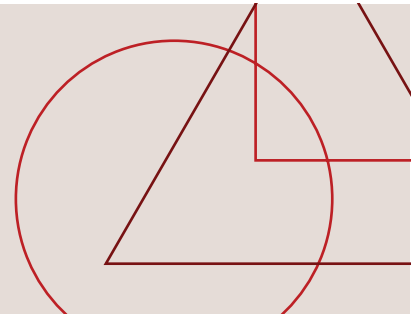




Embracing Diversity & Inclusion as Core Value in International Arbitration – Event with ICC

3 December 2024



3 December was the International Day of People with Disabilities www.un.org/en/observances/day-of-persons-with-disabilities.

On that day, the Branch was proudly one of a number of organisations that supported an event discussing the ICC's Guide for Disability Inclusion in International Arbitration and ADR iccwbo.org/news-publications/news/icc-releases-guide-for-disability-inclusion-in-international-arbitration-and-adr/.

It was a merry evening with Singaporean food prepared and handicraft sales by two wonderful Hong Kong charities Project Dignity Pte Ltd and Love 21 Foundation.

Claudia Salamon, Mia Edin, Mustafa Hadi, and Walter Yu Hang Tsui generously shared their personal insights into how disabilities can impinge on working life and how often reasonable accommodations can enable people with disabilities to participate equally. The panel was expertly moderated by Vera He.

– The key takeaway is that it makes good business sense and is often not difficult or expensive to accommodate people with disabilities.

The ICC's Guide offers short practical and sensible guidance with case studies and will hopefully increasingly be used as a reference point in arbitrations.

Caroline Thomas

Hello Everyone!

Welcome to the May Issue of the Newsletter!

A lot has been happening around the region. As we move to a bi-annual newsletter (event write ups will slowly transition to our LinkedIn page), this means that this newsletter is filled to the brim. I will keep it brief so as not to take away the precious space for our actual content.

Apart from the usual write-ups from around the region, we also have an article from our Caroline Thomas on the issue of Non-Participating Parties in Arbitration. It is an engaging read and tackles an often-seen issue in arbitration.

As always, a big thank you to all contributors and our editorial team. This will also be my last newsletter as editor, and I will be passing the reins to the capable hands of Jennifer Wu.

Happy reading!

Ronald Pang



Fellows & Members Gathering 2025

22 January 2025

On 22 January 2025, the Branch organized a gathering inviting members across the region to meet the Branch Committee and other members to discuss the developments of ADR in the EAB region.



At the gathering, the Branch also had the honour of presenting the induction of the Hon. Mr Geoffrey Ma, the Former Chief Justice of Hong Kong, as an Honorary Fellow of Ciarb.

As members may well know, Mr Ma is a avid supporter of international arbitration and has been featured in various events organised by the Branch.

The event was held at the Hong Kong Club and attended by more than 100 members. It was a resounding success as members had a delightful evening.

Ronald Pang

Taiwan Chapter Co-hosted Conference Titled “Chinese-Speaking Parties and Language Issues in International Arbitration”

21 December 2024



Front row from right to left: Alison Chang FCI Arb (Convenor, Taiwan Chapter; Vice-Chair, ADR Committee of TWBA), Helena Chen C. Arb FCI Arb PhD (immediate past Convenor, Taiwan Chapter; current Chair, ADR Committee of TWBA), Florence Lee Esq. (Executive Supervisor, TWBA), Eugene Thong FCI Arb

On 21 December 2024, our the Taiwan Chapter of the Ciarb EAB (“Taiwan Chapter”) had the honor of co-hosting a conference titled “Chinese-Speaking Parties and Language Issues in International Arbitration.” The conference was organized in collaboration with the Attorneys Academy and ADR Committee of the Taiwan Bar Association (“TWBA”) and Chen & Chang, Attorneys-at-Law.

The conference was moderated by Helena Chen C. Arb FCI Arb PhD (immediate past Convenor of Taiwan Chapter and current Chair of and TWBA’s ADR Committee of TWBA). Florence Lee Esq., the current Executive Supervisor and the President-elect, was invited to deliver the opening remarks. Florence highly praised the ADR Committee’s outstanding contributions to promoting ADR and internationalization under the leadership of President Dagmar Mei-Nu Yu. She also expressed her vision for the TWBA to continue advancing relevant developments and opportunities in the future.

