



Commercial Arbitrators Accreditation Course

CommArb (CEPMLP)

16th - 18th September 2011

Doubletree by Hilton, Dunblane Hydro,
Dunblane, Stirlingshire



Now more than ever, following the passing of the Arbitration (Scotland) Act 2010 and the establishment of the Scottish Arbitration Centre, there is an acute demand for a supply of well trained, commercially aware, competent, and able Arbitrators to determine domestic and international disputes in Scotland and overseas, so as to enable Scotland to compete in the international arbitration marketplace. This course provides the requisite training to equip prospective arbitrators with the necessary skills to conduct domestic and international arbitrations in accordance with the best contemporary practice and standards.

The Course

This course will be delivered over a weekend and will introduce delegates to the key principles and techniques of domestic and international commercial arbitration, and their use for the resolution of commercial disputes. The course will be run and organised by the Centre for Energy, Petroleum, and Mineral Law and Policy (CEPMLP) at the University of Dundee, the world's leading natural resources Graduate School. All the Course Directors have extensive experience of practice and teaching of commercial dispute resolution.

Those entering on the course will be expected to have a basic understanding of contract and delict/tort law, and to have read the materials.

Materials

On enrolment, participants will be supplied in advance of the course with a copy of the Arbitration (Scotland) Act 2010 and a selection of institutional Arbitration Rules.

Related literature is extensive, but it is not necessary to acquire it for this course. On the course, participants will be provided with additional useful materials to assist in the practice and conduct of arbitrations of all kinds. An opportunity will also arise to acquire some relevant publications at a discounted price.

Reading lists for further study will also be provided.

Professional Accreditation

Successful completion of this course will provide accreditation as a CEPMLP Commercial Arbitrator - CommArb (CEPMLP) and CPD points from your professional institution.

As an ongoing part of the accreditation process, Accredited Commercial Arbitrators will be required to undertake regular Continuing Professional Development with a minimum of a one day refresher course annually, organised through the CEPMLP.

Assessment & Award Writing

The course will include practical workshops, culminating in a written assessment requiring the writing of an Award on a commercial law problem to be submitted to the Course directors within three weeks of the conclusion of the course.

Location

The course is to be held at The Hilton Doubletree Dunblane Hydro Hotel, Dunblane, Stirlingshire. The hotel has excellent facilities and has recently been extensively refurbished (**see www.doubletreedunblane.com**).

Dates

The course will be presented over the weekend on a residential basis from 6pm on Friday 16th September to 3.30pm on Sunday 18th September. To achieve accreditation, participants are expected to attend throughout.

Cost

The cost of the course is £1,500 to include all materials, teaching, accommodation and meals.



Course Directors



John Campbell QC is a Queen's Counsel, and works throughout the UK. He was called as an Advocate in 1981, and took silk in 1998. He is a member of the *Hastie Stable* at the Faculty of Advocates, (www.hastiestable.com) and a Barrister.

He has a widely varied practice, and is active in all types of alternative dispute resolution work and its promotion, and in teaching.

He worked on the Arbitration (Scotland) Bill 2010, and provided evidence to the Scottish Parliament. He has taught Arbitration techniques and practice all over the world.



Steven P Walker is an Advocate and member of *Terra Firma Chambers* at the Faculty of Advocates (www.terrafirmachambers.com) and a Barrister and member of *Tanfield Chambers*, London (www.tanfieldchambers.co.uk). Steven was called to the Scottish Bar in 1999, to the Cayman Islands Bar in 2007 and to the English Bar in 2008. He has been an accredited Mediator since 2003. He was appointed an ad hoc Advocate Depute in 2007 and was made an Honorary Fellow of the University of Edinburgh in 2009.

Steven is a contentious commercial lawyer who practises Scots, English and International Law. His practice deals with all forms of commercial dispute, and he has a particular interest in Natural Resources, oil/gas/mining as well as energy and construction and engineering related disputes. He has regularly appeared before numerous arbitral tribunals in the UK and abroad.

He was the co-course director and lecturer on the LLM in international arbitration at the University of Edinburgh from 2009 to 2011. This course was nominated for an EUSA teaching excellence award in 2010 and Steven was individually nominated for a teaching excellence award in 2011. He is also a lecturer on international arbitration at the CEPMLP, University of Dundee. He was coach to the award winning CEPMLP Mediation Team which won an award at the 6th ICC Mediation Competition in Paris in February, 2011.



