



Annual General Meeting of Chartered Institute of Arbitrators (East Asia Branch) 27 April 2023, Hong Kong

The 51st Annual General Meeting (AGM) for the Chartered Institute of Arbitrators (East Asia Branch) took place at the Hong Kong Club on 27 April 2023.

Mr David Fong, the then Branch Chairperson, chaired the AGM.

The focus of the AGM was the announcement of the Branch Committee members for 2023/2024 term.

The AGM was followed by a talk on “Emerging Issues and Future Directions” by Mr Huen Wong.

The list of the new Branch Committee members can be found on the last page of this Newsletter.

Gina Leung

YMG Annual General Meeting 2023/2024 18 April 2023, Hong Kong

The 15th Annual General Meeting for the Young Members Group (“YMG”) was held at the Hong Kong International Arbitration Centre on 18th April 2023. The meeting was preceded by an insightful talk by Victor Dawes SC, the Chairperson of the Bar Association, on the topic of “Trending Topics in Arbitration World”.

During the meeting, the following agenda items were discussed:

1. Approval of the Minutes of the 14th Annual General Meeting;
2. Receipt and adoption of the YMG Co-Chairperson’s Report;
3. Receipt and adoption of the Treasurer’s report for the period ended 2023;
4. Election of committee members for the YMG Committee for the current session (2023–2024);
5. Election of Chairperson for the YMG Committee for the current session (2023–2024);
6. Transaction of any other necessary business.

The YMG Co-Chairperson’s Report was well-received by the young members, who appreciated the insights and updates on the happenings and highlights of the past session. The Treasurer’s report for the period ended 2023 were also received

Welcome to the July edition of the Newsletter.

This month’s edition of the Newsletter marks the first edition of the new committee session and we welcome the committee with our new chair, Donovan Ferguson. The full committee list will be introduced on our social media accounts and website soon – so stay tuned!

In addition, this marks the launch of our Vietnam Chapter Young Members Group who have already taken advantage of the post-COVID 19 situation and have already organised events for its members in Vietnam.

As for articles, we have “Avoiding Disputes in Tech Start-Ups” co-authored by Byron Philips, Nigel Sharman and Eugene Low together with some event write-ups.

Finally, we would like to give our thanks to Gina Leung, who has stepped down from her position as the Newsletter Editor. Her work with the newsletter over the years has been immense and greatly appreciated. We are sure that her new position as Vice-Chair will keep her busy with the committee.

Enjoy reading!

Ronald Pang

and adopted by the members.

The meeting also saw the election of new committee members for the current session (2023–2024), Ronald Pang, Kamping Wan, and Edward Boyle and to thank the outgoing committee members, who have contributed during the past session. We extend a warm welcome to the new and returning committee members and look forward to their contributions to the YMG.

In addition, the newly elected Chairperson will lead the YMG Committee for the current session (2023–2024). We extend our congratulations to Jennifer Wu on being elected as the new Chairperson and look forward to working closely with her and the rest of the committee members to advance the mission and objectives of the YMG.

In conclusion, the 15th Annual General Meeting of the YMG was a success, and we look forward to another productive and eventful year ahead under the leadership of the Chairperson and committee members for this session.

Alvin Cheng

Disputes on Information Technology and Funding

Avoiding Disputes In Tech Start-Ups

Startups in the information and technology sector often involve close partnerships between the founders engaged in a race against time to secure funding, protect their intellectual property and get their product to market. All too often, however, some basics go left unaddressed which leads to problems down the road.

A recent Hong Kong case illustrates the point. Ostensibly about the copyright ownership in an online game, the decision in *Emagist Entertainment Ltd v Nether Games (Hong Kong) Ltd* [2022] HKCFI 899 provided what the judge described as a “classic lesson to all those who are enthusiastic in setting up their own start-up operations, particularly in the information and technology sector”.

On its face, the dispute was a copyright infringement case concerning source code. The parties’ claims and counterclaims however revealed multiple issues relating to how the business was operated, employment conditions of staff, accounting disputes and the sharing of profits. The court ultimately awarded US\$456,000 to the plaintiff (the game’s copyright owner) as damages from the defendants, who had created the game in the first place.

A central issue in the dispute was the legal relationship between the parties. If it had been held that the parties had been in a partnership, the court was likely to find there was shared ownership of the copyright, as well as in the profits and losses deriving from the game. Conversely, if the defendants were held to be Emagist’s employees, more likely than not copyright would have belonged to Emagist as the employer.