The conference featured Eugene Thong FCI Arb, who drew

on his multilingual expertise and experience at the ICC International Court of Arbitration to provide an in-depth analysis of common language issues in international arbitration and the challenges faced by Chinese-speaking parties, such as discrepancies in legal terminology across different Chinese-speaking jurisdictions. He then discussed how factors such as the parties’ negotiation power may influence the choice of language in arbitration. By referring to practical arbitration cases, he engaged with the audience to explore issues such as the determination of language of arbitration in cases with different factual backgrounds and various ways that arbitration may be conducted bilingually in Chinese and English.

Under Helena’s effective moderation, both in-person and online audiences engaged actively with the speaker. The audience enhanced their knowledge in arbitration-clause drafting as well as several language-related issues and benefited tremendously from the conference.

by Frank Yu

Branch Annual Dinner 2025

31 March 2025



On 31 March 2025, the Branch held its Annual Dinner. The Annual Dinner is always one of the highlights of the year and well attended. This year was no exception as all the tickets to the event were sold out prior to the event.

This year, we had the honour of having Ms Winnie Tam SC and Mr José-Antonio Maurellet, SC the guests of honour.

Winnie (against) and Jose (for) entertained our members by debating the motion of “*This House believes that arbitrators are overpaid, underworked, and overvalued*” Despite Jose’s immense efforts, the motion was rejected (almost unanimously) after voting by the audience.

Our Chair Mr Donovan Ferguson and Ciarb Trustee, Mr Paul Barrett also gave speeches at the dinner much to the delight of the audience.

As always, the Annual Dinner was a resounding success filled with great conversation, good food and drinks and amazing company.

Here’s to the next one.

Ronald Pang

Arbitrators and Non-Participating Parties

A 2024 Hong Kong judgment will likely be welcomed by sole arbitrators in the fairly common but awkward situation in which a respondent does not engage in arbitration proceedings. In such situations it helps if the arbitrator is very familiar with the arbitral process and meticulous (e.g. in carefully defining and monitoring how a respondent is to be notified).

In *Pan Ocean Container Suppliers Co Ltd v. Spinnaker Equipment Services Inc* [2024] HKCFI 1753, the unsuccessful plaintiff (and non-responsive arbitration respondent) was a Mainland company engaged in the manufacture of marine cargo containers and the defendant (and claimant in the arbitration) was a Californian company engaged in the business of leasing and selling containers. The HKIAC arbitration clause was found in a Hong Kong law agreement for the manufacture of containers.

The defendant had successfully applied for the arbitration to be conducted in accordance with the Expedited Procedure under Article 42.1 of the 2018 HKIAC Administered Arbitration Rules (“**2018 Rules**”). A sole arbitrator was appointed and an award for over US\$10 million was published granting the defendant liquidated damages and damages. Importantly, the plaintiff did not participate in the arbitration at all.

Afterwards, the plaintiff argued that it never received the award and only found out about it when it learned that its bank account was frozen by an order of the Ningbo Maritime Court in an enforcement action. It issued an originating summons (without a supporting affirmation) to set aside the award relying on four UNCITRAL Model Law grounds namely:

1. 34(2)(a)(ii) claiming it was not given proper **notice** of the appointment of the Tribunal or of the Arbitral Proceedings or was otherwise unable to present its case;
2. 34(2)(a)(iii) claiming the award dealt with a dispute not contemplated by or falling within the terms of the submission to arbitration, or contains decisions on matters beyond the **scope** of the submission to arbitration;
3. 34(2)(a)(iv) arguing the **composition** of the tribunal or the arbitral **procedure** was not in accordance with the agreement of the parties; and
4. Article 34(2)(b)(ii) arguing that the award was in conflict with Hong Kong **public policy**.

Deputy High Court Judge Jonathan Wong in Chambers analysed the evidence in the context of the notification requirements under the applicable 2018 Rules and rejected all arguments. As to argument 1. upon characterising this argument as “*entirely opportunistic*”, the judge approvingly cited KB v S & Ors, HCCT 13 of 2015, 15 September 2015 §1(6) as

authority for the premise that “*in dealing with applications to set aside an arbitral award, or to refuse enforcement of an award, whether on the ground of not having been given notice of the arbitral proceedings, inability to present one’s case, or that the composition of the tribunal or the arbitral procedure was not in accordance with the parties’ agreement, the court is concerned with the structural integrity of the arbitration proceedings. In this regard, the conduct complained of “must be serious, even egregious”, before the court would find that there was an error sufficiently serious so as to have undermined due process.*”

