



The recent highlight for advocacy in arbitration was the Fifth VIS East Moot, which was held in Hong Kong between 3 and 9 March 2008. This very successful event was the largest yet, with 52 teams from around the world taking part. A full report appears below.

They say all things must pass and, as this is my tenth issue as editor of the Newsletter, I have decided to make it my last and make way for some new blood. It has been a rewarding experience preparing each issue and I am confident that the incoming editor's enthusiasm will ensure that the Branch Newsletter will continue to provide informative and entertaining reading for the membership.

Details of the forthcoming programme schedule can be found on the back page and an up to date schedule of events can always be found on the Branch website: <http://www.ciarbasia.org/>.

*Andrzej Cierpicki*

## What is the Chartered Institute of Arbitrators?

Hong Kong, 18 December 2007



*Branch Chairman, John Cock, introducing Teresa Cheng and Tony Houghton*

Teresa Cheng, newly elected President of the Institute for 2008, and Tony Houghton, Chairman of the East Asia Branch regional sub-committee, gave Branch members and professionals from other organisations an insight into the workings of the Chartered Institute of Arbitrators.

Teresa explained that the Institute is a global organisation whose aim is to promote the resolution of disputes through arbitration or alternative dispute resolution methods. She then explained that the Institute is a learned society for dispute resolution, as well as being an educational and training body that sets standards for its members worldwide.

In the second half of the talk, Tony described the activities of the regional sub-committee within the East Asia Branch.

Due to the distances between the locations of the 20 or

so members of his regional sub-committee, much work is done by e-mail. He explained that the East Asia Branch covers the area of China, Vietnam, the Philippines, Japan, Korea, Singapore, Mongolia and Indonesia. Through liaisons with members in these countries, the regional sub-committee also maintains relationships with other arbitral bodies such as CIETAC and the ICC. One of its prime objectives for the year is to set up Chapters of the Institute in both Singapore and the Philippines.

Tony is always looking for assistance with regional activities, so if you are in a position to assist his sub-committee he can be contacted via the Branch, details per the back page.

## Hong Kong's Arbitration Law Reform Proposals

Hong Kong, 26 February 2008

Tony Houghton gave a talk to the members of the Branch in an event organized jointly with the Society of Construction Law entitled "Hong Kong's Arbitration Law Reform Proposals. Steps in the Right Direction?". Tony's talk centred on the Consultation Paper which has recently been published by the Departmental Working Group set up by the Department of Justice in September 2005 with a view to implementing the recommendations of earlier committees to the effect that the Uncitral Model Law of Arbitration should be adopted in Hong Kong for all arbitrations.

The current Arbitration Ordinance in Hong Kong dates back to legislation enacted in 1963, at which time its provisions mirrored the English Arbitration Act 1950. The law at that stage provided for a common arbitration law applicable to both domestic and international arbitrations. The legislation has of course been amended from time to time, and in 1990, following a recommendation by the Law Reform Commission, the UNCITRAL Model Law on International Commercial Arbitration was adopted as regards international arbitration in Hong Kong.

The wheel has now turned full circle in that the Consultation Paper and the Draft Arbitration Bill which have recently been published propose the creation of a unitary regime for arbitration, based on the UNCITRAL Model Law.

The Consultation paper states that:

“The purpose of the reform is to make the law on arbitration more user-friendly. As the Model Law is familiar to practitioners from civil law as well as common law jurisdictions, this would have the benefit of enabling the Hong Kong business community and arbitration practitioners to operate an arbitration regime which accords with widely accepted international arbitration practices and development. Hong Kong would be seen as a Model Law jurisdiction thereby attracting more business parties to choose Hong Kong as the place to conduct arbitral proceedings. The reform of the arbitration law will promote Hong Kong as a regional centre for legal services and dispute resolution”

Tony’s talk attempted to summarise some of the general principles underlying the draft legislation, as well as some of the novel features. One of the first points made was the simple one that the draft legislation follows the logical layout and presentation of the Model Law itself, thus representing a very substantial improvement over existing legislation in terms of accessibility and user-friendliness.

A significant part of the talk focused on Part 11 of the Bill, the so-called “opt-in” provisions. While the Bill is very much in tune with the Model Law these opt-in provisions allow the parties to choose to depart from the Model Law approach in certain circumstances. To an extent the draft Bill proceeds on the basis of a compulsory opting-in because Section 101 provides for the opt-in provisions to apply automatically to an arbitration agreement if that agreement was entered into within 6 years following the Bill coming into effect and if the arbitration agreement refers to “domestic arbitration”.

