



**Fireside Chat with the Hon. Geoffrey Ma:  
Critical Importance of Arbitration in Hong  
Kong & its Future**  
29 August 2024, Hong Kong



Ciarb (East Asia Branch) and its members welcomed the Honourable Geoffrey Ma, former Chief Justice of the Court of Final Appeal of Hong Kong and currently an arbitrator and mediator, for a fireside chat. The topic for the fireside chat was the “critical importance of arbitration in Hong Kong and its future”. More than 100 members signed up for the event and the venue was at full capacity. Our Committee Member, Ms Jennifer Wu, asked questions about the advantages of arbitration in Hong Kong, the existence of the rule of law and how the community can come together to remain competitive. The Honourable Geoffrey Ma shared that the rule of law is the ability to fairly resolve disputes – this is present in Hong Kong arbitration and at Court, where reasons are given for the decision made. The international nature to Hong Kong, together with its proximity to the Greater Bay Area, are also advantages which are unique to Hong Kong. Practitioners should have confidence in the rule of law and administration of justice in Hong Kong, and explain this to those concerned. As for what we can do as a community, it is to continue

Happy Hong Kong Arbitration Week!

In this newsletter, we have the second instalment of “A Guide to Third Party Funding”. The first instalment can be found in our July newsletter and accessible on our website using the QR code below.

The last few months have been very eventful and the newsletter features various event recaps including our Young Members Group Annual Conference which was held in Jakarta, Indonesia.

Lastly, as always, a big thank you to all contributors and our editorial team.

Happy reading!

Ronald Pang



the excellence in the handling of arbitration and resolving international disputes. Hong Kong continues to be a high-quality dispute resolution hub and ranked amongst the best globally. Members present thoroughly enjoyed their time with the Honourable Geoffrey Ma and questions around ESG and diversity were welcomed – and considered important to the future of arbitration. We sincerely thank him for his lighthearted and kind nature in sharing his thoughts on this important topic.

Jennifer Wu

**ciarb.**  
East Asia Branch

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## A Guide to Third-Party Funding (Part II): Mitigating Financial Risks and Optimizing Recovery Potential



Irene Lee

The following is the second part of our two part series on third party funding (“TPF”) by Ms Irene Lee of Deminor Litigation Funding and Ms Sammy Koo of Des Voeux Chambers. In this part, the focus is shifted forward on factors that determine whether a case is suitable for TPF, which are discussed together with case studies and commentary on the future landscape of TPF



Sammy Koo

### Types of Cases Suitable for TPF

TPF is a versatile tool that can be applied across a broad range of legal cases, including commercial disputes relating to contractual breaches or business torts claims, intellectual property cases, shareholder and joint venture disputes, investment treaty arbitrations against sovereign states etc. Construction disputes are also well-suited for TPF. The construction sector has experienced significant disruptions due to COVID-19, including diminished profit margins and project time overruns. TPF in construction disputes benefits claimant sub-contractors who lack financial means to pursue claims against their larger contractor employers. It is also very common for insolvency practitioners to apply TPF as Liquidators frequently face a lack of funding to bring claims against wrongdoers, such as negligent auditors. TPF can help resolve this issue in two ways. First, it mitigates the financial risks for the liquidator in pursuing these claims. Second, if the claim is successful or an amicable settlement is reached, recovery from the legal action can lead to higher returns for the creditors.

### Relevant Factors in Deciding to Fund a Case

When deciding whether or not to fund a case, funders typically consider several factors to assess the potential risks and rewards associated with the investment:

- **Merits of the Case:** Funders undertake comprehensive due diligence in assessing the risks associated with a particular case, considering factors such as the availability and credibility of evidence, likely amount of damages and legal strategy. Funders may invest seed money to instruct expert advisors to obtain second legal opinion, expert report or asset tracing report if they have preliminary interest in the case. This is because funders will lose their investment if the client loses the claim. The costs of due diligence are usually borne by the funders but if a litigation funding agreement is ultimately signed, such costs may be included in the funding amount.
- **Calculation of damages:** Funders need a clear understanding of how the amount damages will be

determined. Experts may be engaged to calculate the damages amount being claimed.

- **Cost-Benefit Analysis:** Funders evaluate the potential costs associated with the litigation, including legal fees, expert fees, court fees, and other expenses.
- **Enforcement prospects:** It is important for both the parties and funders that a judgement/award can be enforced at the end of the day to obtain damages. Funders will thus conduct background checks and asset-tracing to gain further insight into the respondent’s asset availability and location.

While funders will conduct their own assessment of the case, it is the parties’ responsibility to compile all the necessary information for funders to conduct the assessment. Parties will thus, for example, work with their legal counsel and expert to obtain a fee quote for funder’s consideration. In order to speed up the process, it is also ideal that parties are able to provide funders with the merits analysis and necessary expert report for due diligence purposes.

