



As with the previous quarters, the last quarter of 2013 was very busy for the East Asia Branch. This issue of the Newsletter covers inter alia several events since the previous issue, which includes evening talks given by Ms Sara Masters QC, Mr. Robert Morgan and Mr. Daniel Lam. Regionally, we have organized and participated in various events such as the joint seminar with Singapore Academy of Law in Taipei, roundtable discussion with Mr. Gary Born in Beijing, as well as the events with South China International Economic and Trade Arbitration Commission.

As always, the Branch Young Members Group was active in organizing events attracting considerable interest, which covers various promotion talks, site visit and UNICEF charity run. Two representatives from the Young Members Group attended the YMG 3rd Annual Conference in Istanbul.

As always, news items for the Newsletter and letters from the readership are most welcome. Readers are also encouraged to submit articles, book reviews or letters relating to dispute resolution to *Asian Dispute Review*. For submission guidelines please visit [www.asiandr.com](http://www.asiandr.com).

The forthcoming Branch events programme can be found on the back page of the Newsletter, and an up to date programme can be found on [www.ciarbasia.org](http://www.ciarbasia.org).

*Cheryl Je*

## **Evening talk by Ms Sara Masters QC on “Interim Measures – Court v Arbitrator?”**

### **Hong Kong 10 September 2013**

On 10 September 2013, Ms Sara Masters QC of 20 Essex Street Chambers in London gave an evening talk on “Interim Measures – Court v Arbitrator? The decision of the UK Supreme Court in *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP*” at the Hong Kong International Arbitration Centre.

Ms Masters began by reminding members of the principles of party autonomy and judicial non-intervention, which are common to both the English Arbitration Act and the UNCITRAL Model Law. She then outlined the circumstances in which the Courts are empowered to grant interim relief, both before and after the Tribunal is appointed.

The Kamenogorsk case, Ms Masters explained, raised an interesting question as to whether it is necessary for a party to commence or undertake to commence arbitration in order to obtain interim relief from the Court. The issue arose because the applicant had no claim of its own, so did not wish to commence arbitration. The applicant merely wanted to stop the respondent pursuing Court proceedings in Kazakhstan in breach of a London arbitration clause. At first instance, the English Commercial Court granted (i) a declaration that the arbitration clause was valid and binding and (ii) an interim (and subsequently final) anti-suit injunction. The decision was upheld by the Court of Appeal and the UK Supreme Court.

The Supreme Court held that a binding arbitration agreement gives rise to both a positive obligation to arbitrate disputes and a negative obligation not to bring proceedings elsewhere. An anti-suit injunction could be issued to enforce the negative obligation as well as the positive obligation, and it was not necessary for the applicant to commence arbitration in order to invoke the Court’s jurisdiction.

Ms Masters noted that the Supreme Court’s decision has been criticised for (it is argued) depriving the arbitrators of the right to determine their own jurisdiction (*Kompetenz-Kompetenz*). Others, however, have welcomed the decision as a pragmatic solution, enabling the innocent party to avoid the time and cost of commencing arbitration when they have no substantive claim.

The lecture ended with a question and answer session which focused on the extent to which Courts in different jurisdictions are perceived to be more or less supportive of the arbitral process. Following the lecture, Ms Masters was entertained to dinner by Members of the Programme Sub-Committee.

*Steven Wise*

## Evening Talk by Mr Robert Morgan on “Pathways to Arbitration under the Model Law in Hong Kong and Australia : Convergence, Divergence and Limitations”

Hong Kong 29 October 2013



Robert Morgan at the HKIAC

On 29 October 2013, Robert Morgan gave a talk to the members of the East Asia Branch on his paper titled “Pathways to Arbitration under the Model Law in Hong Kong and Australia: Convergence, Divergence and Limitations”. In the talk, Mr Morgan gave an interesting and thought-provoking discussion comparing and contrasting various aspects of arbitration in Hong Kong and Australia.

