



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

28 April 2022, Hong Kong

The 50<sup>th</sup> Annual General Meeting (“AGM”) for the Chartered Institute of Arbitrators (East Asia Branch) took place on 28 April 2022.

A virtual meeting was held for this year AGM due to Covid-19 restrictions.

Mr David Fong, the Branch Chairperson, chaired the AGM.

The focus of the AGM was the announcement of the election results for the Branch Committee members for 2022/2023 term.

Mr Donovan Ferguson, the Branch Secretary, read out the names of newly elected Committee members in the meeting. Congratulations!

The AGM was attended by many members around the region.

*Gina Leung*

## Young Members Group Annual General Meeting of Chartered Institute of Arbitrators (East Asia Branch)

13 April 2022, Hong Kong

This year the Annual General Meeting for the YMG was successfully held on 13 April 2022 by way of Zoom so as to comply with the Government’s social distancing rules.

With the benefit of technology, the YMG is honoured to have the Right Honourable Lord Etherton PC QC, former Master of Rolls of England and Wales as the guest speaker. During his sharing, Lord Etherton shared with us the different roles he has played in his legal career, from as counsel to an arbitrator and to a judge.

Mr Ronald Pang, the then incumbent Chair addressed young members the highlights of the past events and reported the progress of YMG’s healthy development under his leadership in the past two years. Ms Jessica Chan then proceeded to report on the finances of the YMG.

The new Committee for the YMG as follows:-

**Co-Chairperson** – Jennifer Wu and Edward Chin, **Co-Vice Chairperson** – Alvin Cheng, **Immediate Past Chairperson** – Ronald Pang, **Secretary** – Richard Poon, **Treasurer** – Jessica Chan.

It is my pleasure of continuing to be your editor of the CI Arb Newsletter for the 2022/2023 term. I hope you would find the forthcoming Newsletters informative, interesting and enjoyable.

In this first edition of the new term, I would like to highlight the events held in Hong Kong during the last quarter. The Branch delivered 3 sessions of the Past Branch Chairs Nuts & Bolts Series by Mr Christopher To (Chairperson for 2014 - 2015), Mr Nicholas Turner (Chairperson for 2019 - 2021) and Mr Timothy Hill (Chairperson for 2009 - 2011) respectively.

The key events in the last quarter include the Annual General Meetings for both the East Asia Branch (“EAB”) and the EAB Young Members Group (“YMG”). The list of the new EAB Committee and the new YMG Committee can be found inside this Newsletter.

The editorial team would like to extend their thanks further to Mr Timothy Hill for his contribution to the 3<sup>rd</sup> Newsletter technical series on “Fast Dispute Resolution Methods”.

Have a great summer!

*Gina Leung*

**Committee Members** – David Luk, Lavesh Kirpalani, Nicholas Tam, Victor Fung, Vincent Cheung, Mathew Briggs, Lei Shi and Kiki Chiu.

**Co-optees** – Henk Brink and Genevieve Lam.

*Edward Chin*



New YMG Committee (EAB) for the 2022/2023 term

## Fast Dispute Resolution Methods

### “Buried Alive – Documents and the Arbitral Process” by Timothy Hill



Continuing the theme of recent articles in this newsletter of fast dispute resolution methods, the author has been asked to address some of the issues surrounding document production and management in the arbitral process.

#### Introduction

It is invariably the case that the contemporary documents provide a tribunal with the most helpful material to resolve complex factual disputes arising from long term contracts. Often such documents are prepared before a dispute has arisen or crystallised and they are therefore unaffected by the exigencies of a dispute. However, with the proliferation of communication methods make the challenges of managing the various aspects of preparing documents for ultimate use by the tribunal ever more difficult. The cost and time of this process can be substantial and add to the burden of the parties, thus adversely impacting the viability of arbitration as a dispute resolution mechanism of choice for small and medium size disputes.

Parties and their advisers often approach the process without clear consideration of the goals of the exercise and consideration of the development of a process or procedure suitable for their specific dispute. In some cases, a party may not need documents to be produced by its counterparty, however interesting those documents may be. A good illustration of this is where a contractor complains that it was delayed by a failure to supply of information; the contractor should be able to establish when it received the information from its own records without needing to understand the reasons for the delay in the provision of the information.

In an ideal world the parties representatives would be able to discuss and agree suitable protocols to manage the process. However, we do not live in an ideal world and often this is not possible. The ICC Commission on Arbitration’s publication on Techniques for Controlling Time and Costs in Arbitration makes the laudable observation that the early engagement of the tribunal can result in the saving of time and cost in this process. The ICC Commission also suggests that the parties consider how the disclosure process might be limited. Engagement by the tribunal can assist the parties in arriving at an appropriate approach for their dispute and advance the fair and equal treatment of the parties.