Iain K Clark is a Solicitor Advocate and Partner with *Young & Partners LLP, Glasgow* (www.businesslaw.co.uk), and has a wealth of practical experience gained over more than 15 years of conducting all types of Civil Litigation and Arbitration, particularly private & commercial litigation, before the Courts and other Tribunals in Scotland and internationally.

He is regularly instructed in relation to domestic and transnational disputes - to advise on and conduct arbitrations and mediations in Scotland and internationally, including disputes in the engineering, construction, oil and gas, renewables, and property fields; and in other general commercial disputes.

He is a Visiting Lecturer on International Arbitration at the University of Edinburgh; and a Course Director and Visiting Lecturer on International Arbitration and Mediation issues at the CEPMLP at the University of Dundee. He was a coach to the award winning CEPMLP Mediation Team, which won an award at the 6th ICC Mediation Competition in Paris in February 2011. He is also a member of the Accreditation Committee of the Law Society of Scotland in respect of the newly created Specialist Accreditation in Arbitration.

All three Course directors are members of the Global Academic Faculty at the CEPMLP.



Friday 16th September

At Dunblane, rooms are available from 15:00.

17:30 - 18:00 **Registration and tea / coffee**

18:00 - 18:15 **Welcome and introductions - Course Directors**
Introductions of participants, Course Directors and an outline of the course.

18:30 - 20:00 **Arbitration as a means to an end - the global picture**

18:30 - 19:00 **The defining characteristics of Arbitration:**

John Campbell QC

- Advantages and disadvantages
- Consent
- Contract
- Non-governmental
- Binding Awards
- Enforceability

19:00 - 19:30 **Arbitration - why it works**

A comparison with other dispute resolution methods

Iain K Clark

- Self-help
- Negotiation
- Conciliation
- Mediation
- Expert determination
- Neutral evaluation
- Arbitration
- Arbitration-Mediation
- Litigation

19:30 - 20:00 **The renaissance of Scottish Arbitration - some history and present day context**

Steven P Walker

- Economic importance
- Comfort for commercial people
- Supportive legislature and courts
- Rules, laws, conventions and treaties - how it all works

20:00 **DINNER**

Guest speaker



Saturday 17th September

09:00 - 10:30 Introduction to Ad Hoc and Institutional Arbitration

09:00 - 09:30 The Global Picture

Steven P Walker

- The Arbitral Framework internationally - what is happening?
- Making Choices - Ad Hoc or Institutional Arbitration
- Arbitral Institutions: LCIA, AAA, ICC, ACICA, SIAC, ICDR
- An Introduction to the ICC Rules and the LCIA Rules

09:30 - 10:00 The Arbitration (Scotland) Act 2010 - Why arbitrate today?

John Campbell QC

- An introduction to the Arbitration (Scotland) Act 2010
- How the Scottish Arbitration Rules work
- Comparisons with other systems

10:00 - 10:30 Before an Arbitration Commences

Iain K Clark

- Choosing your DR method
- The Arbitration agreement - essential requirements
- Arbitrability
- Arbitration Clauses and agreements to remit to arbitration
- Toxic or pathological clauses
- Selecting and appointing the arbitral tribunal in arbitrations
- Getting help with your choices

10:30 - 10:45 Questions and discussion

10:45 - 11:00 TEA / COFFEE and a break

11:00 - 12:00 Managing a Commercial Arbitration effectively

11:00 - 11:20 An Overview of the Arbitral Process

Steven P Walker

- Securing the process - getting on track
- Terms of Reference
- Choosing an arbitrator, Tribunal - screening arbitrators
- Standards on conflicts of interest: IBA Guidelines
- CIArb Protocol on choosing arbitrators
- Language
- Choosing a Chairman
- Parties - multi party cases
- The Request/Notice of Arbitration and Answer
- The Preliminary Meeting
- Tailoring the Rules to the case



11:20 - 11:40	The detailed powers of management John Campbell QC ■ Duties of the Tribunal ■ Duties of the Parties ■ Objections to the arbitrators ■ Getting rid of an arbitrator ■ Arguments and referrals to the Court on Jurisdiction ■ Confidentiality ■ Interim orders and applications ■ Security for expenses
11:40 - 12:00	Procedure and Evidence Iain K Clark ■ Pleadings - Statements of case, Submissions, Briefs ■ Disclosure, discovery and production of documents ■ Rules of evidence ■ Witness statements ■ Expert evidence ■ Oral hearing or paper resolution ■ Time limit on hearing / length of written submissions ■ Post hearing submissions
12:00 - 13:00	Role play 1 - The Procedural/Preliminary Meeting A 60 minute 'demonstration', which will follow papers to be supplied to participants
13:00 - 14:00	LUNCH and fresh air
14:00 - 15:30	The conduct of the case itself
14:00 - 14:30	Tribunal Directions Steven P Walker ■ Reiterating agreed procedure ■ Enforcing directions ■ Formality, format, observance, flexibility ■ Place of Hearing
14:30 - 15:00	Conduct of the Hearing Iain K Clark ■ Presenting and hearing evidence ■ Burden and standard of proof ■ Witnesses, compelling attendance ■ Using documents ■ Isolating the issues ■ Time limits ■ Fairness to parties ■ Using experts ■ Balancing time, expense and completeness



