



CI Arb Annual Dinner

16 November 2022, Hong Kong



From left to right: Dr. Geoffrey Ma and Mr David Fong

The Branch is pleased to host the Annual Dinner for the first time in 3 years following suspension due to the pandemic.

The Annual Dinner took place at the Hong Kong Club, attended by approximately 160 CI Arb members.

The Branch was grateful for the Honourable Dr. Geoffrey Ma GBM, Immediate Past Chief Justice of the Hong Kong Court of Final Appeal, as our key note speaker for the night.

This is the first major in person event resumed by the Branch following the recent relaxation of Covid restrictions.

The Branch is delighted to see the CI Arb members in person again after a long time.

Gina Leung

Happy New Year! Welcome to the first edition of the CI Arb Newsletter for 2023.

The Branch has resumed a number of in person events during the last quarter. More interesting events and informative seminars are planned for 2023.

This edition features the last article of our “Fast Dispute Resolution Methods” series on “Expert Determination” by Mr Donovan Ferguson, the Vice Chairperson and Honorary Secretary of CI Arb East Asia Branch.

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

On behalf of the editorial team, we wish you a happy Chinese New Year and a prosperous year in the year of Rabbit.

Gina Leung

CI Arb (EAB) Indonesia YMG Launch Event Day 1 - Karen Mills, Ilman Rakhmat and Simon Barrie Sasmoyo Day 2 - Eri Hertiawan, Ignatius Andy and John Lumbantobing

26 and 27 October 2022, Indonesia

On 26 October 2022, CI Arb (EAB) Indonesia YMG was launched with a panel discussion and networking event in Jakarta. The launch event was attended by current CI Arb members, arbitration and Alternative Dispute Resolution (“ADR”) practitioners and law students. During the event, Mr Simon Barrie Sasmoyo moderated a panel discussion on ‘Salient Issues and Career in International Arbitration’, delivered by Ms Karen Mills and Mr Ilman Rakhmat. The panel discussion touched upon issues considered pertinent to Indonesia and matters of interest for young members pursuing a career in arbitration and ADR.

The following day, on 27 October 2022, the YMG Committee held a workshop on “Cross Examination in Arbitration”. The workshop was moderated by Mr John Lumbantobing and was delivered by two senior



arbitration counsels, Mr Eri Hertiawan and Mr Ignatius Andy. After a plenary session touching on various aspects of cross-examination, the participants were divided into breakout sessions where they discussed CI Arb guidelines on “Party-appointed and Tribunal-appointed Experts” and ‘Witness Conferencing in International Arbitration’.

The Indonesian YMG Committee consists of the following members: Mr John Lumbantobing (as Chair), Mr Simon Barrie Sasmoyo, Mr Suar Sanubari, Rininta Ayunina and Mr Daniel Pakpahan.

The launch event and workshop were wrapped up successfully with the generous support of several sponsors: Assegaf Hamzah & Partners, Ignatius Andy Law Offices, RITZ & Partners and Rosetini & Partners.

John Lumbantobing

Dinner with EAB Committee

8 December 2022, Hong Kong

The EAB Committee members gathered with Mr David Fong, EAB Chairperson for dinner before Christmas.



Clockwise from bottom left: Mr Micky Yip, Mr David Luk, Mr Paul Barrett (EAB Trustee), Mr David Fong (Chairperson EAB), Mr John Cock (Past Chair), Mr Stephen Chu, Mr Nicholas Turner (Immediate Past Chair), Mr Donovan Ferguson, Ms Gina Leung and Mr Albert Yeu

Other Committee members (absent from the photograph) include Mr Christopher To, Mr Richard Leung, Mr Glenn Haley, Mr Mingchao Fan, Ms Karen Mills, Mr Tim Liu, Mr Jeffrey Zhang, Mr Lawrence Lee and Mr Ronald Pang

Fast Dispute Resolution Methods

“Expert Determination” by Donovan Ferguson



This is the fourth and last article of the technical series – “Fast Dispute Resolution Methods”, on the topic of Expert Determination.

Expert determination is a form of binding or non-binding dispute resolution in which an independent expert is asked to decide an issue between the parties. It is often seen as being a flexible, speedy and cost-effective way of determining discrete issues of a technical or legal nature between the parties.

