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Fascination and Challenges: Insights into International Arbitration from Taiwan to Vietnam

Ma, Winnie Jo-Mei

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Recommended citation(APA):
Ma, W. J.-M. (2019). *Fascination and Challenges: Insights into International Arbitration from Taiwan to Vietnam*. Poster session presented at PIAC-CAA Joint Seminar, Viet Nam.

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60th anniversary
THE CHINESE ARBITRATION ASSOCIATION, TAIPEI

Fascination and Challenges: Insights into International Arbitration from **Taiwan** to **Vietnam**

Winnie Jo-Mei Ma

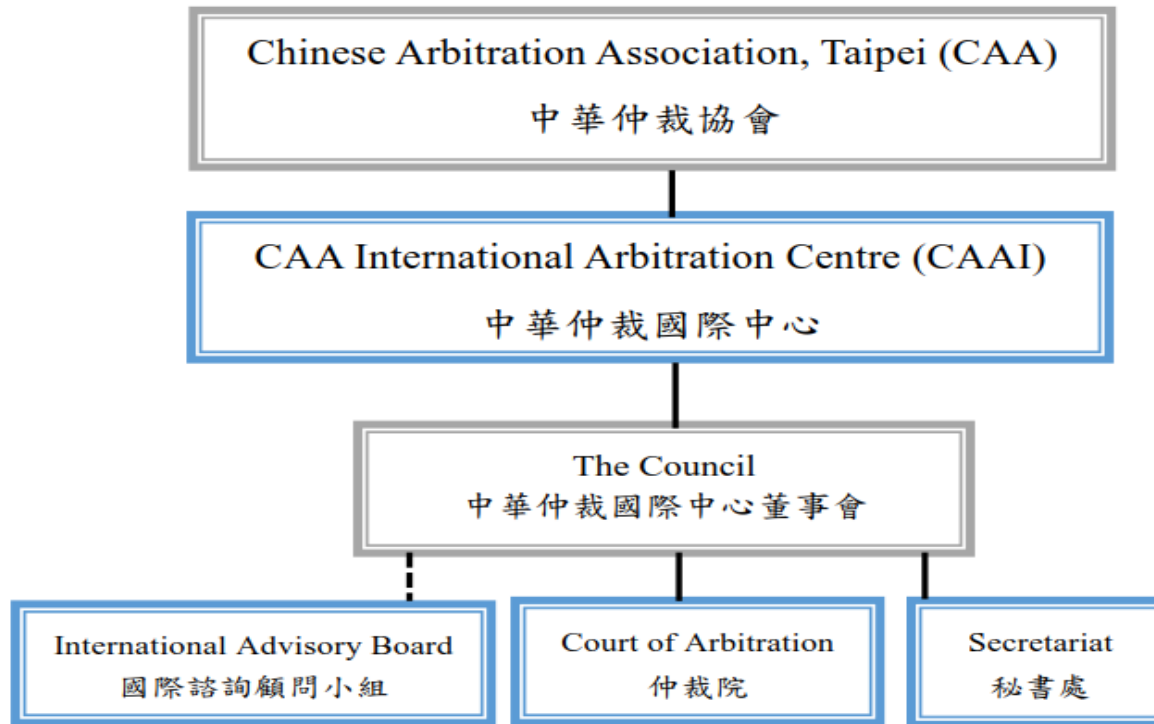
CAA Deputy Secretary-General, 3 April 2019

Introduction

- 1955: **CAA / Chinese Arbitration Association, Taipei** (non-profit organisation based in Taipei, together with offices in Taichung and Kaohsiung)
- 2003: CAA Mediation Center
- 2017: CAAI Arbitration Rules and Preparatory Office
- 2018: **CAAI / CAA International Arbitration Centre** (not-for-profit company limited by guarantee registered in Hong Kong; the first foreign branch of CAA)
- 2019: CAAI Court of Arbitration and CAAI List of Arbitrators



CAA-CAAI Organisational Structure



—— Supervisory guidance / 指導監督

----- Advisory guidance / 諮詢建言



CAA-CAAI Dual-Track System

- **CAA** (Chinese Arbitration Association, Taipei) administers **arbitrations seated in Taiwan** under CAA Arbitration Rules
 - <http://www.arbitration.org.tw/>
- **CAAI** (CAA International Arbitration Centre) administers **arbitrations seated outside Taiwan** under CAAI Rules (effective from 1 July 2017)
 - <http://www.caii-arbitration.org/>



Model Arbitration Clause

Any dispute, controversy, difference or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity, interpretation, performance, breach or termination, shall be finally resolved by arbitration referred to [*insert either* CAA (Chinese Arbitration Association, Taipei) *or* CAAI (CAA International Arbitration Centre)**] in accordance with its arbitration rules in force when the Notice of Arbitration is submitted, and the seat of arbitration shall be [*insert jurisdiction***].

