

For this first issue of the Newsletter in 2015, in addition to the usual round up of the East Asia Branch's programme over the past quarter, we are pleased to introduce two new sections. The first is a feature Q&A section on prominent individuals in the alternative dispute resolution industry, starting with our very own Dr Christopher To and the second is a section on membership statistics. We hope that you will enjoy these two new additions.

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. 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.

Jessica Chan and Kanice Chan

Evening Talk on 'Arbitration and the High Court's E-Discovery Practice Direction'

Hong Kong 25 November 2014



(from left to right) Mr Paul Taylor, The Hon Mr Justice Mohan Bharwaney and Mr Menachem Hasofer

On 25 November 2014, the CI Arb East Asia Branch with the support of the Hong Kong Institute of Certified Public Accountants, held an evening talk on 'Arbitration and the High Court's E-Discovery Practice Direction' at the HKIAC. The speakers included The Honourable Mr Justice Mohan Bharwaney, Mr Paul Taylor and Mr Menachem Hasofer.

Mr Justice Bharwaney provided insights on the new Practice Direction, that became effective in Hong Kong from 1 September 2014. The new Practice Direction is an e-discovery Pilot Scheme in the Commercial List of the High Court of Hong Kong, introducing changes to the way electronic documents are managed in litigation.

Mr Paul Taylor further discussed the use of Electronic Documents Discovery Questionnaire (EDDQ) in the e-discovery process, supplemented with a number of real life examples.

Mr Hasofer, in addition to sharing some general principles on the use of e-documents, gave an overview of e-discovery and pointed out the changes e-discovery has brought to the way information is managed and presented by judges and lawyers at Court. The talk was well attended and concluded with a Q&A session.

Gina Leung

Evening Talk on 'Recent Developments in English Arbitration Law'

Hong Kong 20 November 2014



Speakers at Recent Developments in English Arbitration Law

On 20 November 2014, members attended an evening talk on 'Recent Developments in English Arbitration Law' by three barristers.

Mr Michael Collett QC spoke about multi-tiered dispute resolution clauses, quoting a well-known arbitrator who had referred to such clauses as "a sort of club sandwich". In particular, Mr Collett

discussed the recent decision of the English Commercial Court in *Emirates Trading Agency v Prime Mineral Exports* [2014] that a requirement for "friendly discussion" was an enforceable condition precedent to commencement of arbitration proceedings. He pointed out some of the difficulties in determining whether such an obligation had been met, which raised the possibility of protracted satellite litigation.

Mr Rupert Hamilton addressed the English Court's power to grant interim relief in support of arbitrations. He discussed the circumstances in which the Court might make an order under its general powers to grant injunctive relief where the conditions were not met for invoking the Court's arbitration-specific powers. A recent example of this is the *Ust-Kamenogorsk* [2013] case in which the UK Supreme Court granted

an anti-suit injunction in circumstances where neither party intended to commence arbitration.

Mr Oliver Caplin considered the English Court's jurisdiction over third parties to an arbitration agreement. He explained a recent softening of the traditional view that such parties could not be served out of the jurisdiction, although it is still recognised as an exorbitant jurisdiction not to be exercised lightly.

Finally, Mr Hamilton presented some interesting statistics on the grant of permission to appeal against arbitration awards on points of law under the English Arbitration Act. He also gave some tips on formulating the questions of law to maximise the chance of obtaining permission to appeal.

Steven Wise

Up Close and Personal with Dr Christopher To



In this new feature of the Newsletter, we feature prominent individuals in the alternative dispute resolution industry in a Q&A format to reveal less well-known aspects of their background and experiences. We launch this new feature with our own Chairman of the CI Arb East Asia Branch.

Dr Christopher To is the current Chairperson of the CI Arb East Asia Branch and also an experienced arbitrator and mediator. He is the Executive Director of The Construction Industry Council and the former Secretary-General of the Hong Kong International Arbitration Centre. Dr To has been recognised as a Director of the Year in Hong Kong in 2007 and as a Young Global Leader by the World Economic Forum. Despite his busy schedule, he holds Adjunct Professorships from leading universities and is on the board of various organisations ranging from education to research and development. Dr To holds qualifications in computing, engineering and law.

Introduction

Q: Tell us about yourself in two sentences.

A: I am a high spirited individual who is always game for a challenge and above all a perfectionist.

CI Arb

Q: Can you tell us a memorable event from your involvement with the CI Arb East Asia Branch?

A: Managed to bring the 3rd IBA Arbitration Day to Hong Kong as well as the creation of the Asian Dispute Review Journal.

Q: What changes have you observed throughout the years?

A: More people are interested in arbitration and the pool of arbitrators has increased drastically.

ADR

Q: What is your advice for people who would like to have a career in ADR?

A: Be patient and master the skills inside out and one day out of the blue you will be in the hot seat as an arbitrator.

Q: What challenges and opportunities do you see for the ADR industry in 5 years' time?

