The Japan Commercial Arbitration Association

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JCAA Newsletter

[Articles]
Dispute Boards
Resolution and Avoidance of Disputes in Construction Contracts

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1. Concept and History

Construction contracts are typical of incomplete contracts because it is not possible to describe all contingencies which may, or may not, occur during the course of construction. To cope with those contingencies, most standard forms of construction contracts provide rules for 1) Risk Sharing, 2) Variation (Change) and 3) Dispute Resolution. A mere difference of opinions of the parties in the interpretation of the contract documents often develops to a serious dispute. If the parties fail to settle the dispute by negotiation, they may go to arbitration or litigation. Every party wants to avoid arbitration or litigation because they know arbitration and/or litigation take time and need substantial expenditure. Moreover, in arbitration and litigation, the relationship between the parties gets worse and the project cannot be completed successfully (and someone will loose face in the end!).

The best way to resolve disagreement is to prevent it from becoming a formal dispute. The primary duty of a Dispute Board ("DB") is to avoid disagreements becoming disputes. Making a decision or "Recommendation" is a secondary role of the DB.

A DB is made up of three (or one depending on the size and complexity of a project) members who are experienced in and knowledgeable about the type of the construction, interpretation of contract documents and the DB process and are absolutely independent and impartial. A DB is set up at the outset of a project and the DB Members are to be given the Contract Documents such as Conditions of Contract, Drawings, Specifications and Programme so that the Members can be conversant with the project. The DB visits the Site regularly, say quarterly, to meet the Site people and to observe the progress and problems, if any, of the project. Between the Site visits, the Engineer or the Parties send the DB Members the Monthly Progress Report, Claim Notices and other important correspondence to keep the Members informed. The DB is part of the construction team who assists the parties in avoiding claims and settling disputes by amicable negotiations. If the parties fail to settle disputes, they are referred to DB for determination. Since the DB members are familiar with the contract documents and the Site operation and progress of the project, it will not take much time to judge the dispute. Even if the determination is rejected by one or both parties, it will be the basis for further negotiation in an amicable manner. Thus, the benefit of DB is prevention of disputes and early settlement of disputes without embedding adversarial attitudes.

The concept of DB was established during the use of "a four-person joint consulting board" in the Boundary Dam and Underground Powerhouse Complex Project in the mid-1960s in Washington State and the tunnelling industry first used the DRB (Dispute Review Board) process in 1975 during construction of the second bore of the Eisenhower Tunnel in Colorado. It was an overwhelming success; The DRB heard three disputes during construction and the DRB Recommendations were accepted. All parties were pleased at the end of the project. In 1980 World Bank promoted a DB (then called "Claims Board") on El Cajon project in Honduras, which was also successful[1]. In 1995 World Bank Standard Bidding Document published modified FIDIC[2] conditions which deleted the usual provision of the "Engineer's Decision", giving this task to a DRB.

2. Statistics

The graph, **Fig-1**, shows the statistics of the use of DB from 1982 to 2004. The readers may recognize how DB process has grown over the last decade. Please

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[1] The late Mr. Al Mathews, who was involved in both Boundary Dam and Eisenhower Tunnel projects, persuaded the Contractor and the Government to use a DB in El Cajon project. He was the founder and the first Chairman of the Dispute Resolution Board Foundation (DRBF), Seattle, Washington, USA

[2] Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers)

note that the statistics was made mainly based on the reports from North America and it is assumed that more projects have used DB internationally under FIDIC Conditions of Contract.
In three mega projects, Channel Tunnel/Train/Terminal (UK-France), Hong Kong Airport (HK) and Ertan Hydro Project (PRC), DBs were used successfully.

