



Welcome to the July edition of the CI Arb Newsletter. The East Asia Branch has a very busy quarter. The highlights are the elections of the new Branch Committee and the new committee for the Young Members Group (YMG), following the Annual General Meetings held respectively in May and June 2016.

The 11th Annual Winnie Whittaker Memorial Lecture was also held this quarter by Mr John Battersby. The Branch and the YMG have invited various notable speakers for a series of evening talks held at HKIAC, details of these events can be found inside this Newsletter.

We hope you will find this issue of Newsletter a good overview of the events happened in the last quarter. The forthcoming Branch events programme can be found on the back page of this Newsletter, and an up to date programme can be found on www.ciarbasia.org.

Readers are encouraged to submit articles for the Newsletter or book reviews relating to dispute resolution for the Asian Dispute Review. For submission guidelines please visit www.asiandr.com.

Helen Au and Gina Leung

“Has a new era begun? A review of the proposed construction adjudication scheme” by Mr Calvin Cheuk and Mr King Wong

31 March 2016, Hong Kong

In June last year, the Hong Kong Government published a consultation document on the proposed security of payment legislation and proposed to promote the wider usage of adjudication as a mechanism to resolve disputes in the construction industry. Feedbacks to the consultation are positive and people in the construction industry generally support the approach to use adjudication more.

Whilst waiting for the formal legislation to be enacted, practitioners in the construction industry need to prepare and equip themselves with the knowledge about adjudication, which is different from arbitration or civil litigation in court. In that regard, the Branch was honoured to have two eminent and experienced speakers, Mr Calvin Cheuk and Mr King Wong to give a talk on the topic. The presentation began with the often cited phrase “Cash flow is the ‘lifeblood’ of a construction enterprise”: *Gilbert Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd* (1973) per Lord Denning. The speakers then went on with thorough explanation about the meaning of “payment claims” under the proposed adjudication scheme and the tight time frames to file the notice for adjudication, responses as well as submissions, and then the



(from left to right) – Mr King Wong, Mr Richard Leung (EAB Chairperson) and Mr Calvin Cheuk (EAB Honorary Secretary)

adjudicator appointed would have rendered a decision within a short period of time as stipulated under the proposed legislation. The speakers also shared their valuable experience locally and commented on the situations about the implementation of adjudication system in other jurisdictions including the UK, Australia, Singapore and Malaysia. There was a vivid Q&A session afterwards discussing many issues about adjudication and the impact on the current practices in the construction industry. This seminar was well attended and the audience found the seminar very informative and interesting.

Richard Leung

“What does a Contractor Expect from Arbitrations” by Mr Ashley Howlett

11 May 2016 Hong Kong

The YMG had the honour to have Mr Ashley Howlett, to present a technical talk on “What does a Contractor Expect from Arbitrations” at the HKIAC.

Alongside with the other technical talks which the YMG used to hold focusing on legal updates and technical details of arbitration and dispute resolution, the YMG wishes to also cater for the

users of arbitration. Mr Ashley Howlett at this seminar gave practical tips to the audience as to how to manage arbitrations effectively, and how to strike the balance amongst time/costs/quality.

The seminar received a full-house turnout, and the YMG wishes to thank Mr Ashley Howlett for the very eventful seminar.

Helen Au



(from left to right) – Mr Michael Wong and Mr Ashley Howlett

Close Up Q and A with Mr John Cock



Mr John Cock is a practising arbitrator, mediator and expert witness. He has over 35 years of experience as an architect, designer and project manager. John was previously

the Past Chairman of both the Chartered Institute of Arbitrators (East Asia Branch) and the Society of Construction Law Hong Kong (SCLHK). He recently re-joined the Branch's Committee.

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

A: I joined the CIArb in Australia back in 1999. I joined the East Asia Branch in 2001 when I first moved to Hong Kong. I was the Branch Chair for the 2007-08 and 2008-09 terms, then stayed on as Immediate Past Chair until I stood down in mid-2011.

Q: What have you been doing during your "short break" from the Branch?

