

Year 2015 has been an exciting and eventful year marking the Centenary of CI Arb. This issue highlights some of the activities held by the East Asia Branch in the 4th quarter of 2015.

The section on "Up Close & Personal" features a Q&A session with our own Branch trustee and former Branch chairperson, Mr Anthony Houghton SC. Alongside with our regular contributors, readers are encouraged to submit articles, book or journal reviews in relation to dispute resolution to Asian Dispute Review. Submission guidelines can be found at www.asiandr.com. Updates on upcoming Branch events can be found on the back page, and also at www.ciarbasia.org.

The Branch wishes members a Happy New Year ahead.

Helen Au and Kanice Chan

Young Members Group – UNICEF Charity Run

Hong Kong 29 November 2015

The UNICEF charity run marks its 10th anniversary this year. The East Asia Branch YMG has been a long time supporter of UNICEF and a regular participant in the UNICEF charity run for the children in need. On 29 November 2015, the EAB YMG members joined with approximately 13,000 runners at the Hong Kong Disneyland resort for the UNICEF Charity Run 2015. Successfully, over HK\$11 million was raised in this event, which is sufficient to provide HIV treatment for 690,000 children for one week. We look forward to our next run in 2016.

Linda Wong



Participants at the UNICEF Charity Run

NEC3 Seminar Series

Hong Kong

November & December 2015

The Branch has jointly arranged with the Hong Kong Institute of Engineers (HKIE) Civil Division and Alternative Dispute Resolution Committee a series of NEC3 seminars, supported by the NEC (New Engineering Contract) of Institution of Civil Engineers in the United Kingdom.

The NEC is becoming an increasingly popular form of contract in the Hong Kong construction industry. The Government of Hong Kong has over the past 7 years changed the procurement of construction projects and services from the traditional Government Conditions of Contract (GCC) to the NEC.

On 9 November 2015 at the HKIE headquarters, Mr Tim Knee-Robinson and Mr Dennis Wong gave the third of the NEC3 seminars series on "NEC3 Contracts in Hong Kong". Mr Knee-Robinson began the talk with an introduction of the NEC3 family suite of contracts. He explained the structure of the NEC3 contract including the use of main and secondary Options. Mr Knee-Robinson also discussed the Inaugural Asia-Pacific Users' Group Conference. Mr Wong provided an overview of the current use of NEC contracts in Hong Kong. He shared his in-depth experience and the issues encountered in using NEC3 in Hong Kong through his involvement of NEC projects.

On 25 November 2015 at the HKIE headquarters, Mr Peter Caldwell, a past chairperson of the then CI Arb Hong Kong Branch, together with Mr Hayman Choi presented the fourth NEC3 seminar on "NEC3 Contracts and the Proposed Security of Payment Legislation". The talk focused on dispute resolution procedures and the potential implications of the proposed Security of Payment Legislation on projects procured on both NEC3 and other standard forms of building contract.



NEC3 Seminar 5 (from left to right): Mr Dennis Wong, Mr Ian Cocking, Mr Paul Roberts and Ms Teresa Cheng SC



NEC3 Seminar 4 (from left to right) Mr Ron Brinkman, Mr Joe Gilfeather, Mr Aaron Bok Kwok Ming, Mr Hayman Choi, Mr Peter Caldwell, Mr Sam Chan, Mr Henry Liu and Mr Albert Leung



NEC3 Seminar 3 (from left to right) Mr Dennis Wong, Mr Henry Liu and Mr Tim Knee-Robinson

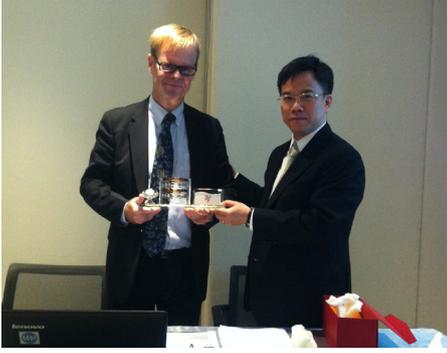
On 10 December 2015 at the Hong Kong International Arbitration Centre, a panel of speakers including Mr Paul Roberts, Mr Ian Cocking and Mr Dennis Wong delivered the fifth NEC3 seminar. The panel further discussed the proposed Security of Payment Legislation and shared a comparison of similar legislations in other countries. The panel also explained the principles of adjudication and how it operates under NEC and other standard forms of building contract.