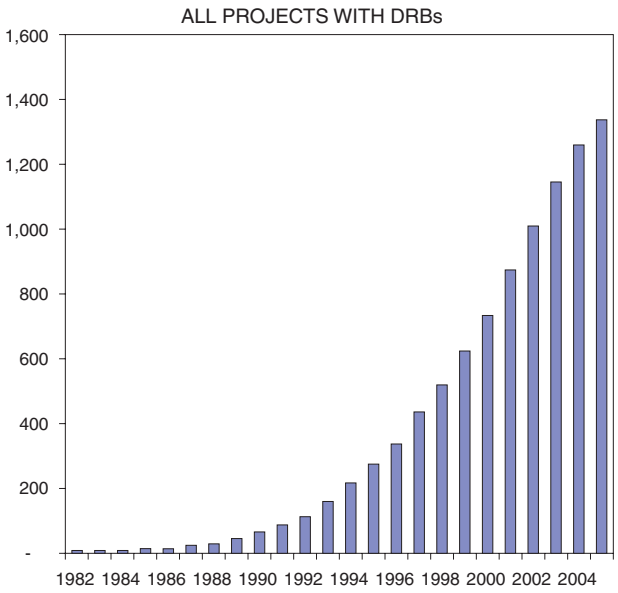

Fig-1

3. DRB, DAB and CDB

There are three principal types of DBs, the Dispute Review Board ("DRB"), the Dispute Adjudication Board ("DAB") and the Combined Dispute Board ("CDB").

(1) DRB

The DRB has been, and is, used in the US widely for these three decades and the dominant form there. Internationally the World Bank also provided for DRBs in the January 1995 and subsequent editions of its Standard Bidding Document, *Procurement of Works*, and continued use until the May 2000 editions, when it adopted the DAB type. The DRB continues in use under ICC Dispute Board Rules. The DRB issues a Recommendation. Either party may express its dissatisfaction with the Recommendation by issuing a notice then the parties may continue negotiations or a party can invoke arbitration or go to court (arbitration is most commonly used in the international business transaction). If no party expresses dissatisfaction within a specified time, the Recommendation becomes binding. It is said that a Recommendation of DRB does not "dictate" to the parties and therefore, is more likely to be the basis for amicable settlement without jeopardizing the parties' good relationship.

(2) DAB

The DAB issues a decision on the matter of dispute, which is binding on the parties as soon as it is issued. It currently is the most common form of DB used in international construction contracts. The parties must comply with it without delay notwithstanding a party's expression of dissatisfaction. Depending on the DAB provisions in the conditions of contract, the parties may renegotiate the issues, or the unsatisfied party may invoke arbitration immediately. Even if objected to, the decision of the DAB is binding until and unless the parties agree otherwise or the arbitral tribunal decides differently. Some people argue that DAB is appropriate to the international projects which have multinational business cultures. Both *FIDIC 1999 Conditions of Contract and FIDIC MDB (Multilateral Development Banks) Harmonised Conditions of Contract provide for DAB although a DAB is called simply "DB" in the MDB Edition*.

(3) CDB

The CDB is a unique Board which the ICC[3] introduced in 2004. As the name shows, it is a process combining DRB and DAB. The aim of the new creature is to combine the advantages of two basic types of DBs, i.e., DRB and DAB; DRB issues a Recommendation and DAB issues a decision.
The CDB operates normally as DRB. However, a party may sometimes need to have a decision with which the parties will comply immediately even if they wish to challenge it in arbitration. What is such an occasion when a party requires an immediate decision? A party may go into bankruptcy if it does not receive claimed payment immediately. A party wants the other party to stop using its know-how illegally or not in accordance with their licensing agreement because the damage may become irreversible if compliance has to await a long arbitration. A party may be facing an imminent threat that the other party will call a performance bond for a large sum of money, to the immediate and severe detriment of the party which has given the bond.

In deciding whether to use a DAB approach instead of a DRB approach, Sub-Article 6.3 of the ICC Rules provides that the CDB shall consider, without being limited to, the following factors:

- whether, due to the urgency of the situation or other relevant considerations, a Decision would facilitate the performance of the Contract or prevent substantial loss or harm to any Party;
- whether a Decision would prevent disruption of the Contract, and

[3] *International Chamber of Commerce, this rule was developed by ICC International Court of Arbitration. http://www.iccwbo.org*

- whether a Decision is necessary to preserve evidence.

