



Welcome to the April edition Newsletter.

As we come to the end of this term for 2019/2020, the Newsletter team has invited the Branch Chairperson, Mr Nicholas Turner, to share the developments of the Branch over the past 12 months in a special "Chair Report".

The past few months have been a challenging time for all of us. The Coronavirus outbreak affects the businesses and the daily lives of people in most countries around the globe. In this edition, Dr. Christopher To (past EAB Chairperson 2014/2015) reviews the development and challenges of using online technology during the Coronavirus lockdown.

In these extraordinary times, we have temporarily removed the programme section on the back page of this Newsletter. Readers are encouraged to visit the Branch website for the latest programme arrangements.

We wish every member and their families safe and well.

*Gina Leung*

## Chair Report 2019/2020

### April 2020

As my term as the Branch Chair comes to a close, I have been asked to give a short report on how the Branch has developed this year and to convey some brief thoughts on what the future may hold.

It goes without saying that throughout the region covered by the Branch we have had a tumultuous end to the Branch year (beginning of 2020). Hong Kong has also had to contend with disturbance and disruption through much of 2019. However, such difficulties have not prevented the Branch from progressing its aims, initiatives and goals in providing education and growing its membership. Reflecting on what we have achieved this year, it gives me heart that our training (under the CI Arb's programmes) has provided us with the necessary skills to deal with and overcome such adversity.

Our numbers have swelled by 134 in the past year. We have organised and run 13 training courses, eight evening events and supported nine externally organised ADR events. An important, and growing, part of the Branch is the YMG and diversity and inclusion sub-committee, and we should look forward to the further development of these activities.

We have actively supported the Vis East Moot, from its formation over 17 years ago. Although the Moot was postponed this year, a Virtual Moot was held during the same period and attracted about 70 teams. We were pleased to support the Virtual Moot and look forward to supporting the Moot, when it is held later in the year.

Our finances remain healthy with a surplus of almost HK\$5million, at the end of 2019. As you would expect, we have prudently managed our reserves, despite not receiving the usual subvention from Head Office in 2019. As in previous years a significant amount of revenue has been received from running our courses, which contributed nearly HK\$600,000 in 2019.

Looking to the future, we will be rolling out the New



Pathways for training courses and assessments, which have been developed by the Head Office. These will strengthen the Institute's position as an international centre of excellence for the practice and profession of ADR.

Many of you will have experienced remote working, over the past month or so, and in doing so you will have had to connect with colleagues and clients in ways you may not have had to do previously. As a result you will have likely experienced the benefits (and challenges) of telephone and video conference calls, virtual meetings, webinars and the like. Whether we like it or not, this is the way of future business and dispute resolution activity. The Vis East Moot has demonstrated that online platforms can be used to resolve disputes. The Department of Justice ("DoJ") has an initiative, eBRAM, to develop online dispute resolution.

The DoJ has many other initiatives to promote and develop Hong Kong as a centre of dispute resolution in the region. One such initiative is the redevelopment of the West Wing government building as a legal hub. The Branch has been allocated space and we are in the process of considering how we might use that space. This is an exciting new stage for the Branch and how we will be able to better service our members.

In closing, I would like to take this opportunity to thank all committee members, subcommittee members, Chapter convenors, co-opted members, observers, guest speakers and all Branch members for their support and active participation in the past year. It has been an honour and a privilege to serve you.

*Nicholas Turner, Branch Chair*

# Every Cloud has a Silver Lining – the impact of Coronavirus on Online Dispute Resolution

25 March 2020, Hong Kong



International dispute resolution often involves a substantial amount of international travel for the stakeholders' involved.

The cost of assembling all participants in one place for the hearing is time consuming and expensive. Although Online Dispute Resolution (ODR) has been gaining wider acceptance over the years in the e-commerce context, nevertheless such disputes are confined to relatively small value disputes, even though technology has advanced since the internet was developed over fifty years ago, traditional forms of conducting hearings have remain.