### Case studies

Below sets out a couple of case studies to provide an insight of funded cases in recent years. Deminor provided funding to a state-owned group in Mainland China for a London arbitration for sums due under a contract for sale and purchase of goods. The state-owned group, while having sufficient financial resources to pay its legal fees, decided to transfer the financial risk of the arbitration, including adverse party costs exposure to a funder. Settlement was reached after close of pleadings and the state-owned group has obtained satisfactory compensation.

Another example of a bigger scale is related to COVID-19. During the pandemic, French authorities enforced closures of non-essential businesses, causing significant revenue losses. Insurance companies refused to pay for business interruption claims. Deminor supported over a hundred restaurants and bars in filing compensation claims, covering legal and expert costs. After initiating six lawsuits, the insurance companies offered settlement in accordance to the insurance policy, thus highlighting the value of TPF in formulating the right strategy to maximise pressure on the respondents.

In another case, a Beijing-based recruitment platform, traded on the New York stock exchange, and registered in the Cayman Islands, announced a merger in 2017. However, the repurchase price offered to shareholders was much lower than the market price. Deminor took action by uniting shareholders and initiating legal proceedings in the Cayman Court to secure a fair repurchase price. In 2018, the case was settled, resulting in shareholders receiving equitable compensation for their shares.

### Looking Forward

It has been argued in recent years that courts/tribunals should consider awarding funding costs to successful parties where

appropriate. In the English Commercial Court case of *Tenke Fungurume Mining SA v Katanga Contracting Services SAS* [2021] EWHC 3301 (Comm), the Commercial Court dismissed a challenge to an arbitration award based on the tribunal's decision to award the costs of TPF to the successful party and held that this did not constitute a serious irregularity under section 68 of the 1996 Arbitration Act. This decision brings valuable clarity by affirming that an arbitral tribunal has the authority to award reasonable funding costs. It is yet to be seen whether funding costs would be more readily awarded going forward.

TPF has emerged as a transformative force in the legal landscape of Asia. Through its ability to improve access to justice, mitigate financial risks, and assist parties to formulate the best legal/enforcement strategy via early case due diligence, TPF has become an invaluable resource for individuals and businesses seeking to pursue their legal rights. Discussing the potential case with a litigation funder will enable parties to make a well-informed decision about how to best pursue their legal claims while minimizing their financial risk from the legal proceedings.

*Irene Lee & Sammy Koo*

## YMG 5th Annual Conference 5-6 September 2024, Jakarta

The 5th Annual Conference of Ciarb (East Asia Branch) Young Members Group (YMG) was held in Jakarta at the Alila SCBD Hotel on 5-6 September. The YMG Indonesia Chapter served as the host and organiser. Like in previous years, this annual YMG conference was well attended and brought together arbitration practitioners from across the region, engaging in insightful discussion on a range of pivotal topics while providing ample opportunity to network and foster collaboration.

The highlight of the conference was the keynote speech by Prof. Bernard Hanotiau, an esteemed international arbitrator and prominent academic. Prof. Hanotiau delivered an in-depth lecture on 'Complex Arbitrations: Multi-party, Multi-contract & Multi-issue Material'.

Before the keynote address, welcoming remarks were given by Karen Mills, C.Arb., FCI Arb. (representing the Chair of Ciarb (EAB) Main Committee), Felda Yeung, FCI Arb. (Chair of Ciarb (EAB) YMG Committee), Ilman Rakhmat, FCI Arb. (Co-Chair of Ciarb (EAB) Indonesia Chapter) and John Lumbantobing, FCI Arb. (Chair of Ciarb (EAB) YMG Indonesia Chapter). In particular, Karen Mills highlights the importance and benefits of joining Ciarb for young arbitration practitioners, where the organisation may serve as an excellent platform to develop one's knowledge and skills as arbitrators.

Indeed, the conference panels went on to touch on topical issues of interest for young practitioners. The first panel dealt with case management from the perspective of arbitrators and young practitioners, featuring as speakers Jay Santiago (Kyndryl; Philippines Institute of Arbitrators), Jonathan Choo (Vantage Chambers, Singapore), Hanna Azkiya (King & Spalding, Singapore) and Wahyu Setiawan (Indonesian Corporate Counsel Association), as well as Josef Sunario (PT Datang DSSP Power Indonesia) as moderator.

The second panel discussed the way with which up-and-coming practitioners from emerging market jurisdictions can raise their profile and get their foot in international arbitration, featuring as speakers Rizki Karim (KarimSyah Law Firm, Indonesia), Bernardete Fan (CFB Lawyers, Macau), Vishnu Vijandran (Aqran Vijandran Advocates & Solicitors, Malaysia)



and Chengkai Wang (Dentons, Taiwan), as well as Windri Marieta (Marieta Mauren, Indonesia) as moderator.

