



We hope the members have had a good summer break. Three months into our new term, the Committee has collated various thoughts from the Committee members for structuring the development plans.

The East Asia Branch ("Branch") has a busy calendar for the events, courses and seminars, thanks to our Programme sub-committee and the YMG. We would be delighted to see you at any of these upcoming events.

We actively encourage your participation in the newsletter, and if anyone has any ideas or thoughts on future editions please contact any one of the editors.

The updated Branch events programme can be found on the back page of the Newsletter, and the latest programme can be found on [www.ciarbasia.org](http://www.ciarbasia.org).

*Calvin Cheuk and Gina Leung*

## "Party non-participation and awards in default of appearance, and documents only arbitration" by Mr John Scott QC SC

31 May 2018, Hong Kong

The Branch had the honour of hearing from Mr Scott, a Chartered Arbitrator and Head of Des Voeux Chambers, on his thoughts and experience of party non-participation and awards in default of appearance, and documents only arbitration. This was the fifth in a series of seminars covering the CI Arb's guidelines and rules for administering arbitrations and other dispute resolution processes.

Mr Scott highlighted the stark difference between proceedings where the other party participates and where they do not. Non-participation can occur at any stage of the proceedings, and Mr Scott gave an example where a party had participated in proceedings all the way through to just prior to the hearing. When party non-participation occurs the common law, arbitral legislation, the relevant rules and the CI Arb guidelines may assist the tribunal in ensuring justice is done, for both the participating and non-participating parties. Mr Scott's guidance



(from left to right) Mr John Scott QC and EAB Chairperson Mary Thomson

included notification, dealing with evidence, proving the case, running hearings and making of awards. Mr Scott, thankfully, had time to cover documents only arbitration, a procedure which the tribunal generally has no power to impose without the parties consent. Again, justice must be seen to be done and a tribunal should ensure that each party is given a fair opportunity to present its case.

Overall, the event was well-received and attended by approximately 50 members.

*Nicholas Turner*

## Post-AGM Evening Talk on "Recent Development in Arbitration in Hong Kong" by Mr Alvin Ho and Mr Hinson Cheung

29 June 2018, Hong Kong

On 29 June 2018, Mr Alvin Ho and Mr Hinson Cheung gave a talk on "Recent Development in Arbitration in Hong Kong" at Pinsent Masons office in Wanchai. The speakers discussed the hurdles for a winning party attempting to enforce an arbitral award in the court.

In the case of *A & Others v Housing Authority [2018] HKCFI 147; HCCT 54/2017*, an application under s.6(4) of Schedule 2 to the Arbitration Ordinance (Cap. 609) (the "Ordinance") was made against an arbitral award. The court considered whether the arbitral award was "obviously wrong", or the question was one of general importance and

the arbitral award was "at least open to serious doubt". Then, there was an application under s.81 of the Ordinance to set aside an arbitral award in *Dana Shipping and Trading SA v Sino Channel Asia Limited [2016] HKEC 599*. The court ruled on an application for payment to be made of the arbitral award amount, as security, pursuant to s.89(5) of the Ordinance pending the outcome of the party also applied to set aside the proceedings in London. Finally, a defence of crown immunity was raised in *TNB Fuel Services Sdn Bhd v China National Coal Group*



(from left to right) Mr Albert Yeu presenting souvenir to Mr Hinson Cheung



(from left to right) Mr Albert Yeu presenting souvenir to Mr Alvin Ho

*Corporation [2017] HKCFI 1016*, where the court analysed the applicability of the common law "control test" on the degree of control asserted by the Central People's Government on the respondent. The talk was well attended and concluded with a question and answer session.

*Albert Yeu*

## **“The Hong Kong strength that Beijing does not see” by Mr Jake van der Kamp**

16 August 2018, Hong Kong

The 13th Annual Winnie Whittaker Memorial Lecture on “The Hong Kong strength that Beijing does not see” was held at The Hong Kong Club. The speaker was Mr Jake van der Kamp, until recently, a regular columnist in the South China Morning Post on financial and economic affairs. Mr van der Kamp started the lecture by recalling his personal friendship with and memory of Winnie, including his recollections of Winnie as the head of the barren rock quiz team. He recalled a particular evening where she helped the team equal the points of the Mensa team, by identifying one (out of 15 players) of the then England rugby team (one Jonnie Wilkinson), and then finally lead the team to victory, by correctly identifying half of the full name of the architect of the millennium bridge.