With the Coronavirus lockdown now in place people who were reluctant to work remotely have now to do so in order to ensure that services remain at optimal levels, whilst observing practical distancing and isolation measures which have been recommended by Governments around the world.

This has been particularly challenging to the Alternative Dispute Resolution (ADR)

community, given that in person hearings were the norm, especially when one party to the dispute prefers to have the in person hearing then a neutral will have no choice but to have the in-person hearing. In some occasions some neutrals may conduct such hearings through video/telephone conferences, but majority of such hearings are conducted in person. Article 24(1) of the UNCITRAL Model Law also reinforces this by stating that "...unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party".

Having in-person hearings have been viewed by the majority as the backbone of due process. Some ADR organisations have suggested postponement or cancelation of hearings whereas others are suggesting the use of video and teleconferencing facilities or some form of virtual hearing solutions to e-Hearings. Some mediators have adapted to using "Zoom" or "Skype" or "Microsoft Teams" as a means to continue with their services. A High Court Judge in Hong Kong recently conducted an unprecedented

hearing with parties involved in a civil case through telephone conferencing, after the in person trial was postponed.

The impact of the Coronavirus without doubt has a positive effective on one's perception on the use of technology to conduct hearings, nevertheless the issues of confidentiality, security, examination of witnesses, their demeanour and body language remain obstacles which may need further convincing. Technology solution providers now have the opportunity to refine their systems to address these impediments thus turning the tide around in favour of ODR for all form of disputes. ADR practitioners and providers may also need to adapt to new working practices which may impact on their business model they have been so accustomed to over the years. As the saying goes "strike when the iron is hot" can only mean that adaption of ODR could be a reality and a common practice within the global ADR community to facilitate the fair and speedy resolution of disputes without incurring unnecessary expense.

Dr. Christopher To

## New Development of Online Dispute Resolution in Asia and the Concept of eBRAM by Mr Daniel Lam

7 January 2020, Hong Kong

The Branch had the honour of hearing from Mr Daniel Lam on the development of an online dispute platform by eBRAM, at The Hong Kong Club.

Daniel started his presentation with many facts and figures about the online connectivity in China and Hong Kong, where there are in excess of 800 million netizens and most of whom carry out e-commerce and online payment. This online commerce has lead to online courts, of which there are now three in Hangzhou, Beijing & Guangzhou. These courts originated as part of Alibaba's online dispute resolution process, but are now run by the Judiciary. The technologies used by the Courts are 'state of the art', using facial recognition and collecting Big Data. In the short time it has been operating, the Hangzhou Court has heard 15,000 cases.

eBRAM (e Business Related Arbitration and Mediation) has been formed in line with the Hong Kong Government's policy address in 2018 which seeks to develop Hong Kong as a centre of dispute resolution in the region. eBRAM will offer mediation, arbitration and deal making facilities to SME's and other organisations throughout the APEC region, and beyond. It will rely on Hong Kong's arbitration friendly laws and Courts, world recognised free economy and Court system, and mutual recognition of arbitral awards and judgements with the Mainland.

It is proposed that the approach to dispute resolution will be as flexible and formal as parties wish, with multiple options for rules. Access to the services will be easy, with internet connection and laptop facilities being all that is needed. Information and data submitted to eBRAM will be held on



From left to right: Mr Nicholas Turner (Branch Chairperson) and Mr Daniel Lam

servers in Hong Kong and block chain used to overcome security issues. Language services will initially include English and Chinese but other language functionality is envisaged. eBRAM is still in the development stage, but a launch is anticipated later in 2020 when funding is expected to be approved.

Daniel's speech was well-received and there were many questions. The event was attended by approximately 40 members.

Nicholas Turner

## 17th Vis East Moot

22nd to 29th March 2020, Hong Kong



**From left to right: Mr Ronald Sum, Ms Alix Povey, Ms Louise Barrington, Ms Maricel Somerville, Ms Sherlin Tung and Mr Lawrence Tam**

The 17th Vis East Moot was held from March 22nd to 29th 2020. What was unique this year was for the first time in its history the competition took place 'virtually' and in people's homes around the world.