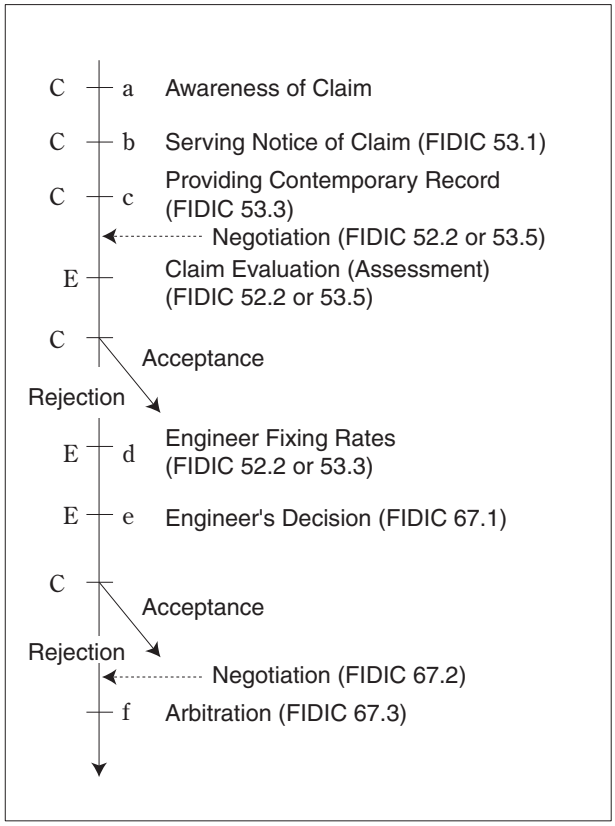

Fig-2: Claim and Dispute Procedure Under FIDIC Red Book 4th Ed.

Under the ICC Rules, when a party requests a decision by DAB and another party objects, the CDB has the power to determine whether the reference should be dealt with acting as a DRB or a DAB. The rule is silent as to any time limit by which the Board must determine which process, DRB or DAB, should be applied, but presumably it would be early in the formal dispute procedure.

The readers must have noticed that ICC DB Rules are quite suitable for any type of long term contract such as a licensing agreement, a sole agency agreement etc. because ICC Rules are "stand-alone".[4] In fact, it is reported that a few contracts in the IT industry have adopted this CDB. Also, the ICC has adopted it for dispute resolution under the ICC Model Form of Major Projects.

4. Engineer's Decision and DAB in FIDIC Conditions of Contract

The Engineer, stipulated in the FIDIC Red Book up to 4th edition 1987[5], plays two roles (Dual Role); on the one hand, he acts on behalf of the Employer as his agent to administer the contract, and supervise the Works, on the other hand, he certifies the progress, fixes the rates and prices of varied works and evaluates claims as an impartial professional (quasi-adjudicator). The Engineer is required to make an "Engineer's Decision"[6] on a dispute between the Contractor and the Engineer/Engineer's Representative or the Employer (see **Fig-2**). Thus he is expected to facilitate the dispute resolution effectively.

It is often observed in the operation of FIDIC contract that the latter role of the Engineer is not functioning properly and that a dispute goes on to arbitration. This is because the Engineer often is employed by the Employer throughout the project from the outset as a consultant to carry out the feasibility study, designing, preparation of the tender documents and evaluation of each tender to award the contract. It is quite understandable that it is very challenging for the Engineer to play the Dual Role properly; not only has to try to be objective in evaluating possible errors or omissions in the design phase, but also balance his duty to be "impartial" (under the 4th Ed of the Red Book) when acting as Engineer, he must judge his own actions or inactions. Even if his role as Engineer is not the basis of a claim, he nevertheless is in the uncomfortable position of trying to give judgment between two parties: (1) his valued client, the Employer, from whom he may hope to receive further work in the future; (2) the Contractor, who if his claim succeeds may cause delay or cost to that valued client, the Employer. In order to resolve this dilemma, FIDIC has restructured its Red Book as well as Yellow[7] and Silver[8] Books in 1999, by replacing the Engineer's Decision with the DAB process.

5. Establishing and Operating a DB

5.1 Timing

It is often the case that the land acquisition of the construction Site has not been finished, that the right of way to the Site has not been acquired, that the Drawings for construction have not been delivered to the Contractor timely, the mobilization of the construction equipment has not been complete by the planned date and so on. Thus, problems and difficulties often occur from the very beginning of a project which have adverse effects to the progress of the contract and perhaps the entire project. The purpose of a DB is to prevent formal disputes from arising by helping to resolve disagreements before they escalate to formal disputes, if arise. Therefore, it is obvious that a DB should be established at the outset of a project to

[4] *Christopher Koch in his presentation at the DRBF 8th International Conference at Cape Town, South Africa, in May 2008, used this terminology to compare ICC Rules and FIDIC Conditions of Contract, the latter incorporates DAB rules as integral part of the conditions.*

[5] *Conditions of Contract for Works of Civil Engineering Construction*

[6] *Clause 67; Settlement of Disputes*

[7] *Conditions of Contract for Plant and Design-Build*

[8] *Conditions of Contract for EPC Turnkey Projects*

fulfil its purpose. Yet, FIDIC 1999 Yellow Book and FIDIC 1999 Silver Book provide for an "ad-hoc" DB, established after a dispute has arisen. From the author's point of view, the "ad-hoc" DB loses the principal value of the DB concept.