Mr van der Kamp went on to share his thoughts on recent developments to the Hong Kong exchange rules, and drawing comparisons with the Shanghai composite index. Mr van der Kamp touched on and questioned the restriction of

“professional investors”; that new boards be created for “new economy” industries (whatever they might be), which could include pre-profit companies (companies not having an established profitability record for the past 3 years); changes to market capitalisation; light touch regulation and allowing weighted voting rights. Mr van der Kamp questioned what criteria were left? In his opinion, the Hong Kong exchange’s developments were a short term view. Mr van der Kamp went on to question the regulator’s approach to regulation and protection of the market! Mr van der Kamp concluded his talk by suggesting there may be a lot of disputes in the future and what better way to resolve them than through ADR, including arbitration, and the members should be ready to rise to the occasion...

The lecture was well attended by approximately 40 members.



Nicholas Turner

## **“A look at the dispute resolution landscape for the Belt and Road initiative and broader issues relating to Investor State Dispute Settlements” by Professor David Holloway and Professor André Janssen**

28 June 2018, Hong Kong

The Branch had the honour of hearing from both Professor Holloway and Professor Janssen.

Professor Holloway briefly introduced the Belt and Road (OBOR) initiative describing its reach and the impact it will have on world infrastructure development in the coming years. He highlighted the issues which may arise from disputes on these projects and explored in detail the proposed establishment of an International Commercial Court in China to support the OBOR initiative. Professor Holloway considered various issues which may arise from the enforcement of judgments handed down by the Court, the recognition of its legitimacy and credibility on the world stage and practical points such as the language, the underlying law and the judges who will make up the Court. Professor Holloway ended by asking what Hong Kong’s role would be if this were the way OBOR project disputes are to be resolved.

Professor Janssen summarised the decision handed down by the Court of Justice of the European Union (EU) in *Slowakische Republik v. Achmea BV*. The Court held that the arbitration clause in a BIT (here between the Netherlands and Slovakia) violated EU law and was therefore void (because the arbitration clause was adverse and, therefore, “incompatible with EU law”). Professor Janssen then went on to consider the consequences of this decision on the following scenarios BIT between EU member states, BIT between EU member states and third party countries, BIT between the EU (itself) and third party countries and finally arbitration clauses between commercial entities. The position is still unclear, however, it is possible that in all but the last scenario there may be issues in resolving dispute between the EU and its member states, by way of the arbitration.

Overall, the event was well-received and attended by approximately 20 members.

Nicholas Turner

## **“CIArb Asia Pacific Diploma in International Commercial Arbitration 2018”**

28 July 2018 – 5 August 2018, Perth

This pre-eminent flagship course of CIArb was first launched in 1995 by the Chartered Institute of Arbitrators in London and is being held annually in the UK and from time to time outside the UK by the various branches overseas. In about 2016, the three branches, i.e. Australia, East Asia and Singapore, collaborated and conducted the Diploma course with Asia Pacific focus in particular by rotation. It started in Singapore in 2016, then in Hong Kong in 2017 and recently in Perth, Australia in 2018. This time, it attracted over 20 candidates coming from many jurisdictions including Australia, China, Indonesia, Philipines and others.

The course directors were Ms Caroline Kenny QC and Ms Mary Thomson, the respective chair of the Australia and East Asia Branch. They were assisted by the regional manager Mr Chalee Nai Kin who did all the organizing works. The course was delivered by many renowned faculty members from the three branches including in particular Ms Mary Thomson, Mr Paul Barrett, Mr Glenn Haley, Dr Christopher To and Mr Richard Leung from the East Asia Branch.

The 9 day course was intensive and rigorous as it covered all aspects of the arbitration process, whether ad hoc or institutional, from the legal framework and drafting of the arbitration agreement, onwards then through constituting the tribunal and conducting the proceedings, to delivering the award and consequent proceedings about setting aside and enforcement.