*** Please insert **CAA** if the seat of arbitration is in **Taiwan** (in which case CAA Arbitration Rules will apply). Alternatively, please insert **CAAI** if the seat of arbitration is **outside Taiwan** (in which case CAAI Arbitration Rules will apply).*



Herbert Smith Freehills' Lexology Blog, 17 August 2017 (May Tai, Helen Tang & Rebecca Soquier)

“Although Taiwan is not a signatory of the New York Convention, CAA awards are known to have been successfully enforced outside Taiwan pursuant to bilateral agreements, or on the basis of principles of comity and reciprocity.

The enactment of the CAAI Rules in line with accepted international practices, and with Hong Kong as the default seat, is therefore a welcome effort to enhance the enforceability of CAA awards.”



Internationalisation

1. Modified adoption of international standards & practices	Dual-track system for arbitrations within & outside Taiwan; adoption of IBA Rules & Guidelines
2. Platform for exchange with arbitration practitioners & users	Inter-institutional agreements/MOU (e.g. CIArb); arbitration-related conferences, seminars & courses (local, regional & international)
3. Training & capacity-building	
4. Collaboration with the judiciary	
5. Collaboration with industries & governmental agencies	Benefits of arbitrating in Taiwan: language, expertise, efficiency etc.
6. Reform proposal for Taiwan's Arbitration Law	Modified adoption of UNCITRAL Model Law with Taiwanese features



Comparative Overview of CAAI Rules

International practices adopted	Trends to be tested
<ul style="list-style-type: none">• Emergency measures and interim measures (Schedule 1; Art. 26)• Consolidation (Art. 28)• Joinder (Art. 27)• Multiple contracts and/or parties• Confidentiality (Art. 39)	<ul style="list-style-type: none">• Third party funding• Early / summary dismissal• Investment arbitration rules• Online / E-arbitration

Distinctive features of CAAI Rules

- Semi-bilingual approach to language of arbitration (Arts. 7.2 & 20)
- Double time limits on arbitral tribunal (closure and award-making: Arts. 30 & 33)
- Unified criteria for single arbitration of multiple contracts (at initial stage: Art. 9) and consolidation of arbitrations (at later stage: Art. 28)



CAAI Rules & Related Documents

- Arbitration Rules
- Guidelines on Case Management Conference
- Code of Ethics for Arbitrators & Parties

<http://www.caa-arbitration.org/Rules.aspx>

- Notes on Composition & Procedure of CAAI Court of Arbitration
- Arbitrators Guide
- Parties Guide
- Various Statements (Arbitrator, Tribunal Secretary, Tribunal-appointed Expert)



CAAI Guidelines on CMC

“To assist the Tribunal and the parties with conducting their arbitration with efficiency, clarity and predictability”

- CMC (Case Management Conference) to establish Terms of Reference (substantive & procedural framework) and Procedural Timetable (dates or time limits for each stage of arbitration)
- Comprehensive but non-exhaustive agenda for CMC
- New claims beyond the scope of Terms of Reference require Tribunal’s approval
- Tribunal or parties can request CAAI to decide on any items in the Terms of Reference which they cannot agree



CAAI Code of Ethics

“To ensure that arbitrators and parties act with integrity and professionalism when conducting arbitrations”

- **Arbitrators:** impartiality, independence, fairness, availability, diligence, confidentiality
 - Enforcement and sanctions by CAAI Court of Arbitration
- **Parties (including party representatives):** unauthorised unilateral communications; activities intended to obstruct the arbitration or jeopardise the award, or to knowingly deceive or mislead Tribunal or CAAI
 - Enforcement and sanctions by Tribunal



Common Interests in International Arbitration

- party autonomy +
- arbitral tribunal's discretion +
- institutional scrutiny →
 - impartiality and integrity
 - enforceability and efficacy
 - flexibility and efficiency
- Determination and Termination of Dispute



Events & Resources

- **Taipei Symposium** on International Arbitration Rules (August 14): invited arbitral institutions
- **Taipei International Conference** on Arbitration & Mediation (August 15-16): arbitration scholars, practitioners and users
- **CAAJ** (Contemporary Asia Arbitration Journal): published in May and September each year
- **CIArb courses** through CIArb East Asia Branch Taiwan Chapter (Accelerated Route to Membership course on June 15-16; Award-Writing course for Fellowship in September)





Thank You

Email: wma@arbitration.org.tw