A few months ago, this would have been unimaginable but the ongoing global pandemic has been a major disruptor. The organising committee of the Moot under the leadership of Ms Louise Barrington and Ms Alix Povey did not want to disappoint university students who had been preparing hard since the fall of 2019; and the

idea of the virtual moot was conceived to allow students to compete in spite of the pandemic.

The opening ceremony was live streamed from the Hong Kong International Arbitration Centre on Sunday March 22nd. And for the next six days, 71 teams represented by universities from 25 countries presented oral arguments for the general and elimination rounds before arbitrators in a three-member tribunal. The students together with more than 200 arbitrators worked tirelessly around the clock in multiple time zones. The final arguments were live streamed on Sunday at 7pm Hong Kong time before a panel of women arbitrators. Working through 8 rounds of arguments from general rounds to finals, and competing every day for a whole week, the winner of the 17th Vis East Moot was finally awarded to The Chinese University of Hong Kong.

Each year, the Vis Moot problem is centred on a contractual dispute relating to the sale and purchase of goods under the United Nations

Convention on Contracts for the International Sale of Goods. And this year was no different. The moot problem involved the validity and enforceability of an asymmetrical arbitration clause; and whether the arbitral tribunal has the power to exclude an expert witness to avoid potential conflicts of interest with a party appointed arbitrator which could subsequently lead to an improper arbitrator challenge.

As Sarah Grimmer, Secretary-General of the Hong Kong International Arbitration Centre, said in her opening speech, "*what we are about to experience this week is a little bit of a glimpse into what the future holds.*" Arbitration and dispute resolution practices are increasingly moving online. The future lies in technology, and the 17th Vis East Moot has just demonstrated that it is possible to host a high caliber moot competition all in the comfort of your own home! So congratulations to all the participants in making history as we set a new path for the future.

*Saniza Othman*

## CIArb Introduction to Arbitration Course

7 March 2020, Taipei

Undeterred by the coronavirus outbreak, the CIArb course on "Introduction to International Arbitration" took place in Taipei as scheduled on 7 March 2020, it was well attended by more than 40 enthusiastic candidates. The course was part of a cooperative program with National Chengchi University (NCCU) and was held on the NCCU campus. The majority of the candidates were NCCU students who are eager to become advocates for international arbitration.

Despite the travel restrictions, Mary Thomson (Immediate Past Chairperson for EAB) gave her full support to the Taiwan Chapter by giving lectures to the candidates via teleconference from Hong Kong. She was joined by faculty members, Ms Helena Chen (FCIArb), and Ms Alison Chang (FCIArb) at the venue.

The course was conducted with strict precautionary measures that required all faculty members and candidates at the venue to wear facial masks throughout the course.



Thanks to Professor Anna Yan of NCCU (MCIArb), Monica Wang (FCIArb), Felice Lu (MCIArb), and Almeric Chang (MCIArb) for making this CIArb first-ever "masked" course possible, and an unforgettable one.

*Monica Wang*

## Brewery Tour & Beer Tasting Workshop

21 December 2019, Hong Kong

The "Brewery Tour & Beer Tasting Workshop" was successfully held on 21 December 2019 (Saturday). The event was jointly organised by CIArb-YMG, CIBSE-YEN, HKIS-YSI, ICE-G&S and HKIE-YMC.

A group of 37 participants attended this special tour. It began with the introduction of the brewing process including malting, milling, mashing,

lauding, boiling, fermenting, conditioning, filtering and packaging. During the tour, the participants explored the machinery, the system and enjoyed the taste of the drink-from-tank beer. At the end of the tour, the participants attended the beer tasting workshop for four different types of beers. Further explanation was given on the beer production process including the measures applied to control quality, types and favor of beer.



It was a fabulous unforgettable experience for the participants to be guided through the brewing process at the brewery and also, the enjoyment of different favours of beer!