In between, candidates were invited to attend a Welcome Reception, a mid-week dinner and a Gala Dinner held at The Western Australian Club at the end. As the host for conducting this Diploma course, the Australia Branch was honoured to have Mr Christian Porter, AG of Western Australia, as the Guest of Honour at the Gala Dinner who gave an interesting and informative talk about the relationship between arbitration and Magna Carter besides expressing his warm welcome to all candidates.

The collaboration is a great success and the Branches are discussing for possible continued cooperation in the near future.

Richard Leung



# Promotional Talk at Hong Kong SAR Development Bureau Project Capability Building Seminar – Construction Adjudication and Construction Professionals in Contract Administration and Dispute Resolution

27 August 2018, Hong Kong

On 27 August 2018, Mr John Cock, committee member of the Chartered Institute of Arbitrators (East Asia Branch) (CI Arb(EAB)) and the past CI Arb(EAB) Chairperson for year 2007 to 2009, together with Mr Albert Yeu, Chairperson of the CI Arb(EAB) Young Members Group (YMG), delivered a talk on construction adjudication and construction professionals in contract administration and dispute resolution to the Government. The presentation formed part of the HKSAR Development Bureau's "Project Capability Building Seminar". The talk was well received with an audience of around 300 government officers and policy makers. The reach of this talk was extensive with officers of professional grades or above from the Development Bureau and 11 government departments including Civil Engineering and Development Department, Highways Department, Transport Department, Drainage Services Department, Water Supplies Department, Environmental Protection Department, Planning Department, Architectural Services Department, Housing Authority, Lands Department, Electrical and Mechanical Services Department.

Albert gave an informative introduction to CI Arb and YMG on its objectives, values and different types of membership grades. With a recent court of appeal case in another jurisdiction, he further talked about the use of construction adjudication and analyzed the strength, weakness, opportunities and threats of the proposed Security of Payment Legislation in Hong Kong. This was followed by John who delivered an entertaining talk on the different roles a construction professional could play in not only contract administration but also various practical aspects of dispute resolution. He further discussed the tensions between different roles played by construction professionals and how to balance them.

Questions from the enthusiastic audience ranged from the arbitrability of land planning issues, major differences between mediation, adjudication and arbitration, foreseeable challenges of the Security of Payment Legislation in Hong Kong and advice to construction professional wishing to practise as arbitrators.

As John commented after the talk, "This was a valuable opportunity for the Institute to make an impact on the construction industry where alternative dispute resolution practice is widespread. It was valuable in that we were able to share with so many professionals the importance of efficient and effective dispute resolution rather than the time-consuming and expensive route of litigation. We were also directly able to deliver our views to the ears of policy makers in the Government. This was an important event for the Institute and the Branch, and very enjoyable."

Albert also expressed his gratitude to the opportunity of speaking in front of a considerable size of audience from the Government, "As the Chairperson of the Young Members Group, I feel very glad that we have grasped this opportunity to deliver a talk to the Government. This is the first time YMG has done so in front of such a sizeable audience from the Government with such a diverse background. It is also a good opportunity to promote CI Arb and what we can do for our members. We surely will look for further opportunities to collaborate with the Government."

This talk was initiated by YMG and fully supported by the CI Arb(EAB). Positive feedback was received after the talk and some audience members approached Albert to understand more about the routes to different grades of membership of CI Arb.

*Gordon Kwok, John Cock, Albert Yeu*



(From left and right): Mr John Cock, Mr Albert Yeu and Mr Gordon Kwok



## "Corporate Choices in International Arbitration"

24 July 2018, Yangon

The EAB Branch held a half day seminar on "Corporate Choices in International Arbitration" on 24 July 2018 in Yangon with speakers Mary Thomson, Chair of EAB, Robert Pe of Arbitration Chambers and Denis Brock, Chair of International Disputes and Arbitration Practice and managing partner of at O'Melveny & Myers. The event was supported by the HKIAC, the Independent Lawyers' Association of Myanmar and the Myanmar Institute of Directors and was well received with over 50 attendees. Much thanks goes to Robert Pe who ensured the publicity of the event to the targeted sectors.