A: I was a Council member of SCLHK from 2002-16, and Chairman from 2009-11. I decided to step down from the SCLHK Council last month in part so I could focus more on my return to the Branch Committee. I am also a member of the Hong Kong Institute of Architects (HKIA) sub-committee for the Architects Regional Council of Asia (ARCASIA) and the Commonwealth Association of Architects (CAA).

During my "short break" from the Branch, I continued to help with interviews for Chartered Arbitrator candidates Fellowship assessments, tutoring on some of the Branch's training courses and presented a talk for the 'Nuts and Bolts' series. I have also delivered a number of talks for other organisations including HKIA, The Academy of Experts and HKCAC. More recently, I was invited by the YMG to deliver a talk on "Expert Evidence in Arbitration" following their AGM at the HKIAC.

Q: What made you to return to the Branch Committee?

A: I have felt a bit distant teaching and tutoring on arbitration whilst not on the Committee. Being on committee will allow me a closer connection, and give me more advanced

notice of what is coming up as well as more opportunity to help shape it.

Q: What changes have you observed at the Branch since you have first joined?

A: One of the big changes is the Young Members Group (YMG), which did not exist in the EAB before about 2004. Though a system was already nationally in place at that time, Terence Wong, Joe Gilfeather and others really got the YMG going for EAB.

The other big change is the development of chapters. There were only a couple of chapters initially, although they were always part of the system. Some chapters have expanded enormously and eventually separately from EAB to form their own Branches, with Thailand in about 2003, followed by Singapore in 2010.

Q: I note you practise as an arbitrator, mediator and also an expert witness. Which role do you enjoy the most and tell us the reasons.

A: I suppose arbitration, as in some ways it is a bigger intellectual challenge and certainly a weightier activity. Challenges for arbitrators include resolving cases that may not be well put together and dealing with parties. The practicalities can often be difficult as the parties virtually cannot agree on anything, and this can be frustrating for the arbitrator. The other big challenge is, of course, once all the submissions and evidence have been put to you, weighing the evidence and trying to resolve the conflicts between what different parties say.

I have always found there is no such thing as an easy arbitration and there is no such thing as an arbitration with obvious answers. Whatever may drive parties to end up in arbitration, they wouldn't be there if there wasn't a genuine difference in opinions or in how they see the facts and their entitlements. It is also very rare to see somebody pursue a case with no basis, given the cost and time attached to it. In doing his or her role, the arbitrator has the difficult exercise of deciding between the competing positions. In most cases, you will find this is very far from black and white. The only way is to trust the process, follow the system, take the evidence and weigh it. The overall decision is usually an aggregate of small decisions, points

of facts and points of law that all stack together. It's organic in a way.

Q: You have recently given a talk on "Expert Evidence in Arbitration" for the YMG. What are the things you would like to point out to young aspiring expert witnesses?

A: I think training for expert witness work is critical and no longer an option. To practise as an expert nowadays, you need not only technical expertise, which is a given, but also professional training in expert witness skills. If experts don't understand the process, there is no way they can help the tribunal. If they don't understand their role in that process, they may not understand the purpose of the questions they are being asked by counsel or the tribunal. If you are going to help the tribunal, you need to comprehend what the parties' cases are, so that you can provide opinions that help the tribunal to choose between them.

For new starters, the hardest thing is getting the first appointment. People need to know which area of expertise you can offer, whether you are interested to be considered for the role, your availability to deliver and – most importantly – they must have confidence in you. This is the hardest to develop, as it can only come from experience.

A key to surviving cross examination is that you must know your stuff, both technically and procedurally: stick to what you know, stay within your instructed scope and genuinely express your true professional opinions. When experts struggle under cross examination, it is usually because they haven't done one of those things. They may try to present an opinion which is not really theirs or try to answer questions outside their area of expertise. My advice is to stick with the fundamentals of being impartial – that's the biggest challenge in expert witness work. This is because you are inevitably working closely with your instructing party's team. It can be very difficult not to get caught up in that team mentality and to stay separate from it. The second biggest challenge is to develop an understanding of the tribunal that you are presenting to, so that you can really focus your evidence to give the assistance that particular tribunal needs.

