

INSIDE ARBITRATION: SPOTLIGHT INTERVIEW: KATH SANGER

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Legal Briefings

Born and bred in Yorkshire, UK, Kath has lived and worked in Mainland China and Hong Kong since 2002. She joined our Hong Kong Arbitration Team as a Partner in October 2016, after many years in the Disputes team of Clifford Chance. Kath is a commercial arbitration specialist with a broad practice that includes M&A, financial services, energy, pharmaceutical and China-related disputes. She is qualified in Hong Kong and England & Wales.

UNUSUALLY FOR A YORKSHIRE LASS, YOU SPEAK AND WRITE MANDARIN CHINESE. HOW DID THAT COME ABOUT?

I was always interested in learning languages. My grandmother was German and my mum kept trying to get my dad to speak German to me when I was younger. That never quite succeeded, but it did inspire an interest in languages at an early age. When I was 15, I went into a Chinese restaurant in Leeds with my dad. As soon as I looked at the menu, I decided I had to learn to write those characters. I realised pretty quickly that I couldn't learn them on my own and that doing a degree was going to be the best way to achieve it. I ended up reading Chinese at Wadham College, Oxford and never looked back.

YOU TRAINED IN LONDON BUT HAVE SPENT VIRTUALLY YOUR WHOLE CAREER IN HONG KONG. WHAT ORIGINALLY DREW YOU TO THE REGION, AND WHAT HAS KEPT YOU HERE FOR ALMOST 20 YEARS?

After reading Chinese, I converted to law. The uncle of my good friend at Wadham was a partner at Freshfields and my friend's mum was a careers advisor. Between them, they convinced me that speaking Chinese would be a great advantage for a lawyer. I applied to Clyde & Co and was interviewed in Chinese by a lawyer who was visiting from Hong Kong; they pretty much offered me a job on the spot. That was great, because the firm would sponsor me to go to law school, but by this time it was almost too late to apply. Thankfully, I managed to get my application in on the last day, having had to courier it all the way to Oxford for my old tutor to sign it!

I loved studying law, but was determined not to lose my Chinese. I pushed Clyde & Co to give me a six month trainee seat in Hong Kong. At the time they had just cancelled their Hong Kong programme, but one day they found me entertaining a group of Chinese clients in one of the London meeting rooms – in Chinese. The next day I was offered a six month placement in Hong Kong. The moment I arrived it felt like home, and I knew fairly quickly that this was the place where I wanted to develop my career. It also helped that I met Laurence, my now husband and then a trainee with Slaughter and May, in the first week!

Why am I still here 20 years later? It's a place of great opportunity generally, and a fabulous place to practise arbitration. I have been able to develop my practice in both languages, and to build a niche in the arbitration community through my work with HKIAC. Laurence also made partner at Slaughter and May, before becoming GC at Li & Fung, a world-leading supply chain manager.

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Hong Kong is a dynamic city that attracts people with great energy. Laurence and I have made some very deep and long - lasting friendships, and it has been a great place to raise our two boys in a diverse and multicultural environment. They have learned Chinese from an early age, which is important to me.

YOUR RECENT PORTFOLIO INCLUDES SEVERAL PRIVATE EQUITY DISPUTES. WHAT TRENDS ARE YOU SEEING IN THAT SECTOR, AND HOW IS IT BEING AFFECTED BY THE GLOBAL ECONOMIC SITUATION?

Private equity deals have always been relatively competitive in this region. The pandemic has intensified scrutiny on these deals, but it has also created opportunity. This means there is a lot of M&A activity, which generates disputes on both sides of the transaction.

Pre-closing, we've seen cases where the private equity sponsor has either refused to close the deal, or has used aggressive tactics to negotiate a large discount at the last minute. We have helped clients on both sides of that line, including by giving strategic advice to assist in pre-closing negotiations.

Unsurprisingly, we are also seeing disputes that arise from one party exiting the investment. We have a number of disputes around the exercise of put options in different Asian markets. I am also defending my first ever case where the claimant has alleged frustration of a series of investment contracts.

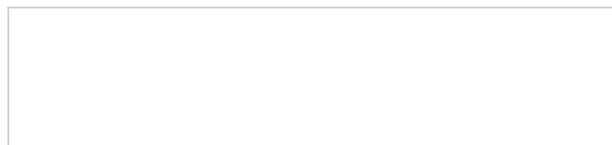
WHAT OTHER SECTORS ARE TRENDING IN ASIA RIGHT NOW?

I am seeing increasing numbers of pharmaceutical, healthcare and TMT disputes.