The third panel approached the topic of cross-examination from various angles, including non-legal expert and interpreter, featuring as speakers Felda Yeung (Gall Solicitors, Hong Kong), Ilman Rakhmat (Rakhmat Suroso Adinugraha, Indonesia), Grace Lu (CMS, Singapore) and Tigran Ter-Martirosyan (TIVACO Experts, Singapore), as well as Rininta Ayunina (KarimSyah Law Firm, Indonesia) as moderator.

The fourth panel highlights the considerations in choosing between sectoral and general arbitral institutions, featuring Irene Mira (ICC Court of International Arbitration), Sherly Gunawan (Singapore International Arbitration Centre), Dinah Amrad (Singapore Chamber of Maritime Arbitration) and Harald Sippel (sippel.arbitration, Malaysia and Japan), as well as Johnson Ng (Mayer Brown, Hong Kong) as moderator.

Finally, the fifth panel focused on current development and future outlook on arbitral award enforcement in Indonesia, featuring Andi Kadir (HHP Law Firm, Indonesia), Alvin Ambardy (Assegaf Hamzah & Partners, Indonesia), Sri Purnama (Anggraeni and Partners, Jakarta) and H.E. Assistant Justice Rizkiansyah (Indonesian Supreme Court), as well as Suar Sanubari (Rosetini & Partners, Indonesia) as moderator. Afterwards, the conference was followed with dinner and networking event co-hosted with Ciarb (EAB) Indonesian Chapter and attended by even more Ciarb members.

We also thank the conference's sponsors for their generous support.

*Felda Yeung*

## Moving the Dial? Is Mandatory Court-Adjunct Mediation on the Horizon in Hong Kong? by Robert Morgan

### 26 September 2024, Hong Kong



The Ciarb EAB invited our former Chairperson, Robert Morgan, to deliver an evening talk on the topic of 'Moving the Dial? Is Mandatory Court-Adjunct Mediation on the Horizon in Hong Kong?'.

During the talk, Robert gave a lengthy discussion on the possible impact to Hong Kong as a result of the English Court of Appeal's decision in *Churchill v. Merthyr Tydfil County Borough Council* [2023] EWCA Civ 456. The landmark decision in *Churchill*, which overturned the long-standing position in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 that English courts cannot compel but can only encourage parties to litigation to engage in mediation.

In his view, a consultation process aimed at bringing the English Civil Procedure Rules (CPR) into line with the Court's decision could result in exponentially wider application of court-adjunct mediation. Notwithstanding differences between the CPR and Hong Kong's Rules of the High Court (Cap 4A), as amended by the Civil Justice Reform in 2009. It is possible that a similar approach to court-adjunct mediation could eventually be adopted in Hong Kong, where the *Halsey* guidelines have also been applied.

This was an in-person event attended by over 30 members at HKIAC.

The evening talk was concluded with an interesting Q&A session.

*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)

Fellow 614	Associate 688	Member 3,072
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### Distribution by Region

Cambodia, Laos, Mongolia, Myanmar and others	30
Macau	35
South Korea	54
Japan	102
Vietnam	108
Philippines	128
Indonesia	139
Taiwan	175
China	512
Hong Kong	1,789

The above statistics are current as of October 2024.

The Chartered Institute of Arbitrators (East Asia Branch) is accepting applications for the following two courses.

Accelerated Route to Fellowship (International Arbitration) Course	Accelerated Route to Membership (International Arbitration) Course
 <p><b>Venue</b> 2/F, West Wing, Justice Place, 11 Ice House Street, Central</p> <p><b>Course date:</b> 30/10/2024 (18:00 – 21:00) 13/11/2024 (9:30 – 17:00) 14/11/2024 (9:30 – 17:00) 6/12/2024 (start date of online assessment)</p>	 <p><b>Venue</b> 2/F, West Wing, Justice Place, 11 Ice House Street, Central</p> <p><b>Course date:</b> 20/11/2024 (09:30 – 18:00) 21/11/2024</p>

## 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 2024/25

Chair & Communications within Ciarb and outside bodies/PR Officer – **Donovan Ferguson**, Vice-Chairs – **Lawrence Lee & Gina Leung**, Honorary Secretary – **Micky Yip**, Honorary Treasurer & Finance – **John Cock**, Immediate Past Chair – **David Fong**, Professional Development & Training – **Stephen Chu**, Regional (PRC) – **David Fong** assisted by **Jerry Zhang & Minghao Fan** (co-optee), Regional (Taiwan, Korea, Japan, Indonesia, Vietnam, Philippines & Others) – **Glenn Haley**, Adjudication – **Nichols Turner**, Membership – **Richard Leung**, Mediation – **Lawrence Lee & Albert Yeu**, Programme – **David Luk**, Vis East Moot – **Karen Mills**, IT – **Lawrence Tam**, Social Media/Newsletter – **Ronald Pang**, Mentoring – **Jennifer Wu**, YMG – **Felda Yeung** (co-optee), Diversity – **Caroline Thomas** (co-optee)

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