Each of the seminars attracted a high number of participants. Many of the participants expressed an interest in more NEC3 talks in the future.

Gina Leung

Res Judicata and Arbitral Jurisdiction in International Arbitration – Some Issues

Hong Kong 17 November 2015



(from left to right) Mr Paulo Fohlin and Mr Richard Leung (CI Arb EAB Chairperson)

On 17 November 2015, Mr Paulo Fohlin gave a technical talk on “Res Judicata and arbitral jurisdiction in international arbitration – some issues” at the Hong Kong International Arbitration Centre.

Mr Fohlin discussed the rationales of res judicata, and noted that there is no transnational principle of res judicata. Having considered the scope of res judicata under different national and international legal regimes, he concluded that national arbitration acts, national codes of judicial procedure, institutional arbitration rules, treaties and conventions between states, and individual arbitration clauses most often do not give much guidance on the scope of res judicata.

In national courts, a “triple identity test” for res judicata is often adopted – i.e. whether the cases concern the same parties, the same relief(s) sought and whether the same facts are relied on. Each identity test may be more or less strict in different jurisdictions. Further, issue estoppel is of particular interest to practitioners acting in

different countries as it appears not to have any equivalent in most civil law countries. As a matter of principle, in most civil law countries, only the “dispositive” is res judicata and not the reasons. When issuing awards, tribunals should be mindful of the potential res judicata implications of findings made in the reasons of the award as well as of the orders and declarations, if any, made in the “dispositive” part of the award, and carefully consider the wording used accordingly. Similarly, counsel should carefully consider whether any monetary relief sought should be supplemented by a request for declaratory relief.

This was a very interesting and rare topic for presentation, and it engendered much interest among the participants at the talk.

Kanice Chan

Young Members Group – Centenary Celebration Conference

Paris 6 November 2015

On 6 November 2015, around 80 delegates from all over the world attended the CI Arb Young Members Group (YMG) Centenary Celebration Conference 2015 held at the ICC headquarters in Paris. Ms Linda Wong (YMG Vice-Chairperson), Mr Bryan Fok (YMG Honorary Secretary) and Mr David Luk (YMG Committee Member) had the invaluable opportunity to take part in the event as representatives of the East Asia Branch YMG.

The day-long conference began with a keynote address by Ms Wendy Miles QC, reviewing the developments in arbitration in the past 100 years. Mr Alexis Mourre, the President of ICC

International Court of Arbitration, provided the closing address, by discussing how international arbitration may develop in the next 100 years.

During the day, delegates also attended various workshops and debates on hot issues such as sports arbitration, third party funding and the use of arbitral secretaries. All sessions were informative and interesting.

Ms Wong, Mr Fok and Mr Luk had also attended two cocktails events on 5 and 6 November 2015 respectively to meet with international arbitration practitioners and let them know the recent developments of East Asia Branch YMG.



(from left to right) Ms Linda Wong, Mr Charles Brown (CI Arb President), Mr Bryan Fok and Mr David Luk

The East Asia Branch YMG looks forward to the next conference in London and other YMG international conferences in the future.

Linda Wong, Bryan Fok & David Luk

“Introduction to International Arbitration” & “Accelerated Courses to Membership”

Macau November & December 2015



The Branch undertook two “Introduction to International Arbitration” courses and two “Accelerated Courses to Membership” courses, in Macau during November and December together

with two mock arbitrations. This was conducted in both Chinese and English. Approximately 50 lawyers from the Macau Lawyers Association participated with the courses spanning over 6 weekends, culminating in an examination held on 13 December 2015. Demand for tutors was high and over 20 members took part in teaching and acting in what was an enjoyable experience and the Branch’s first serious foray into Macau. Demand for further courses is expected from the Macau Lawyers Association and the prospect of a Chapter, or even a Branch, beckons. Perhaps the highlight of the courses was having two Queen’s

Counsel acting out the parts of counsel for the parties in one of the mock arbitrations. This was met with particular enthusiasm by the candidates for which our corresponding thanks go to Mr Philip Boulding QC and to Mr Ian Pennicott QC SC for giving up their valuable time and for putting in so much effort to make the mock truly realistic. Thanks also go to the other members of the committee and the Faculty List for their participation. Given the positive reaction the Branch is considering repeating the mock arbitration in Hong Kong during 2016, hopefully with the same cast!

