

## Spotlight Interview Cathy Liu

Cathy is a partner at our Joint Operation firm Kewei in Shanghai. Her practice focuses on dispute resolution, regulatory investigations and white-collar crime. She has over 15 years' experience in representing clients before courts and arbitral institutions, dealing with disputes related to international trade, product liability, corporate control and unfair competition.

Meet [Cathy Liu](#) here

### **Passing the PRC Bar exam is notoriously challenging. What made you want to become a lawyer?**

My aunt is a dramatist. When I was young she took me to see *The Merchant of Venice*. I was particularly impressed by Portia, because she is very intelligent, and takes on the role of judge and problem-solver. After seeing that, it became my dream to become a lawyer. And once I qualified, I discovered that what I love most about the job is the advocacy. It's a kind of art to present your own version of a story, and to observe the reactions of your counterparts and the adjudicator as you persuade them to accept your version of a case. Using the art of persuasion to help clients solve a problem is the reason I love this career. At the end of the day, it's about problem solving: that's the key function and value of a good lawyer. Solving a problem doesn't always mean you win a case outright; it's about knowing what your clients need, and fighting for it. Even where a client has a case that isn't very strong, we can find ways to help. Sometimes, just delaying a payment can be a victory for a client. There is always a way for a lawyer to figure out a way to meet the client's commercial needs.

### **You have a wide-ranging practice that covers litigation, arbitration, regulatory investigations and white collar crime. What originally interested you in these areas of law?**

My original and lasting interest is in resolving disputes; everything else flows from that.

I think of all areas of my practice as contentious matters. Litigation and arbitration are obviously contentious procedures. In regulatory investigations, the relevant government authority is essentially my client's counterparty. Even internal investigations can require my clients to confront the targets of the investigation. Also, an investigation will often be followed by a contentious process like disciplinary action against the employee, or full-blown legal proceedings. Dispute resolution is at the core of everything I do.

### **How has Mainland Chinese dispute resolution changed since you started to practice?**

I'd say the major change is increased sophistication. Not only Chinese lawyers, but also judges and clients have become more and more sophisticated in the way they deploy litigation and arbitration to resolve problems.

When I started practising 18 years ago, clients in Mainland China were very reluctant to commence litigation. The prevailing view was that fighting a counterparty in court was not a good thing, and would damage the client's reputation. Parties would delay starting proceedings, or avoid it altogether.

Things have changed quickly. Now, my clients will actively seek litigation or arbitration to resolve conflict with their business partners, or use proceedings as leverage in commercial negotiations.

Another major change has been in the quality of adjudication. 20 years ago, many judges in China - particularly in rural areas - were retired army members, not lawyers. Although they had their own ways of helping parties to settle disputes, these judges had no legal background and no formal judicial training. These days, most judges in Mainland China have postgraduate legal degrees; many have also spent time studying and working abroad. Although many Chinese judges still encourage parties to settle their disputes, and PRC litigation procedure is designed to encourage settlements, it's for a different reason. Parties' increasing use of litigation means there are many more cases than there used to be. Settling them both helps the parties, and reduces the burden on the courts.

These changes reflect the fact that China generally is much more international and globalised than at the start of my career. Improvements in China's economy have also played a part. As the country has grown more prosperous, more and more parents have been able to send their children overseas to study and gain experience in a cross-border context, before bringing that experience back home to China.

**Tell us about the Kewei-HSF joint operation. How does it work to enhance the firm's offering to clients both in and outside Mainland China?**

I joined Kewei three years ago, after the joint operation had been established. In that short time, I have

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This knowledge enables us to act as a bridge between Chinese clients and the Herbert Smith Freehills teams outside China. That capability differentiates us from other international firms in China and from purely local Chinese firms.

For example, we recently acted for a Chinese state-owned entity in a Singapore arbitration. Before instructing us, the client had been working with a local Singaporean firm, but the general counsel was finding it really difficult. He felt that the lawyers wouldn't interact with him, and that they just wanted to interview the client's senior management and to dig out every email and document that had anything to do with the case. The GC, who has a Chinese legal background, understandably felt that this was not in the SOE's favour. As someone with both Chinese and international background, I was able to explain that it is usual in international arbitration to interview witnesses and produce evidence that may or may not support your case. The Singapore lawyers had been doing their

jobs, but it wasn't until Kewei came on board that the client fully understood the process and procedure he was involved in, and the reasons for it.

This same client is now involved in Australian court proceedings, working with Herbert Smith Freehills' Perth office. Our Australian team wasn't optimistic about the client's prospects, but the client wanted to litigate regardless. Kewei has acted as a bridge, explaining to the Perth lawyers that it was important for the SOE to initiate the litigation because PRC law obliges SOEs to protect state assets however it can, even outside China. We also explained to the client that our colleagues' assessment wasn't positive, and discussed whether to

proceed. The client decided to go ahead, and we have helped develop a strategy that allows it to spend as little time and money as possible, while complying with its obligations under PRC law.

**How do your clients use arbitration (both domestic and international)?**

More and more Chinese clients are highly sophisticated, and routinely consider when entering a transaction whether to resolve disputes by litigation or arbitration. Their choices will depend on the circumstances of the transaction.

Mainland clients with foreign counterparts tend to opt for arbitration over litigation. Our clients know that arbitration gives them more flexibility, for example in choosing both arbitrators and shaping the procedure, compared to foreign court proceedings.

If the counterparty is a government authority, for example under a PPP agreement, my Chinese clients tend to feel that arbitrators provide a more impartial procedure than a judge in court.

Chinese clients are also aware of the enforcement advantages of arbitration over litigation. Clients are particularly keen on

arbitrating in Hong Kong, because of the Interim Relief Arrangement that allows clients to apply for interim relief from the PRC courts to preserve the other side's assets at the beginning of the transaction. My clients see this as a major advantage.

**If you hadn't been a lawyer, what would you like to have done as a career?**

I would love to have been a primary school teacher. Being a lawyer, and the time and energy it involves, makes me feel that I owe a great deal to my family, and particularly to my two kids. I also love time spent with young children.

**What have you done to pass the time during periods of Covid lockdown? Any new hobbies - or pets?!**

I have spent a lot of time exercising. It's easier for me to exercise at home than when I'm working in the office, and it is important for my physical and mental health to keep exercising.

I have also made sure to keep in contact with my friends, family and clients during the pandemic. This could be by giving them a call, or posting on WeChat groups and other social media. Keeping in touch with people and checking in with them has helped me endure the lockdown, especially as it went on longer than we originally thought it would.

**Get in touch**

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