

I-Ching Tseng



SENIOR ASSOCIATE of the Brisbane office of Minter Ellison
LLB (HONS) B.INT.B (GRIFFITH, 2000)
LLM (NAGOYA UNIVERSITY, 2004)
AIAMA

Area of law

International Arbitration, Litigation and Dispute Resolution

Background

I-Ching focuses her practice on commercial litigation and alternative dispute resolution, with an emphasis on international commercial arbitration and mediation. She has been involved in ad hoc arbitration proceedings as well as arbitration proceedings under the auspices of major international arbitration institutions, including the International Chamber of Commerce (**ICC**), World Intellectual Property Organization (**WIPO**), the International Centre for Dispute Resolution (**ICDR**) and FIFA Dispute Resolution Chamber (**DRC**). She has assisted in the drafting of expert report for arbitral proceedings under the auspices of Singapore International Arbitration Centre (**SIAC**). She has also advised clients on arbitration proceedings under the rules of the London Court of International Arbitration (**LCIA**), the Japan Commercial Arbitration Association (**JCAA**) and the China International Economic and Trade Arbitration Commission (**CIETAC**) and assisted them in reaching settlement; on the recognition and enforcement of foreign arbitral awards; and on the drafting of dispute resolution and jurisdiction clauses, including investor-state dispute resolution provisions. She has also assisted and represented clients in multi-million dollar cross-border litigation. Her experience stretches over a diverse range of industries, including:

- Commodity and Energy and Resources;
- Pharmaceutical, medical device and life science;
- Manufacturing Sector;
- Sport and Entertainment industry; and
- Intellectual Property disputes, particularly domain name and copyright issues.

I-Ching speaks, reads and write fluent English, Japanese, Mandarin and Taiwanese.

Sample of relevant matters

Resources and energy

- Acting for Anglo American in relation to a range of disputes with power station owners CS Energy and Intergen concerning the supply of coal to Callide Power Station, particularly whether the power station owners are able to exercise an option to extend the coal supply agreements.
- Advising a global explorer and producer of gas in relation to the expected default of a foundation customer to take or pay for future gas supply valued in the AU\$ hundreds of millions. Particularly, advice on **arbitral proceedings** under ICC Rules and advice on enforcement risks in China form important parts of the advice.
- Advised AGL / Arrow in relation to a dispute arising out of a power purchase agreement, particularly the impact of cyclic operation on critical components of a combined cycle gas plant. The design of and assistance in a bespoke dispute resolution process is an important component of the work.
- Advising a state owned electricity generator in Queensland a dispute (in the order of AU\$ hundreds of millions) arising out of royalty payment arrangements with the coal production and export arm of one of Australia's largest listed companies.

- Advising a multinational metals and mining company in relation to a long term coal supply agreement with a power station in Thailand, particularly in relation to the right to terminate the coal supply agreement due to frustration. The dispute calls for **international arbitration** under SIAC Rules.
- Acted for an Indonesian subsidiary of Thiess in relation to a dispute in the Supreme Court of Queensland with the mine owner under a life-of-mine mining services contract concerning a coal mine in Indonesia. The mine owner unsuccessfully sought declarations that it was able to terminate the mining services contract pursuant to the contract or, alternatively, that a change in law in Indonesia had resulted in the contract becoming illegal or frustrated. The judgment assisted the client to negotiate a favourable settlement, which has since been litigated resulting in a judgment that the mine owner make payment to the client of amounts in excess of AU\$ 400 million. Also assisted Thiess in related claims in the Supreme Court of Queensland in relation to payment claims under the mining services contract.
- Provided advice to Anglo American in relation to an agreement for the supply and construction of "Stackers and Reclaimers" for a coal handling plant with a Chinese state owned entity. Specifically, advised on multi-tiered dispute resolution (the final tier being **arbitration** under ICC Rules), jurisdiction and choice of law provisions and risk-mitigation measures.

Free Trade Agreement / BITs

- Assisted an industrial body in surveying and considering legislations and policies of state governments requiring preservation of certain percentages of gas production for domestic purposes and possible issues arising out of BITs and GATT obligations.
- Provided advice to an Australian based international mining and metal company on **investorstate arbitration** and assisted in the drafting of investor-state dispute resolution provisions in several EPC agreements with the government of Mozambique.
- Advised Asia's leading agribusiness group on proposed regulation of sugar production and marketing under Commonwealth and Queensland laws would impact on investments made in Australia by the company to such an extent as to violate the provisions in Chapter 9 of the Singapore-Australia Free Trade Agreement (**SAFTA**). Particularly, provided advice on whether there are good grounds for an argument that an indirect expropriation would result from the proposed measures coming into effect.

Construction and infrastructure

Advised Brisbane Airport Corporation on potential risks exposures and risk mitigation measures in relation to a dredging agreement for its parallel run-way, both in relation to enforcement of **arbitral** awards in certain jurisdictions and risks arising out of compulsory adjudication and process arising out of the Building and Construction Industry Payment Act. Also assisted in drafting dispute resolution provisions in relation to a design agreement and related guarantee agreement in relation to the parallel run-way project.

Arbitration

- Advising an international natural health supplement distribution and marketing company on potential **ad hoc arbitration under UNCITRAL Rules** in Queensland against its former distributor in Korea in relation to alleged breach of know-how owned by the company.
- Acted for Sugar Australia in **ad hoc arbitration** proceedings (two) under the now superseded *Commercial Arbitration Act 1990* (Qld), as well as related appeals in the Supreme Court of Queensland, against Mackay Sugar in relation to the breach of a sugar supply agreement.
- Advised a Chinese based solar panel company on enforcement of **arbitral award** in Australia against a company that was in the process of winding down.
- Advised Singapore based funds companies on the revision of arbitration provisions in shareholders' agreements.
- Provided advice in relation to the review of an arbitration clause (**ICC**) under a Deed of Confidentiality in relation to a business venture involving worldwide exhibitions of automobiles.

