

INSIDE ARBITRATION: SPOTLIGHT ON ANTONY CROCKETT

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Legal Briefings

Antony is a disputes lawyer, specialising in public international law. He leads our global Business and Human Rights practice and is a member of the firm's Environmental, Social and Governance (ESG) leadership group. Originally from Australia, Antony has lived and worked abroad for most of his career. He is now based in Hong Kong, and was promoted to the partnership on 1 May 2021.

Public international law (PIL) is often considered an academic discipline, but you apply it every day in your practice. How does PIL help your clients in their business activities?

Public international law underpins so many aspects of investment and trade; it is hugely important to facilitating international business. PIL also influences international regulation of everything from employment, to environmental protection, to human rights. All of that affects our clients and the way they run their businesses. So, even though most clients and lawyers do not engage directly with it on a day-to-day basis, public international law is really foundational to international commercial activity.

In the last few years, "ESG" has gone from a buzzword to what our CEO, Justin D'Agostino, describes as "critical to everyone's future". What has brought about this change, and why now?

The adverse social and environmental impacts of business activity – particularly transnational economic activity – have been a concern since at least the 1960s. It is true that ESG has become a huge buzzword over the last year, but this is really the culmination of a movement that has built up over several decades. People have become increasingly aware of these adverse impacts and of the consequential economic, financial and social outcomes. The materiality of social and environmental performance for companies has long been debated, but there is increasing evidence that companies that manage their ESG risks responsibly will outperform financially. Alongside increased awareness of the need to avoid adverse impacts, there is also rising awareness that ESG creates new opportunities for business. Decarbonisation, the growth of renewable energy and focus on sustainable supply chains are just a few examples.

Even for an international lawyer, you are very well travelled. You have lived and worked in Australia, Singapore, London, Jakarta, Vienna, and now Hong Kong, and travelled far and wide on cases. Can you name a high point of your international lifestyle, and a low point?

It has been tremendously exciting to work in all those different places, with so many different people and in different cultures. Building friendships all over the world with a diverse group of colleagues and clients is an added bonus. Once upon a time, I could maintain these friendships by seeing people regularly on my work travels, but the pandemic has made that impossible for more than a year now. That has certainly been a low point.

The global nature of international arbitration is part of what originally attracted me to this area of practice. As well as enjoying meeting so many people from a human point of view, I think these interactions have made me a better disputes lawyer.

"There is no better way to get to know the business culture of a country and the types of disputes that arise in that culture and political context than being able to go there, meet and talk to people, and get a first-hand understanding."

One of the reasons international arbitration is so effective and widely used is that the international community has developed a consensus around the best ways to resolve international disputes. That consensus, and the community that created it, was built in part by practitioners being able to travel, meet in person, develop deep relationships and work together effectively. As Winnie the Pooh once said: "You can't stay in your corner of the forest waiting for others to come to you; you have to go to them sometimes."

"There is increasing evidence that companies that manage their ESG risks responsibly will outperform financially"

Business & Human Rights is a key pillar of your practice. Why are clients seeking our help in this area? Are there regional or sector trends?

This year is the tenth anniversary of the UN Guiding Principles on Business and Human Rights, which were endorsed by a unanimous resolution of the UN Human Rights Council in 2011. The Guiding Principles establish a universal expectation that business enterprises should respect human rights. This means that businesses must act with due diligence, to avoid adverse human rights impacts that might be caused by their activities.

By now, the majority of our clients have adopted policies reflecting that expectation. At the same time, governments have begun to legislate requiring companies to do human rights due diligence or to report on the steps they take to avoid human rights risks. Clients seek our advice on how to carry out the due diligence, how to avoid or mitigate adverse human rights impact, and how to resolve grievances and disputes.

In terms of trends, multinational corporations started to adopt human rights policies in the late 1990s/early 2000s. We saw this first in the extractive industries, for the obvious reason that this sector involves projects with significant environmental and social footprints, and resulting risks of adverse human rights impacts. It was only a decade or so later that some of the large technology companies started to adopt human rights policies. As they reached a point where their businesses were so large and geographically diverse, these tech giants also started to develop an awareness of the adverse social impacts which may arise in relation to their operations and the use of their services. When the firm's Business and Human Practice was first established, we were working almost exclusively for oil & gas or mining companies. That experience and the approaches we developed in those early years are now being applied in new sectors; we have been particularly busy in the tech sector over the last couple of years.

Another important global trend which is very relevant in the Asia Pacific relates to concern about modern slavery and human rights abuses in supply chains. Almost twenty years ago, the large fashion retailers were amongst the first to be under significant scrutiny in this area. More recently, other companies have realised that similar risks exist in the supply chains for a huge range of commodities as well as services. The introduction of modern slavery legislation in the UK, Australia and parts of Europe has contributed to this and it has become increasingly important for clients to carry out due diligence on those risks in this region.

What do you enjoy most about the work you do?

Working with interesting people, solving interesting problems and learning about different businesses, sectors and economies. In the context of an investment treaty arbitration, not only the legal system in the host state, but also its political and social situation will often be a very important part of the background to the dispute. To resolve these disputes, you have to learn about all of that, which I find fascinating.

You have two young children. What advice will you give them about choosing a career, when the time comes?

In order of importance:

Do something that energises you.

Do something you find interesting.

Do something that lets you work with people you enjoy working with.

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

KEY CONTACTS

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



ANTONY CROCKETT
PARTNER, HONG
KONG
+852 21014111
Antony.Crockett@hsf.com

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