

INSIDE ARBITRATION: SPOTLIGHT INTERVIEW - JAMES ALLSOP

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Legal Briefings

James started as a Herbert Smith trainee in 2006 and qualified in England & Wales in 2008. Despite his English background, he always wanted to work in Asia, and did a secondment to our Tokyo office from 2012-15. After a few years back in London, litigating in the English courts, James returned to Tokyo in 2018, where he has built a practice combining international arbitration with corporate crime and investigations work. Acting for many of the firm's largest Japanese and multinational clients across sectors including manufacturing, energy, TMT, pharma and consumer products, he was promoted to of counsel in 2020 before joining the partnership on 1 May 2022.

Japan has a reputation for being slow to pursue disputes, preferring to resolve conflict by negotiation. Is that your experience? What disputes do go to arbitration in Japan, and why?

That is a long-standing reputation and, in general, it still holds true. Japanese corporates generally favour arbitration clauses for international deals, typically Singapore International Arbitration Centre (SIAC) or Hong Kong International Arbitration Centre (HKIAC) rules. When a dispute arises, they are often reluctant to arbitrate, and prefer to reach an amicable settlement wherever they can.

However, over recent years Japanese companies are increasingly willing to utilise formal dispute resolution procedures, including arbitration, to try to reach an amicable settlement. I recently acted for a client in an M&A dispute where the other side refused to proceed to completion, citing an inability to satisfy certain conditions precedent. When negotiation failed, we suggested the client commence HKIAC proceedings, and utilise the document production process to put pressure on the other side to complete. We adopted the same approach in another recent case, by commencing SIAC arbitration. In both those cases, the parties ended up settling at an early stage.

Where it is not possible to reach a settlement, my experience is once our clients decide to fight in formal proceedings, they are very committed to that course and will pursue the arbitration actively to the end. Generally, it's the big, business-critical deals where clients feel they have no choice but to take it to arbitration.

You also advise on fraud and corruption investigations, corporate governance and crisis management. How did that occur and do the two sides of your practice ever meet?

Investigations and white-collar crime have always been interesting to me, due to their subject matter and because they involve a different, albeit complimentary, skillset to arbitration. This an increasingly important issue globally, and a real focus area in Japan in particular. Japanese companies frequently invest in risky jurisdictions and, following several high-profile incidents involving Japanese companies, ensuring compliance with international best practice has taken on even greater significance.

The two sides of my practice don't often cross over, but I have had cases where an investigation turns up evidence of wrongdoing that ultimately leads to an arbitration. I acted for a major Japanese technology company that had acquired a subsidiary in Southeast Asia. The subsidiary's original management team was retained after the sale, to continue day-to-day running of the company as part of an earn-out structure under the share purchase agreement (SPA). Our client discovered this team was implicated in various wrongdoings, including embezzlement and corrupt payments to public officials. This led first to an internal investigation and then to an enquiry by the US Department of Justice for potential breaches of the Foreign and Corrupt Practices Act. That investigation revealed there had been breaches of the sellers' representations and warranties under the SPA, and we commenced a successful arbitration claiming damages for those breaches.

Diversity is a focus for the arbitration community. From practising outside your home jurisdiction, what have you learned about bringing different perspectives to the table when running a case? And what changes you have noticed during your time in Japan?

As an English-qualified lawyer, I'm probably too inclined to think the common-law approach is always the right one. Practising overseas in arbitration has taught me that is not the case. Working with international parties and co-counselling with civil lawyers, I have learned how valuable it can be to apply different perspectives and approaches to achieve a successful outcome - particularly where the stakeholders are from different backgrounds themselves.

Japan is still traditional in working practices compared to many jurisdictions but I have noticed several changes in gender diversity. The trading houses and big corporates are increasingly aware of the importance of gender balance, and are rolling out some good initiatives. There is also an increasing confidence and desire to pursue corporate careers, on the part of Japanese women, that is bound to result in continued change over time. This is true in many sectors, including the law - there are undoubtedly more women now in the legal profession, especially in senior roles.

Working conditions are changing too. Japan has jumped forward ten years in terms of its approach to agile working because of the pandemic, with many companies now rolling out formal agile work policies, permitting employees to work from home up to two days a week.

We're also seeing Japanese clients move away from traditional business dinners, which are hard to juggle with family commitments, to breakfasts and lunches, which are more family-friendly.

Japan was largely closed to the world throughout the pandemic. What is one thing you have done in Japan you might not have if you'd been able to travel?

My youngest child, Samuel, was born in March 2020, just before the world started shutting down. In some ways, I was glad of the excuse not to have to travel with three children under six!

Not being able to leave Japan encouraged me and my wife, Elizabeth, to explore new parts of Japan and its culture. A highlight was taking part in a shichi-go-san, a coming-of-age ceremony, last year with our two older children, Olivia and Felix. This traditional rite of passage ceremony celebrates the growth and well-being of young children. The whole family wore traditional Japanese dress. Both kids really enjoyed it - Felix enjoyed it even more when someone gave him a toy sword during the ceremony!

What did you do on 1 May to celebrate your promotion to the partnership?

The timing was fortunate, as it was the Golden Week holiday in Japan. I was away with the family at Fujikawaguchiko, one of the "Fuji-five" lakes. It was ten days of great family time after the hectic period that precedes partnership promotion. I indulged in a few bottles of champagne too!

Listen and watch the interview [here](#).

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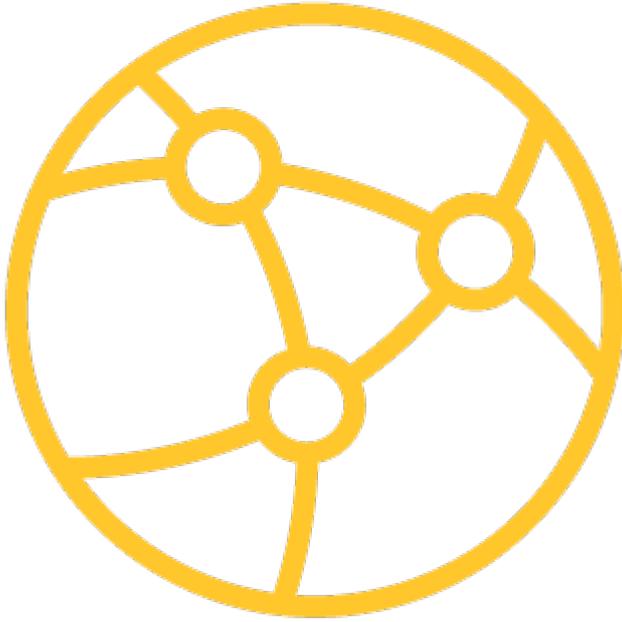
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