

The thing about ...

Asian-mena Counsel's Patrick Dransfield had the chance to photograph and interview Chen Fuyong, deputy secretary-general of the Beijing Arbitration Commission/Beijing International Arbitration Centre, and put to him a series of questions on behalf of the *In-House Community*.

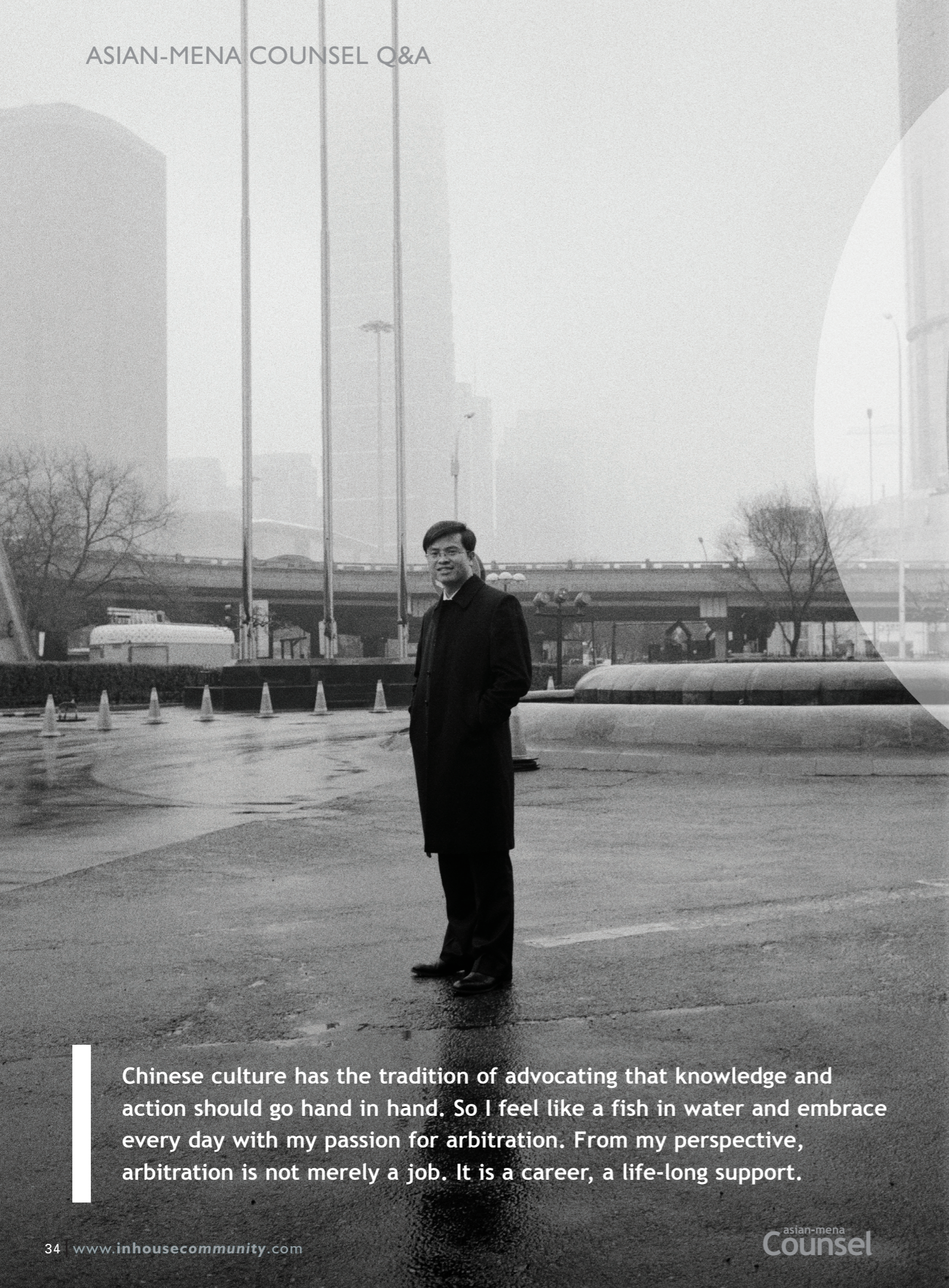
Chen Fuyong

Asian-mena Counsel: I understand that you did your doctoral thesis on China's arbitration institutions – has the reality of helping to run an arbitration centre lived up to your expectations?

Chen Fuyong: Absolutely. For me, it was a calling to engage in the field of arbitration. Although generally very few law students enter into arbitration institutions, it came naturally for me to take the road less travelled by other law students. Back in 1992, Deng Xiaoping did the famous southern tour and China started to clearly express the goal of establishing a market-oriented economy. Echoing this transition in the economy, the Arbitration Law of the PRC was

enacted in 1994 with an aim to transform the original planned economy-based administrative arbitration regime into a non-administrative one in line with international arbitration practice.

