



Chair Report 2020/2021

April 2021

As my second and final term as the Branch Chair comes to an end, I wanted 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.

We certainly did not expect the year we have just had - it has been a tumultuous both personally and for the Branch! Our personal experiences will no doubt have differed, but we have all suffered together. Our skills, experience, training and resilience have ensured we have weathered this "storm". We have developed and learnt to connect in new ways to ensure the Branch has been able to progress its aims, initiatives and goals in providing education and growing its membership. Reflecting on what we have achieved this year, it is incredibly satisfying to see how we have overcome such adversity.

Our numbers have swelled by around 150 members in the past year. We have organised and run seven training courses (involving over 150 participants), seven evening events and co-organised/supported nine externally organised ADR events. An important and growing part of the Branch is the YMG and diversity and inclusion sub-committee, the YMG continues to grow with new groups being formed in Japan and Indonesia.

We have actively supported the Vis East Moot, from its formation over 18 years ago. Again, the Vis East has developed, embracing the virtual world to organise one, if not the, largest gathering it has ever achieved, attracting 147 teams. We were pleased to support the Virtual Moot and look forward to supporting what hopefully will be a face to face Moot, next year.

Our finances remain healthy with a surplus of almost HK\$4.5million, at the end of 2020. As you would expect, we have prudently managed our reserves, despite not receiving the usual subvention from Head Office in 2020 or being able to run the usual number of training events. As such, a substantially lower amount of revenue



than budgeted has been received from running courses, although revenue in 2020 was still HK\$0.83 million.

Looking to the future, now we have mastered the virtual world we plan substantially more events running the New Pathway courses and assessments in 2021. Some of these will be run jointly with other APAC Branches. This will strengthen the Institute's position as an international centre of excellence for the practice and profession of ADR and create connectivity throughout the Branches.

Many of you may still be working remotely, missing the face to face connection with colleagues and clients. While we know virtual events can be successful, the YMG (Philippines group) organised a virtual conference which attracted over 650 delegates, we know you have missed the face to face events. Events such as the evening seminars, Annual Dinner, AGM and others. We are exploring ways we can organise these events in a safe way.

There have been some exciting new developments in 2020 which will see the Institute and the Branch go from strength to strength. The Institute welcomed a new Director General, Catherine Dixon, who despite not being able to meet the team face to face for the first six months is now fully integrated and undertaking a head to toe review of the Institutes operations. Closer to home, the Branch aims to take advantage of the space allocated in West Wing in 2021. This will be 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

Welcome to the Newsletter!

This edition commences with a special Chair Report by Nicholas Turner, the Branch Chairperson.

Despite the Covid-19 restrictions, the Branch has successfully delivered a number of seminars via Zoom in the first quarter of 2021. These seminars were attended by a high number of members in the region.

This edition also features the new Vietnam Chapter.

I hope you will find this issue of Newsletter a good overview of the events happened in the last quarter.

Happy reading!

Gina Leung

ADR Survey

The Hong Kong International Arbitration Centre has recently launched its first survey on the Asian Dispute Review journal ("ADR").

Readers of ADR are encouraged to provide their feedback on the ADR by participating in the survey via this link (<https://surveyhero.com/c/50cb214d>) or the QR code below.

Your opinion counts.



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

Welcome to the CIArb – The Vietnam Chapter

April 2021, Vietnam

The Vietnam ADR community heads into new frontiers with the formation of its CIArb Vietnam Chapter. On 5 February 2021, the Vietnam Chapter held its first meeting to elect the Chapter Committee with the presence of the Branch and representative of Board of Trustees of CIArb.

The Branch is hereby pleased to announce the constitution and inauguration of the CIArb Vietnam Chapter Committee as follows:

Trinh Nguyen FCIArb, LLM, (Chairperson), **Nguyen Thuy Duong** MCIArb, LLM, (Co Secretary General), **Minh Nguyen** ACIArb LLM (Co Secretary General), **David Lockwood** MCIArb FRICS (Committee Member), **Mark Olive** MCIArb FRICS (Committee Member) and **Thai Hong Nam** ACIArb, PMP, MSc (Treasurer)

In the first message from the new Vietnam Chapter, Ms Trinh Nguyen (Chairperson) says *"We have no better way to realise our goals than seeking the collaboration and support from our members, arbitration institutions and local academies and universities with the shared goal."*

With the diverse background, the Vietnam Chapter Committee is committed to acting as a bridge to bring the updated knowledge and the power of network to CIArb current and potential members in each targeted profession including legal practitioners, claim experts and ADR users. *"It is our goals and commitments to continue*

raising awareness of good practice of ADR and to build ADR Vietnam community with a solid foundation, rooted in the CIArb accreditation and network. We would have no better way to realize such goals than seeking the collaboration and support from our members, arbitration institutions and local academies and universities with the shared goals", said Ms Trinh Nguyen, the Chairperson of the Vietnam Chapter.