In this process the tribunal can express to the parties at an early stage its desires regarding the format of materials to be presented at the ultimate hearing. Low hanging fruit include the development of a clear and common pagination system for non-controversial documents e.g. contracts or minutes of meeting, thereby ensuring a consistency of referencing throughout the proceedings and a constructive discussion of the mode of preparation of other documents. This will reduce the risk of documents proliferating and being duplicated.

#### Disclosure

In the writer’s experience it is rare that parties entirely forego some form of disclosure process. Fortunately, arbitration has departed from the 19th century Peruvian Guano test, however the selection, production and review of disclosure remains a significant cause of

cost and delay to the process. In many cases, the associated cost adds to questions over the viability of parties pursuing their rights.

Having decided that some form of disclosure is necessary, parties assisted by the tribunal will need to consider how to manage this process. The IBA Rules on Taking Evidence in International Arbitration are often seen as a good starting point for the development of an efficient, economical and fair process. This process involves requests for the disclosure of specific documents or narrow and specific requested categories. On occasion categories and types of documents can be described in such detailed and all encompassing forms that the principle is honoured in name rather than substance. Tribunals can assist parties by giving an indication of how they will approach requests at an early stage, thereby seeking to establish a fair and even-handed treatment of the parties.

In this context, the growing use of electronic media including forms of instant messaging require careful consideration. The absence of a properly managed process can lead to an unequal outcome leading to additional applications and even a risk of unfairness in the process as a whole. The Chartered Institute’s Protocol for E-Discovery in International Arbitration provides parties and arbitrators with a helpful succinct basis for a discussion of these issues. It encourages parties to seek to agree as much of the process as they can. Where this is not possible, the Protocol provides a framework which the tribunal can deploy in discussion with the parties and their representatives. The Protocol includes discussion of the types of materials available, the retention and preservation of the materials, methods of searching and related matters, including the inadvertent production of privileged materials.

#### Hearing

The author has already observed that it is desirable for parties at an early stage to consider the format and content of the materials to be provided to the tribunal at the substantive hearing. If this advice has been followed much of a hearing bundle will be prepared during the course of the case preparation.

Parties should avoid the situation where the same or largely similar documents are presented to a tribunal in different formats. A tribunal will struggle to deal with the situation where each party refers to different sets of documents leading to submissions and cross examination being conducted using different references for the same document. A party’s pride in retaining control or authorship should give way to efficiency in the arbitral process. An example of this is where a party insists on producing a self-serving selection of materials out of what would otherwise be a chronological presentation and then insists on referring to this presentation – few tribunals are taken in by such strategem.

#### Conclusion

It is all too easy for parties to become buried in the proliferation of documents in the arbitral process and the tendency to follow a well-worn path. Early consideration of how documentation is to be managed in a specific dispute can yield substantial dividends in the achievement of a fast process, avoiding unnecessary expense and delay.

## Past Branch Chairs Nuts & Bolts Series No. 5 “Case Management Techniques and Interlocutory Reliefs”

Webinar by Dr. Christopher To

29 March 2022, Hong Kong



The fifth topic of the latest series of “Past Branch Chairs Nuts & Bolts” is “Case Management Techniques and Interlocutory Reliefs”. Former Branch Chair Dr. Christopher To was invited to give a talk on this topic.

The issues he discussed included:

- What causes delay and excessive costs in arbitration? Dr. To cited some of the rules in HKIAC and ICC.
- Types of interlocutory applications such as security for costs, interim measures, and preliminary order.

The presentation was well-received and attended by many members in the region.

Stay tuned for the rest of the series.

*David Luk*

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## Past Branch Chairs Nuts & Bolts Series No.7 “Document Production – Documents and the Arbitral Process”

Webinar by Mr Timothy Hill

22 June 2022, Hong Kong



The Branch continued to launch the latest series of ‘Past Branch Chairs Nuts & Bolts’.

The seventh topic is “Document Production – documents and the arbitral process”. Past

Branch Chair Mr Timothy Hill was invited to give a talk on this topic.

The issues he discussed included:

- Value of contemporary documents
- Document management
- Management of cost
- Disclosure process
- CIArb Protocol for E-Disclosure in International Arbitration
- IBA Rules on the Taking Evidence in International Arbitration
- Hearing preparation

The presentation was very well-received and attended by many members in the region.

Stay tuned for the rest of the series.

*David Luk*

## Past Branch Chairs Nuts & Bolts Series No. 6 “Statements of Case – How to put your best case forward?”

Webinar by Mr Nicholas Turner

5 May 2022, Hong Kong



The Branch continued with the latest series of “Past Branch Chairs Nuts & Bolts”.

