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Q&A With Mayer Brown's Ted Howes

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B. Ted Howes

B. Ted Howes is a partner in Mayer Brown LLP's New York office and is both the leader of the firm's U.S. international arbitration practice and a member of the firm's global leadership team for international arbitration. He advises U.S. and foreign companies in a variety of international commercial arbitrations, including arbitrations governed by the Rules of the International Centre for Dispute Resolution, the International Chamber of Commerce, the Hong Kong International Arbitration Centre and the Singapore International Arbitration Centre.

Howes is also an active arbitrator and has been appointed to the panel/list of arbitrators of the International Centre for Dispute Resolution, the Hong Kong International Arbitration Centre, and the Beijing International Arbitration Centre. He is a member of the Chartered Institute of Arbitrators and is an authority on drafting arbitration provisions for complex international commercial contracts.

In addition to his international arbitration experience, Howes has extensive experience representing foreign and U.S. corporations in U.S. commercial litigation, often of an international nature. He routinely appears before the federal and state courts of New York in connection with his litigation practice.

Q: What attracted you to international arbitration work?

A: To be honest, I graduated from law school barely knowing that international arbitration even existed, much less what it entailed. I know it's a very popular course these days, but they did not even offer classes on international arbitration when I was in law school. All I knew is that I wanted to litigate and I wanted to travel the world, so I chose to work for the biggest international firm at the time, Coudert Brothers, and ended up in Paris. I remember walking into the office of William "Laurie" Craig in September 1991, just as he was unpacking the fresh Second Edition of his treatise on International Chamber of Commerce Arbitration. He proudly gave me a copy and the rest is history.

If what initially attracted me to international arbitration was the ability to be a disputes lawyer and experience foreign travel and foreign cultures at the same time, what has magnified that interest over the years is the sometimes maddening, always fascinating, clash of cultures that comes with the work. It is one thing to litigate a contract dispute between two U.S. companies. It is another thing to arbitrate a dispute between a U.S. company and, say, a Chinese company, who view the concept of contract through a very different cultural lenses. Take a typical contentious commercial litigation, add a layer of cultural dissonance, and then try to present the case to a jury of three arbitrators from three different

countries, and that is pretty much what you get in international arbitration. Never a dull day.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: As the practice grows in popularity, we are witnessing a "democratization" of the practice. In the past, there were a few firms that specialized in the practice and they really monopolized most of the work. Today, everyone seems to be trying to get into the field. There was also a certain aristocracy of super-arbitrators under the "old order" and not without good reason: they were the trailblazers, academics, intellectuals. As the old order retires, there is widening of the pool of both advocates and arbitrators. For an international practice, a greater diversity of viewpoints can only be a positive development.

Another undeniable trend has been a shift in emphasis from civil law procedures to Anglo-American dispute procedures. To be sure, international arbitration is still, and will always be, a blend of the civil and common law models of dispute resolution, and that is one of things that makes it so special. It strives to combine the strengths of both systems and it has been largely successful in that regard. Still, we are witnessing more document discovery, more e-discovery, longer cross-examinations, and more "motion practice" (including often unjustified applications to disqualify arbitrators). There has been a lot of negative talk about this trend, particularly because it may increase costs. There are also some benefits, however, which can reduce costs. For example, I believe international arbitrators are more receptive to summary disposition procedures these days. This is a good thing.

Q: What is the most challenging case you've worked on and why?

A: Without revealing confidences, it was probably a dispute arising out of a pair of joint venture contracts between a U.S. party and a Chinese party, governed by Chinese law, seated in Singapore . Suffice it to say that the case presented a number of unique challenges, including the fact that I ultimately had to try the arbitration before four arbitrators, two of whom were selected by my adversary. It's a long story.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: First of all, be cognizant of cultural sensibilities. For example, do not treat international arbitrators like jurors. There is nothing that will turn off a European or Asian arbitrator more than an aggressive American-style cross examination. I learned this the hard way. This is a contentious process, but it is also a gentlemanly one.

Second, be patient. It takes hard work and it takes time to learn the procedures and customs. And it takes attention to detail. Those who work hard, master the facts of the case and think outside the box will be rewarded.

Third, have fun. It's a great career for a young attorney today.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: Paul Friedland, who is currently the head of White & Case's international arbitration practice. I had the good fortune to work for Paul during the first five years of my career, when we were both at Coudert Brothers. Paul was a tremendous mentor to me. He is one of the finest lawyers I know, and has done a lot to advance the profession. He is so good at putting together a concise and persuasive

argument — at knowing what to say and, maybe more important, what not to say. I still remember his advice after he slashed apart a draft brief I had prepared for him: “Ted, argue with facts, not with words.”

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