



Happy New Year! Welcome to the first edition of the CI Arb Newsletter for 2017. The EAB held a number of successful key events last year. More interesting events and informative seminars are planned for 2017.

In our first Close Up Q&A for 2017, we are delighted to feature Mr Peter Caldwell, the then chairperson of the Hong Kong Branch, which has later grown to become the East Asia Branch.

The YMG has conducted a series of CI Arb promotional talks at various universities in Hong Kong. The Branch and the YMG have arranged various evening talks, the details of these forthcoming Branch events can be found on the back page of the Newsletter, and an up-to-date programme can be found on www.ciarbasia.org.

We hope you will find this issue of the Newsletter a good overview of the events happened in the last quarter.

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.

On behalf of the editorial team, we wish you a happy Chinese New Year and a prosperous year in the year of Rooster.

Helen Au and Gina Leung

Updates to Arbitration and Cross-border Litigation

6 December 2016, Hong Kong

CI Arb (EAB) YMG was pleased to have Mr Keoy Soo Khim, Mr Philipp Hanusch and Mr Andrew Chin of Baker & McKenzie to give an evening talk on "Updates to Arbitration and Cross-border Litigation" at their office.

Mr Hanusch spoke about third party funding and its development in Hong Kong. This is followed by Mr Chin's talk on service of notice of arbitration with reference to some cases. Mr Keoy then provided the audience with updates on cross-border litigation, such as the issues arising from recognition and enforcement of foreign judgments in Hong Kong. Mr Chin then



Ms Linda Wong (Chairman of EAB YMG with Mr Keoy Soo Khim, Mr Philipp Hanusch and Mr Andrew Chin

discussed the developments concerning the use of emergency arbitrators.

There were around 25 attendees and positive feedbacks were received.

David Luk

Promotion of CI Arb at HKU SPACE

20 December 2016, Hong Kong



Mr Jeffrey Sham, a CI Arb EAB YMG representative, gave an introduction of the CI Arb to students at HKU SPACE

The CI Arb EAB YMG conducted a university promotion talk at HKU SPACE. The presentation was conducted by CI Arb EAB YMG committee member Mr Jeffrey Sham, with the helpful

assistance of Ms Genevieve Lam, the event coordinator of the YMG. The YMG members gave a brief introduction of the CI Arb, including its history, objectives, latest facts and figures of the Branch, as well as the Student Affiliate Membership Scheme. The talk was well received, attended by approximately 15 students of the HKU SPACE Postgraduate Diploma in Arbitration and Mediation. The YMG committee would like to thank Ms Wella Chau of HKU SPACE especially for their helpful arrangements amidst their tight teaching schedule.

Genevieve Lam

Promotion of CI Arb at the City University of Hong Kong

14 November 2016, Hong Kong

Every year, our YMG committee members are invited to promote CI Arb at the City University of Hong Kong (CityU). This year, Dr Christopher To has assisted in making arrangement for a promotion talk at CityU. CI Arb EAB YMG representatives Mr Albert Yeu, Miss Annie Po and Mr Simon Wong, have given a brief introduction to approximately 50 students of the LL.M in Arbitration and Dispute Resolution.

The presentation covered the background and objectives of CI Arb, with a specific focus on the student affiliate membership scheme and the various activities organised by the EAB. The representatives also detailed the upcoming CI Arb events and the benefits of membership. The students were later encouraged to apply for student membership by simply clicking on an internet link through their electronic devices. The



Simon Wong, a CI Arb EAB YMG representative, gave an introduction of the CI Arb to students at City U

talk was well received and numerous students have expressed their interest in joining CI Arb.

Simon Wong

Close Up Q and A with Peter Caldwell



Peter Caldwell is a practising Arbitrator and Mediator with a civil engineering background. He has lived and worked in Hong Kong for almost 43 years. Peter was chairperson of the

Branch from 1993 to 1995 when it was called the Hong Kong Branch and was instrumental in its metamorphosing into the East Asia Branch. He was also chairperson of the Society of Construction Law Hong Kong 2008/2009. The other important role that Peter has taken is Secretary-General of Hong Kong International Arbitration Centre (HKIAC) from 1990 to 1998.