15:00 - 15:30	The Arbitral Tribunal's Powers Iain K Clark ■ The power to control proceedings ■ The power to order payment and award damages ■ The power to order payment of interest ■ Other powers
15:30 - 15:45	TEA/COFFEE and a break
15:45 - 16:15	When do you need help from the Court, and how to get it? John Campbell QC ■ Anti-suit injunctions ■ Interim measures ■ Referrals to the Court on Points of law ■ Securing attendance of witnesses; securing evidence ■ Crossing borders ■ Variation of time limits ■ Other Powers of the Court - safeguarding/protective orders, interdicts
16:15 - 18:00	Role Play 2: The Hearing 30 minutes preparation 1 hour 15 minutes, a contested hearing on a short point, to be argued live
18:00	Close for the day
20:00	DINNER



Sunday 18th September

09:00 - 10:30 **The outcome - Awards in Commercial Arbitrations**

09:00 - 09:30 **How should an Award be conceived? What should an Award try to achieve?**

John Campbell QC

- Types of Award; part, provisions, draft, interim, final, consent, default
- Certainty and finality of scope and outcome
- Applying the relevant procedural law and lex arbitri
- The substance of the dispute - show understanding
- The danger of exceeding the jurisdiction
- Exhausting the submission
- Dissenting arbitrators
- Scrutiny of awards
- Styles of Award

09:30 - 10:00 **The Form of Award**

Steven P Walker

- Styles and use of templates - what do parties want?
- Continuing jurisdiction to correct an award or make an additional award
- Types of Award; declaration, payment of money, performance or a mixture
- Signing off and the seat of the arbitration

10:30 - 10:45 **TEA/COFFEE and a break**

10:45 - 12:00 **Role Play No 3 - Decision Making**

75 minutes of a scripted scenario including planning an Award

12:00 - 13:00 **Interest, Expenses, and Recognition and Enforcement of Awards in Commercial Arbitrations**

12:00 - 12:15 **Interest**

Iain K Clark

- Purpose
- Rates
- Sharia law and alternatives to interest

12:15 - 12:30 **Expenses**

John Campbell QC

- The general rule
- Discriminating approach
- Administrative costs
- Arbitrators' costs - securing fees in advance
- Awards pro rata
- Agreement about costs in advance



12:30 - 13:00	Recognition and Enforcement of Awards Steven P Walker ■ Domestic ■ International - The New York Convention 1958
13:00 - 14:00	LUNCH
14:00 - 15:00	Avoiding challenges, important considerations and delivery of the Award
14:00 - 14:20	Avoiding Challenges to the Award Steven P Walker ■ Methods of challenge ■ Possible grounds of challenge ■ Substantive jurisdiction challenges ■ Serious irregularity challenges; excess of jurisdiction ■ Non-arbitrability ■ Legal error challenges ■ Time limits ■ If a challenge succeeds
14:20 - 14:40	Important Considerations Iain K Clark ■ Immunity of arbitrators, experts, lawyers, witnesses from suit ■ Loss of the Parties' right to object - personal bar/estoppel/waiver ■ Independence and impartiality of the Arbitrator ■ Arbitrator ethics ■ Conduct - preserving your status
14:40 - 15:00	Delivery of the Award John Campbell QC ■ The Arbitrator's expenses and fees ■ How to make sure you get paid ■ Getting help
15:00 - 15:30	Further Information + Final Questions ■ Further reading lists ■ The Centre for Energy, Petroleum and Mineral Law and Policy ■ The Chartered Institute of Arbitrators ■ The Scottish Arbitration Centre ■ International institutions concerned with arbitration ■ Continuing professional development - opportunities in Scotland
15:30	Close of conference

Course Registration Information

For further details and to register please contact:

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Alternatively, please visit the online booking site: www.cepmlp.org/online