Gina Leung

The 11th Annual Winnie Whittaker Memorial Lecture “The Role of a Quantity Surveyor in Avoiding and Resolving Disputes” by Mr John Battersby

7 June 2016, Hong Kong

The 11th Annual Winnie Whittaker Memorial Lecture on “The Role of a Quantity Surveyor in Avoiding and Resolving Disputes” was held at the HKIAC. The speaker of the lecture was Mr John Battersby, a quantum expert witness and a Registered Professional Surveyor in Hong Kong.

Mr Battersby started the lecture by recalling his personal friendship with and memory of Ms Winnie Whittaker as a quantity surveyor and an arbitrator. He discussed the profession of quantity surveying and the typical document produced by

the quantity surveyors – the Bills of Quantities. Mr Battersby explained the importance of the Bills of Quantities, in which they must be properly prepared with accurate quantities in order for the Contractors to submit a realistic price. Mr Battersby also explored into greater details as to how to prepare an accurate Bill of Quantities – by using the standard method of measurement, estimation of costs, allowances. He also looked at errors found in the Bills of Quantities – within the description, under-measurement of quantities, under-pricing and shared his experience of good



(from left to right) – Mr David Fong (EAB Vice Chairperson) and Mr John Battersby

practice for preparing the Bills of Quantities. In the later part of his talk, Mr Battersby discussed the role of a quantity surveyor as the dispute resolution adviser, the expert, the mediator, the arbitrator and the adjudicator. The lecture was concluded by a lively Q&A session.

The lecture was well attended by over 30 people.

David Fong

“International Arbitration and Jurisprudential Clashes of the New World Titans-HK, Singapore and Australia” by Dr Dean Lewis

2 June 2016, Hong Kong

Dr Dean Lewis has recently published a book on international arbitration and the title of his book is “The Interpretation and Uniformity of the UNCITRAL Model Law on International Commercial Arbitration: Focusing on Australia, Hong Kong and Singapore”. In this talk, Dr Lewis highlighted the key points and the main research findings in his book about the jurisprudential differences (if any) of the three jurisdictions namely Hong Kong, Singapore and Australia, in which their respective arbitration laws are by at large UNCITRAL Model Law based with minor modifications.

Dr Lewis drew our attention specifically to article 2A of the Model Law which provides “In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith”. Therefore, when a judge interprets the Model Law, he/she becomes an international judge. He/she is applying a law intended to respond to the needs of a transnational community and the reference points and sources should be globally based instead of his/her national jurisprudence. A judge, in Dr Lewis’s view, should adopt an internationalist approach to the interpretation of the Model Law. The question is how far and to what extent that is the case for Hong Kong, Singapore and Australia which enacted their respective arbitration laws based on the UNCITRAL Model Law at different times. Whether further regard

is being given to the *travaux préparatoires* i.e. commentaries and consultations by the UNCITRAL Commission concerning the introduction and/or amendments made to the Model Law and global jurisconsultorium can also be found in judgments when interpreting the Model Law in these three jurisdictions.

In closing, Dr Lewis highlighted the subtle differences in construing the meaning of a

public policy in the three jurisdictions as a ground for refusing the enforcement of an arbitral award.

There was a vivid Q&A session afterwards during which many issues about this topic were discussed. This seminar was well attended and the audience found the seminar very informative and interesting.

Richard Leung

The 8th Annual General Meeting of the CI Arb (EAB) Young Members Group

16 June 2016, Hong Kong

The 8th Annual General Meeting of the CI Arb (EAB) Young Members Group took place on Thursday, 16 June 2016, at the Hong Kong International Arbitration Centre.

There was a good turnout at the AGM. New committee members were endorsed, and Ms Linda Wong was elected to be the new Chairperson of the Young Members Group for the 2016-17 session at the AGM.

The AGM was followed by a talk on “Expert Evidence in Arbitration” by Mr John Cock.

Helen Au

Hiking to the Dragon’s Back (龍脊)

9 April 2016, Hong Kong

On 9 April 2016, participants from the Chartered Institute of Arbitrators went hiking on the Dragon’s Back (龍脊) trail on Hong Kong Island.