The sixth series focus on the topic of “Statements of Case – How to put your best case forward?”.

Immediate Past Chair Mr Nicholas Turner was invited to give a talk on this topic.

The issues he discussed included:

- The process is governed by the arbitration agreements, law and rules.
- Amendments and related issues.
- Greener Arbitration
- Practical tips

The presentation was well-received and attended by many members in the region.

Stay tuned for the rest of the series.

*David Luk*

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## Jurisdiction and Admissibility in International Arbitration Webinar by Professor Anselmo Reyes

19 May 2022, Hong Kong



The Branch is very delighted to have Prof. Anselmo Reyes SC delivered a webinar on the topic “Jurisdiction and Admissibility in International Arbitration” on 19 May 2022.

Prof. Reyes started the webinar by first reviewing the seminal case *C v D* [2021] 3 HKLRD 1. He also visited this topic by referring to cases like *Fiona Trust & Holding Corporation v Privalov* [2007] 4 All ER 951. Prof. Reyes then illustrated the difficulties in distinguishing jurisdiction and admissibility in practice by referring to four commonly encountered objection scenarios. It was then followed by a lively Q&A section.

The webinar was very well received and was attended by 76 members across different part of the globe.

*David Fong*

## Young Members Group Launch of Korea Chapter

31 May 2022, Hong Kong

On 31 May 2022, the Korea chapter has successfully held its soft launch event and officially becomes one of the chapters of the YMG. The YMG co-chairs Ms Jennifer Wu and Mr Edward Chin have joined the soft launch event to outline the objectives of the Branch and the upcoming events held by YMG.

The YMG is also delighted to announce that the Japanese chapter of YMG has been established. YMG has established close liaison with other key stakeholders in the East Asia region, such as Korea and Vietnam.

More chapters in the region are expected to be coming soon. This is in line with YMG's aim to increase its international profile in the region.

YMG wants to take this opportunity to express its gratitude to the main committee for its continued support. Our gratefulness also goes to our immediate past Chair, Mr Ronald Pang for his stewardship in the past two years.

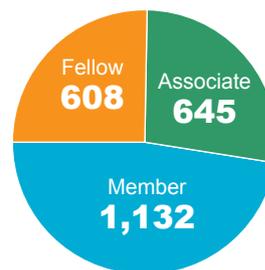
*Edward Chin*



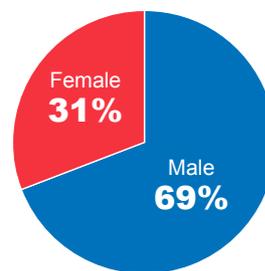
## Current Branch Membership

### Distribution by Membership Grade

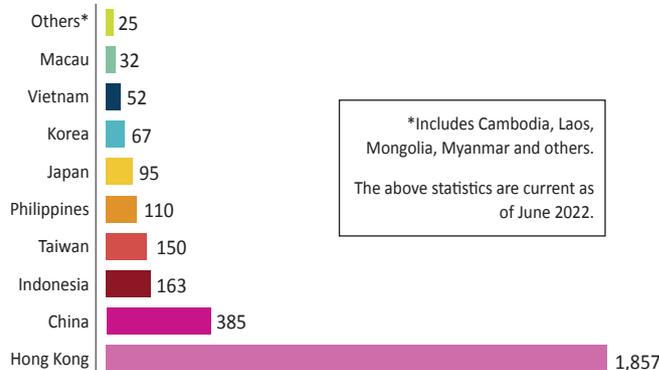
(excluding the Retired Members and Students)



### Distribution by Gender of Members



### 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 residents 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 2022/23

Chairperson – **David Fong**, Vice Chairperson and Honorary Secretary – **Donovan Ferguson**, Vice Chairperson – **Christopher To**, Honorary Treasurer – **Richard Leung** assisted by **John Cock** (co-optee), Immediate Past Chair – **Nicholas Turner**, Professional Development and Training – **Christopher To**, Programme – **David Luk**, Mediation – **Lawrence Lee** assisted by **Albert Yeu**, Adjudication – **Stephen Chu**, Membership, LinkedIn and Website – **Micky Yip** assisted by **Lawrence Tam**, ADR Editorial – **Christopher To**, Newsletter – **Gina Leung**, Regional (PRC) – **Tim Yimin Liu** assisted by **Jeffrey Zhang** and **Mingchao Fan**, Regional (Taiwan, Korea, Japan, Indonesia & Others) – **Glenn Haley**, YMG Co-Chairperson – **Edward Chin** (co-optee), Communications within CIArb and Communications with outside bodies/Public Relations Officer – **David Fong**, Diversity – **Ronald Pang** (co-optee), Vis East Moot – **Karen Mills**, EAB Trustee – **Paul Barrett**

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