

This third quarter has been an eventful one for the East Asia Branch highlighted by several major events. This issue of the Newsletter covers the Fellows' Cocktail Party, HKIAC Mock Arbitration Seminar in Taipei and various insightful and interesting talks.

As with the previous quarters, the Branch Young Members Group (YMG) has been active in organising events attracting considerable interest, including the YMG AGM, evening talks, a site visit and the Mid-Autumn Festival charity event.

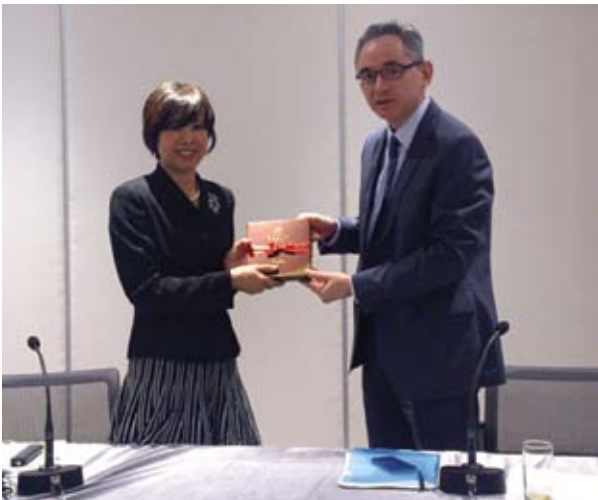
As always, news items for the Newsletter and letters from the readership are most welcome. Readers are also encouraged to submit articles, book reviews or letters relating to dispute resolution to Asian Dispute Review. For submission guidelines please visit [www.asiandr.com](http://www.asiandr.com).

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).

*Jessica Chan and Kanice Chan*

## Evening Talk by Madam Justice Chan on "Judicial Support for Arbitration"

Hong Kong 3 September 2014



*CI Arb Chairman Christopher To (right) presents a token of appreciation to Madam Justice Mimmie Chan (left)*

On 3 September 2014, the Honourable Madam Justice Mimmie Chan, a judge of the Court of First Instance and judge-in-charge of the Construction and Arbitration List gave an evening talk on "Judicial Support for Arbitration". The talk was well received and was attended by close to 80 people.

Madam Justice Chan started the talk by reviewing the relevant provisions of the Arbitration Ordinance (Cap 609) for the court's role in arbitration. Her Ladyship then elaborated the 7 basic principles regarding the enforcement of arbitral awards with case law as follows:

- i) Even if sufficient grounds are made out for refusal of leave to enforce, the court will nevertheless enforce the award in appropriate cases;
- ii) Opposition to enforcement based on unmeritorious points of minor procedural issues or minor complaints are viewed with disfavor by the courts;
- iii) Courts are prepared to enforce the awards except where complaints of substance can be sustained;

- iv) The party opposing enforcement has to show a real risk of injustice and that its rights are shown to have been violated in a material way;
- v) Courts are extremely reluctant to review the merits of the award;
- vi) Failure to make prompt objection to the Tribunal or supervisory court may constitute estoppel/want of bona fide;
- vii) Since 2009, courts have ordered unsuccessful applicants to pay costs on an indemnity basis, unless "special circumstances" can be shown to apply.

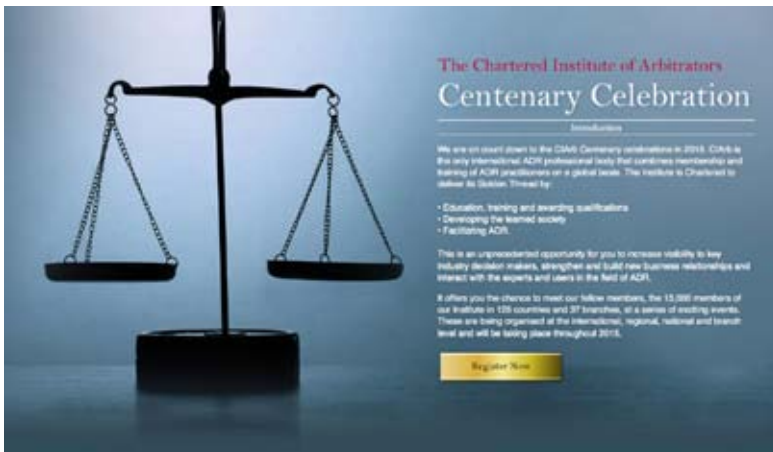
After elaborating the foregoing principles, her Ladyship then used case law to illustrate the applicable principles in refusing the enforcement of arbitral awards based on the following grounds:

- i) Public policy ground; and
- ii) Other irregularities in arbitral hearing.