Paul Barrett

Up Close and Personal with Anthony Houghton SC



In this section of the Newsletter, we feature prominent individuals in the alternative dispute resolution industry in a question and answer format to reveal lesser known aspects of their background and experiences. In this issue, we feature Mr Anthony Houghton SC, our Branch Trustee and former Branch Chairperson.

Tony first qualified as a Chartered Surveyor in the United Kingdom. He later studied law, and was called to the Bar, in England and Wales in 1988, and in Hong Kong in 1989. He has practiced as a barrister since then, in general civil and commercial litigation, but with a particular emphasis on construction and engineering work, especially in arbitration.

Although still active as a counsel, much of his practice now involves sitting as an arbitrator in Hong Kong, elsewhere in Asia and the Middle East on both construction and various non-construction related disputes. Tony was appointed as a Recorder of the Court of First Instance of the High Court of Hong Kong in March 2013.

Personal

Q: Tell us about yourself in two sentences.

A: Perhaps because I started my professional life as a surveyor I practice both as a counsel and as a 'neutral' in various forms of ADR. By choice my family and I live and work in Hong Kong.

CIArb

Q: How long have you been involved in CIArb EAB?

A: I was invited to apply to join the (then) Hong Kong Branch Committee in about 1997, in part to 'make up the numbers'. That quickly developed into a working role and I have been involved in CIArb activities ever since, either on or off committees.

Q: What changes have you observed throughout the years?

A: It is tempting to say that almost everything has changed. Geographically the Hong Kong Branch expanded to become the

East Asia Branch. The membership has grown considerably and international and domestic arbitration has also grown considerably. At the same time parties have continued to seek other ways to resolve their disputes, resulting in the growth of mediation and adjudication and other varieties of ADR across the region. The ADR industry has become both more professional and more efficient.

Q: What do you hope to achieve in and during your role as the CIArb (EAB) trustee?

A: As trustee I carry (along with 11 others) a responsibility to oversee the affairs of the CIArb globally, and to help to set the overall strategy for the Institute. As the trustee elected from the largest 'pool' of members I am especially interested in promoting the growth of CIArb in this region and in making sure that membership continues to provide a world-leading standard of education and training in ADR.

ADR

Q: What aspect(s) of your ADR work do you enjoy most?

A: I enjoy advocacy, especially when I am sitting as arbitrator. And vice versa. The grass is always greener on the other side of the hill. I am very lucky to work on both sides of the hill!

Other

Q: What challenges and opportunities do you see for the ADR industry in 5 years' time?

A: There will be, quite rightly, continued pressure to provide a service that is better, quicker and cheaper. More types of ADR and different techniques will be used. The challenge is to train and educate practitioners and consumers of ADR so as to allow these newer techniques to develop effectively. Given the continued growth in trade and services within the region, the opportunities for the ADR industry are as large as the challenges.

Q: What is on your mind at the moment?

A: The CIArb of course! Having just attended the latest meeting of the Trustees I am excited at the initiatives that are underway to further promote the use of ADR and to train practitioners and users. There is an expending demand for ADR services, in this region in particular, and the Institute has a very important role to play in seeing that there are well trained and competent practitioners, and also educated and knowledgeable consumers of ADR. An increasing number of jurisdictions in East Asia are seeking education and training in ADR, giving the Institute fresh challenges. It has been very satisfying taking part in this process in the past, and I am looking forward to our continuing, and expanding role.

Young Members Group – Home Visit and Mooncake Delivery to the Elderly for Mid-Autumn Festival

Hong Kong 19 September 2015



YMG delegation presenting moon cakes for the elderly

On 19 September 2015, over ten members and friends of the YMG celebrated the Mid-Autumn festival with the elderly living in Wong Tai Sin, in cooperation with a local charity organization the Yang Memorial Methodist Social Service Choi Hung Community Centre for Senior Citizens-Day Care Service. The YMG proudly sponsored more than 50 gift packs for the event.

The YMG members visited the senior citizens at their homes and presented them with Mid-Autumn Festival gift packs. Both the elderly and our members and friends enjoyed the moment we shared during the visits.

This event provided a platform for the members to give back to the society. It was a great success with much enthusiasm and interaction between the volunteers and the elderly. We look forward to seeing more members and friends joining this meaningful and enjoyable event in the coming years.

