CHALLANGES AND FASCINATION: A MESSAGE TO NEOPHYTES IN THE ARENA OF ARBITRATION*

*Nigel N. T. Li & Joyce W. Chen***

ABSTRACT

The discussion over twenty years ago about the role of an arbitration institution sparked a systemic reform in Taiwan. The reform in Taiwan as well as the worldwide movement from the New York Convention to UNCITRAL Model Law prompted a rethink of the nature of arbitration and the necessity of distinguishing between domestic and non-domestic arbitration in the modern reality. The essay discusses the four international arbitration theories, namely, the jurisdictional theory, the contractual theory, the hybrid theory, and the autonomous theory, all of which leads to a deeper understanding of the nature of arbitration. An in-depth look at the relationship between the parties, arbitrators and arbitration institutions follows. Two special cases are highlighted; one from Taiwan and the other from Austria. They represent diametrically opposite points of view. Judicial immunity on arbitration fee decisions is also touched on. The different roles a counsel could play in arbitration are inherently fascinating. The role shift from a counsel to an arbitrator can be intellectually demanding and stimulating. Furthermore, in international arbitration, arbitrators may work with peers from multiple jurisdictions. That means performing their jobs properly entails dealing with cultural differences and both common and civil law systems from time to time. They will also have to learn to harness the flexibility built into arbitration, applying Lex Mercatoria or amiable composition where appropriate, rather than adhering dogmatically to substantive laws. These features and challenges of arbitration naturally lead one to ponder how justice can best be served.

KEYWORDS: *international arbitration theories, arbitration in Taiwan, arbitration institution, institutional arbitration, language, civil law, common law, med-arb, the Keeneye case*

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** Nigel N. T. Li, President of CAAI Court of Arbitration; Joyce W. Chen, Senior Attorney, Lee and Li, Attorneys-at-Law. The authors can be reached at nigelli@leeandli.com, and joycewjchen@leeandli.com.