Mr Morgan commenced his talk by outlining the development of arbitration legislation in Hong Kong and Australia, which culminated in Hong Kong’s Arbitration Ordinance (Cap. 609) (“AO”) and Australia’s Commercial Arbitration Act which governs domestic arbitrations and the International Arbitration Act 1974 (“IAA”) which governs international arbitrations. Both countries adopted substantially similar approaches to the implementation of the Model Law, in particular, in the power of arbitral institutions to decide on the number of arbitrators. However, differences could also be seen in the context of interim measures of protection, for example, preliminary orders are available under the AO, whilst such provisions are excluded under the IAA.

In terms of arbitral venues, Mr Morgan commented that Hong Kong’s features as an arbitral venue include experience in cross-jurisdictional disputes, skilled practitioners, competent judiciary and a stable and efficient financial system. In comparison, despite sharing many advantages of reputable Asia-Pacific venues, Australia nevertheless remained an emerging arbitral venue, with obstacles such as geographical distance and inconsistent decision-making amongst the courts. Both venues had arbitral institutions which administer international rules based on UNCITRAL Rules, adopt light-touch administered arbitrations and act as default appointing authority.

As for current developments and issues, Mr Morgan discussed the introduction of emergency arbitrators to arbitral regimes in both Hong Kong and Australia, the requirement for reasons for arbitral awards and the conflicts prevalent in the decisions amongst Australian courts and with Hong Kong courts. In relation to judicial conflicts in Australia, Mr Morgan examined a few examples, such as whether arbitrators were strictly bound to apply court-type versions of adversarial procedures, whether arbitral tribunals were always bound to a judicial standard of giving reasons for awards, whether adopting a particular set of arbitration rules amounted to opting out of procedural law and the use of indemnity costs.

Mr Morgan recognised that much effort had already been made to develop and promote Australia’s suitability as an arbitral seat. However, the vesting of concurrent jurisdiction in eight State and Territory Supreme Courts along with the Federal Court in Australia has not been conducive to the development of a consistent body of jurisprudence on the interpretation of the IAA and Model Law. In closing, Mr Morgan suggested that perhaps the centralisation of judicial power to determine arbitration-related applications in a single court, for example, the Federal Court, would improve the quality and consistency of arbitral decisions, and thereby strengthen the arbitral regime in Australia.

Jessica Chan

## The Chartered Institute of Arbitrators Centenary Celebration 2015

To celebrate the centenary anniversary of the Chartered Institute of Arbitrators in the year 2015, many events and activities are being organized in the UK and other parts of the World. Hong Kong is fortunate to be the only second venue (after London) for organizing the Centenary Conference. The dates have now been fixed. For the Hong Kong events, it will be held from 19 to 21 March 2015, whilst the London events will be held from 2 to 4 July 2015.

The programme of the conference will cover a wide range of topics covering contemporary and innovative issues and focusing on cultural as well as specialized areas. Training and education are also offering as part of the event. To provide sufficient networking opportunity, a great variety of social events will be organized to the participants.

It is likely that the conference will be oversubscribed. We will provide more update in the CI Arb (East Asia Branch) website. SAVE THE DATES NOW!

Cheryl Je

## Full Day Conference held by South China International Economic and Trade Arbitration Commission on “China Equity Investment and Corporate Governance”

Hong Kong 8 December 2013



Richard Leung (left) and Man Sing Yeung

On 8 December 2013, the Branch as one of the supporting organizations joined the full day conference held by South China International Economic and Trade Arbitration Commission (alias Shenzhen Court of International Arbitration “SCIA”) entitled “China Equity Investment and Corporate Governance”. The Branch Chairman Mr Man Sing Yeung and Vice-Chairman Mr Richard Leung attended the event. The conference was well attended with over 400 people.

*Richard Leung*

## Roundtable Discussion with Mr. Gary Born jointly organized with China Young arbitration Group

Beijing PRC 13 September 2013

On 13 September 2013, with the support of Fangda Partners, the Chartered Institute of Arbitrators East Asia Branch and the China Young Arbitration Group jointly held a round-table discussion at the Beijing office of Fangda. Mr. Gary Born, partner of WilmerHale and Chair of the firm’s international arbitration practice group, was invited as the keynote speaker. Ms Teresa Cheng SC, Vice Chairperson of Hong Kong International Arbitration Centre, was also invited to attend the discussion. The 30-plus attendees mainly consisted of attorneys and arbitrators specialized in international arbitration.