On 18 March 2021, the CIArb Vietnam Chapter conducted its Kick-off event: "Pathways to CIARB – Passports to The ADR World" and this event was attended by over 70 persons within and outside Vietnam.

The activity of the Vietnam chapter has continued with the online training course "Essential Knowledge and Skills for arbitration users & counsels- Part I- Arbitration Planning", which was conducted jointly with The Vietnam Academy for Arbitration (VAAR) on 25, 26 and 30 March 2021. This course was delivered by the esteemed faculty members most of whom are renowned fellows of CIArb including, Marion Smith QC, Deputy Chairperson of CIArb Board of Trustees, Amanda Lees FCIArb, Director of CIArb Singapore, Rob Palmer FCIArb, Dr Hop Dang FCIArb. Our Vietnam Chapter Chairperson Ms Trinh Nguyen FCIArb acted as a course coordinator and faculty member of this course. Part II of the course on Arbitration Proceedings - Strategies Building and Comparison of Rules will be soon advised with the participation of the past chairwoman of CIArb East Asia alongside with renowned international and Vietnamese practitioners.

Future courses and seminars are now being developed for 2021 by the Vietnam chapter with the view to structuring and maintaining a network which engages with businesses, institutions, professional bodies and universities. The economic future of Vietnam shines bright and professional, transparent and structured ADR forums are an essential cornerstone for Vietnam's position within the economic global community.

All member of the Vietnam Chapter of CIArb are proud exponents of this new venture and we go forward with optimism and professionalism.

"Case Analysis of Various Types of Legal Disputes" seminar

17 March 2021, Taiwan

The Taiwan Chapter was honored to co-host a conference with the Taipei Dispute Resolution Study Society (TDRSS), Soochow University School of Law, the Taiwan Quality Improvement for Pharmaceutical Affairs Association, the Taiwan Health Association, the Taipei Medical Association, the Chen Chung-Chwen Memorial Doctor-Patient Relationship Promotion Educational Public Welfare Trust Fund, the Chinese Arbitration Association, Taipei, and iADR® on the topic of "Case Analysis of Various Types of Legal Disputes - Prospects and Trends of ADR from the Perspective of New Laws and Practices" on 17 March 2021 at Soochow University in Taipei.

The first keynote speaker, Dr. Helena Chen (Convenor of the Taiwan Chapter), gave an introduction to the ICC's 2021 Arbitration Rules. She highlighted several key changes in the new rules, including the measures to increase the efficiency and transparency of complex arbitration proceedings.

The second keynote speaker, Dr. Shih-Ying Lee, Secretary General of the TDRSS, presented an analysis of a real life case of medical dispute involving investigation by a district attorney office and its intersection with civil and criminal proceedings and mediation.

The other speakers shared their experiences in resolving disputes arising from local communities, domestic matters and medical treatments.

The Conference was attended by various professionals, mostly with a legal or medical background. It was provided free of charge to all members of the co-organizers (including the CIArb).

The conference was delivered successfully and received much applause from all participants.

Monia Wang



CIArb
evolving to resolve
East Asia Branch

The Chartered Institute of Arbitrators (East Asia Branch) Young Members Group
Presents:
Young Arbitrators Interview Series!

Monthly interviews with young ADR professional across Asia, on topics such as how to develop a practice in ADR, tips and tricks, recent developments in the field of ADR and more!

FOR MORE INFORMATION, PLEASE

The interviews will be uploaded on our website and our social media accounts monthly starting from mid-January 2021.

CLICK HERE

Trinh Nguyen & Mark Olive

“Halliburton v Chubb: What It Means For Arbitrator Bias – Around The World and In Asia” Webinar by Michael Crane QC, Jonathan Webb, Rimsky Yuen SC

28 January 2021, Hong Kong

The Branch held a webinar jointly with the Society of Construction Law Hong Kong, on a recent leading English law case (“Halliburton v Chubb”). The webinar was delivered by Michael Crane QC, Mr Jonathan Webb and Rimsky Yuen SC.