The existing standard form building contracts, which make reference to arbitrations being “domestic”, will not only continue to be usable, but any arbitration that is carried out under those forms of contract will still be subject to a supervisory regime through the courts not dissimilar to that currently in place. As to the scope and ambit of the “opt-in” provisions, these include provisions relating to disputes being referred to a sole arbitrator; consolidation of sets of proceedings, challenge to an award on the ground of serious irregularity affecting the tribunal, the proceedings or the award; and limited rights of appeal against an award on questions of law.

The conclusion to be drawn from the draft is that these are steps that will assist in keeping the arbitration process in Hong Kong as up to date as it can be, and as easily understood as it can be. That this is important to the arbitration community in Hong Kong is perhaps illustrated by the high attendance at the talk, and by the questions that were discussed at the end.

## **Fifth Annual Vis (East) Arbitration Moot**

**Hong Kong, 3 – 9 March 2008**

The Fifth Willem C. Vis (East) International Commercial Arbitration Moot was conducted in Hong Kong from 3-9 March 2008. Fifty-two teams from 13 countries argued throughout the week over a mock dispute relating to an international wine transaction.

The Moot is an annual international arbitration competition, of which Chartered Institute of Arbitrators (East Asia Branch) is principal sponsor and underwriter and Chinese University of Hong Kong is host. East Asia Branch committee member, Louise Barrington, is Director of the Vis (East) Moot.

The Moot is based around resolution by arbitration of a problem involving the United Nations Convention on International Sale of Goods (CISG), with awards given for both oral argument and written submissions. The participating students present their arguments to panels of arbitrators who judge and score their performances.

The week of oral arguments was the conclusion to months of preparation by the teams, during which they each prepared written memoranda for both the Claimant’s and the Respondent’s cases.

The final was argued on Sunday the 9th, between Griffith University, Queensland, Australia and Albert-Ludwigs Universität of



*Louise Barrington, centre, flanked by tribunal panellists and the finalist teams.*

Freiburg, Germany. The four finalist advocates were all outstanding. Griffith, arguing for the Respondent, ultimately carried the day in a close final round and were declared winners of the 2008 David Hunter Award for the team prevailing in the oral arguments.

Other major awards were:

- Gautam Sood (Loyola Law School Los Angeles, USA) won the Neil T. Kaplan Award for best individual Oralist;
- Albert-Ludwigs Universität, Freiburg, Germany, won the Eric Bergsten Award for the best Claimant Memorandum;
- Hofstra University School of Law, USA, won the Fali Nariman Award for best Respondent Memorandum.

Over 120 professionals from more than 20 countries freely gave up their time to spend a few days or the full week in Hong Kong acting as Moot arbitrators.

This was the biggest Vis East Moot to date, and one of the most exciting final arguments since the competition began. "Both the Griffith team and its opponent Freiburg were tested by the penetrating questions of the arbitral tribunal, chaired by Doug Jones, a partner at Clayton Utz in Australia. Ingeborg Schwenzer of Germany and Mike McConville of Chinese University of Hong Kong also sat on the panel. Everyone deserves a huge hand for their efforts this year", said Louise Barrington. The Sixth Willem C Vis (East) International Commercial Arbitration Moot will take place in Hong Kong from 23rd to 29th March 2008.

*John Cock*

## CIArb Entry Courses

### The Philippines, Japan and Macau

The Branch has been active in the presentation of Entry Courses within the region over the last few months, with the most recent courses taking place in Manila, Tokyo, and Macau. The newly formed Philippine Chapter's first major activity was an Entry Course (the third in the country) and this took place on 25 and 26 January 2008 at the Linden Hotel, Pasig City, Metro Manila. Tony Houghton (Course Director), John Cock, Glenn Haley and Mario E. Valderrama tutored. Eduardo Ceniza and Teodoro Kalaw assisted. There were 34 attendees.

The Philippine Chapter Launch also took place that weekend during a dinner held on 26 January immediately following the close of the Course. The members who were present signed a Declaration of Formation of the Philippine Chapter.

On 29 February and 1 March the Japan Chapter offered an Entry Course which attracted twenty participants from a variety of professional backgrounds (including lawyers, a forensic accountant, a businesswoman with a consulting background and others) and a number of different nationalities. The course had the support of the JCAA and was generously sponsored by Baker & MacKenzie, Herbert Smith, Paul Hastings and White & Case.

Tony Houghton was the course director with Glenn Haley and Mary Thomson as co-tutors, while Yoshi Takatori of Paul Hastings and Haig Oghigian of Baker and MacKenzie covered the topic of arbitration in Japan. There was strong logistical support from Harriet Lewis of Nagashima Ohno & Tsunematsu.