5.2 Qualifications of DB Members

FIDIC Conditions of Contract, ICC Dispute Board Rules and the DRBF[9] Manual describe similar qualifications or required attributes of DB members. The following are the ones specified in DRBF Manual:

Quote:

When nominating prospective Board members, the contracting parties should recognize the following necessary attributes:

- Complete objectivity, neutrality, impartiality and freedom from bias and conflict of interest for the duration of the contract.
- Dedication to the objectives and principles of the DRB process.

In addition to these attributes, the parties must evaluate the experience and qualifications of the prospective members for the specific project, with respect to:

- Interpretation of contract documents
- Resolution of construction disputes
- The type of construction involved
- The specific construction methods to be used
- The dispute-prone facets of the work

Unquote

Each DB member warrants that he/she meets the requirements for the duration of the contract, and shall declare any change which may arise.

5.3 Selection of DB Members

According to FIDIC 1999 Red Book, each of the parties shall nominate one member for the approval of the other party. The parties shall consult the selected two members and shall agree upon the third member who shall become the Chairperson. In addition to the required attributes described above, the Chairperson shall have the ability of running effective meetings in difficult situations.
Where to find a potential DB member? FIDIC provides for the List of President's Approved Dispute Adjudicators which is on its website[10]. Upon request, DRBF and ICC also will nominate or appoint DB members. The IDRC (International Dispute Resolution Centre) in Dublin, Ireland (part of the American Arbitration Association) has a list of persons suitable for DB work, as does the DBF (Dispute Board Federation). So, also, do the Institution of Engineers of Ireland and the UK ICE (Institution of Civil Engineers).

6. Cost of a DB

The costs for the DB process consist of two parts, one of which is the remuneration and reasonable expenses of the DB members and these costs are to be shared equally by the parties. The remuneration consists of the Monthly Retainer and Daily Fee. According to the General Conditions of Dispute Board Agreement of the FIDIC Red Book, a Retainer Fee per calendar month shall be considered as payment in full for: (i) being available on 28 days' notice for all Site visits and hearings; (ii) becoming and remaining conversant with all project developments and maintaining relevant files; iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties. A Daily fee shall be considered as payment in full for: (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the Site, or other location of any other meeting with the other Members; (ii) each working day on Site visits, hearings or preparing decisions; and iii) each day spent reading submissions in preparation for a hearing.

Also, typically the Contractor provides local transportation for the DB to the Site, and if the Site is remote, will provide the DB with Site accommodation and meals, and the cost of this shared with the Employer. Recovery of the Employer's share typically is accomplished by including it in the next monthly progress invoice, or if there are stage payments, then by a separate invoice.

The other part is the costs to be incurred by the parties themselves. The Contractor shall pay for the costs of travel and accommodation for the company's staff to participate in the DB Site visits. If a referral is made and hearing is to be held, the Contractor shall pay for costs for preparation of position papers, the costs for obtaining the experts' opinion, if necessary, costs for the travel and accommodation of their company's staff and their experts to participate in or attend the hearing to be held at the Site. (Normally, legal counsel do not participate in DB hearings.) The Employer shall pay for the similar costs of its participation in the process, including those relating to the Engineer, who typically has a large involvement, including drafting Employer written submissions, arranging to obtain experts' opinions, and assisting at any hearing.

[9] *Dispute Resolution Board Foundation, Seattle, Washington, USA, http://www.drb.org/*

[10] *http://www.fidic.org/*

7. Conclusion

Too often, even though the contract calls for a DB, the parties see the DB as "too expensive" and because they have no disagreements at the beginning of the contract (the parties being "newly weds") so they postpone establishing the DB and say "We will establish the DB if we have a dispute which we cannot settle by friendly discussion." Or they establish the DB but insist that the DB Site visits be only annually, instead of quarterly, so they can "save money". These attitudes reflect lack of experience in use of DBs and lack of understanding that a properly established and maintained DB is one of the most valuable economies they can accomplish.