The Halliburton case attracts significant attention to the arbitral institutions such as LCIA, ICC, CIARB, LMAA and GATA. The Court emphasised the importance of the arbitrator’s duty of disclosing multiple appointments in order to minimise the perception of apparent bias. The Halliburton case provides guidance in the context of arbitrator’s impartiality to the wider arbitration community.

Michael Crane QC began the webinar with an introduction of the arbitration between Halliburton and Chubb and their respective roles in the Deepwater Horizon project. In short, Mr Rokison, the arbitrator appointed by the English Court, was acting as an arbitrator in two arbitrations involving Chubb. Mr Rokison has disclosed these two appointments to the parties. Later, Mr Rokison accepted two further appointments relating to the Deepwater Horizon project. Mr Rokison did not disclose to the parties about his further appointments, but Halliburton became aware of these appointments.

Halliburton made an application to the English Court to remove Mr Rokison under Section 24 of the Arbitration Act. However, the application was unsuccessful and Halliburton appealed to the Supreme Court. Halliburton contended there was apparent bias on the part of Mr Rokison, and that his failure to disclose his further appointments did not act in fairness to the arbitration procedures.

The Supreme Court held there was no allegation that the arbitrator was biased, but confirmed an arbitrator is under a duty to disclose facts and circumstances that may give rise to the appearance of bias. The arbitration institutions including the LCIA, ICC and CIARB suggested the approach of placing a legal duty of disclosure. The Supreme Court emphasised the requirement of increasing transparency in arbitration should be in alignment with the IBA Guidelines.

Mr Jonathan Webb discussed how the institutional rules in ICC and LCIA arbitrations, differ from the practices of LMAA and GATA.



(Top left) Mr Calvin Cheuk (SCL Chairperson) & Mr David Fong (Branch Vice Chairperson)
(Top right) Rimsky Yuen SC, (Bottom left) Michael Crane QC, (Bottom right) Mr Jonathan Webb

Under the LMAA and GATA rules, the engagement in multiple overlapping arbitrations do not need to be disclosed.

Given the limited pool of specialist arbitrators and the restriction of a tight time period, Mr Webb explained that in the maritime industry, arbitrators were generally appointed quickly to meet the time bars requirement. Therefore, the maritime arbitration generally accepts arbitrators whom may have multiple appointments with overlapping strings, as it is common that disputes often arise from the same incident.

Mr Webb further explained that the IBA guidelines recognise in certain types of arbitrations such as shipping, no disclosure of multiple appointments is required as the customers are usually familiar with the arbitration procedures.

Rimsky Yuen SC explained, unlike the Arbitration Act in the UK where there is no

express statutory provisions for confidentiality, the Arbitration Ordinance in Hong Kong Section 18 includes confidentiality provisions. Mr Yuen went on to discuss how the Halliburton judgement may affect the future drafting of dispute resolution clause. Furthermore, Mr Yuen discussed the extent in which the arbitral institutions may take account of the effects of the Halliburton judgement when they next review the arbitration rules.

Based on the Halliburton judgement, Mr Yuen also pointed out that potential problems relating to arbitrator impartiality may arise in the future. Problems may occur when one of the parties is unhappy with the award, and consequently refer to the Halliburton judgement to challenge the enforcement of the award.

The webinar was well-received and was attended by a large number of members in the region.

Gina Leung

“Is There More To A Contract Than Meets The Eye” webinar by Jagmeet Makkar, Clive Aston, Elizabeth Sloane, Arthur Bowring MH, Punit Oza, Nevil Phillips

8 April 2021, Hong Kong

On 8 April 2021, the Hong Kong Branch of the Institute of Chartered Shipbrokers and the London Maritime Arbitrators Association jointly organised the webinar “Is There More To A Contract Than Meets The Eye”.

The Branch is proud to join the Hong Kong Maritime Arbitration Group and Singapore

Chamber of Maritime Arbitration as the co-organisers of this event.

The panel appeared in this webinar includes Mr Jagmeet Makkar (moderator), Mr Clive Aston (panellist), Ms Elizabeth Sloane (panellist), Mr Arthur Bowring MH (panellist), Mr Punit Oza (panellist) and Mr Nevil Phillips (panellist).

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The webinar considered when and in which ways the terms may be implied into shipping contracts and “The principles of implied terms under English law”.