During the discussion, the attendees actively raised questions regarding various issues encountered in international arbitration, such as cross-examination skills, enforceability of injunctions, case management strategy. Mr. Born shared his valuable experience in handling international arbitration cases as well as his insight into trends in international arbitration, particularly in the Asia-pacific region. He emphasized that parties to future international transactions would increasingly resort to international arbitration as dispute resolution method, offering greater opportunities for the younger generation in this field. Ms. Cheng and Mr. Born provided the audience with practical suggestions to enhance their arbitration skills. The round-table event lasted for approximately an hour and ended in vigorous discussion.



*Helen Shi*





*(From left) Shilin Huang, Helena Chen, Houchih Kuo, Lok Vi Ming and Chan Kock Keng*



## Taipei Chapter of EAB and Singapore Academy of Law Joint Seminar on “Resolving Disputes Through International Arbitration under the IPA”

Taipei Taiwan 19 November 2013

Taipei Chapter of East Asia Branch (EAB) of the Chartered Institute of Arbitrators co-hosted the seminar entitled “Resolving Disputes Through International Arbitration under the IPA” on 19 November 2013 together with the Singapore Academy of Law in Taipei. The seminar was supported by various organizations and law schools including the European Chamber of Commerce Taiwan, Swedish Chamber of Commerce Taipei, Taiwan Business Leader Forum, the Taipei Bar Association, National Taiwan University, National Taipei University, as well as National Chengchi University.

Mr. Houchih Kuo, Chair of Taipei Chapter of EAB, and Mr. Lok Vi Ming, S.C., Head of China Desk of the Singapore Law Committee and President of the Singapore Law Society, delivered the opening remarks of the seminar. Both stressed the importance of commercial arbitration in resolving international commercial disputes and thanked the supporting organizations for their promotion of the memorable conference, which was attended by more than 110 participants, including lawyers, businessmen, law professors and students.

In addition to Mr. Kuo and Mr. Lok, speakers of the seminar include Dr. Helena Chen, partner of Formosan Brothers and Mr. Shilin Huang, partner of K&L Gates Taipei, and Mr. Chan Hock Keng, partner of Wong Partnership.

*Houchih Kuo*

## Half day Seminar held by South China International Economic and Trade Arbitration Commission on “Business Registration Reform and Company Law Practices”

Shenzhen PRC 24 October 2013

On 24 October 2013, the Branch as one of the supporting organizations joined the half day seminar held by South China International Economic and Trade Arbitration Commission (alias Shenzhen Court of International Arbitration “SCIA”) entitled “Business Registration Reform and Company Law Practices” in Shenzhen. The Branch Chairman Mr Man Sing Yeung and Vice-Chairman Mr Richard Leung attended the event. Mr Richard Leung was one of the panelists commenting on the latest reform of business registration and company in the Mainland and how such changes may impact on business disputes and shareholders’ disputes. The seminar was well attended with over 200 people.

*Richard Leung*

## Evening Talk by Mr. Daniel Lam BBS, JP on “Nightmares – Subcontracts”

Hong Kong 12 November 2013



Daniel Lam at the HKIAC

In the evening of 12 November 2013, Mr. Daniel Lam, who is a prominent figure in both the construction industry and arbitration community in Hong Kong, gave us a talk entitled “Nightmares – Subcontracts”.

In Hong Kong, the budget allowed for subcontracts is substantial, however this is a problematic area. There are three main types – nominated subcontracts, named domestic subcontracts and domestic subcontracts. Mr. Lam discussed the problems mainly occurred in domestic subcontracts, particularly those involving small subcontract companies. Mr. Lam gave an account of the problems at different stages and areas including tendering, formation of subcontract, work commencement, changes or variations, interim payment, sectional completion, completion of the subcontract works as well as relationship with the Employer. Mr. Lam concluded that those problems could not be resolved without the input from the Government and other statutory bodies.