Q: You have seen the formation of several leading dispute resolution institutions during your 43 years residence in Hong Kong. Can you elaborate on the formation of these institutions and your involvement?

A: The first new institution with which I was involved is the Hong Kong Mediation Council. It was originally called the Mediation Group of HKIAC. We held courses in the early 1990s to train and accredit mediators. For these courses, we brought in leading mediators from America and Europe. Following completion of these courses, I arranged a meeting with the newly accredited mediators at HKIAC (which was then housed in the old Central magistracy building in Arbuthnot Road). At the meeting, we debated what we should do next to advance mediation in Hong Kong. One of the results of that meeting was the founding of the Hong Kong Mediation Council which, it was agreed should embrace all forms of mediation including construction, commercial and family. I was actively involved in the early stages of the Council as a committee member. Although the Catholic Family Advisory Council had begun to offer mediation of family matters before the Mediation Council was formed, the Mediation Council fast became the primary focus of all forms of mediation in Hong Kong.

The second one is the Hong Kong Institute of Arbitrators. In the run up to 1997, before the handover of Hong Kong to Chinese sovereignty, people had many questions

about the future. There was a strong feeling amongst many people that CI Arb, as a branch of a British society, may not be the appropriate vehicle for addressing arbitration concerns with the government in Hong Kong. CI Arb set up a broad based committee, which I chaired, to look into the issue of having a Hong Kong institute. The committee included representatives from a range of professions in addition to representatives from CI Arb. The Committee concluded that HKI Arb should be launched and that CI Arb Hong Kong Branch should take on a wider regional role and be renamed as the East Asia Branch. It was recommended that the CI Arb and the proposed HKI Arb should work closely together in Hong Kong.

The last of the organisations for which I was involved from the start was the Society of Construction Law Hong Kong, which was formed in 2001.

Q: Can you tell us more on the development of HKIAC and its importance to dispute resolution in Hong Kong?

A: The recent survey by Queen Mary College in London has rated HKIAC as one of the best arbitration centres in the world. In choosing a venue for arbitration, clients generally look for a place with good infrastructure to run arbitration efficiently. The venue must have a good legal system, good communication, comfortable hotels etc. Experienced practitioners consider that an arbitration centre with experienced and competent staff greatly enhances the value of a place of arbitration. Through its 30 years of existence, the HKIAC has provided arbitration support services and promoted Hong Kong as a prime centre for arbitration.

In addition to supporting arbitration cases, HKIAC has conducted numerous conferences, seminars and training schemes for the benefit of the wider professional industry both in Hong Kong and around the world. In short, HKIAC has done much to put Hong Kong on the world map as a major player in all forms of dispute resolution.

Q: How important is the Hong Kong's new Arbitration Ordinance (Cap 609) to the undertaking of arbitration in Hong Kong?

A: I was involved in advising on a series of amendments to the arbitration ordinance from the late 1980s. Before that, the Arbitration Ordinance in Hong Kong primarily was based on the English Arbitration Acts of 1950 and 1979. This old ordinance in common with English law allowed court review of arbitrators' decisions. In 1985, the United Nations Commission on International Trade Law (UNCITRAL) recommended member states to adopt model arbitration legislation (the UNCITRAL Model Law). Hong Kong was one of the first jurisdictions to recognise the advantage of this model, which was adopted early in 1990 for international arbitrations. The amended ordinance retained the old regime for domestic arbitration. This early adoption of the Model Law put Hong Kong at the forefront of arbitration development. The arbitration ordinance was further developed in 1997 with minor amendments and more recently in 2011 when the domestic and international regimes were merged into a unitary system applicable to all arbitrations and incorporating the UNCITRAL updates to the Model Law of 2006.

Today the Arbitration Ordinance (Cap 609) is internationally recognised as one of the best, if not the best, arbitration legislation anywhere.