Linda Wong

Accelerated Route to Membership

Indonesia 1 & 2 December 2015

The Indonesia Chapter held its first Accelerated Route to Membership (ARM) Assessment in Jakarta on 1 and 2 December 2015. The Assessment was preceded by an orientation session on 18 November primarily to familiarise the participants with the differences between the Model Law and the Indonesia's Arbitration Act.

The 20 participants included some of Indonesia's senior and most experienced arbitrators, as well as some younger practitioners, and one former Supreme Court Justice as well. It was a very dynamic, lively group and interesting discussion ensued on the issues.

The events were organised by Ms Karen Mills, Mr Ilman Rahkmat and the Indonesia Chapter. These were timed to coincide with the visit of CIARB President, Mr Charles Brown, who also helped with the workshop assessments. Ms Mary



Thomson from the East Asia Branch joined as Course Director, and Ms Mills served as assessor as well as organiser. A cocktail reception was held on the evening of 1 December, after the workshops, to thank Mr Charles Brown for his participation and to celebrate CIARB's Centenary – yet again.

The Assessors were assisted by Mr Ilman Rahkmat and Ms Windri Marietta, whom have recently promoted to Fellowship, and CIARB's 14,000th member, Mr Gustaaf Reerink, who has just sat the Award Writing Exam and hopes soon to join the growing number of Fellows in Indonesia.

Karen Mills

Young Members Group – Street Photography Workshop

Hong Kong 28 November 2015

The YMG organised a street photography workshop event on 28 November 2015. The afternoon event was attended by quite a number of arbitration professionals such as surveyors, engineers, barristers and solicitors. Participants enjoyed the opportunity to learn about the art of street photography whilst taking snapshots of the Kowloon "Fruit Market" and the Temple Street district under the guidance of Mr James Yeung, an associate of the CIARB, who is also a well-regarded freelance photographer in Hong



YMG participants at the street photography workshop

Kong. Most importantly the event provided a very warm and relaxing environment for participants to mingle with fellow professionals.

Jeffrey Sham

CIARB East Asia Branch

The East Asia Branch provides a regional organisation for members of the Chartered Institute of Arbitrators who are resident in the geographical area of Hong Kong, mainland China, Indonesia, Japan, Korea, Macau, Mongolia, the Philippines, Taiwan and Vietnam. Thailand and Singapore, formerly part of the Branch, were constituted as separate branches in 2003 and February 2010 respectively.

The objectives of the Branch are to promote, encourage and facilitate the practice of settlement of disputes by arbitration, mediation and other means of dispute resolution, and generally to support and promote the status and interests of the Institute.

CIARB East Asia Branch Committee

Richard Leung – Chairperson, **Christopher To** – Immediate Past Chairperson / Mediation & Adjudication, **David Fong** – Vice Chairperson / Regional (China) / Faculty List, **Mary Thomson** – Vice Chairperson / Regional (Other than China), **Edward Chow** – Honorary Secretary, **Nicholas Turner** – Deputy Honorary Secretary, **Lawrence Lee** – Honorary Treasurer / Mediation & Adjudication, **Helen Au** – Newsletter / YMG, **Paul Barrett** – ADR Editorial / Professional Development & Training, **Louise Barrington** – ADR Editorial, **Kim Barton** – Programme, **Kanice Chan** – Newsletter, **Martin Doris** – Universities Outreach, **Justin Wong** – Mediation & Adjudication, **Fan Yang** – Public Relation Officer, **Cordia Yu** – Membership, **Gina Leung (co-op)** – Newsletter, **Joseph Leung (co-op)** – Website

Contact Details

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2016 East Asia Branch Events Programme

Unless stated otherwise, events are free to CIARB members, 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 15 January 2016

YMG Annual Party – Boujjs, Central, Hong Kong

Saturday 16 January 2016

Joint Institute event – Networking Balloon Twisting Party at San Po Kong, Hong Kong (together with CIBSE; HKIE; HKICE; HKIS; HK LawSoc)

Tuesday 21 January 2016

Seminar on "Sharpening the edges of international arbitration in Hong Kong", jointly coordinated with the Department of Justice. Panellist of speakers include Mr Richard Leung, Ms Kim Rooney, Dr Christopher To and Mr Wesley Wong SC of the Department of Justice. A flyer will be dispatched soon.

More Upcoming Events

1st quarter 2016

CIARB Annual Dinner

3rd quarter 2016

11th Annual Winnie Whittaker Memorial Lecture by Mr John Battersby