One example where expert determinations are often sought are questions of valuation. For example, where an expert valuation is required for the review of gas pricing under long-term supply agreements if no mutual agreement can be achieved by the parties. Another example is in relation to shareholders’ agreements or joint venture agreements to determine the value of shares if the parties are unable to reach agreement.

The above situations are relatively narrow and defined in the scope of what the expert is being asked to do. It would be uncommon to see an expert being asked to finally determine issues involving complex legal questions and disputed factual evidence. For example, it would be unusual for parties to agree to a final and binding expert determination in respect of a final account dispute in a construction contract, as the process is generally not tailored to deal with issues involving delay, variations, or defects, which are factually and technically intensive and often require consideration of legal and contractual issues in tandem. That is the role of arbitration or the long-awaited statutory adjudication.

A consensual process founded in contract

Importantly, expert determination is a consensual process which is agreed by the parties at the time of contract (but can sometimes be subsequently arranged and agreed on an ad-hoc basis). Expert determination is not governed by statute and the expert’s powers are limited to those which have been expressly agreed by the parties to the contract.

This makes it very important for the parties to clearly consider, define and agree on the details.

What to look out for?

1. The first consideration is whether the determination will be final and binding, without any right of further appeal or challenge in court or in arbitration. If it is final and binding, this should provide certainty and finality in relation to the expert’s decision. We often see various carve-outs drafted in agreements, providing for grounds in which a decision may be challenged (for example, ‘manifest error’, fraud or a material departure from the scope of instructions). As there are no inherent rights under statute or otherwise (in Hong Kong) to challenge an expert’s decision, care should be taken to clearly draft these grounds in the parties’ agreement. If you fail to do this, you will be bound by an unfavourable determination by the expert.
2. If the decision is agreed by the parties as being non-binding, this can be useful in giving the parties a steer on how an arbitrator or expert may decide an issue in dispute in the future. These non-binding determinations can and have often been used as a

reference point in commercial discussions between the parties, ultimately leading to a resolution of the dispute. Of course, a favourable non-binding determination for one party may by the same token lead to the further entrenching of its position, now fortified by a determination which sometimes may not be arrived at with the same level of analysis and reasoning as an arbitrator or judge would have done. Nonetheless, a non-binding determination can be a useful tool in the dispute resolution process where parties can articulate, develop and understand the weaknesses and strengths of their respective cases, and seek a reasoned view from a third party on the same.

3. The procedure for appointment and the conduct of the determination are also key details which need to be ironed out at the start. One way to do this is to incorporate into the clause, rules published by dispute resolution centres (for example, the Centre for Effective Dispute Resolution (CEDR), or The Academy of Experts), which can be chosen to act as the appointment authority to avoid any deadlock in the process of choosing an expert.
4. It is also important to clearly define what it is that the parties want the expert to determine, and also whether reasons will be required to be provided. Ambiguous drafting can make any expert decision susceptible to challenge (on the grounds that the decision was outside the scope of the parties’ agreement on what the expert was tasked with). For example, if an expert is required to determine a technical question of valuation but in the process of this must interpret various clauses of the contract, it may be useful to include provisions that any decisions made by the expert in construing the contract to arrive at the determination are also final and binding. However, considerations in relation to defining the scope of the determination are often very fact-specific: the losing party will not want to be saddled with an incorrect final and binding interpretation of the contract even if the determination is issued quickly and for less costs than an arbitral award.
5. Enforcement can sometimes be challenging as an expert determination is not directly enforceable or on the same footing as an arbitral award or Court judgment. If the parties wish for the determination to be final and binding, then care should be taken to provide in the parties’ agreement that any determination rendered shall be contractually enforceable even if that means the assistance of a court or arbitrator is required.

Conclusion

Expert determination is an additional way in which the parties can resolve disputes. It can be a speedy and cost-effective process in resolving discrete, technical issues between the parties. On occasion, non-binding determinations are also useful in giving the parties a commercial steer as to what their key strengths and weaknesses are. Timely (and early) implementation of this process is important before the parties’ positions become entrenched. However, as always, the devil is in the details, which means the process and the consequences of a determination should be clearly defined and agreed by the parties to avoid further disputes about the expert’s determination.

