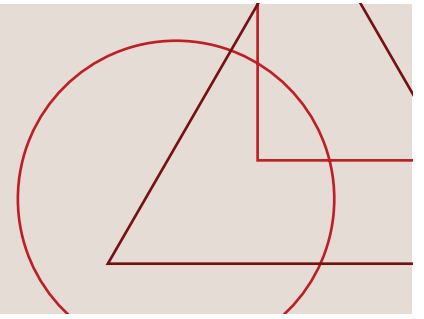


April 2023

**ciarb.**  
East Asia Branch

Newsletter



## CIArb (EAB) YMG 4th Annual Conference 23 & 24 February 2023, Hong Kong



After several years of the pandemic, the CIArb (EAB) Young Members Group (YMG) finally held its first face to face conference since the inaugural conference in 2019. This year it was held again in Hong Kong to celebrate Hong Kong's continued support of arbitration in the region while promoting opportunities to young practitioners.

As with every year, this year's conference was held with other YMG chapters from Indonesia, South Korea, Japan and Taiwan. We were also joined and supported by the CIArb YMG Global Steering Committee. Our keynote speaker was the Honourable Justice Godfrey Lam, Justice of the Court of Appeal in Hong Kong. His inspiring speech gave our members insights into the development of arbitration in Hong Kong from the judiciary's perspective. Further, we had the honour of opening speeches from Victor Dawes SC and the CIArb (EAB) Branch Chair, Mr David Fong.

On the first day, we had a panel relating to third party funding, contingency fees and renewable energy sector in Taiwan. On the second day, the University of Law hosted a networking brunch for all delegates. This was followed directly by panels discussing expedited arbitration proceedings, witness evidence and approaches to non-responding respondents in arbitration. The conference ended with our YMG Annual drinks which was hosted at the Banker's Club.

Next year, the CIArb (EAB) YMG Indonesia Chapter will be hosting the annual conference in Bali. We look forward to seeing all members there.

*Edward Chin*

Welcome to the April edition of the Newsletter.

Following the success of the "Covid-19 and Arbitration" series in 2020 and "Fast Dispute Resolution Methods" series in 2022, this edition features a new series for 2023 on "Disputes on Information Technology and Funding". The first article is "Crypto disputes in Hong Kong" by Mr Peter Bullock.

The Branch had a very good start to 2023 and held a number of events in person, including the YMG Annual Conference.

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

*Gina Leung*

## "Outcome Related Fee Structure for Arbitration in Hong Kong" Webinar by Mr Justin Yuen 1 February 2023, Hong Kong

The CIArb EAB has invited Mr Justin Yuen, to talk about "Outcome Related Fee Structure for Arbitration in Hong Kong" following the implementation of relevant rules in December 2022.

Mr Yuen shared with our members on the following issues:

- Background leading to change of rules in relation to Outcome Related Fee Structure for Arbitration ("ORFSA")
- Exception to the applicability of ORFSA
- Types of ORFSA, i.e. conditional fee agreements, damages-based agreements, and hybrid damages based agreements
- Requirements for a valid ORFSA
- Specific conditions to the ORFSA
- Most importantly, comparison of the ORFSA regime Hong Kong and Singapore.

The presentation was very well-received and the event was attended by almost 40 members.

*David Luk*

# Disputes on Information Technology and Funding

## “Crypto disputes in Hong Kong” by Peter Bullock



Although it has been 14 years since the presumed pseudonymous Satoshi Nakamoto defined the genesis block of bitcoin, the subject of cryptocurrencies, digital assets or Non-Fungible Tokens (NFTs) is still polarising when discussed in general commercial circles. Although cryptocurrencies currently account for just 7% of the world’s money, the HKIAC recorded “banking and financial services” cases rising from 16.2% of its cases in 2021, to 36.9% in 2022. It is thought that the sharp increase may be largely attributed to cryptocurrency and other digital asset related arbitrations. For this reason alone, general commercial arbitration practitioners would be foolish to discount digital assets as a fad or aberration.

Naysayers may scoff that the high incidence of disputes is an indicator of the inherent unreliability of digital assets (or those using them), but having worked in this area for a number of years now, the writer believes the position is rather more complex than this.