There was a lively Q&A session at the conclusion of the talk. The attendees raised questions on topics including the judicial review of decisions by the HKIAC on consolidation, standard of enforcement of emergency relief granted by an emergency arbitrator, and indemnity costs for successful applications for the refusal of enforcement of arbitral awards.

*David Fong*

## The Chartered Institute of Arbitrators – a Century of Commitment to ADR



CI Arb Centenary Celebration: [www.ciarbasia.org/Centenary\\_Celebration/](http://www.ciarbasia.org/Centenary_Celebration/)

The longest journey begins with the first step. Nearly 100 years ago, with modest aspiration to promote alternative dispute resolution, 2 solicitors (H C Emery and A Stevens), an architect (F M Burr), an accountant (I W Bullen) and a passionate individual (A Powells) founded the Institute of Arbitrators (later renamed as the Chartered Institute of Arbitrators (CI Arb)) on 1 March 1915.

Originally founded as an unincorporated association, CI Arb was granted a Royal Charter in 1979. Its primary object under the Royal Charter is to promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution (PDR) other than resolution by the court. CI Arb is a leader in academic and professional thinking in the field of PDR and works

closely with researchers, universities, legal authorities, governments, judges and other international organisations to help in disseminating and developing best practice.

Today, CI Arb is a non-profit, UK registered charitable organisation. It is the only membership body that covers the entire range of alternative dispute resolution methods on a global basis and has approximately 13,000 members in 125 countries and 37 branches. Its members include practitioners of PDR, professional advisers, and users, as well as those interested in the process of ADR.

2015 is a special year for the CI Arb as it marks its 100<sup>th</sup> anniversary. To celebrate this significant moment, the East Asia Branch – CI Arb (EAB) (its biggest branch in terms of numbers of members and territories coverage), is planning a flagship event including a 2-day conference from 19-21 March 2015 in Hong Kong – **A Century – Shaping the Future of Arbitration**.

In addition, two CI Arb Conferences will take place in the UK. The first conference will take place at the International Conference Centre Birmingham, England from 22-24 January 2015, and is themed “The Future of Dispute Resolution in the Construction and Property Sectors”. The second will be a flagship CI Arb Conference taking place at the Guildhall, London from 1 – 3 July 2015 with the title “The London Principles on Promoting Efficient, Effective Economical & Ethical Resolution of International Commercial Disputes Through Arbitration”.

The Hong Kong conference is an opportunity to showcase the CI Arb and its work in the promotion of arbitration and other forms of dispute resolution globally. It is open to all members of the CI Arb, those who wish to become members, clients, retired members of staff, professionals associated in other professions, opinion formers and government officials. Guests and members can benefit from increased visibility to key industry decision makers, strengthen and build new business relationships and interact with the experts and users in the field of ADR. Guests of Honour include Lord Neuberger, President of UK Supreme Court, Robert French, CJ of Australia, Geoffrey Ma, CJ of HKSAR and Sundaresh Menon, CJ of Singapore/Patron of CI Arb.

As a unique CI Arb event in the Asia Pacific region, the conference explores a plethora of issues and opportunities, ranging from the strategic to the pragmatic across functions, territories, jurisdictions as well as deliberation on emerging trends toward the near future. Social events, namely the Welcome Cocktail Reception, the Conference Luncheons, the Gala Dinner and a number of other unique activities will be crafted for all guests and members during their stay in the Asia World City – Hong Kong.

Registration for the Hong Kong conference is now open to both CI Arb members and non-members. Don't miss out and please join before 20 January 2015 to enjoy early bird discounts. Discounts are also available for multiple tickets for non-members to book as a group. All delegates will be invited to make a donation to the CI Arb's Centenary Fund at the point of booking. CPD accreditation will be applied for from the Law Society of Hong Kong.