What happens if there is no DB? Typically when claims become serious disputes, both the Contractor and the Engineer begin exchanging elaborate claims documents, typically prepared with the help of consultants such as claims consultant companies, experts in delay analysis, independent specialists such as geologists or geophysicists, consulting quantity surveyors, and lawyers (both those internationally prominent and local lawyers of the country of the contract). All of these are expensive helpers! Those used by the Engineer of course are paid for ultimately by the Employer.

Preparation of these documents takes more than money, it takes a lot of time. Inevitably the documents must be reviewed by the parties' managements. Meetings to review and discuss the documents of both sides will be held, week after week, month after month, as the parties struggle with each other for victory without having to go on to the further expense and delay of arbitration. Typically, the struggle will continue even after construction has been completed. The Employer will have to keep staff of the Engineer working longer than the case if claims had been resolved by the time construction was complete. Similarly, instead of being able to release all staff to other projects, the Contractor has to keep its key Site staff involved, and if its camp has been demobilized, may have to find commercial office space, and may have to find rental accommodation locally for its claim staff. It is likely that some if not all of the experts who have assisted the parties in preparing the claims documents will be involved in these meetings. As with document preparation, if the experts are from outside the project country, significant transportation and accommodation costs are involved in attendance at meetings. Further, if eventually success is obtained in negotiating an amicable settlement, a very large amount of senior management time will have to be devoted to those negotiations. Sometimes it is even necessary to employ a mediator to assist the parties, and to avoid arbitration.

Obviously, it is very difficult to budget for these costs. By contrast, a DB can be planned for and budgeted from the outset.

So let us turn to what happens if a DB is established at the outset and operated properly. The DB will be familiar with the contract from inception, and from its Site visits plus reading of regular written reports received between Site visits, the DB will be familiar with the progress of the construction. From experience on similar projects elsewhere, the DB will be alert to the principal areas of risk and potential problems. The DB will have the experience to assist the parties in avoiding conflict, and when disagreements do arise, in guiding the parties so that amicable settlement is achieved without elevating the disagreements into formal disputes. The most successful DBs are those which never have to deal with formal written submissions and hold hearings. Instead, using papers already in the hands of the persons doing the day-to-day management of the contract, and informal discussions, they can guide the parties to mutually acceptable resolutions. Typically, only the Site management staffs are involved with the DB, and the involvement of senior management of the parties is not required to reach resolution of disagreements on Site.

If for some reason a particular disagreement unavoidably becomes a formal dispute, the DB will be resolved to reach its own decision on the dispute quickly, and will control the production of documents to keep them to a minimum, keep any hearing to the minimum duration necessary to give each party a fair hearing, and then will prepare its decision under a time limit to which they are bound by their contracts with the parties. They will seek to give a unanimous opinion, and even if it is not fully acceptable to both parties, it very often forms the basis for further discussions and negotiations between the parties and leads to a settlement without either party initiating arbitration. Also, typically in contracts with DBs, all disagreements arising during construction will be resolved by the time construction is complete.

Clearly, the cost of a DB is a *saving* compared to the traditional end-of-the-contract battles over massive claims documents (and counter-claim documents!) dragging on many months after construction is complete.

[Report]
APRAG Conference 2009

Hiroyuki Tezuka*

1. Introduction

The Asia Pacific Regional Arbitration Group (APRAG) Conference for the year 2009 was convened from June 21 to 23 this year at the Grand InterContinental Seoul, Korea. APRAG was established on November 2, 2004, it is a regional federation of arbitration associations which aims to improve standards and knowledge of international arbitration.[1]

The purpose of the conference this year was defining "Best Practices of International Arbitration for Asia" and the desirability and feasibility of adopting them. Not only from the Asia Pacific Region, but from all over the world, over 200 people, such as representatives from arbitration centers and related institutions and prominent scholars and practitioners, participated in the conference.

2. Sessions Overview

Sessions were held for 2 days, starting in the morning on the day after the Welcome Reception. At the sessions interesting discussions among the chairpersons and the panelists of the sessions took place: those who participated in the sessions from the conference floor were also actively involved in exchange of opinions.