Many questions were raised by the audience and discussion ensued among the speaker and the audience during the question and answer session.

*Cheryl Je*

## Roundtable Meeting chaired by the Secretary for Commerce and Economic Development on “IP Arbitration & Mediation”

Hong Kong 8 October 2013

A Working Group on IP Trading, chaired by the Secretary for Commerce and Economic Development, was set up in March 2013 to advise on the overall strategies to promote the development of Hong Kong as an IP trading hub, and to identify policy and other support measures to facilitate IP trading in Hong Kong.

The Working Group is working on a proposed strategic framework to help position and promote Hong Kong as a premier regional IP trading hub. The Working Group is setting up a Sub-Group to study IP arbitration and mediation. A roundtable meeting had been held to engage relevant stakeholders to gather and exchange views on how IP arbitration and mediation could be further promoted to strengthen Hong Kong’s position as an IP trading hub.

The meeting was chaired by Hon Andrew Liao, the vice-chair of the Working Group on IP Trading, attended by its Working Group members & a nos. of stakeholders. It had about 30 people attended.

Man Sing Yeung and Christopher To, respectively the Branch Chair and the Vice Chair had attended the meeting. The Working Group solicited views from the stakeholders in the Arbitration & Mediation community. Discussion had been made on how to further develop IP ADR in Hong Kong to strengthen the Hong Kong position as an IP trading hub. Areas like arbitrability, technical rules / protocols, other ADR methods like expert determination, publicity & promotion had been touched. It was expected the Working Group would convene more consultation events in due course.

*Man Sing Yeung*

# Promotion of CI Arb at The University of Hong Kong and City University of Hong Kong

Hong Kong 4 September & 18 November 2013



Promotion talk at the HKU

With the commencement of the academic year 2013, the CI Arb YMG conducted a university promotion talk on 4 September 2013 at The University of Hong Kong (HKU). The chairperson of the CI Arb EAB YMG, Lawrence Lee, together with two committee members, Jessica Chan and Allen Lai, conducted the talk. They explained the brief history and objectives of the Institute as well as the student affiliateship scheme to about 50 students of the HKU LL.M. in Arbitration & Dispute Resolution Programme. After the talk, the YMG committee members had a chance to meet the students and encourage them to apply for student affiliateship online using the computers provided.

On 18 November 2013, YMG committee members Allen Lai, Julian Ho and Jessica Chan also conducted a promotion talk with the class of around 100 students of the LL.M. in Arbitration and Dispute Resolution of the City University of Hong Kong (City U). Similar to the talk at the HKU, the talk at City U covered the background of the Institute and highlighted the student affiliateship scheme.

Both courses are recognized equivalent courses in Hong Kong for the purpose of applying to become a CI Arb Member. The YMG committee would like to especially thank Ms Katherine Lynch and Mr Christopher To for arranging the promotion sessions.

*Lawrence Lee*

## Site Visit to HZMB

Hong Kong 7 December 2013



Group Photo

A joint site visit was organized by YMG of Chartered Institute of Arbitrators and Chartered Institute of Civil Engineering Surveyors to Hong Kong – Zhuhai – Macao Bridge (HZMB) Hong Kong Link Road (HKLR) Contract HY/2011/09 on 7 December 2013 with 25 attendants of civil engineers, surveyors and solicitors.

The HKLR serves to connect the HZMB Main Bridge at the HKSAR Boundary and the Hong Kong Boundary Crossing Facilities located at the north eastern waters of the Hong Kong International Airport. The section of HKLR between HKSAR Boundary and Scenic Hill comprises a dual 3-lane marine and

land viaduct of approximately 9.4km in length connecting the HZMB Main Bridge and the tunnel over the sea.

On site, hundreds of barges were working on the sea and prepared to build the foundation of the future piers of the bridge column. Special facilities like mobile concrete batching plants were floating on the sea and ready for supply ready mix concrete for the bridge structures.