Donovan Ferguson

CIArb (EAB) YMG & University of Law – Arbitration Career Fireside Chat Paul Lin, Vincent Cheung, Savvas Michael and Edward Chin

30 November 2022, Hong Kong

In partnership with the CIArb (EAB) YMG, the University of Law held an arbitration career fireside chat on 30 November 2022, which was open to all University of Law students, as part of the University's Speaker Series. The fireside chat featured Mr Paul Lin and Mr Vincent Cheung as speakers.

The event was opened by Mr Robert Rhoda, who welcomed the audience and gave a brief introduction of his practice. The opening was followed by the fireside chat, moderated by Mr Savvas Michael and Mr Edward Chin- the Co-Chairperson of the CIArb (EAB) YMG. The speakers spoke about their experience working in various capacities in the field of arbitration. Mr Lin talked about his unique journey to qualification, having first qualified in Mainland China, and subsequently in Hong Kong and England & Wales. Having initially worked at an arbitration institution and as tribunal secretary prior to starting his training, Mr Cheung shared his work experience from an institution perspective. The speakers also shared with the students some tips which they found

useful when they applied to law firms as students. In the final Q&A session, the students raised numerous questions— they were particularly keen to find out more about law firm application processes, and about getting into arbitration.

The evening was concluded with drinks, where the speakers and attendees had a chance to mingle and further chat about their studies and careers.

The CIArb (EAB) YMG would like to express its gratitude to the University of Law for co-organising the fireside chat, and to Dentons Hong Kong for providing the venue for the talk. The CIArb (EAB) YMG also wishes to thank all speakers and attendees for attending the event.

Edward Chin



From left to right: Savvas Michaels, Vincent Cheung, Paul Lin and Edward Chin

“Party-appointed Expert in International Arbitration”

4 October 2022, Taiwan

The CIArb's Taiwan Chapter was very honoured to co-host with the ICC YAAF and Chinese Arbitration Association, Taipei (CAA) on 4 October 2022, a hybrid conference on “Party-appointed Expert in International Arbitration” as a part of the 2022 Taiwan Arbitration Week series events.

As an opening remark, Dr. Helena Chen, the Convenor of the CIArb Taiwan Chapter, explained that the use of party-appointed experts is common in international arbitration, but is relatively new in Taiwan. It was only introduced into Taiwan legal regime in July 2021, when Taiwan Commercial Case Adjudication Act became effective.

The first session was conducted in mandarin Chinese. Professor Kuan-Ling Shen elaborated the provisions regarding a party-appointed expert witness under Taiwan Commercial Case Adjudication Act and compared the practice thereunder with the common practice of party-appointed experts in international arbitration. She also shared her personal experiences of acting as a party-appointed expert in a Hong Kong court proceeding regarding recognition and enforcement of a Taiwan arbitral award.

The second session was conducted in English and moderated by the North Asia Representative of the ICC YAAF, Ms Alison Chang. Mr

David Holloway, an experienced barrister and arbitrator, shared his views from a counsel's perspective. Mr Holloway raised a question as to whether expert opinion on the interpretation and application of foreign laws is of assistance to the tribunal, and further gave his advice and insights on working with experts in arbitration as a counsel. Mr Chris Clark, gave directions for expert procedures on delay issues in construction cases and elaborated the development of hot-tubbing from an expert's perspective. Finally, Mr Glenn Haley, Regional-non-PRC Chair of CIArb East Asia Branch, expressed his views on expert witnesses from a tribunal's perspective in response to the opinions from the co-panelists and shared his insights on the value of expert evidence on foreign laws and the effectiveness of joint expert process and hot-tubbing. The conference was well-attended and received many positives feedbacks from the audience.

Monica Wang



From left to right: Dr. Helena Chen, Prof. Kuan-Ling Shen, Prof Ful-Dien Li, Alison Chang



Past Branch Chairs Nuts & Bolts Series No.10 “Arbitration Ethics, Guerrilla Tactics and Due Process Paranoia” Webinar by Mr Peter Caldwell

30 November 2022

The CIArb EAB has continued to launch the latest series of “Past Branch Chairs Nuts & Bolts”.

The tenth topic is ‘Arbitration ethics, guerrilla tactics and due process paranoia’. Past Branch Chair Peter Scott Caldwell was invited to give a talk on this topic.