*Sr Jessica Chan*



## Time, Privacy and Cost considerations in Maritime Arbitration

25th September 2019, Hong Kong

The Baltic Exchange – Institute of Chartered Shipbrokers lunch time lecture, supported by the CIARB and Hong Kong Shipowners Association was held on the 25th September 2019 at the Hill Dickinson Office.

The talk was conducted by Mr Jagmeet Makkar, and attended by more than 20 participants including renowned arbitrators in Hong Kong. The lecture looked at (1) the comparison of initial objectives of arbitration as an ADR and findings of surveys in last few years, (2) role of institutions, legal support and parties to expedite the arbitration procedure and reducing costs, (3) role of arbitrators to manage the process efficiently and, (4) recognition and enforceability of awards, followed by Questions & Answers.

Position of Hong Kong courts was also discussed. The Hong Kong Government's policy has been to encourage arbitration as an alternative dispute resolution method and the Arbitration Ordinance states that its purpose is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense. Jagmeet looked at the development of the arbitration acts in the US and UK leading to where we are today. He started with the Locke Act and took the participants through 1854, 1889, 1950, 1979 acts and finally the 1996 act. One of the key



issues which was debated at length with good interaction with the audience was "have the objectives of the arbitration, as an alternate dispute resolution method met with regards to reduced time, less cost, party autonomy and privacy"? Some of the established arbitrators who attended the talk mentioned that over a period of time we have gone in the way of litigation in terms of high cost and time taken. For example (a) parties' own costs of preparing and submitting their cases, (b) fees and expenses of any arbitral institution in connection with the administration of an arbitration, (c) arbitrator's fees and, finally (d) disbursements are significant. First two of these being the major costs.

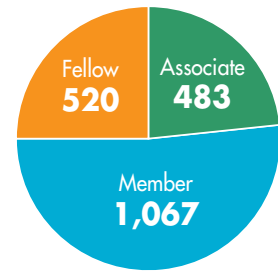
Findings of the 2018 Survey by the School of International Arbitration, Queen Mary, University of London was also discussed.

*Jagmeet Makkar*

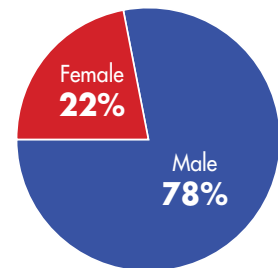
## Current Branch Membership

### Distribution by Membership Grade

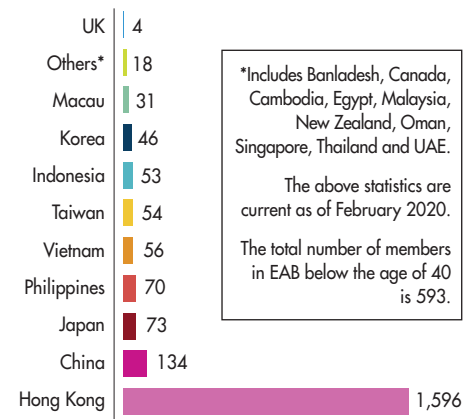
(excluding the Retired Members and students)



### 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 2020

**Nicholas Turner** – Chairperson / Communications with CIARB bodies & HO, **David Fong** – Vice Chairperson / Communications with outside bodies / Public Relations Officer, **Donovan Ferguson** – Honorary Secretary, **John Cock** – Honorary Treasurer, **Mary Thomson** – Immediate Past Chairperson / Vis East Moot, **Christopher To** – Professional Development & Training, ADR Editorial / Faculty List, **Albert Yeu and David Luk** – Programme, **Lawrence Lee** – Mediation, **Joseph Leung (observer)** – Adjudication, **Cordia Yu** – Membership, **Gina Leung (observer)** – Newsletter, **Mingchao Fan** – Regional – PRC, **Glenn Haley** – Regional – Taiwan, Korea, Japan, Indonesia and others, **Micky Yip** – Website, **Vincent Li** – LinkedIn Portal, **Mac Chan** – YMG, **Helen Au** – University Promotion / Mentoring, **Giovanna Kwong (co-optee)** – Diversity

### 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