Q: In recent years, some commentators have suggested that Singapore may have overtaken Hong Kong as the arbitration hub in Asia. What is your view on the future prospects of arbitration and mediation in Hong Kong?

A: Singapore, undoubtedly, has been growing in importance as an arbitration centre in the region. There are more administered arbitrations in Singapore than in Hong Kong. However, in recent years, the number of administered cases in Hong Kong is growing. I understand that, in broad terms, about half of the arbitrations in Singapore are administered by ICC and the other half are administered by SIAC. There appear to be few ad hoc arbitrations in Singapore. In contrast, Hong Kong, until recently, had few administered cases but had primarily ad hoc arbitrations. Statistics about ad hoc arbitration are unreliable, as parties do not

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advertise the existence of their cases. Hong Kong is a prime seat for shipping arbitrations. However, these cases are often conducted on 'documents only' without any hearings.

My feeling is that Singapore is at present getting more big cases than Hong Kong but Hong Kong probably has significantly more arbitrations than Singapore.

In the past, I have been consulted by governments or practitioners in various parts of the world about setting up their own arbitration centres. Some of these centres, in time, no doubt will be successful but it must be observed that with few exceptions the successful arbitration centres are also major international and financial centres with internationally recognised experts based there. Hong Kong is particularly well placed in this regard with a large number of law firms, accounting firms, firms offering various forms of expert witness services etc. In Asia, only Singapore can be compared with Hong Kong in this regard. In Europe London is the predominant centre for arbitration.

Hong Kong also has a larger legal centre than

Singapore, with more full time professionals working in the dispute resolution field. These professionals work on Hong Kong cases as well as cases seated in other jurisdictions. Thus, the total income of Hong Kong from providing arbitration services, while difficult to measure, is still very important to our economy.

Q: Will Hong Kong continue to grow as an arbitration centre or will the potential clients move to elsewhere?

A: My answer is that where clients choose to arbitrate is their perception. Some clients may consider Hong Kong better whilst others may consider other venues as better options. My own belief is that given the high number of law firms in Hong Kong, the lawyers may advise their clients to arbitrate here. In addition, the rising number of mainland China cases has meant the arbitration business will remain strong and growing in Hong Kong. In particular, the Belt and Road Initiative provides abundant opportunities for arbitration and expert work on large-scale Chinese-funded infrastructure projects. Many of these projects will be in countries where arbitration law is undeveloped and dispute resolution services inadequate.

Q: What do you think Hong Kong should do to enhance its position as the Asia's premier arbitration centre?

A: There are two key elements. Firstly, few standard forms of contracts include arbitration clauses which name Hong Kong as the seat. Hong Kong needs to work on achieving inclusion of such clauses in standard forms of contract. For example, it may be possible to work with the various development banks to name Hong Kong as a possible seat.

Secondly, although most main construction contracts between governments and international contractors name the country where the construction is taking place as the seat of arbitration, there are many subcontracts where the contractor and sub-contractors may not wish to arbitrate there if they have a dispute. In addition, where a project is funded by one of the development banks or by commercial project finance, it may be possible to have Hong Kong chosen as the seat of arbitration. I am sure similar considerations apply to other industries.

Gina Leung

Site Visit to EMSD's Kai Tak Development on District Cooling System

12 November 2016, Hong Kong

The CI Arb (EAB) YMG and ICES co-hosted a site visit to EMSD's Kai Tak Development on District Cooling System (DCS). The event began with a view of the scale model of the DCS north and south plant rooms and their pipeline distribution network, chilled water network pipe, seawater cooled chiller and heat exchanger. A presentation was then delivered by EMSD's representative, Mr Ho Ming Sang about the project background and DCS future development, its challenges in the design, construction and operation phases. The audience was particularly curious on the operational control of water temperature in

the DCS pipeline. Mr Ho addressed a few other questions about construction difficulties across Kai Tak River and the potential disputes with the commercial end users. Following the presentation, the audience was guided to the control room and chiller plant room of the DCS north plant where the operation team explained the key monitoring parameters of DCS pipelines and emergency procedures for continuing chilled water supply to end users. This exciting event was well received and was fully booked within just 2 weeks of its announcement!