(1) Session 1: Defining "Best Practices of International Arbitration for Asia" I: Preliminary and Pleading Stages

In this session, points to consider at the preliminary and pleading stages of international arbitration were introduced by prominent practitioners practicing arbitration in various nations and regions. Active discussions and exchanges of opinions regarding the content of the request for arbitration and the use of witness statements took place.

(2) Session 2: Defining "Best Practices of International Arbitration for Asia" II: Hearing and Post-Hearing Stages

In this session, techniques with respect to witness examinations and others points to consider at the hearing and post- hearing stages were introduced by prominent practitioners practicing arbitration in various nations and regions. I was involved in this session as a panelist. I introduced and offered my views on the Böckstiegel Method. Under this method each party is given a certain amount of time to plead, present witnesses of fact, cross-examine, and present experts: the parties are allowed to freely allocate their given time for the pleadings and examinations.

(3) Session 3: Defining "Best Practices of International Arbitration for Asia" III: Perspectives of Transnational Institutions

Representatives from various arbitration centers served as panelists for the session and introduced issues under the current practices within their institutions. Most current issues in the field of international arbitration, such as interim measures in arbitration and matters concerning confidentiality, were discussed. There were a number of questions from those who participated in the session from the floor, and there were active discussions regarding the topics.

(4) Session 4: "Asian Arbitration Practices under the Common Law Jurisdiction"

Representatives from arbitration centers in Hong Kong, Singapore, Malaysia, the Philippines and Dubai introduced practices in common law jurisdictions as panelists.

(5) Session 5: "Asian Arbitration Practices under the Civil Law Jurisdiction"

Representatives from arbitration centers and related institutions in Korea, the People's Republic of China, Japan, Indonesia, Vietnam and Chinese Taipei introduced practices in civil law jurisdictions. As a panelist, Mr. Tatsuya Nakamura, a professor at Kokushikan University and General Manager of the Arbitration Department of the Japan Commercial Arbitration Association explained arbitration practices in Japan. Mr. Yasuhei Taniguchi, a professor Emeritus at Kyoto University and president of the Japan Association of Arbitrators co-chaired the session, and provided views on topics such as reasons why the number of international arbitration cases in Japan were still small compared to other nations and regions, and the necessity to stimulate international arbitration in Japan.

(6) Session 6: "Best Practices of Asian Investment Arbitration"

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[1] *http://www.aprag.org/*

In this session, practitioners who are actually involved in Asian investment arbitration introduced recent trends and current issues with regard to investment treaties and investment treaty arbitration in Asia. The speed with which investment treaty arbitrations are handled was also focused on as a topic.

(7) Session 7: "Adopting Best Practices of International Arbitration for Asia: Desirability and Feasibility" (A Wrap-up session for open discussions)

Discussions to "Wrap-up" the APRAG Conference 2009 were commenced: panelists provided opinions on the desirability and feasibility of adopting best practices of international arbitration for Asia.

3. Reception

The APRAG Conference started with a warm welcome from the hosts at the Welcome Reception. Chairpersons, panelists and participants were able to actively communicate during the luncheons, conference dinner, refreshment breaks and breakfasts in a separate room in between the sessions. I was able to enjoy the renewal of old friendships and to make new friends as well. These opportunities made my participation in APRAG Conference 2009 meaningful and fruitful.

4. Conclusion

Representatives from arbitration centers and related institutions and prominent scholars and practitioners from various nations and regions participated in the conference. Active exchanges of opinions took place with respect to the most-advanced topics and issues in international arbitration. The conference was very meaningful and fruitful for all of us that participated. For example, very hot topics were introduced by practitioners who are actually involved in investment treaty arbitration. In the near future I believe that the importance of investment treaty arbitration, as a method to resolve disputes between investors and governments, will be realized in Japan; however, given the small number of investment treaty arbitration cases involving Japan and the limitation of reference materials related to the topic, the conference provided a valuable opportunity for those practitioners who are interested in this field to gain knowledge in a realm where information is difficult to obtain in Japan.

The conference also provided a valuable opportunity for communicating with people involved in the international arbitration community.