If you have any questions or need further information about conference, please do not hesitate to visit the website or contact CI Arb (EAB):

**Website:** [www.ciarbasia.org/Centenary\\_Celebration/](http://www.ciarbasia.org/Centenary_Celebration/)

**Telephone:** (852) 2525 2381

**Fax:** (852) 2524 2171

**E-mail:** [ciarb@hkciac.org](mailto:ciarb@hkciac.org) or [karen@hkciac.org](mailto:karen@hkciac.org)

*Man Sing YEUNG  
Chair of the Centenary Celebration Branch Sub-committee*

## Event Talk by Mr Julian Cohen on “Construction Arbitration in Dubai and Hong Kong – Contrast and Similarity”

Hong Kong 20 August 2014



On 20 August 2014, Julian Cohen gave the members of the East Asia Branch a talk titled “Construction Arbitration in Dubai and Hong Kong – Contrast and Similarity”. Mr Cohen started the talk with a review of the Dubai construction boom and bust, and boom again. He remarked that many disputes that have submerged during the global financial crisis have re-surfaced recently with the now-available funding of developers. This has led to a substantial demand for arbitration service.

To seize the opportunity there, Mr Cohen shared with us the differences in commercial and cultural environment, as well as legal infrastructure and law. Mr Cohen gave an example of “repudiatory breach of contract” where Dubai law does not allow the innocent party to unilaterally decide whether to treat the contract as continuing or being at an end,

but the party may only apply to the court or tribunal for decision. He gave another example of Dubai having its own rules for witnesses and oaths, and a derivation from them is likely to render an award unenforceable.

Mr Cohen advised us to consider enforcement from day one to cope with the differences. He commented that arbitration in Dubai often involves an interpretation of the Dubai civil code by common law trained lawyers and arbitrators, who tend to analyse Dubai law as if the underlying principles from common law jurisdictions applied. Further, local factors such as little certainty on the interpretation of Dubai law on a particular point (even for Dubai lawyers) and limited availability of reliable source material on Dubai law in European languages have strengthened the tendency. Legal arguments and findings in Dubai arbitrations therefore often tend to represent what a common law trained practitioner would think that Dubai law should be rather than what Dubai law actually is.

This dynamic poses both substantive and enforcement risks for the parties in arbitration. The former materialises because of the difficulty to ascertain the relevant law and to predict the outcome. The latter materialises because findings on Dubai law from a common law tribunal may surprise Dubai lawyers and judges, and may cause a court to refuse enforcement.

To manage these risks, Mr Cohen said that it was often advisable for a party to avoid heavy legal argument and instead to focus on factual issues and contractual wording. A successful party should work out from day one in arbitration exactly what did happen and go wrong on the project, and to present a coherent and consistent factual story to the tribunal. While this may lead to a front loading of costs compared to Hong Kong arbitrations, it tends to make arbitrations more cost efficient overall as evidence and document disclosure focus on the real issues and disputes from day one.

Mr Cohen also discussed a 6-month limit applied to arbitration in Dubai from formation of the tribunal to final award unless extended. Practically, this affects the style and length of hearing and requires proactive management and prioritisation from the tribunal. Mr Cohen remarked that a shorter timescale tends to produce more “rough and ready” or “quick and dirty” results compared with the possibly lengthier and more detailed arbitral process in Hong Kong. However, Mr Cohen observed that in practice, clients do not tend to complain about the fact that the dispute resolution process is more “rough and ready” or “quick and dirty”. Indeed commercial clients often prefer to take the associated risks of a “quick and dirty” process than to incur the time and costs of a more “Rolls Royce” process. He ended the evening talk with a reflection of Hong Kong’s system and style, wondering whether any Dubai lessons may be applied to Hong Kong – and suggested that, irrespective of the introduction of adjudication, Hong Kong arbitrations might benefit from a shorter timescale and more proactive case management from the tribunal.