*Lawrence Lee*



# Chartered Institute of Arbitrators Young Members Group ("YMG") Conference 2013

Istanbul Turkey 18-19 October 2013



*Andrew Chin and Burnston Fan with CIArb President Vinayak Pradhan during the Bosphorus River Cruise*



On 18-19 October 2013, around 60 delegates from all over the world attended the Young Members Group Conference 2013 held in Istanbul, Turkey. Mr Andrew Chin (Vice-Chair of the EAB YMG) and Mr Burnston Fan (Honorary Treasurer of the EAB YMG) had the invaluable opportunity to take part in the event as representatives of CI Arb (EAB) YMG.

On Friday 18 October 2013, delegates were invited to a welcome cocktail reception held at Arcadia Blue Hotel. Mr Chin and Mr Fan represented the EAB YMG to meet other delegates

and organizers of the Conference, which included Colonel Anthony Abraham (Director General of CI Arb), Mr Vinayak Pradhan (President of CI Arb) and Ms Sue McLaughlin (Member Services Manager of CI Arb). Around 30 delegates attended the cocktail.

The Conference was held on Saturday 19 October 2013 at Barbaros Point Hotel. Around 60 delegates attended the Conference. It started with opening remarks by Mr Vinayak Pradhan and Ms Bennar Balkaya (Chair of CI Arb European Branch). Thereafter, Mr Arran Dowling Hussey (Chair of CI Arb YMG Steering Committee) presented an introduction speech to the delegates.



*A moment with Mr. Volodymyr Nagnybida, Dean of the Law Faculty of Khmelnytsky University, Ukraine and also the youngest law school dean in Ukraine*

The opening speeches were followed by a number of panel discussions and presentations in respect of arbitrator independence and impartiality, evidential issues in construction arbitrations, challenges in preparing effective evidence for a damages claim and other interesting topics. The delegates found the topics to be highly informative and engaging, as evidenced by the post-panel discussions.

The eventful Conference was brought to a close by a cruise and dinner down the Bosphorus River where delegates mingled with each other on arbitration-specific matters or otherwise, and appreciate the diversity of cultures within the CI Arb global membership.

The EAB YMG looks forward to continue developing the working relationships with the Young Members Groups across the network, and to the next YMG Conference, which will be held in London in 2014.

*Andrew Chin & Burnston Fan*

## YMG UNICEF Charity 10K Run

Hong Kong 24 November 2013

UNICEF Charity Run has been successfully held for 7 consecutive years since 2006 at Hong Kong Disneyland. It is not only the flagship annual fundraising event for UNICEF HK, but also the 2nd largest distance running event in Hong Kong.

The goal of the UNICEF Charity Run 2013 is to raise money to support UNICEF's mission in achieving Zero HIV/AIDS transmission from mothers to children in UNICEF's Global Campaign.

Races encompass scenic spots including the Hong Kong Disneyland Resort, Inspiration Lake, costal area alongside Airport Express station and Sunny Bay.

Continuing the meaningful tradition, CI Arb(EAB) YMG is happy to take part in the charity run again this year on Sunday, 24 November 2013. All CI Arb(EAB) YMG runners recorded good times and achieved their personal goal on the day. We express our gratitude to the runners and their generous sponsors.



*(From left) Andrew Chin, Helen Au, Selina Chan and Lawrence Lee*

*Helen Au*

## 2013-2014 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.

### Tuesday 7 May 2013

Nuts & Bolts Lecture No. 8 by Ms Catherine Mun on "Award and Challenges to Award". Details circulated.

### Saturday 11 May 2013

YMG Site Visit to MTR Ap Lei Chau Tunnel Site. Details circulated.

### Monday 20 May 2013

YMG Non-technical talk by Sean Lin (Toastmasters International, HKUST Convocation, Chief Inspector of the Hong Kong Police Force) on "You can negotiate – a sharing session with a professional negotiator". Details circulated.

### Friday 7 June 2013

YMG Annual General Meeting and evening talk by Professor A Reyes on "What assistance will a Tribunal be seeking from counsel, experts and factual witnesses in an arbitration?" Details circulated.