Ultimately, the court decided there was no partnership bearing in mind the defendants had never enquired as to how much of the partnership/joint venture they were entitled and did not request distribution of profits when the game became successful. Employment disputes are often common at the early life stages of a company. In the recent Australian decision of the Fair Work Commission in Melbourne, *Antony Robert Course v Wavin Technologies Pty Ltd* (U202/3632), the applicant applied for an unfair dismissal remedy under the Fair Work Act 2009, after he was dismissed from his employment as a sales advisor with the respondent. Wavin objected that Mr Course was not an employee of the company and therefore could not have been dismissed within the meaning of the Act.

Wavin was a technology startup founded by Adam Friedman, Wavin’s director. The company had been set up for COVID tracking using technology that was faster than QR codes and the company had visions of extending the use of the technology into other markets. The business plan faltered when the State of Victoria decided on its own Covid QR code system and the employment of Mr Course was terminated.

Counsel for Wavin suggested that the agreement between the parties indicated the status of an independent contractor



Byron Philips

Nigel Sharman

Eugene Low

rather than an employee for a number of reasons. It was prepared by the applicant and given to the respondent, which was said to be “very odd” in an employment relationship.

The court determined that there was a contractual relationship of employer/employee between the parties and was not varied by later verbal discussions. The court highlighted two factors in particular in assessing the question of whether the applicant was an employee, first, the greater degree of control exercisable by the principal/employer over the work performed, the greater the likelihood that an employment relationship existed. Second, an examination was required of the extent to which it could be shown that the person acts in the business of, and under the control and direction of, the other.

Hearing the case, Commissioner O’Neill said he was satisfied that Wavin did have the legal right to and did exercise control over the work undertaken by Mr Course. Although there was no day-to-day supervision, this did not necessarily preclude a finding that Wavin had the right to control his work. The court concluded that by reference to the rights and duties established by their contract, Mr Course was an employee of Wavin.

As well as clarifying the nature of business relationships, it is important to clarify who owns the assets held by the start-up. The court in *Emagist* commented that the investor should have demanded written documents such as agreements with the original owners of computer codes, music and other drawings, to confirm that Emagist was the owner of the copyright in the game.

It is important to ensure that the start-up has access to independent legal advice with expertise in the business sector concerned since startups often tend to rely on lawyers used or favoured by their founders. Close examination should be also given to issues such as:

- How roles, responsibilities and duties should be defined
- The desired profit sharing and loss bearing arrangements
- The exit plan if it all goes wrong
- How disputes will be handled
- Corporate governance and how to deal with alleged misconduct

Issues like this are important not solely for investor protection but also for reputational preservation.

When conflict does arise, it can be helpful to call on the services of an informal adviser to help resolve the situation or be seeking guidance from other experienced third parties. Getting the basics right at the start, however, can be key in preventing problems further down the line.

Word & Zotero Handy Tools Sharing Session for Students and Practitioners 29 April 2023, Taiwan



On 29 April 2023, CIArb Taiwan YMG held a Word & Zotero Handy Tools Sharing Session in collaboration with the ADR Commission of the Taiwan Bar Association and Chen & Chang, Attorneys-at-Law. The Sharing Session was held in hybrid mode in a conference room of the Taiwan Bar Association with a virtual conference link provided for online participants.

Ms. Claire Liu moderated the Sharing Session, and Ms. Alison Chang, the Founding Chair of Taiwan YMG, was invited to deliver opening remarks. Alison highlighted the importance to master document editing tools and the benefit of citing in a more efficient and organized way for legal practitioners as well as researchers.

The Sharing Session was divided into two parts. The first part was about Microsoft Word handy tools, which was presented by Mr. Chia-Hsin Wu MCIArb (Secretary-General of the Taiwan YMG). Mr. Wu delivered useful tips in using Microsoft Word including multilevel numbered headings, cross-reference, document comparison. He also used a template written submission (in Mandarin Chinese) as an example to demonstrate how to edit and format a written submission more efficiently. The second part of the Sharing Session was about an Introduction to Zotero, presented by Dr. Pei-Jung Li MCIArb (Chair of the Taiwan YMG). Zotero is a tool to collect and manage research resources and to create citations and bibliographies for research papers. In her presentation, Dr. Li introduced the primary functions of Zotero and demonstrated how it could efficiently save author's time by automatically creating (and refreshing) citations and lists of references. She further shared with the audience how important it is for a researcher to create and develop his or her own customized database for long-term benefits.

The presentations were followed with an interactive Q&A session, in which more advanced skills of Word and Zotero were shared.