We started the trail from near To Tei Wan village early in the morning. The weather was fine with magnificent views of Shek O, Tai Long Wan, Stanley and Tai Tam and beautiful coastal scenery. We finished the trail at around noon and went to Shau Kei Wan for lunch. All participants enjoyed the hike.

Genevieve Lam



Participants at the hike

“Expert Evidence in Arbitration” by Mr John Cock

16 June 2016, Hong Kong

The YMG invited Mr John Cock, an architectural expert and the past Chairman of the EAB, to give a talk following the YMG’s Annual General Meeting on “Expert Evidence in Arbitration”.

The talk centred on the Expert’s role and responsibilities in arbitration and included references on the latest developments in case law on how those duties should be properly discharged. Mr Cock also gave some useful insight on the recent case of *Van Oord UK Ltd and Another v Allseas UK Ltd*.

The talk was well attended and there was a lively Q&A session following the talk.

Tim Cradock



“Expert Evidence in Arbitration” (from left to right) – Mr John Cock and Ms Linda Wong (EAB YMG Chairperson)

Annual General Meeting of Chartered Institute of Arbitrators (East Asia Branch)

26 April 2016, Hong Kong

The 44th Annual General Meeting for the Chartered Institute of Arbitrators (East Asia Branch) took place on 26 April 2016 at the Hong Kong International Arbitration Centre.

The AGM attracted a high number of attendees. Mr Richard Leung, the Branch Chairman, chaired the AGM.

The focus of the AGM was announcement of the election results for the Branch Committee members for 2016/2017 term. The voting results of the nominations and the names of the newly elected Committee members were read out in the meeting. Congratulations!

The list of the new Branch Committee members can be found in the last session of this Newsletter.

Gina Leung

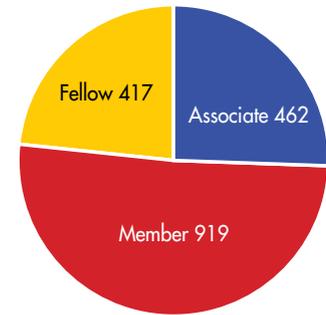
2016 East Asia Branch Events Programme

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.

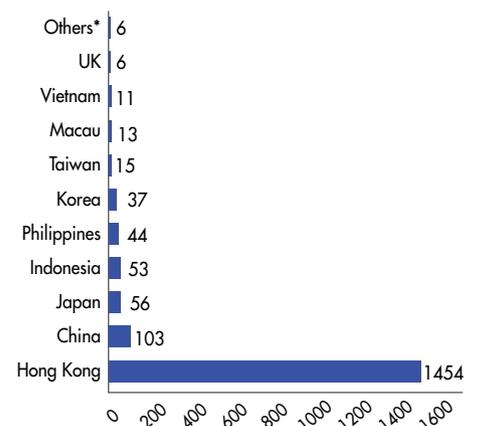
August 2016

Fellows’ Cocktail Party at the Hong Kong Club. Details to be circulated.

Current Branch Membership – Distribution by Membership Grade



Current Branch Membership – Distribution by Region



*Includes Cambodia, Sri Lanka, Canada and Singapore
The above statistics are current as of June 2016

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 2016/2017

Richard Leung – Chairperson / Communications with local bodies and CIARB (HO), **David Fong** – Vice Chairperson / Regional (China) / Faculty List, **Mary Thomson** – Vice Chairperson / Regional (Other than China), **Calvin Cheuk** – Honorary Secretary, **Lawrence Lee** – Honorary Treasurer / Mediation, **Fan Yang** – Public Relations Officer, **Paul Barrett** – Professional Development & Training/ ADR Editorial, **Glenn Haley** – Professional Development & Training, **John Cock** – Vis East Moot/ Adjudication / Professional Development & Training, **Nicholas Turner** – Programme, **Cordia Yu** – Membership, **Louise Barrington** – ADR Editorial, **Helen Au** – Newsletter, **Linda Wong** (co-op) – YMG, **Christopher To** – Universities Promotion, **Edward Chow** – Incorporation/ New Branch Rules, **Joseph Leung** (co-op) – Website, **Gina Leung** (co-op) – Newsletter

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