- Assisted a Japanese company of silicon wafers for the production of solar panel in settling a multimillion-dollar dispute with a Chinese company arising out of alleged breach of long-term supply agreement. The dispute resolution clause provided for **CIETAC arbitration**.
- Advised an Australian bio-therapeutic company on a multimillion-dollar arbitration under the auspices of **ICC** brought by a Japanese government-owned entity under a joint development agreement.
- Acted as arbitral secretary in an **ICC arbitration** between a French company and a Japanese company arising out of termination of distribution agreement. Assisted the tribunal in all procedural aspects of the matters, including coordinating meetings, carrying out researches and assisted the tribunal in the preparation of procedural orders and award.
- Acted as arbitral secretary to the sole arbitrator in an **ICC arbitration** between an American baby food manufacturer and its Korean distribution arising out of alleged wrongful termination and product liability. Assisted the sole arbitrator in all procedural aspects of the matters, including coordinating meetings, carrying out researches and assisted the arbitrator in the preparation of procedural orders and award.
- Acted as arbitral secretary to the sole arbitrator in managing and coordinating an **ICC arbitration** between American and Japanese parties arising out of alleged breach of a joint development agreement and trade secret. Particularly, assisted the arbitrator in all procedural aspects of the matters, including coordinating meetings, carrying out researches and assisted the arbitrator in the preparation of procedural orders and award.
- Advised a Japanese electric utility company on **LCIA arbitration** proceedings and **ICC proceedings** for separate claims arising out of related long-term coal supply agreement. Queensland laws governed the ICC proceedings
- Successfully assisted a German agribusiness company in enforcing an **arbitral award** issued under the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce in Japan.
- Defended a Japanese football club in a **FIFA DRC** proceeding for unfair dismissal brought by a Brazilian football player.

Professional Appointments

- Panel Member on WIPO's List of Mediators and Arbitrators
- Arbitrator, China Chongqing Arbitration Commission
- Panel Member, IAMA Domain Name Panel (2012-2014)
- Arbitrator, The Chinese Arbitration Association, Taipei
- Queensland Chapter Committee Member, The Institute of Arbitrators and Mediators (IAMA) (2012 – present, Deputy Chairperson in 2014)
- Council member 2012-present (Taiwan Representative) for Asia-Pacific Forum for International Arbitration.
- Member, Arbitration Sub-Committee, Practice and Standards Committee, Chartered Institute of Arbitrators (2011 - present)

Thought Leadership papers and presentations (sample only)

- Presenter, Arbitrating Disputes with Chinese Parties, Inaugural Introduction to International Arbitration course in Australia organised by the Chartered Institute of Arbitrators, 23 May 2015.
- Presenter, *Arbitration and Dispute Resolution in the Chinese Cultural Paradigm* in Society of University Lawyers regional meeting on 30 May 2014.
- Presenter *Dispute Resolution of International Contract* at Legalwise Contracts Conference, 28 March 2014.
- Minter Ellison Alert, International traders beware: varying jurisdictions could hamper your dispute resolution process, 19 August 2013, co-authored with Khory McCormick.
- Minter Ellison Alert, International Arbitration - Vanguard or Keeping Pace, 15 April 2013, coauthored with Khory McCormick.
- Minter Ellison Alert, A win for international trade – High Court dismisses challenge to International Arbitration Act, 15 March 2013, co-authored with Khory McCormick.
- Case Notes on *Sugar Australia Pty Limited v Mackay Sugar Ltd*, 31(1) The Arbitrator & Mediator (May 2012), co-authored with Khory McCormick.

- "One Step Forward, One Step Back – Part II", 17(1) IBA Arbitration News (April 2012), coauthored with Khory McCormick
- "Some Thoughts on the Recognition and Enforcement of Foreign Arbitral Awards in China", 30(2) The Arbitrator & Mediator (October 2011)
- "One Step Forward, One Step Back", 16(2) IBA Arbitration News (September 2011), co-authored with Khory McCormick
- *Japan* in The Baker & McKenzie International Arbitration Yearbook 2009, co-authored with Haig Oghigian F.C.I.Arb
- *Japan* in The Baker & McKenzie International Arbitration Yearbook 2008, co-authored with Haig Oghigian F.C.I.Arb
- "The Future of Arbitration in Japan", 5 Transnational Dispute Management, (issue 4, July 2008) co-authored with Haig Oghigian F.C.I.Arb.
- "Japan's Arbitration Law" (June 2008) Zeitschrift fuer Schiedsverfahren (German Arbitration Journal) 270, co-authored with Haig Oghigian F.C.I.Arb.
- "Factors Affecting the Choice of Dispute Resolution Methods in Japan (With an Emphasis on Arbitration)" (2007) 24 Journal of International Arbitration 211-230.
- "The Law Promoting the Use of Alternative Dispute Resolution or the Law Preventing the Use of Alternative Dispute Resolution – Some Comments on the ADR Law of Japan", 4 Transnational Dispute Management, (issue 1, 2007)
- English translation of "Field Survey on Civil Litigators – Summary of the Survey Result" conducted by the Justice Reform Council, 212 Nagoya University Journal of Law and Politics (Housei-ronsyu) (June 2006), co-authored with Ikuo Sugawara
- "The Survey on Japanese Contractual and Dispute Resolution Practices" Presented at Harvard Project for Asian and International Relations Student Conference (Shanghai, August 18-21,2004)