A: The challenges are that more players will evolve, making the environment highly competitive. Nevertheless with the right skill and judgment, opportunities will come knocking whereby the ability to act as arbitrator would increase.

Personal

Q: What is your favourite quote?

A: "Life is really simple, but we insist on making it complicated" by Confucius and another one is "the most important thing is to enjoy your life – to be happy – it's all that matters" by Audrey Hepburn.

Q: If you could do anything now, what would you do?

A: Give up my job and travel the world (and enjoy the travels) but in saying that I may become bored very quickly.

Q: What might others be surprised to know about you?

A: Hard work does pay off and sometime luck does help as well. Always high aim and think the impossible.

Mock International Arbitration for Government Corporate Counsels

Philippines 20 November 2014



Mock International Arbitration for Government Corporate Counsels in Philippines

The Philippine Institute of Arbitrators (PIArb) presented a 'Mock International Arbitration for Government Corporate Counsels' on 20 November 2014. The one-day event was made possible through the initiative of Atty Jesusito Morillos, PIArb Senior Vice President for Advocacies, in cooperation with the Office for Alternative Dispute Resolution (OADR), Office of the Government Corporate Counsel (OGCC) and CI Arb East Asia Branch.

Prior to the mock arbitration proper, PIArb Chairman Prof Mario E. Valderrama gave a

refresher on the topic of "Party Autonomy". The mock arbitration demonstrated the arbitration process of a simulated international commercial dispute, using International Chamber of Commerce (ICC) Arbitration Rules. Various roles were portrayed by PIArb trustees and officers, together with Mr Houchih Kuo (Chair, Taiwan Chapter, CI Arb East Asia Branch) and Ms Sylvia Tee (Director, ICC Arbitration and ADR, Asia) who acted as arbitration counsel and ICC expert respectively.

Jesusito Morillos & Houchih Kuo

Chartered Institute of Arbitrators Young Members Group Conference

London 1 November 2014



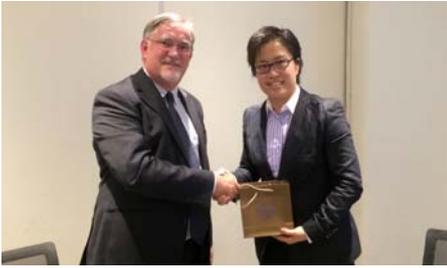
(from left to right) Mr Patrick Ng, Mr Michael Stephens (CI Arb President) and Mr Jeffrey Sham

On 1 November 2014, around 60 delegates from all over the world attended the CI Arb Young Members Group (YMG) Conference 2014 held in London. Mr Patrick Ng (YMG Honorary Treasurer) and Mr Jeffrey Sham (YMG Committee Member) had the invaluable opportunity to take part in the event as representatives of the East Asia Branch YMG. The very eventful day-long conference included various workshops led by renowned arbitration practitioners as well as an entertaining debate on whether "London is best for international dispute resolution". The East Asia Branch YMG looks forward to the next conference in Paris and further YMG conferences in the future.

Patrick Ng & Jeffrey Sham

Evening Talk by Dr Chris Jackson on 'Becoming an Expert Witness'

Hong Kong 5 November 2014



(from left to right) Dr Chris Jackson and Ms Helen Au

On 5 November 2014, Dr Chris Jackson delivered a well-received talk on 'Becoming an Expert Witness' to the East Asia Branch YMG.

The talk started off with Dr Jackson explaining the key differences between a witness of fact and an expert witness. It was emphasised that although the expert is instructed by one of the parties, he or she owes an overriding duty to the Court or Arbitral Tribunal and must not act as a "hired gun" for that fee-paying party. Dr Jackson then moved on to describe the characteristics of a good expert witness, with all three characteristics starting with the letter "i", namely, independence, impartiality and integrity.

Dr Jackson also provided some advice on how to become an expert witness. He urged the audience to learn their trade/profession, learn the applicable rules of evidence, develop their writing skills and also get themselves known to the legal and arbitral community, including working as an assistant to practicing experts. Dr Jackson stated as a concluding remark, "It will be tough to get the first expert appointment, but perseverance and hard work will pay off."

Adrian Chan

Introduction to International Arbitration Course

Phnom Penh 3-4 October 2014

The first CI Arb 'Introduction to International Arbitration Course' in Phnom Penh organised by the East Asia Branch was held on 3 and 4 October 2014 with Ms Louise Barrington as Course Director and Ms Mary Thomson assisting. The Course was conducted in co-operation with the Vis East Foundation which was conducting its first capacity building project (CBP) in Cambodia to prepare university students in Cambodia for the next Vis East Moot in Hong Kong. The

1.5-day course took place during the 10-day CBP. A total of 26 university students from 5 schools participated in the course (including 2 Filipino visitors). The students were also joined by 9 professionals from CI Arb making a total of 35 attendees. The course went very well with plenty of interaction. This was considered quite impressive as the attendees were relatively new to international arbitration and English was not their first language. The feedback was also very



Introduction to International Arbitration Course in Cambodia

good. The East Asia Branch hopes to organise similar courses in the future in other countries in the Region including Vietnam and Myanmar.