### Tuesday 18 June 2013

Nuts & Bolts Lecture No. 9 by Mr Glenn Haley on "Costs, Offers to Settle and Payments in". Details circulated.

### Friday 21 June 2013

Winnie Whittaker Memorial Lecture – Talk on "Revitalization of Salt-pans at the Island of Yim Tin Tsai, SaiKung" (dispute avoidance procedure and/or how to handle complaints) by Ms Anna Kwong. Details circulated.

### Friday 21 June 2013

Mock arbitration by EAB Philippines Chapter. Details circulated.

### Thursday 27 June 2013

Trustee's Visit to Taiwan Chapter. Details circulated.

### Friday 28 June 2013

Mediation Introduction Course – EAB Taiwan Chapter. Details circulated.

### Tuesday 23 July 2013

Fellows' Cocktail. Details circulated.

### Friday 2 August 2013

Growing importance of India as a world economic power and the 'myths' surrounding arbitration practice in India by Mr Rajiv Dutta. Details circulated.

### Wednesday 4 September 2013

YMG Promotion Talk to HKU LLM in Arbitration & Dispute Resolution Programme Student by YMG Sub-Committee Members.

### Tuesday 10 September 2013

Interim measures – court v arbitrator? The decision of the UK Supreme Court in *Ust-Kamenogorsk Hydropower Plant JSC (Appellant) v AES Ust-Kamenogorsk Hydropower Plant LLP (Respondent)* by Mr Sara Masters QC. Details circulated.

### Saturday 14 September 2013

YMG Charitable mooncake distribution to elderly. Details circulated.

### Friday – Saturday 27-28 September 2013

Accelerated route to fellowship. Details circulated.

### Saturday 28 September 2013

YMG Promotional Talk to Chun Wo

### Monday 28 October 2013

YMG Promotional Talk to HKU LLB Law Students.

### Tuesday 29 October 2013

Pathways to arbitration under the Model Law in Hong Kong and Australia: Convergence, Divergence and Limitation by Mr Robert Morgan. Detail circulated.

### Tuesday 12 November 2013

Sub-Contracting in the Construction Industry and Disputes by Mr Daniel Lam. Details circulated.

### Sunday 24 November 2013

YMG UNICEF Charity Run. Details circulated.

### Friday 29 November 2013

YMG Promotional Talk to Leighton

### Saturday 7 December 2013

YMG Site Visit to Zhu Hai Macau Bridge Project (Jointly organised with ICES). Details circulated.

### Friday 17 January 2014

YMG Annual Party. Details circulated.

### Thursday 13 March 2014

Branch Annual Dinner in Hong Kong Club. Details to be circulated.

### Upcoming Events

- YMG Evening Talk on BIM related to dispute / DRA by Ms Ada Fung
- Evening Talk on Container Terminals Development and Disputes by Mr Horace Lo, Development Director, Modern Terminals
- Evening Talk on CIETAC Arbitration Rules by Dr Wang Wenyong.
- Nuts & Bolts of Construction Arbitration Series

## CI Arb (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.

### CI Arb (East Asia Branch) Committee

**Paul Barrett** – Professional Development & Training/ Editorial/ Vis East Moot, **Louise Barrington, Jessica Chan** – Universities Promotion, **Kanice Chan, Martin Doris, David Fong, Joe Gilfeather** – Regional (Mongolia, Vietnam & Cambodia), **Menachem Hasofer** – Programming / IT, **Cheryl Je** – Honorary Secretary/ Newsletter/ Website, **Houchi Kuo, James Lau, Johnson Lee** – Public Relation Officer/ Mediation & Adjudication/ Membership, Lawrence Lee – YMG, **Richard Leung** – Vice Chairman/ Regional (China), **William Leung, Mary Thomson** – Regional (Korea, Taiwan, Indonesia, Philippines & Japan), **Christopher To** – Vice Chairman/ Professional Development & Training, **Man Sing Yeung** – Chairman, **Cordia Yu** – Honorary Treasurer

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