*Patrick Ng*

## Evening Talk by Mr Philip Yang on “Asian maritime arbitration centre. What it takes and what is lacking”

Hong Kong 13 August 2014



*Mr Philip Yang gave an evening talk on “Asian maritime arbitration centre. What it takes and what is lacking”*

On 13 August 2014, CIArb was honoured to have Mr Philip Yang present an evening talk on maritime arbitration. Mr Yang gave a fascinating history of the contribution of maritime law to jurisprudence, and particularly on the law of contract, and the leading role that maritime arbitration has played in the Hong Kong arbitration scene for many years. Mr Yang also described how various Asian nations are aspiring to become maritime arbitration centres, in competition with Hong Kong. He provided an insightful analysis of the industry, which is highly competitive, truly international and very litigious in nature. The maritime-related industry (shipping, commodities and insurance) has produced numerous arbitration cases and contributed to the growth of maritime arbitration in various centres. The propensity to disputes is not helped by the use of standard forms in the industry, even most of the BIMCO standard forms, said to be very widely used, are usually very

comprehensive, balanced and well-drafted.

Mr Yang addressed the potential advantages Hong Kong has to remain a centre of maritime arbitration, especially given its proximity to China which became the world’s top trading (commodities) nation in 2013. Mr Yang concluded with comments on areas which might need some attention if Hong Kong is to continue to enjoy a prominent role in maritime arbitration.

*Kim Barton*

---

## Accelerated Route to Membership Course

Seoul 29-30 August 2014

The Korea Chapter held its first Accelerated Route to Membership (ARM) course in Seoul on 29-30 August 2014. The tutors included Mr Colin Wall, Ms Mary Thomson, Ms Samrith Kaur and Mr Benjamin Hughes. The original course director, Ms Rashda Rana, fell ill but kindly continued to assist which effort is much appreciated. East Asia Branch Trustee and generally heroic chap Mr Wall stepped bravely into Ms Rana’s high-heeled shoes to lead the course. The course was a great success, with almost thirty persons registered. We are hopeful that this course and others will lead to growth in membership on the Korean peninsula. The Korea Chapter wishes to thank the Korean Commercial Arbitration Board (KCAB) for its support of the course, as well as the tutors who came from overseas to give of their time and expertise. Additional courses are being planned for the late fall and early spring.

*Benjamin Hughes*

---

## HKIAC Mock Arbitration Seminar

Taipei 2 July 2014

On July 2, 2014, HKIAC held its first ever mock arbitration seminar in Taipei as part of its international roadshow – New Rules and Recent Practices at Taipei’s Sherwood Hotel. The seminar was attended by more than 130 participants, most of whom were lawyers and in-house counsels. EAB was one of the event’s supporting organisations, together with the General Chamber of Commerce of Taiwan, the Taipei Bar Association, Taiwan, National Taipei University, National Chengchi University, as well as several trade associations. CIArb was represented by EAB committee member and chair of the Regional subcommittee (other than China), Ms Mary Thomson, chair of Taiwan chapter, Mr Houchih Kuo, and deputy chairs of Taiwan Chapter Mr Shilin Huang and Mr Jackson Huang.

Chinese Arbitration Association, Taipei Chairman Nigel Li delivered the seminar’s opening remarks, which was followed by a round-table discussion hosted by HKIAC Secretary-General Chiann Bao. The speakers of the round-table discussion included Ms Helen Su, Mr John Rhie, Ms Mary Thomson as well as Mr Nigel Li. The topic for the session was strategies for engagement in international arbitration.

The second session was a mock arbitration based on a case concerning an automobile distribution and manufacturing dispute. Speakers who took part in the role play include: Ms Helena Chen, Mr Philip Georgiou, Mr Jackson Huang, Mr Shilin Huang, and Mr Houchih Kuo.

The seminar was well-received. Many participants expressed interest in receiving information on future seminar or courses from the EAB.

*Houchih Kuo*

## Evening Talk by on “Practical Approach to NEC & Mediation”

Hong Kong 17 June 2014



(from left to right) Mr Stanley Lo, Mr Hayman Choi, Mr Ken Ko, Mr Wai-hung Luk and Mr Ivan Cheung

On 17 June 2014, an evening talk on “Practical Approach to NEC & Mediation” was jointly organised by the Chartered Institute of Arbitrators (CI Arb East Asia Branch), the Hong Kong Mediation Council (HKMC) and the Hong Kong Institution of Engineers (HKIE) at the Hong Kong International Arbitration Centre.