There were several sub-arguments that fell under argument 2. all of which failed. The most interesting argument relates to the quantum of the claim (which topic we also discuss in our final section). In its notice of arbitration the Defendant had requested: “*a direction pursuant to Article 42 that the arbitration be conducted in accordance with the Expedited Procedure ... The amount in dispute ... well below the monetary threshold of HKD 25m set by the HKIAC¹. It follows that the matter falls under Article 42.1(a).*” The Plaintiff argued, without citing authority, that the Defendant should have on at least two occasions informed HKIAC that the Expedited Procedure was no longer appropriate. The judge disagreed and held at paragraphs 4.15–4.16: “*even within the “streamlined” Expedited Procedure, the Tribunal was meticulous and careful in the process, even disallowing substantial parts of the Defendant’s claim without any input by the Plaintiff. ... this complaint does not come close to having the character of precipitating a substantial injustice which is shocking to the court’s conscience.*” A secondary argument related to the alleged adduction of without prejudice communication also did not persuade the judge who at paragraph 4.33 found: “*the Tribunal is an experienced barrister and I have no doubt that she was able to put any reference to without prejudice communications out of her mind. In any event, as pointed out above, the Plaintiff has not adduced into evidence what it considers to be without prejudice material.*”

Arguments 3 and 4 were formulated in a number of different ways none of which succeeded. The Plaintiff was ordered to pay the Defendant the costs of the originating summons application (and ancillary applications) on an indemnity basis.

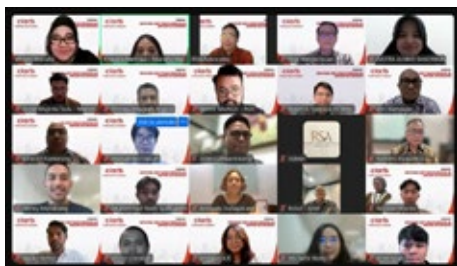
Caroline Thomas

This article was adapted from Lloyd’s List Intelligence’s “Arbitration law in 2024: a review of developments in case law” which [will be shortly be/ is] available on i-law.com.

¹ The HKIAC is considering increasing this limit.

Constitutional Court Ruling on Arbitration Law: Significance and Consequence

17 February 2025



Co-Chairs of Indonesia Chapter

On 17 February 2025, our Indonesia Chapter held a webinar to discuss the recent ruling of the Indonesian Constitutional Court which has revised the definition of international arbitration under the law.

Previously, an international arbitration award was defined as an award issued within Indonesian jurisdiction, or an award which, under the applicable laws, is deemed as an international arbitration award. The latter sub-sentence created uncertainty in past cases. An application to review this provision was brought to remove the sub-sentence. A judgment was rendered last month.

At the outset of the webinar, Ilman Rakhmat (Co-Chair of the Chapter) delivered an opening remark highlighting the significance of the Constitutional Court's Judgment. Windri Marieta (Co-Chair of the Chapter) moderated the session.

We invited the applicant, Togi Pangaribuan, to explain his application as well as his analysis on the finding of the Constitutional Court. In the Q&A sessions, interesting questions were asked by participants and addressed by the speakers.

The webinar was attended by 55 participants which including practitioners, academics, and students.

Ilman Rakhmat and Windri Marieta

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	Associate	Member
596	563	1,128

Distribution by Gender of Members



Distribution by Region

Macau	32
Cambodia, Laos, Mongolia, Myanmar and others	45
South Korea	45
Japan	96
Vietnam	100
Philippines	113
Indonesia	132
Taiwan	153
China	493
Hong Kong	1,621

The above statistics are current as of March 2025.

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 2025-2026

Ex-Branch Chair – **Donovan Ferguson**, Branch Chair and PR & External Communications – **Gina Leung**, Treasurer – **John Cock**, Secretary & Membership – **Micky Yip**, Vice Chair & Mediation – **Lawrence Lee**, Vice Chair – **Ronald Pang**, Adjudication – **Nichols Turner**, Regional (Others) – **Glenn Haley**, Newsletter & Social Media – **Jennifer Wu**, Regional (PRC) – **Richard Leung**, Programme – **David Luk**, Diversity – **Felda Yeung**, PD&T – **Stephen Chu**, IT & Website – **Lawrence Tam**, Vis East Moot – **Eric NG**, YMG Chair – **Mathew Briggs**, **Caroline Thomas** & **Wenny Huang** (Co-Optees), EAB Trustee – **Paul Barrett** (Observer), **Christopher To**

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