Mary Thomson

Introduction to Arbitration Course

Tokyo 14-15 November 2014



Introduction to Arbitration course in Tokyo, Japan

On 14 and 15 November 2014, the Japan Chapter held an 'Introduction to Arbitration Course' jointly organized with the Japan Association of Arbitrators (JAA). The course was sponsored by Anderson, Mori & Tomotsune (who provided their conference room), K&L Gates (who sponsored the cocktail party at the end of the first day of the course) and Orrick, Herrington and Sutcliffe LLP. Ms Mary Thomson from the CI Arb East Asia Branch was the Course Director, assisted by Course Lecturers and Tutors Mr Haig Oghigian, Mr Yoshi Takatori and Mr Douglas Freeman, all three of whom are convenors of

the Japan Chapter.

The course had a good turnout of 24 registered participants – comprised of a diverse group of Japanese attorneys, university professors, students from Switzerland and Australia, and practitioners from Singapore.

Feedback from the participants was positive. They considered the course very interesting and worthwhile. Many participants expressed an interest in further courses from the CI Arb.

Douglas Freeman

UNICEF Charity Run

Hong Kong 23 November 2014

The East Asia Branch YMG has been a long time supporter of UNICEF and a regular participant in the UNICEF charity run for children in need. This year was no exception.

On 23 November 2014, there was a record of 15,000 runners at the Hong Kong Disneyland. Over HK\$11 million was raised – sufficient for one-week HIV treatment for over 690,000 children. All members of the CI Arb team scored good time. We look forward to our next run in 2015 for a good cause.

Helen Au



(from left to right) Ms Phoebe Lee, Ms Helen Au, Mr Alfred Chan

YMG Joint Professional Event – ‘Cycling Tour of Nam Sang Wai’

Hong Kong 7 December 2014



On the morning of 7 December 2014, over 30 members from CI Arb East Asia Branch and five other young professional organisations gathered in Yuen Long for a bike ride around Nam Sang Wai, a picturesque wetland area in north-western New Territories, Hong Kong. Along the Kam Tin River, through the Nam Sang Wai grassland, and crossing the Shan Pui River, the participants were introduced to the ecology of wetland mangrove as well as migratory waterbirds. Following a trail lined up by piles of lemon-scented gums, the members were led to the only swing ferry in Hong Kong. Before the sun set behind the reeds, whether being an arbitration professional, an engineer, a surveyor or a solicitor, one learned to tell the differences between the Great Egret and the Little Egret by their bills, as well as understood the cultivation of Gei Wai shrimps by sluice gates.

Patrick Ng

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.

Monday 12 January 2015

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

Friday 23 January 2015

YMG Annual Party at Levels, Central, Hong Kong. Details to be circulated.

Tuesday 10 February 2015

Talk on ‘Expert Evidence – Hazards & Opportunities’ by Mr Jeremy Nicholson QC. Details to be circulated.

Tuesday 19 March –

Saturday 21 March 2015

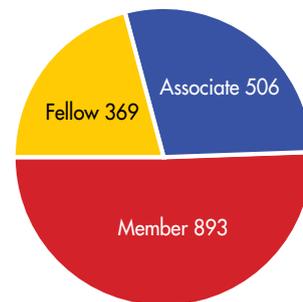
Centennial Conference in Hong Kong ‘A Century – Shaping the Future of Arbitration’ at JW Marriott Hotel, Hong Kong. Opening Cocktail Reception at HKIAC. Save the date circulated. Open for registration at www.ciarbasia.org/Centenary_Celebration/online_reg.php

More Upcoming Events

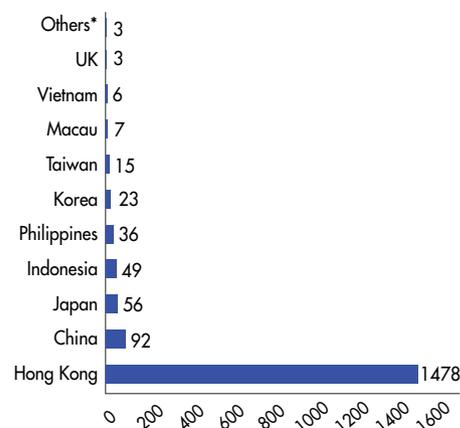
3rd quarter 2015 – Construction Arbitration Series.

November 2015 – Visit by East Asia Trustee to Chapters (Japan, Philippines, South Korea).

Current Branch Membership – Distribution by Membership Grade



Current Branch Membership – Distribution by Region



*Includes Australia, New Zealand and Singapore

The above statistics are current as of December 2014

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

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

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