Mr Stanley Lo of HKMC facilitated this evening talk on New Engineering Contract (NEC) – an increasingly common form of contract being used in Hong Kong, especially by the Government. The talk was delivered by a panel of experienced NEC users from the Employer, the Contractor and the Consultant disciplines, comprising Mr Wai-hung Luk, Mr Ken Ko, Mr Ivan Cheung and Mr Hayman Choi. The key highlights are summarised below.

Mr Wai-hung Luk from Drainage Services Department of Hong Kong Government shared his invaluable practical experience in the application of the NEC from the Employer’s perspective, with particular reference to the large scale and high profile drainage improvement project currently under construction in Happy Valley.

Mr Luk in particular emphasised that *“NEC entails the Employer to adopt a partnering approach and collaborative working techniques, a fundamental cultural change from the rigid structure in traditional contract strategies”*. He further explained how partnering has been encouraged by adopting, amongst other things, joint Employer/Contractor offices. This simple measure has improved communication both within and between the Employer’s and the Contractor’s organisations and played a key part in achieving the project objectives. Mr Luk concluded that based on his experience NEC has actually brought together the objectives of the Employer and the Contractor, improved project performance and staff morale and established long term strategic partnering business alliances focusing on a quality high end product; a real benefit for the Employer.

Mr Ken Ko continued the highlight of the evening talk by discussing his practical experience of NEC application from the Contractor’s perspective. He echoed Mr Luk’s statements that NEC requires the Employer and the Contractor to operate in a spirit of mutual trust and co-operation. Mr Ko then focused the talk on the hot topic of managing variations under NEC – early warning and compensation events. He pointed out that the time bar in NEC stimulates the Contractor to “act promptly” on potential claims for additional cost and or time, otherwise his right for extra time or money will be forfeited. Interestingly from his experience, he viewed these time bar provision as positive, as *“NEC allows prior notification and quick decisions to be made. It also encourages quick settlement on compensation events before their implementation – a common potential area of dispute in traditional contracts”*.

Mr Ivan Cheung gave an overview of NEC projects in Hong Kong, including the proportion of the types of NEC contracts being used, the main options that were selected and the sectors in which Employers have used NEC for their projects. He also outlined the contract structure and the dispute resolution procedures under NEC.

Mr Hayman Choi went on to discuss the role of consultants under NEC contracts and how the NEC can help in reducing disputes. External consultants are occasionally called in for the Government NEC projects to provide assistance in fulfilling the roles of Project Manager, Supervisor or Service Manager. He explained that effective communication in NEC projects can help to reduce the disputes. *“To achieve this, a change of mind-set and a change in behaviours by both the Employer and the Contractor will be required”*, said Mr Choi.

The evening talk attracted a full house audience. The panel took a number of questions from the floor. In closing, they suggested that the increasing use of NEC may lead to a widespread cultural change in operating construction contracts in Hong Kong.

Gina Leung

## CI Arb YMG AGM and post-AGM Talk by Ms Teresa Cheng SC on “Likes and Dislikes of Arbitrators”

Hong Kong 26 June 2014



The YMG AGM was held on 26 June 2014. In line with our custom, an experienced and well-respected practitioner in the ADR field was invited to give a post-AGM talk and this year the YMG had the honour of having Ms Teresa Cheng SC, chairperson of the HKIAC, to speak to us.

Being a seasoned and much sought-after arbitrator, Ms Cheng spoke to the young audience on the “Likes and Dislikes of Arbitrators”. Ms Cheng’s humour and pleasant tone have attracted the attention of all. The talk was informative and undoubtedly very well attended and received.

*Helen Au*

## Fellows’ Cocktail Party

Hong Kong 22 July 2014

The Fellows’ Cocktail Party was held at the Hong Kong International Arbitration Centre on 22 July 2014. It has attracted a number of Fellow members to enjoy this convivial evening as they met the new Branch Committee of this session.

Our new Branch Chairman, Mr Christopher To gave a welcome address to all members attended. Mr To reported that the Branch would organize a number of training courses both locally and in the East Asia region as usual and the nuts and bolts lectures in construction arbitration in the later part of the year, coupled with the launch of a construction law book, which has received sponsorship from the publisher. He also invited suggestions for the Institute and Branch activities and development from members. A number of senior fellow members also came to share their views in the evening.

