Spotlight Interview **Weina Ye**

Weina is an international partner at Kewei. She started her career at Herbert Smith Freehills, where she was a member of the international arbitration teams in London, Hong Kong and Mainland China, before moving to Kewei in 2020. Weina's practice covers disputes in a broad range of sectors, including TMT, manufacturing, energy, infrastructure and leisure.

Hear from **Weina Ye** here

You are a Herbert Smith Freehills PRC Scholar, meaning that you trained in the London office and qualified as an English lawyer. You are also qualified in the PRC, and have practiced much of your career in China. How has that experience shaped your career and your approach as a lawyer?

I qualified as a non-practising lawyer in the PRC more than 15 years ago, but for regulatory reasons only obtained my practising certificate in 2021, after I moved to Kewei. I have been practising as an English solicitor for more than a decade, from London, Hong Kong and Mainland China. So I practise both English and Chinese law and advise both Chinese and multinational clients, on both Chinese and international arbitrations.

This is a fairly unusual background, which allows me to give advice from a comparative perspective, and offer insights from both the Western and PRC points of view. For example, there are differences in the way a Chinese tribunal and an international tribunal will approach certain issues. I can explain those to my clients, to help them assess the best options in each case.

The China market divides lawyers to "Chinese lawyers" and "international lawyers". With a hybrid background, I consider myself a "Chinese international lawyer" or an "international Chinese lawyer".

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?

PRC regulation prohibits international firms like Herbert Smith Freehills from advising on PRC law. As a PRC law firm, Kewei can give Chinese law advice and represent clients in front of Chinese tribunals and courts.

The tie-up means, for my practice, that we can now provide a one-stop-shop for our multinational & Chinese clients for all types of disputes. This is a major advantage for all our clients, particularly in the resolution of cross-border disputes.

For example, in PRC-related international arbitration matters, the joint practice can not only run the international arbitration itself, but also the interim relief applications, related court proceedings and enforcement proceedings in Chinese courts, without having to engage co-counsel on a case-by-case basis. In global debt recovery matters, our HSF-Kewei joint team can work seamlessly in a number of jurisdictions including Mainland China, Hong Kong, Europe and the US. We also advise on disputes outside Mainland China that are governed by Chinese law or involve Chinese elements on a regular basis.

By providing a one-stop solution, the tie-up has enhanced our services in the resolution of cross-border disputes and addressed a real need for our clients. Kewei has become an important piece in the jigsaw of our very strong global disputes practice.

The PRC recently proposed a major revamp of its Arbitration Law. In your view, what are the most significant revisions, and why?

As a dual-qualified lawyer, I have paid much attention to the differences between Chinese arbitration practice and international arbitration practice. I often think about which is better, why, and how to harmonise the two systems.

There are many significant revisions in the consultation. For me, three stand out.

i) The proposals would allow arbitrations between non-equal parties, such as individuals and states. Essentially, this opens the door to investment arbitration in Mainland China, and is a very welcome development;

ii) The draft suggests that foreign institutions could administer foreign-related arbitrations in China (see article on page [ ] for further details). While the scope of the proposed permission isn't yet clear, this would be a truly significant change that would open

and internationalise the Chinese arbitration landscape;

iii) The amended law would allow ad hoc arbitrations in Mainland China. This proposal is limited to foreign-related disputes, but still represents a major shift in approach. Currently, all arbitrations in Mainland China must be administered by an arbitral institution.

Overall, the proposed revisions reflect two key things: Chinese legislators are willing to open the arbitration market to foreign practitioners, and there is a genuine drive to internationalise Chinese arbitration practice. I find this very encouraging.

What else is needed to internationalise arbitration practice in China and to harmonise Chinese and international practice?

There are two parts to this question: (1) internationalisation of practice in China; (2) international practice being more diverse to practitioners from various backgrounds and cultures.

We need to see continued internationalisation of arbitration in China. In some ways, Mainland arbitration practice is quite disconnected from international practice. There are several reasons for this, including overall differences between the Chinese/civil law litigation culture, which relies heavily on documentary evidence over witness testimony and encourages mediation, and international practice. Language is another obvious barrier, though this should improve gradually following arbitration reform in China, with more and more Chinese practitioners like me working in arbitration.

At the same time, it is important for international arbitration to be more diverse. While gender diversity has improved significantly, cultural diversity lags behind. For example, HKIAC and SIAC statistics include significant numbers of PRC law-governed and PRC-related cases, but appointment of PRC arbitrators remain relatively low. The same is true for arbitrators from other, less well-represented jurisdictions.

For international arbitration and Chinese arbitration to come closer together, we need to see more Chinese arbitrators sitting on international tribunals, then bringing that experience back to China for the benefit of Chinese and international parties alike.

China's Belt and Road Initiative was expected to generate a large number of disputes. Has that played out in practice? If so, what kinds of disputes are emerging, and in what fora are they being resolved?

"Belt and Road" is a loose "umbrella" label for all kinds of projects in the 70+ Belt and Road countries. I am not aware of any official statistics, but in the last few years I have definitely seen overseas Chinese projects, for example in the construction and mining sectors, encountering difficulties. The underlying reasons vary; the Covid pandemic is a factor, and a number of disputes arise for geopolitical reasons.

These disputes are referred to different fora, including arbitration. The choice of arbitral seat tends to depend on party nationality. Chinese deals with African counterparties often provide for arbitration in Paris. Central and Southeast Asian counterparties prefer Singapore and Hong Kong. Of course, most of these deals involve Mainland Chinese parties, and CIETAC arbitration is also used, for example, in Chinese financing agreements. There are also many "hidden" Belt and Road disputes being referred to CIETAC arbitration. These are disputes that arise out of a Belt and Road project, but between exclusively Chinese parties, eg a Chinese contractor and sub-contractor. Naturally, those parties may choose to arbitrate in China using a Chinese arbitral commission.

Historically, very few Chinese clients got involved in investment treaty arbitration. Has that changed?

Broadly, yes. In recent years, Chinese clients have developed a better understanding of investment treaty arbitration. This applies to both state-owned and private sector clients.

SOEs are still quite restrained in terms of bringing investment treaty arbitration, not least as a result of political and diplomatic concerns. However, we have seen a number of investment arbitration cases brought by Chinese private sector clients in the last few years. Overall, the Chinese market has an enhanced awareness of investor-state arbitration compared to a decade ago. As parties learn more about how treaty arbitration can be used for strategic and investment protection purposes, I certainly expect to see more cases in the years to come.

If you hadn't been a lawyer, what would you be doing now?

I have lots of thoughts on this! I want to run a farm, and to spend half of my time travelling. I'd also like to write a book about the generation born in the 1980s in China, based on my own experience and the experiences of those around me.

Get in touch

Weina Ye
International Partner, Kewei
T +86 21 2322 2132
weina.ye@hsfkewei.com

https://www.herbertsmithfreehills.com/our-people/weina-ye