*Mary Thomson*

## 2018 East Asia Branch Events Programme

### 7 September 2018

Taiwan Chapter – the Taiwan Chapter together with CAA is organising a joint event to

- (i) launch YMG Taiwan,
- (ii) promote ARF course (later in September) and
- (iii) provide refresher/beginner seminar

### 15 September 2018

YMG – Mooncake delivery and elderly people visits

## YMG – Joint Institutes Candle Making Workshop

11 August 2018, Hong Kong

The young members group of CIArb, HKIE, HKIS, CIBSE and ICE had jointly organized a non-technical event – Candle Making Workshop on 11 August 2018. A total of 15 young professionals joined this fun and creative event. Together they explored the science and art behind candle making; and brought home their hand-crafted candle.

Annie Po



### 20 September 2018

Sport arbitration seminar by Paul Hayes QC

### 22 September 2018

YMG – Site visit to TM-CLKL

### 23 & 24 September 2018

Taiwan Chapter – Accelerated Route to Fellowship course, Mr Anthony Houghton

### 18 & 22 October 2018

Indonesia Chapter – Award writing short course and exam

### 30 October 2018

President to address EAB members by Mr James Bridgeman

### 29 November 2018

Arbitration of financial disputes by Dr William Wong

### 30 November 2018

YMG – Conference in Dublin

### November and December 2018

YMG – University promotion

### November/December 2018

Indonesia Chapter – Entry Course (ACIArb)

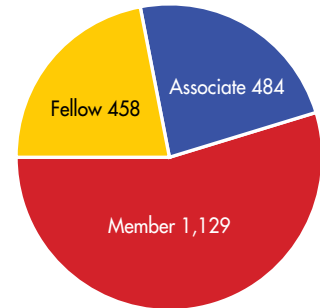
### November/December 2018

YMG – Site Visit to CEDD Kai Tak Development

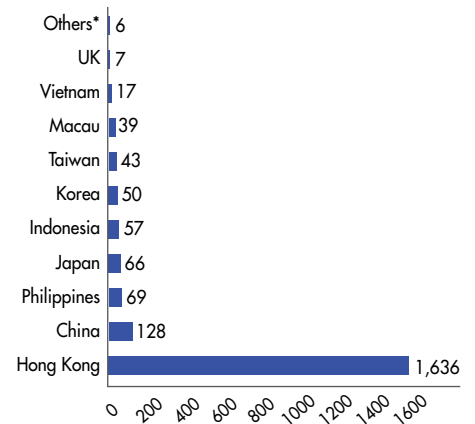
## Current Branch Membership

### Distribution by Membership Grade

(exclude Retired Members)



### Distribution by Region



\*Includes Cambodia, Canada, Malaysia, New Zealand, Singapore and Thailand.  
The above statistics are current as of August 2018

## 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 2018

**Mary Thomson** – Chairperson; Regional – non-PRC and Institute Communications, **David Fong** – Vice Chairpersons; Public Relations Officer, **Nicholas Turner** – Vice Chairpersons; Programme, **Donovan Ferguson** – Honorary Secretary, **Paul Barrett** – Honorary Treasurer, **Richard Leung** – Immediate Past Chair, **Helen Au** – University Promotion, **Louise Barrington** – Vis Moot, **Calvin Cheuk** – Newsletter, **John Cock** – Website, **Mingchao Fan** – Regional – PRC, **Glenn Haley** – Professional Development and Training, **Giovanna Kwong** – Diversity, **Lawrence Lee** – Mediation, **Gina Leung** – observer, **Vincent Li**, **David Luk** – observer; YMG, **Joseph Leung** (co-op) – Adjudication, **Saniza Othman** (co-op), **Christopher To** – Asian DR Editorial and Faculty List, **Cordia Yu** – Membership; **Edward Chow** – Incorporation / New Branch Rules

### Contact Details

c/o the Hong Kong International Arbitration Centre, 38/F Two Exchange Square, Central, Hong Kong  
Telephone: (852) 2525 2381  
Website: www.ciarbasia.org  
Fax: (852) 2524 2171  
E-mail: ciarb@hkiac.org