Mr Man Sing Yeung, our immediate past Branch Chairman and also the chairman of the Branch centenary celebrations sub-committee, gave the members an introduction on the centenary celebrations in Hong Kong. He also invited members to sponsor our centenary conference scheduled on 19-21 March 2015, and welcomed any sponsor proposal in whatever amount from members. This would allow the Branch to make a reduction on the registration fees for our members to attend the 2 day conference with gala dinner etc. It is hoped that members would be able to attend the events and share with the Branch its past achievements and help in shaping the future of arbitration to make Hong Kong the leading hub for ADR globally.

The Branch concluded this evening with presentation of diplomas to the newly admitted members who have successfully passed the recent entry course and accelerated fellowship course.

*Man Sing Yeung*

## Site Visit to MTR KTE 1001

Hong Kong 28 June 2014

A site visit to the MTR project KTE 1001 (Kwun Tong Line Extension) was jointly organised by the Chartered Institute of Arbitrators and Lighthouse Club on 28 June 2014, attended by 10 participants. The visit was led by the construction team of the main contractor, Nishimatsu Construction Co. Ltd.

The KTE project extends from the Kwun Tong Line, and will run from Yau Ma Tei to Whampoa. The site visit inspected a section of the tunnel that forms a part of the KTE project.

In view of the geographical limitation, the upper soft ground near the surface will be excavated by open cut method. Open blast method will then be adopted for the deeper part of the station. The construction of the new station and tunnel civil works are ongoing.

*Lawrence Lee*



## Distribution of Moon Cakes to Elderly in the Wong Tai Sin Area

Hong Kong 6 September 2014



On 6 September 2014, over ten members and guests of the YMG celebrated Mid-Autumn Festival with the elderly living in the Wong Tai Sin area of Hong Kong, in cooperation with local charity organisation Choi Hung Community Centre for Senior Citizens of the Yang Memorial Methodist Social Service. Participants visited 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 meaningful event proved to be successful and we look forward to serving this community in the coming years.

*Burnston Fan*

## 2014-2015 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 23 September 2014

Talk on "Hong Kong – CMAC's next station". Speakers include Mr Wang Wenying and Mr Wang Haocheng of CIETAC. Details circulated.

### Tuesday 25 November 2014

Talk on "E-Discovery – the New Practice Direction". Speakers include Justice Mohan and others. Details to be circulated.

### December 2014

Talk on "Applicable Laws to Arbitration Agreements – Law & Practice in Mainland China" by Dr Fan Yang. Details to be circulated.

### Thursday 19 March 2015

CIArb Centennial Conference Opening Reception. Details to be circulated.

### Friday & Saturday 20 - 21 March 2015

CIArb Centennial Conference. Details to be circulated.

### More Upcoming Events:

- Nuts & Bolts of Construction Arbitration series by various speakers. Details to be circulated.
- November 2014 – Visit by East Asia Trustee to Chapters.

## 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

**Christopher To** – Chairman/ Professional Development & Training, **Richard Leung** – Vice Chairman / Regional (China), **Justin Wong** – Honorary Secretary/ Public Relation Officer, **Cordia Yu** – Honorary Treasurer/ Membership, **Paul Barrett** – Professional Development & Training/ ADR Editorial Board/ Vis East Moot, **Louise Barrington** – Professional Development & Training, **Kim Barton** – Programme/ Charitable Status, **Jessica Chan** – Newsletter/ Website/ Vis East Moot, **Kanice Chan** – ADR Editorial Board/ Newsletter/ Vis East Moot, **Martin Doris** – Professional Development & Training/ Universities Outreach, **David Fong** – Universities Liaison/ Faculty List, **James Lau** – Mediation & Adjudication, **Lawrence Lee** – YMG, **Mary Thomson** – Regional (Other than China), **Fan Yang** – Professional Development & Training, **Man Sing Yeung** – Immediate Past Chairman/ Sponsorship/ Centennial Events

### Contact Details

c/o the Hong Kong International Arbitration Centre, 38/F Two Exchange Square, Central, Hong Kong

Telephone: (852) 2525 2381

Fax: (852) 2524 2171

Website: <http://www.ciarbasia.org>

E-mail: [ciarb@hkiac.org](mailto:ciarb@hkiac.org)