The panellists addressed the legal aspects of cases implying terms in shipping contracts context which among others, included a discussion on the Union Power and Res Cogitans. The implications of such decisions in a broader sense for various maritime contracts and resulting changes, if any, made to the existing standard forms.

The webinar also sought to answer “Do commercial practitioners need to know and appreciate the obligations flowing from the implied terms?” and thus the parties may consider contracting in or out of such implied terms to the extent that such exclusion can legally be made.

Some of the best legal and commercial minds of the fascinating maritime industry discussed, amongst others, following-

- Is there any significant difference between what we might now call the “modern law” on implied terms and the established test of “necessity”.
- Can we engage with an argument as to an implied term without first engaging with arguments as to contractual construction or interpretation?

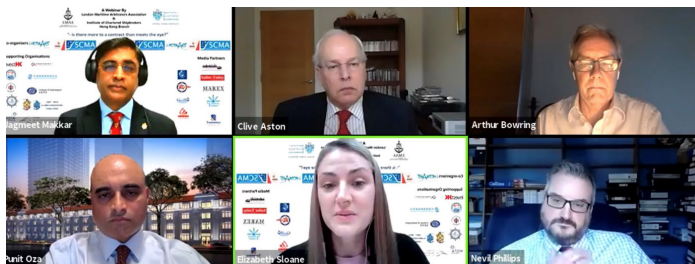
- Is the practical understanding about Implied Terms in commercial/chartering teams and, what are the cost impacts of not having this understanding?
- Considering the practitioners agreeing to shipping contracts without often having the Sale of Goods Act in front of their mind, what can we learn from the Union Power and Res Cogitans litigation, and how critical is that piece of learning?
- What would have prevented the terms of SOGA from being implied into the Union Power case?
- Are the implied terms often pleaded by the parties in practice? And, would you say that arbitrators tend to view implied terms as a plea of desperation?

And many more!

If you missed the webinar, you may like to benefit from the recording of the webinar by clicking on the link below.

https://drive.google.com/file/d/1p3njrMFOk3Z_ccl_vZAzdK91ezFQ0fm9/view

Jagmeet Makkar



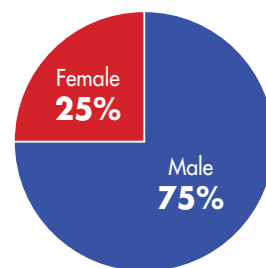
Current Branch Membership

Distribution by Membership Grade

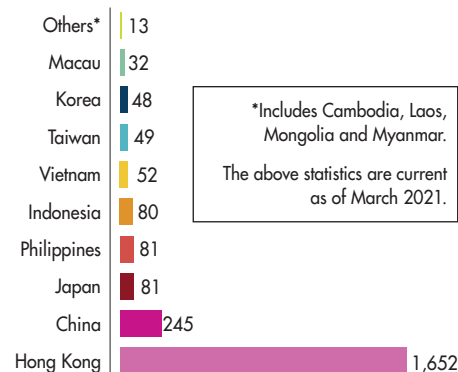
(excluding the Retired Members and students)



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 2021

Chairperson – **Nicholas Turner**, Vice Chairperson – **David Fong**, Branch Secretary – **Helen Au** assisted by **Donovan Ferguson** (co-optee), Branch Treasurer – **John Cock**, Adjudication – **Joseph Leung** (observer), ADR Editorial – **Christopher To**, Communications within CIARB – **Nicholas Turner** assisted by **Scott Ramsden** (observer), Communications with outside bodies/Public Relations Officer – **David Fong**, Diversity – **Giovanna Kwong** (observer), LinkedIn – **Vincent Li**, Mediation – **Lawrence Lee**, Membership – **Cordia Yu** assisted by **Jagmeet Makkar** (observer), Newsletter – **Gina Leung** (observer), Professional Development & Training and Faculty List – **Christopher To** assisted by **Stephen Chu** and **Saniza Othman** (observer), Programme – **Albert Yeu** and **David Luk**, Regional – PRC – **Mingchao Fan** assisted by **Richard Leung**, Regional – Taiwan, Korea, Japan, Indonesia and others – **Glenn Haley** assisted by **Anny Wong** (observer), YMG Chairperson – **Ronald Pang** (co-optee), University Promotion – **Helen Au**, Vis East Moot – **Mary Thomson** assisted by **Jagmeet Makkar** (observer), Website – **Micky Yip**, **Karen Mills** (co-optee), **Chun Wai Ling** (observer)

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