[JCAA Activities]

International Commercial Arbitration Seminar "Recent Developments and Critical Issues"

In Tokyo, on September 16, 2009, the JCAA co-organized the International Commercial Arbitration Seminar with White & Case LLP Tokyo Office. The speakers and their topics were as follows:

1. Mr. Christopher Seppälä (Partner, Paris, White & Case LLP)
   "Arbitral Proceedings: From the Request for Arbitration to the Final Award"
2. Mr. Paul Friedland (Partner, New York, White & Case LLP)
   "Controlling Expense in International Arbitration"
3. Prof. Tatsuya Nakamura (General Manager of the Arbitration and Mediation Departments, JCAA)
   "New Mediation Rules and Recent Developments in Arbitration in Japan"
4. Mr. Aloke Ray (Partner, Singapore, White & Case LLP)
   "Arbitration in Asia: Current Trends and the Indian Dimension"

Mr. Seppälä has extensive experience in international arbitration and his presentation on the arbitral proceedings was very practical. Mr. Friedland gave tips for cost control in the three phases: contract drafting, selection of counsel, and arbitral proceedings. Prof. Nakamura explained the JCAA's arbitration in accordance with the UNCITRAL Arbitration Rules and the ICC Arbitration Rules together with an overview of the JCAA's New International Commercial Mediation Rules. Finally, Mr. Ray explained arbitration in China, Singapore and India.

82 participants consisting of business persons, lawyers and scholars attended the seminar. The summary of the presentations of Messrs. Seppälä, Friedland and Ray will be publicized in the JCA Journal (Japanese only) in December 2009.

New Cooperation Agreement between JCAA and HKIAC Signed

The New Cooperation Agreement between the Japan Commercial Arbitration Association (JCAA) and the Hong Kong International Arbitration Center (HKIAC) was concluded on September 24, 2009, signed by Dr. Michael J. Moser, Chairman of HKIAC, and countersigned by Mr. Kosuke Yamamoto, President of JCAA. In order to conclude the said Cooperation Agreement, Mr. Onuki, Executive Director of JCAA visited HKIAC, on the occasion of participating in the Conference "ADR Asia 2009" in Hong Kong, to meet

Dr. Michael J. Moser and Mr. Garry Soo, Secretary General of HKIAC, to bring negotiations to a final conclusion, and reached the agreement with them, with its final draft signed by Dr. Michael J. Moser.

Under the New Cooperation Agreement, JCAA and HKIAC desire to strengthen the existing close ties to promote the more effective resolution of international business disputes which involve parties from Japan and China through arbitration.

For cooperation in the promotion of arbitration, JCAA and HKIAC will explore the ways in which they might jointly administer arbitration proceedings in Hong Kong and in Japan. The Agreement provides that JCAA and HKIAC jointly agree that in arbitrations administered under its rules where a location in Japan is designated by the parties as the seat for arbitration or the venue for meetings or hearings, HKIAC shall encourage the parties to conduct those hearings at JCAA and to use the services provided or arranged by JCAA, and this includes referring parties to the JCAA panel of arbitrators when selecting or appointing arbitrators, and on the other hand, in JCAA arbitrations where the parties have designated Hong Kong as the seat for arbitration or the venue for meetings or hearings, it shall encourage the parties to conduct those hearings at HKIAC in Hong Kong and to use the services provided or arranged by HKIAC, and this includes referring the parties to the HKIAC panel of arbitrators when selecting or appointing arbitrators.

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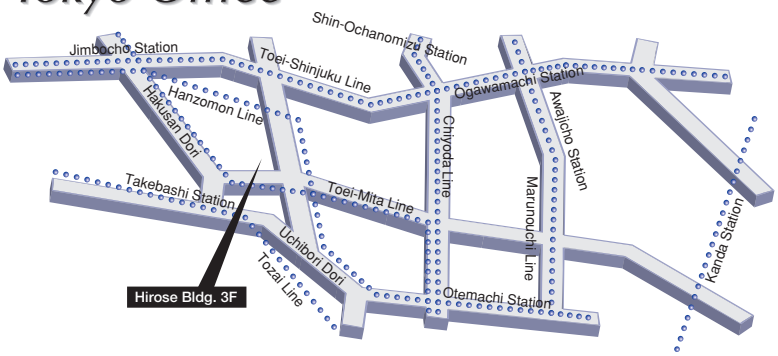

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