Mainland China is a particularly active market because of the opportunities it offers international health and pharmaceutical companies to access an extremely large and lucrative market. However, given the difficulties of penetrating that market, foreign investors generally need to enter joint venture or collaboration agreements with their Chinese counterparts. Frequently, these arrangements generate disputes further down the line.

TMT disputes are just starting to trend in this part of the world, not least as a result of the US-China rift and moves against companies like Huawei and ByteDance. It will be interesting to see how this trend develops once the new US administration takes office.

YOU ARE A RESPECTED MEMBER OF HONG KONG'S ARBITRATION COMMUNITY, HAVING SPENT MORE THAN A DECADE AS A MEMBER OF HKIAC'S COUNCIL AND FIVE YEARS AS CHAIR OF ITS APPOINTMENTS COMMITTEE. FROM THAT POSITION, HOW DO YOU VIEW HONG KONG AS AN ARBITRAL SEAT?



I'm obviously biased, but Hong Kong remains an excellent place to arbitrate. It has done a superb job of building and maintaining a reputation as one of the world's top seats, supported by a fabulous and innovative institution in HKIAC. Both the institution and the Hong Kong Government have been very agile in changing rules and law to keep up with trends in international arbitration. The Arbitration Ordinance has been amended several times in the less than ten years since it was introduced, including to make emergency arbitral relief enforceable, and giving access to interim relief via the Mainland courts. The courts are knowledgeable and supportive of arbitration, and the current Secretary for Justice was formerly Chair of HKIAC, so fully understands arbitration and what it needs to flourish. Despite recent press, none of that has changed.

AS A LEAD ADVOCATE, YOU HAVE BEEN AT THE COAL FACE OF THE "PIVOT" TO VIRTUAL HEARINGS THIS YEAR. WHAT HAVE BEEN THE BEST AND WORST THINGS TO COME OUT OF CONDUCTING HEARINGS BY ZOOM?

On the positive side, it is incredibly efficient to be able to conduct a whole hearing from a meeting room in your offices. My experience with the technology has been very good; it has worked very smoothly, including during simultaneous Chinese/ English interpretation while cross-examining witnesses via Zoom. In a recent hearing, I questioned Chinese witnesses in English, got the answer in Chinese, and had an interpreter in my earpiece to help with any words I hadn't caught. Surprisingly, I found doing this remotely was actually smoother and easier than having all of us together in one room.

"The arbitration community as a whole has adapted remarkably well to the virtual environment"

The other upside is the reduced impact on the environment, particularly because no one is flying and we are using a lot less paper. Across the board, this should make a significant impact on arbitration's carbon footprint over the years.

On the less positive side, it's a shame not to have my team together in person during the hearing. Where we would usually get together during breaks and at the end of the day to de-brief, we now have to do it virtually, which is less satisfactory. I also found it harder to build rapport with witnesses when we weren't in the same place. Obviously too, when the technology does fail that can be a real frustration. Having said all that, I feel the arbitration community as a whole has adapted remarkably well to the virtual environment and that the pros generally outweigh the cons.

DIVERSITY IS A HOT TOPIC IN ARBITRATION, PARTICULARLY THE GENERAL LACK OF DIVERSITY ON ARBITRAL TRIBUNALS. AS A LAWYER WHO ALSO SITS AS ARBITRATOR, WHAT IS YOUR TAKE ON THIS? WHAT CAN BE DONE TO ENCOURAGE MORE GENDER AND ETHNIC DIVERSITY ON TRIBUNALS IN ASIA?

The arbitral institutions have done a good job in ensuring that their lists of arbitrators are generally diverse across the board.

We as lawyers could do better. We need to take more responsibility for both, producing diverse lists of candidates for our clients, and encouraging them to feel comfortable nominating some less familiar names. We also need to encourage a more diverse range of people to apply to the HKIAC List of Arbitrators, SIAC list and other institutions' panels of arbitrators.

FINALLY, WHAT IS YOUR FAVOURITE THING ABOUT BEING AN ARBITRATION LAWYER?

Cheesy as it sounds, I love being in the Herbert Smith Freehills Arbitration team. It is a hugely talented and fun crowd of people to work with, and it has become my family.

"I like the fact that we do our own advocacy"

I like the fact that we do our own advocacy, and I like the way a case unfolds at the hearing from a bare legal submission to a real-life story involving real people. That process is always fascinating to me.

Finally, arbitration lawyers get to become mini-experts in the sectors and industries that give rise to our disputes. For example, I recently did a case about a logistics business and finally understood why, when you order something tiny from Amazon it comes in a massive box...!

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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