Digital assets share a number of characteristics which may explain the increasing dispute environment, and in part the suitability of arbitration as a resolution tool:

### 1. Volatility

We are (hopefully) emerging from a crypto-winter, during which the values of cryptocurrencies have uniformly fallen (and in the case of a number of altcoins and stablecoins, have been trounced). However, the values of Bitcoin and Ethereum received support at their late 2021 levels. Whilst some investors may have suffered heavy losses, many more are still very much ahead – sufficiently above water to be able to fund litigation or arbitration. Around each transaction there is often a backstory. Whilst one side may feel aggrieved, they may not have lost their shirt, but rather failed to maximise their hoped for gains. In short, there are usually funds available to pursue a claim. A successful investor / trader may be involved in a number of claims, whilst maintaining an overall profit on their portfolio.

### 2. Poor paper

The legal documentation underlying many digital assets transactions is often technically suboptimal. This is for a number of reasons. Cryptocurrency exchanges are sometimes coy over where their management operates from. This can lead to misleading or contradictory choices of law and jurisdiction across standard terms offered by the platform. Previously, participants have been more keen on swift execution of transactions than figuring out the legal paperwork. Hopefully that will change in the more sober times ahead. In any case, whilst this may lead to jurisdictional argument, once jurisdiction is founded, there often remain a number of triable issues.

### 3. Enforceability

A constant in digital asset transactions is the significant geographical distribution of participants, intermediaries

and assets. This means that a judgment or award may likely need to be enforced in a jurisdiction outside the place of adjudication. The wide reach of the New York Convention often marks out arbitration as preferable to litigation in any chosen national court. Reputable operators of platforms imposing arbitration agreements will not know whether they will be claimant or respondent so should hopefully seek viable routes to adjudication and enforcement.

### 4. Technical complexity

The language, technical effect and commercial practices of the cryptocurrency world are highly complex. Whether the dispute arises following a hacking event, the vagaries of the operation of stablecoins, or the use of complex derivatives, there is a very real risk that a judge in a national court will be ill-equipped to fully understand the matters in issue. Arbitration has a clear advantage here as the parties can choose an arbitrator with appropriate technical and industry expertise. Given the extent of the cryptocurrency caseload, HKIAC and other arbitral bodies will have increasing numbers of arbitrators with the requisite experience on their panels.

### 5. Confidentiality

The platforms and intermediaries offering standard terms of business (who often will be the party dictating the dispute resolution provisions) are usually very keen to maintain their reputation. The confidentiality of the arbitration process in disposing of any disputes is therefore of importance to them.

Another aspect of the trade in digital assets is the interconnectedness of market participants. It is fashionable to talk of digital assets in terms of ecosystems. This comes about owing to various factors. Ethereum is seen as an enabler of various strands of economic activity because its blockchain, and the ERC-20 and other tokens inhabiting it, share connectivity. Bitcoin has an ecosystem, owing to the interaction of miners, who validate “new” Bitcoins in exchange for a fee, separate from traders and investors (some will, of course wear a number of hats across the ecosystem). Separately, the route to market has tended to revolve around exchanges, such that investors have tended to trade their digital assets (whether as offeror or offeree) via the often fast growing exchanges.

In the event of a failure of a large player in one of these ecosystems – whether through a hack, a lack of liquidity, market sentiment or fraud, the collateral damage tends to be very significant. Many players run for the exits – making claims and allegations as they go. Co-founders often find themselves at loggerheads with one another, or with their investors. The potential for disputes is seemingly endless.

In light of all the above considerations, it seems likely that cryptocurrencies and other digital assets will provide fertile ground for those involved in the arbitration ecosystem for the foreseeable future.

## **“Delay Analysis of Construction Disputes” Two Day Conference on 13 December 2022 and 11 January 2023, Taiwan**



from left to right: Mr. Daren Yang, Dr Helena Chen, and Mr Jack Chen

The Taiwan Chapter of CIArb was proud to co-host, in collaboration with the Mediation and ADR Committee of the Taiwan Bar Association, the Chinese Arbitration Association (CAA), and Chen & Chang Attorneys-at-Law, a series of hybrid conferences on

“Dispute Resolution of International Construction Disputes”. Two conferences took place on 13 December 2022 and 11 January 2023, focusing on the topics of “Introduction to Independent Experts and Delay Analysis” and “Independent Delay Analysis Models and Examples” respectively.