This Sharing Session attracted about 170 participants (in person and virtually). A post-event survey revealed a satisfaction rate as high as 93%.

Pei-Jung Li

Conference on "Practical Skills for Cross-Examination" 18 April 2023, Taiwan

The Taiwan Chapter of CIArb EAB, the ADR Committee of the Taiwan Bar Association, the Chinese Arbitration Association, Taipei (CAA), and Chen & Chang Attorneys-at-Law have once again joined forces to successfully host the third session of the "Dispute Resolution for International Construction Disputes" series, titled "Practical Skills for Cross-Examination" in the evening of 18 April 2023. It was a great honor to have the President of the Taiwan Bar Association, Ms. Mei-Nu Yu, as the guest speaker, and she especially acknowledged the longtime efforts of the ADR Committee in promoting various alternative dispute resolution mechanisms, including arbitration and mediation.

The first two conferences of the series were held respectively on 13 December 2022, and 11 January 2023. In these two conferences, speakers explored the roles and responsibilities of experts in international arbitration, six models of construction delay analysis, and four widely-used models for critical path analysis. They also shared practical case examples of applying those models to various types of construction projects and introduced commonly used methods to examine each of the models respectively.

As regards the third conference, Mr. John McMillan of Keating Chambers, Mr. David Falkenstern of Kroll, frequently serving the role as expert witness, and Mr Eugene Thong of the Arbitration Chambers, shared a panel to discuss cross-examination from the perspective of a barrister, expert witness, and arbitrator respectively. They provided in-depth analyses of how lawyers can prepare for cross-examination, how expert witnesses may respond, and how arbitrators can evaluate cross-examination. Dr. Helena Chen, the Convenor of the Taiwan Chapter of CIArb EAB and Ms Qingjing Meng of Kroll, hosted the conference seamlessly in both Chinese and English. The speakers generously shared their decades of practical experience and skills, which sparked a lot of practical discussions among the audience.

The three conferences in this series have attracted the participation of over 400 people attending in person or online in total.

Monica Wang



Vietnam ADR Week 2023 – Pre-Conference Dinner Talk: How To Develop A Career In Arbitration? 8 May 2023, Vietnam

On 8 May 2023, a dinner talk organised by the Vietnam International Arbitration Centre (VIAC), Vietnam Institute for International Arbitration Research and Training (VIART), Vietnam Business Lawyers Club (VBLC), and the CIArb YMG Vietnam Chapter was held at Caravelle Saigon Hotel in Ho Chi Minh City, Vietnam.

The event was attended by diverse students and young legal practitioners in Vietnam, who had the opportunity to hear from distinguished arbitration professionals, including Nguyen Manh Dzung, Cam Tu Vo Nguyen, Tribunal Secretary at The Arbitration Chambers (TAC), Duong Hoang, Deputy Counsel of the Singapore International Arbitration Centre (SIAC), Hang Vu, Secretary-General at the VIAC and Hieu Nguyen (moderator).

The event aimed to shed light on various aspects of a career in arbitration and provide valuable insights to young practitioners in Vietnam. The speakers engaged in a round discussion covering three significant topics including “Opportunities in arbitration career for young practitioners”, “What young practitioners should prepare to practice in the arbitration field and which qualifications young practitioners should meet in arbitration practice”, and “Navigating the differences between civil and common law systems in international arbitration”:

The event was well received and Vietnam Chapter YMG looks forward to organising more such events in the future for its members.

Truong Le

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 June 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 – **Donovan Ferguson**, Vice-Chairpersons – **Lawrence Lee & Gina Leung**, Honorary Secretary – **Micky Yip**, Honorary Treasurer & Finances – **John Cock**, Immediate Past Chair – **David Fong**, Professional Development & Training – **Stephen Chu**, Regional (PRC) – **Mingchao Fan & Tim Liu** assisted by **Jerry Zhang**, Regional (Taiwan, Korean, Japan, Indonesia & Others) – **Glenn Haley**, Adjudication – **Nicholas Turner**, Membership – **Richard Leung**, Mediation – **Lawrence Lee & Albert Yeu**, Programme – **David Luk**, Vis East Moot – **Karen Mills**, IT – **Lawrence Tam**, Communications within CIArb and Communications with outside bodies/Public Relations Officer – **Donovan Ferguson**, Diversity – **Caroline Thomas** (co-optee), YMG – **Jennifer Wu** (co-optee), Newsletter/Website/Social Media – **Ronald Pang** (co-optee)

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