

applicable law, any information obtained by a member during the course of the DRB activities shall be kept confidential.

Article 8 (DRB Hearing)

The date of the first DRB hearing shall be determined within 10 days of the appointment of the last member. The first hearing shall give the parties the opportunity to present information regarding the project's background, design, and other relevant details. The DRB may, in consultation with the parties, establish a schedule of meetings. After the first hearing, the DRB may hold additional hearings if it deems it necessary or if the parties so request.

Article 9 (Providing Information)

A party shall provide information requested by the DRB in a timely manner and shall promptly send a copy of it to the other party.

Article 10 (Site Visits)

The DRB shall arrange site visits in accordance with the member agreement.

After every site visit, a party shall produce any documents requested or answer any inquiries raised by the DRB, and shall promptly send a copy of the documents or answer to the other party.

Article 11 (Request for Informal Assistance)

Upon request by any party, the DRB may provide informal suggestions or assistance in resolving any disagreement that may arise between the parties. The DRB, however, may not provide *ex parte* suggestions or assistance without the presence and knowledge of the other party.

The parties shall not request the DRB to be bound by any views or suggestions which it may have given in the course of its informal assistance.

Article 12 (DRB Statement of Case)

In the event of a dispute between parties, either party may bring the dispute to the DRB.

When a party brings a Statement of Case to the DRB, a committee will consider the Statement of Case, and documents will be served on the other party. The Statement of Case shall include:

- 1) The parties' names and addresses. If a party is an organization, company, or institution, include the name of its office and place of business.
- 2) Any legal representative or agent's name and address.
- 3) A clear description of the facts and issues of the dispute.
- 4) The contractual agreement and the legal basis in the dispute.
- 5) Suggestions or proposals to resolve the dispute.
- 6) All supporting documents including proof, drawings, and other information.

For appointment of an agent to the DRB, the party shall attach a written consent form.

#### Article 13 (Submitting the Answer)

The responding party shall respond to the Statement of Case in writing within 7 days of receiving it, and shall prepare its answer and relevant documents to the DRB, which will be served to the complaining party.

If the responding party fails to submit an answer within 7 days, the DRB may still proceed with the dispute review procedure.

#### Article 14 (Determination Meeting Procedures)

Once the answer is received and the time frame is set, the DRB will hold a Determination Meeting and shall notify both parties. The DRB shall conduct a fair and impartial inquiry, and give both parties a reasonable opportunity to be heard. Both parties may attend the Determination Meeting with no impact on the proceedings.

Either party may appoint an agent to participate for them in the Determination Meeting by attaching a letter of appointment. Without consent from the DRB, an agent shall not question or examine any personnel in connection with the opposing party.

The DRB may, but is not limited to, do any of the following:

- 1) Question the parties and related personnel, and investigate the projects they are working on.
- 2) Request parties to file additional relevant information and written comments.
- 3) Perform an on-site survey.
- 4) Engage in any other procedure which will aid in resolving the dispute in a timely manner.

When the DRB has analyzed the dispute and reached a Recommendation, they shall announce the end of the Determination Meetings.

#### Article 15 (Time Limitation for Rendering a Recommendation)

Unless the parties agree otherwise, the DRB shall complete the Determination Meetings within 28 days after receiving the Statement of Case. When necessary, the DRB may further extend the time limit up to 14 days.

Unless the parties agree otherwise, the DRB shall make its Recommendation within 5 days after the end of the Determination Meetings. The DRB shall provide a written decision within 14 days which shall state the reasons for which it came to its Recommendation.

When a 3-member DRB makes a Recommendation, the following applies:

- 1) After the end of the Determination Meetings, the DRB shall hold a review meeting.
- 2) The DRB shall aim to reach a unanimous vote on its Recommendation. If it fails to reach a unanimous vote, the Recommendation will be made based on a majority vote.
- 3) If one member fails to attend the meetings, or perform his duties, the other two members can still make the recommendation.

The written recommendation shall be made and signed by at least 2 DRB members, and will be served upon the parties.

In a 1-member DRB, the sole members shall make and sign the recommendation, and serve it upon the parties.

Article 16 (Effect of the DRB Recommendation)

If no party has sent a written notice expressing its disagreement with the Recommendation within 28 days to the other party and DRB, the Recommendation shall become contractually binding upon the parties.

If any party submits a written notice expressing its disagreement with the Recommendation, or if the DRB does not issue its Recommendation within the time limit prescribed in Article 15, the parties may, based on their contract or laws and regulations, proceed with other dispute resolution procedures.

If the parties agree, the Recommendation may be introduced as evidence in subsequent litigation, arbitration or mediation.

Article 17 (Clarifying a DRB Recommendation)

Within 7 days of the parties receiving the Recommendation, a party may make a written request to the DRB to provide the details of the decision for purposes of clarification and understanding the Recommendation.

The DRB shall provide these details to the parties within 14 days of the clarification request by submitting written opinions to both parties. The parties are limited to one combined request for clarification.

Article 18 (Reconsidering a Recommendation)

During the Determination process, if the Recommendation is made without evidence, and it is something sufficient enough to affect the Recommendation, upon written request, a party may ask for reconsideration of the Recommendation within 7 days from the date of delivery of the Recommendation.

The DRB shall give written notice to the parties within 7 days of the request informing of whether it intends to reconsider the Recommendation.

If the DRB elects to reconsider the Recommendation, the DRB must do so within 14 days of the notice given to the parties informing them of its decision to reconsider the Recommendation. In accordance with Article 16, Paragraph 1, there is a 28-day period for reconsidering a Recommendation from the time it was made.

The parties are limited to one combined request for reconsidering a Recommendation.

Article 19 (Corrections to a Recommendation)

If the Recommendation contains any kind of clerical, computational, typographical, or other minor errors, the DRB may either request the parties to correct the error, or correct the error on its own.

If the DRB decides to correct the error on its own, it must consult with the parties first.

Article 20 (Unresolved Dispute and Subsequent Proceedings)

If the dispute fails to be resolved through DRB, both parties may agree to proceed to arbitration which will be carried out in accordance with the Republic of China Arbitration Law. No DRB member can act as agent of either party to the arbitration. However, if both parties give their written consent, a DRB member may be appointed as an arbitrator for the parties' arbitration.

Article 21 (CAA Administrative Assistance)

Parties may request the CAA to assist with the administrative procedures of carrying out the DRB.

Article 22 This code, as well as any amendments thereto, shall enter into force on the date on which the board of directors resolves to adopt it.