Ir Albert Yeu



Participants at the Site Visit to EMSD's Kai Tak Development on District Cooling System

Instant Photography Workshop Event

17 December 2016, Hong Kong



Participants at the Instant Photography Workshop

The Instant Photography Workshop took place on 17 December 2016 and was led by a local polaroid camera repair and maintenance company "MiNT". "MiNT" is the inventor of the camera InstantFlex TL70 – the world's first instant film shooting Twin Lens Reflex Camera. The participants were provided with films as well as an opportunity to try out this legendary camera in order to have a taste of instant photography.

The morning event brought together arbitration professionals, barristers and solicitors. The participants enjoyed the opportunity to learn about the techniques of instant photography. The event provided a very warm environment for participants to mingle with fellow professionals.

Jeffrey Sham

Promotion of CIArb at Contractor Organisation

7 December 2016, Hong Kong



CIArb EAB YMG representatives and staff from Leighton Contractors at the promotional talk

The CIArb EAB YMG committee members Mr David Luk, Mr Bryan Fok, Ms Annie Po and Mr Albert Yeu gave an evening talk to the members of the Young Professional Group of Leighton Contractors. The evening started off with a presentation by Mr Bryan Fok on the key features of arbitration, the legal framework of arbitration in Hong Kong and elements of an effective arbitration clause. This was followed by a presentation by Mr David Luk on the benefits of mediation and recent developments in the legal and regulatory framework of mediation in Hong Kong. Mr Albert Yeu then gave a presentation on construction adjudication and an overview of the proposed security of payment legislation in Hong Kong. The evening ended with a brief introduction of the CIArb (EAB) and the different CIArb membership pathways. In the Q&A session, the audience was particularly interested in the differences between the various kinds of Alternative Dispute Resolution (ADR) methods, as well as the transition of a construction expert to an ADR practitioner. Overall, the event was well-received and attended by approximately 30 young professional staff members from the Contractor. The CIArb (EAB) YMG looks forward to future opportunities to cooperate with the Young Professional Group of Leighton in promoting ADR.

David Luk, Bryan Fok, Albert Yeu and Annie Po

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.

Thursday 19 January 2017

Technical talk on "UNCITRAL Notes on Organising Arbitral Proceedings" by Mr Peter Caldwell. Details circulated.

Thursday 19 January 2017

CIArb YMG Annual Party.

Thursday 2 March 2017

Technical talk by Steven Walker. Details to be circulated.

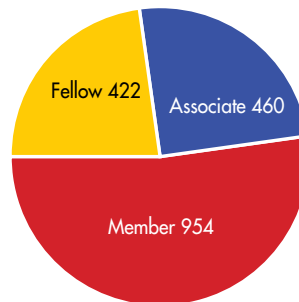
Wednesday 29 March 2017

CIArb Annual Dinner. Details to be circulated.

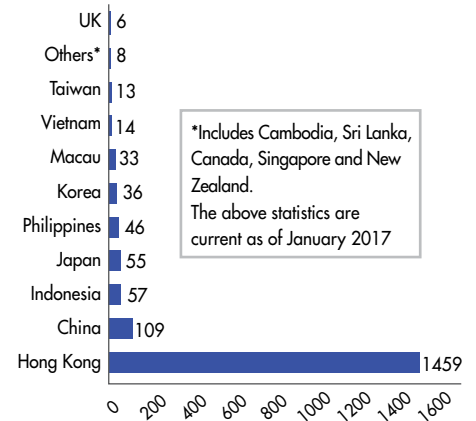
Thursday 27 April 2017

Annual General Meeting followed by a technical talk

Current Branch Membership – Distribution by Membership Grade



Current Branch Membership – Distribution by Region



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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