Meanwhile, in Macau, an Entry Course is currently underway, under the direction of Peter Caldwell. This has the support of the Legal & Judicial Training Centre of the Macau Government, and has attracted 27 attendees. The lecture on law in Macau relating to arbitration is kindly being given by Ms Teresa Leong.

## A Young Members Group Outing

### Lantau, 26 February 2008

The Young Members Group (YMG) recently organised a 3½ hour walk from Tung Chung to Tai O along the coastal route, running parallel to the airport runway for part of the walk and thereafter following the coastline of Lantau Island. Joining the walk was Mark Nunns, allegedly the oldest member of the YMG thus far. No doubt remembering his early Commando days, Mark set a cracking pace, but, as the weather turned sour, was soon brought to heel by an offer from Joe Gilfeather of a shared umbrella.

As can be seen from the photo, once under cover in Tai O, no time was spared in getting a hearty meal on the table.



*The YMG enjoy a seafood lunch at Tai O with its allegedly "Oldest" Young Member.*

## One-day Seminar on Contract Management

Hong Kong, 12 January 2008

Over 200 participants gathered to attend a one-day seminar on Contract Management which was held at the Hong Kong Polytechnic University. Various distinguished practitioners from the construction industry spoke on a wide range of contract management issues, including dispute resolution, delay and extensions of time, pay-when-paid clauses, Public-Private Partnerships and the New Engineering Contract.

Each segment was followed by an engaging question-and-answer session where much lively intellectual interaction took place. Organised by the young members groups of six professional bodies, namely, the CIArb, HKIE, CIBSE, HKIS, ICE and Hong Kong Law Society, this one-day seminar has become a very popular annual event. This was the fourth such event and promises to continue to be a great educational and networking opportunity for all of the young members in years to come.



YMG chairman, Joe Gilfeather, encourages more women to join the Young Members Group

Jessica Chan

## 2007-2008 East Asia Branch Events Programme

Unless stated otherwise, events are free to members, are held at the HKIAC and start at 6:00 pm, with drinks and snacks being served prior to the commencement of the presentation at 6:30 pm.

### Friday 4 April 2008

An evening talk presented by Colin Wall and Mélanie Meilhac to our Singapore-based members on dispute prevention techniques. Venue Singapore.

### Thursday 17 April 2008

Branch Annual Dinner, guest speaker Teresa Cheng. Venue Hong Kong Club.

### Tuesday 29 April 2008

Branch AGM. Venue Hong Kong Club

### Thursday 15 May 2007

"What You Wear Says a Lot" a YMG event run jointly with young members' groups of the HKIE, HKIS, CIBSE and ICE. Venue HKIS, Suite 801, Jardine House, 1 Connaught Place, Central. HK\$50 event fee, which includes the price of refreshments.

### Thursday 20 November 2008

A talk presented by Lord Woolf. Venue Hong Kong Club.

### Date to be advised

Part 4 of the 'Nuts and Bolts' series: "Mediation, Adjudication and the Dispute Resolution Adviser System"; speaker Andrzej Cierpicki.

### Date to be advised

Part 5 of the 'Nuts and Bolts' series: "Writing the Award"; speaker John Cock.

### Date to be advised

Part 6 of the 'Nuts and Bolts' series: "The Perfect Arbitration: An Encore"; speakers Tony Houghton and Glenn Haley.

## CIArb East Asia Branch

The Branch provides a regional organisation for members of the Chartered Institute of Arbitrators who are resident in the geographical area of Hong Kong, China, Vietnam, The Philippines, Japan, Korea, Singapore, Mongolia and Indonesia (Thailand, formerly part of the East Asia Branch, was constituted as a separate branch in 2003). The objectives of the Branch are to promote, encourage and facilitate the practice of settlement of disputes by arbitration and other means of dispute resolution, and generally to support and promote the status and interests of the Institute.

### CIArb East Asia Branch Committee

**Raymond Au Koon Shan, Paul Barrett** – co-opted, **Louise Barrington, Peter Caldwell, Jessica Chan, Andrzej Cierpicki, John Cock** – Chairman, **Julian Cohen** – co-opted, **Jayems Dhingra, Fung Ching Nam, Joe Gilfeather** – Hon. Treasurer, **Glenn Haley** – Ex-Officio and Hon. Secretary, **Timothy Hill** – Vice-chair, **Tony Houghton, Nicholas Longley, Christopher To, Doug Wardale** – Vice-chair, **Yeung Man Sing, Cordia Yu** – co-opted

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