The first conference was kicked off by Dr. Helena Chen and Mr Daren Da-Deh Yang. In the opening speech, Mr Yang emphasised the importance of independent experts in construction dispute resolution. The conference was followed by Ms Qingjing Meng, introducing the roles and responsibilities of experts in international arbitration, as well as a typical plan to produce an expert report on delay matters. Ms Clara Seah, further introduced the Delay and Disruption Protocol (2nd edition) published by the Society of Construction Law. Among the six models of delay analysis mentioned in the Protocol, Ms Seah elaborated on the models of “As-Planned versus As-Built Windows Analysis” and “Time Impact Analysis” with detailed examples.

The second conference started with a welcome speech by Mr Joe Yeong-Chyan Wu, acknowledging the tremendous success of the long-term cooperation between the CAA and CIArb’s Taiwan Chapter. The second conference was moderated by Dr Helena Chen. Ms Qingjing Meng and Ms Clara Seah, elaborated the four widely-used models for critical path analysis, they are the Remaining Duration, S Curve, Bottleneck, and Time-Chainage Chart. Ms Meng and Ms Seah explained and identified which model is more suitable in relation to the critical path analysis of each kind of project with detailed examples.

The presentations were met with great interest from the audience and sparked many questions, the momentum of which was further enhanced by the remote participation of Mr Petros Karalis and Mr Hamzah Rishiq. Both conferences were attended by approximately 140 participants each day, virtually and in-person. The Taiwan Chapter will run the third conference of this series on the topic of “Cross-Examination of Expert Witnesses” on 18 April 2023.

*Claire Liu*

## **CIArb Introduction to International Arbitration Course 11 February 2023, Taiwan**



On 11 February 2023, the Taiwan Chapter of CIArb East Asia Branch, successfully conducted the “Introduction to International Arbitration” course with a total of 30 candidates attending in person.

Mr Glenn Haley (Course Director) delivered a warm welcome virtually from Hong Kong, emphasising that the attendance of the Introductory course is an excellent starting point for all candidates to further pursue their career in international arbitration. Ms Mary Thomson (past Chairperson for EAB), supported this course by giving insightful lectures online from the UK. All local faculty members, Dr Helena Chen, Ms Alison Chang, and Ms Monica Wang delivered lectures in person.

The Taiwan Chapter of CIArb East Asia Branch would like to thank all candidates for their active engagement in the course and the College of Law of the National Chengchi University (NCCU), in particular, Prof. Anna Yan and her team, for their assistance to the success of the course. The Chapter is dedicated to organising similar or advanced courses in the future to contribute to the growth of the international arbitration community in Taiwan and support potential newcomers to this exciting field.

*Monica Wang*

## **Past Branch Chairs Nuts & Bolts Series No. 11 “Nuts and Bolts to establishing an Arbitration Practice” Seminar by Ms Mary Thomson 28 February 2023, Hong Kong**

The Branch continued to launch the ‘Past Branch Chairs Nuts & Bolts’ series.

The eleventh topic is ‘Nuts and Bolts to establishing an’ delivered by the Past Branch Chair Mary Thomson.

The issues Ms Thomson discussed include the following:

- How to kickstart an arbitration practice
- How to overcome challenges
- How to raise profile
- How to find opportunities in arbitration

The presentation was very well-received. The event was attended by over 40 members, both in person and online.

Stay tuned for the rest of the series.

*David Luk*

**Past Branch Chairs Nuts & Bolts Series No. 12**  
**“Applicable Laws governing Arbitration**  
**Agreements”**  
**Seminar by the Honourable Ms. Teresa**  
**Cheng GBM SC JP**  
**24 March 2023, Hong Kong**



The twelfth and final topic of the ‘Past Branch Chairs Nuts & Bolts’ series is ‘Applicable Laws governing Arbitration

Agreements’. The past Branch Chair, the Honourable Ms Teresa Cheng GBM SC JP was invited to give a talk on this topic.

The issues she discussed include the following:

- Relevant articles under New York Convention
- The recent cases of Kabab-Ji SAL v Kout Food Group, BNA v BNB and BNC, Shanghai Golden Landmark v Siemens
- Relevant articles under UNCITRAL Model Law

The presentation was very well-received. The event was attended by approximately 50 persons in person and also 30 persons virtually.

The Branch gratefully acknowledges the venue sponsorship by the South China International Arbitration Centre Hong Kong.

Thank you again for the support for the entire series of “Nuts & Bolts”. The series has come to a successful conclusion.

*David Luk*

**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**



The above statistics are current as of February 2023.

**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**

**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