

INSIDE ARBITRATION: SPOTLIGHT ON MAY TAI

27 July 2018 | Global
Legal Briefings

May Tai is a Malaysian national who has spent her career in Herbert Smith Freehills' international arbitration practice, working on many of our largest, most complex cases. Since last year, she has also been the Managing Partner of our Greater China offices. We asked her to tell us about her globetrotting career with the firm, and how it has shaped her as a lawyer.

[*First published in Inside Arbitration, Issue 6*](#)

YOU ARE TRULY THE PRODUCT OF AN INTERNATIONAL LAW FIRM, HAVING WORKED IN NO LESS THAN FIVE OF THE FIRM'S OFFICES. WHAT PERSPECTIVES HAVE YOU GAINED FROM THAT EXPERIENCE?

I went to university in the UK, and started as a trainee in the London office. During my training contract, I spent six months in Tokyo, then returned to qualify in London. I was seconded to Singapore for two years as an associate, going back to London for another two years before moving to the Shanghai office, where I was promoted to partner. I moved to Beijing in 2010 and spent four years in that office before relocating to Hong Kong in 2014. So far, I have no plans to move again – but you never know!

Working in so many different offices has made me realise, above all, that there is no one "right" way to deliver legal services or be a trusted adviser to a client. Our approach has to be guided by the client's legal and cultural background, as well as its business culture. There isn't even a "one size fits all" approach throughout Asia; it's a huge territory with numerous different languages, cultural attitudes and norms. Though I have noticed that you can bond with almost anyone in Asia about food! It's the equivalent of talking about the weather in England...

Clients routinely tell us that it is important their lawyers understand both the Asian norms and the Western, common law aspects of the international arbitration process. This is particularly true of Chinese state-owned enterprises, which have distinctive cultures and processes. To service these clients, it is vital that you understand and appreciate the cultural differences.

ARE THERE STILL OPPORTUNITIES FOR LAWYERS TO TRAVEL AROUND AS YOU DID? WOULD YOU RECOMMEND IT?

I think it's "horses for courses", to coin an English expression. It has been a great experience for me to spend time in so many of the firm's offices, but it isn't for everyone. So much depends on your personal circumstances, your career preferences, and whether you can achieve a work-life balance that suits you.

"The important thing is that the firm still offers the opportunity to travel and work in different parts of the world to those lawyers who want it"

The firm really benefits from this internal movement, and so do the individual lawyers. Of course, it's not possible for every lawyer in the firm to do it; you have to be in the right place at the right time, and be open to saying yes when the opportunity arises.

YOU ARE A MANDARIN SPEAKER, AND HAVE BEEN BASED IN CHINA FOR 10 YEARS. HOW HAVE THE NEEDS OF CHINESE CLIENTS CHANGED DURING THAT TIME?

To do well in any process, you need to understand the rules of the game. Although there is a long history of arbitration in China, Chinese domestic arbitration is very different from international arbitration in seats like Paris, London or Singapore. Any Chinese party who expects to find arbitration practiced in the same way in Paris or Singapore as they would find in China, will quickly find it is mistaken and unlikely to do well. The same is true of multinationals who end up in CIETAC arbitration on the mainland.

Chinese clients' expectations have changed over the years, as they have had more exposure to the international process and realised that it is different to the process they were traditionally used to. Once they have come to this conclusion, and if they are well advised, they can of course play the game as well as anyone. In fact, some of the distinctive features of Chinese companies can be an advantage in international arbitration, like the fact that people generally stay in one company for a very long time. I'm working on a large case now, where my client is a Chinese state-owned enterprise. It has submitted statements from 14 witnesses, all of whom were employed by the client when the events in dispute happened several years ago. All 14 still work there. This makes it significantly easier for the client to obtain their evidence and paint a complete picture of the events that led to the dispute. In my experience, this is almost unheard of in any multinational or other Western company.

Chinese clients are increasingly sophisticated, and understand that they may have to work harder than their opponents because they are unfamiliar with international arbitral process. But they are willing to do that work, and more and more Chinese parties are prevailing as a result.

Equally, we as lawyers have become more accustomed to working with Chinese clients, and adapting our own working styles to accommodate theirs. Whereas, for example, a senior in-house lawyer at a Western company can sign off on a submission within a day or two, it could take three weeks for a Chinese client to get all the approvals its internal process requires. Neither system is right or wrong, they are simply different. As an international lawyer, it is my job to understand and accommodate that.

YOU ARE KNOWN AS A CHAMPION OF DIVERSITY IN THE FIRM. WHY IS THIS IMPORTANT TO YOU?

When I was a junior lawyer, the people who promoted and encouraged me recognised the importance of diversity. It would be remiss of me not to do as much as, if not more than, my mentors did for me.

More broadly, the firm's business requires genuine diversity.

"It would be impossible for any international business to operate today without diverse teams that reflect both its existing pool of clients, and the clients it is targeting"

When I come across an opponent who is representing an Asian client without at least some lawyers who speak the client's language and understand the client's business culture, I know that that is not going to be an easy cooperation. I know that a lot of time will be spent trying to understand one another and avoid miscommunication and misunderstandings. We can avoid this by fielding diverse teams.

WHAT ARE CLIENTS LOOKING FOR IN TERMS OF DIVERSITY, AND WHY?

Our job is about communicating; with clients, with opponents, and with tribunals. That requires diverse teams with a mixture of backgrounds and language skills, as well as genuine cultural sensitivity. Often, I am representing a Chinese client in a dispute with a non-Chinese counterparty and a tribunal of mixed nationalities. As well as advocacy before the tribunal, I find myself advocating to the client, to persuade it to approach an unfamiliar process in a way that will increase its chances of success, but may initially be uncomfortable. Because I have lived and worked in both Asia and the West, I can understand the different mind-sets and cultures. Speaking Mandarin, Cantonese and English helps too; it is much easier to communicate with anyone if you can let them speak to you in their mother tongue. I want my client or witness to feel at ease and relaxed when they speak to me.

Clients increasingly understand the advantages of diversity, not least because they rely on them in their own businesses. I do some work for hotel management companies and one of them has a standard engagement letter that requires diversity from its law firms, on grounds that the nature of its business requires it to field diverse teams. I expect to see many more like this in years to come.

The landscape has changed a lot since I started my career, particularly as regards gender diversity. 66% of our China arbitration partners, and 35% of the entire Mainland China partnership, are now female. This year, Herbert Smith Freehills promoted 18 partners worldwide; 14 are women.

We are making progress in other areas of diversity too.

"We have worked hard to promote LGBTI+ diversity, and have been recognised for our success"

The firm's promotions process increasingly favours lawyers with the linguistic and cultural backgrounds that clients in this region require. For example, 75% of our newly-promoted Senior Associates in our Asian offices are of ethnically Asian backgrounds. We also recognise that we need lawyers with Chinese language skills and backgrounds outside Asia, and are working hard to recruit and retain the right people.

All of these efforts have resulted in a much more ethnically diverse body of lawyers across the firm, which is clearly a strength. Our Greater China arbitration team is a perfect example: besides me, we have one Singaporean partner, one Hong Kong partner, three mainland Chinese partners, and three from the UK, all of whom are long-term Asia residents.

A firm that can build – and maintain – that kind of diverse talent has really hit the jackpot. We believe our clients agree, and feel the benefits.

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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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