The issues he discussed included:

- Arbitration ethics by reference to materials including CIArb Code of Professional and Ethical Conduct for Members

- Guerrilla tactics by reference to materials including LCIA rules and the IBA Guidelines on Party Representation in International Arbitration
- Due process paranoia
- How to pull the above strands together by citing some practical examples

The presentation was very well-received and the event was attended by over 30 members.

Stay tuned for the rest of the series.

David Luk

CIArb (EAB) – Career Opportunities in International Arbitration

25 November 2022, Vietnam



On 25 November 2022, the CIArb YMG Global Steering Committee and CIArb (EAB) YMG, with the support of CIArb Vietnam Chapter, were warmly welcomed by the International Law Faculty of the Ho Chi Minh City University of Law (ULAW) for a lively discussion on career opportunities in international arbitration.

After an introduction of CIArb by EAB YMG Co-chair Edward Chin, the panelists, including Cam Tu Vo Nguyen, Earl Rivera-Dolera, Duong Hoang (Deputy Counsel, SIAC (Singapore)), Hieu Nguyen, Truong Le, addressed Vietnam's current economic landscape to explain the increasingly higher involvement of Vietnamese parties in international arbitration cases.

The panelists then engaged in a lively exchange with the students on the opportunities they may explore when pursuing a career in international arbitration.

The panelists highlighted the importance of gaining basic and solid knowledge in arbitration and ADR in general, if they wish to begin or pursue their journey in these areas of practice- something they can gain by becoming members and attending training courses provided by CIArb.

The CIArb YMG Global Steering Committee and EAB YMG concluded their discussion by giving their heartfelt thanks to Prof. Viet Dung Tran, the speakers who made the trip to Ho Chi Minh City, and the students for their engagement and insightful questions.

Cam Tu Vo Nguyen

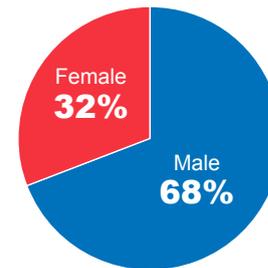
Current East Asia Branch Membership

The Branch currently has under 3,000 members in the region. Find out the composition of the Branch membership in the diagrams below.

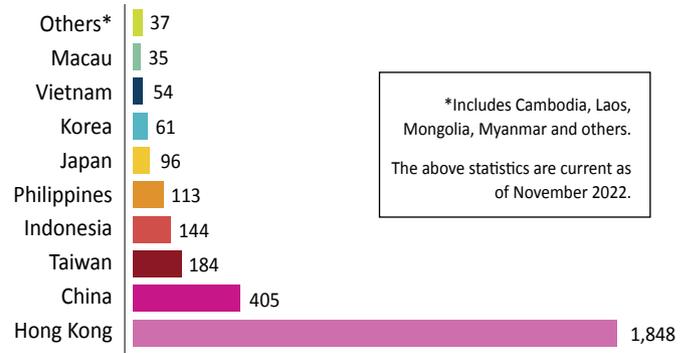
Distribution by Membership Grade (excluding the Retired Members and Students)



Distribution by Gender of Members



Distribution by Region



*Includes Cambodia, Laos, Mongolia, Myanmar and others.
The above statistics are current as of November 2022.

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 2022/23

Chairperson – **David Fong**, Vice Chairperson and Honorary Secretary – **Donovan Ferguson**, Vice Chairperson – **Christopher To**, Honorary Treasurer – **Richard Leung** assisted by **John Cock** (co-optee), Immediate Past Chair – **Nicholas Turner**, Professional Development and Training – **Christopher To**, Programme – **David Luk**, Mediation – **Lawrence Lee** assisted by **Albert Yeu**, Adjudication – **Stephen Chu**, Membership, LinkedIn and Website – **Micky Yip** assisted by **Lawrence Tam**, ADR Editorial – **Christopher To**, Newsletter – **Gina Leung**, Regional (PRC) – **Tim Yimin Liu** assisted by **Jeffrey Zhang** and **Mingchao Fan**, Regional (Taiwan, Korea, Japan, Indonesia & Others) – **Glenn Haley**, YMG Co- Chairperson – **Edward Chin** (co-optee), Communications within CIArb and Communications with outside bodies/Public Relations Officer – **David Fong**, Diversity – **Ronald Pang** (co-optee), Vis East Moot – **Karen Mills**, EAB Trustee – **Paul Barrett**

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