More than 200 arbitration institutions have been established in China since the Arbitration Law came into effect in 1995. However, the development of these institutions varies dramatically and the intended transformation seems quite difficult. My doctorate thesis was an empirical analysis of the then-current status and future trends of China's arbitration institutions, which attempted to unlock the intricacies of the transformation of these institutions.



Chinese culture has the tradition of advocating that knowledge and action should go hand in hand. So I feel like a fish in water and embrace every day with my passion for arbitration. From my perspective, arbitration is not merely a job. It is a career, a life-long support.

For the purpose of doing participant observation and collecting data, I joined BAC as a case manager for two years and learned about the inner working of an arbitration institution. During that period, I also organised two national surveys on the arbitration institutions and did interviews with staff in 10 arbitration institutions located in different cities and with different development levels. Then I spent one year as a visiting researcher at the Centre for the Study of Law and Society at the University of California, Berkeley and did a comparative study of the development of arbitration in America. After that I put my heart and soul into the writing of my dissertation for another year. The dissertation turned out to be the first systematic empirical research on China's arbitration institutions. I rejoined BAC in 2009 and was very excited to put my academic insights into practice. Chinese culture has the tradition of advocating that knowledge and action should go hand in hand. So I feel like a fish in water and embrace every day with my passion for arbitration. From my perspective, arbitration is not merely a job. It is a career, a life-long support.

AMC: Why is arbitration important for China?

Chen: Basically, arbitration plays an indispensable role in every country's system of dispute resolution. For China, arbitration shows its special significance in two ways: firstly, against the background of social transformation, the development of arbitration is a symbol of the development of self-governance of business society. Secondly, against the background of increasing outbound investment, international arbitration is one of the fields that China seeks to expand its power of discourse. To some extent, pursuing an arbitration is not just to resolve a specific dispute, but to construe and define the related rules of international trade and investment.

AMC: You describe the Beijing International Arbitration Centre as one of the busiest in the world. Could you provide details of the volume and kinds of cases that the centre typically hosts?

Chen: Since its establishment in 1995, BAC/BIAC has cumulatively accepted more than 30,000 cases, including over 800 international cases with disputing parties coming from more than 30 countries. If we look at the annual caseload, there is a sharply increasing trend in the past three years. The caseload in 2014, 2015 and 2016 were 2,041, 2,944 and 3,012, respectively. There are 11 hearing rooms at BAC. It is not unusual that we find all the hearing rooms are in session at the same time. The cases involve disputes arising from various commercial contracts, including sales contracts, commission contracts, contracts for construction projects, investment

and financing contracts, lease contracts, loan contracts, franchise contracts, technology contracts, and so on.

AMC: What are the potential attractions for a foreign party to use the Beijing International Arbitration Centre for their disputes?

Chen: BAC/BIAC devotes itself to providing dispute resolution services of an international calibre at local fee standards. The arbitration under BAC/BIAC rules is independent, impartial, professional, efficient and cost-effective. In addition, BAC/BIAC is very user-friendly. For example, under international procedures, the disputing parties could appoint an arbitrator from outside the panel. If, upon the termination of unsuccessful conciliation proceedings, both parties may request a replacement of an arbitrator on the ground that the results of the award may be affected by the conciliation proceedings.

AMC: My limited understanding is that, globally, arbitration centres typically fall into three categories: state to state, state to investor and commercial. How would you define the current status of the Beijing International Arbitration Centre? What are the plans for the centre over the next five years?

Chen: Currently, BAC/BIAC is mainly focusing on commercial arbitration, but is open to administer state-to-investor arbitration as well. As a leading arbitration institution in China and an emerging international arbitration centre, BAC/BIAC is expected to substantially increase its international visibility over the next five years, especially against the background of the Belt-and-Road initiative, and to make greater contribution to facilitate exchanges and cooperation between Chinese professionals in the field of arbitration and their counterparts in other countries.

AMC: How does the drive of technology and use of big data affect the way that International Arbitration is evolving? Are you now seeing people with different skills being called upon to be arbitrators, for example?

Chen: Technology and big data affect arbitration in many ways. Just to name a few, at BAC/BIAC, the parties are provided with a computer system to search for specific background information on arbitrators to make sure they have made appropriate disclosure of any conflicts. To increase efficiency, BAC/BIAC has designed and developed a case management system to consolidate information and expedite case handling since its establishment. BAC/BIAC also has designed and developed an online office system to provide arbitrators with greater access to case materials and tools to arbitrate cases with greater efficiency.



AMC: Where do you personally stand of the debate regarding third-party funding for arbitration?

Chen: Third-party funding is definitely a hot topic in recent years. I personally fully support this type of funding for arbitrations. The key is to require the disputing parties to disclose the third-party so that the tribunal could clearly decide whether there is any conflict of interest.

AMC: Who is your mentor?

Chen: Looking back to the days that I have grown, my academic mentors include Professor Pan Jianfeng at the Law School of Peking University, Professor Wang Yaxin at the Law School of Tsinghua University and Professor Malcolm Feeley at the Law School of UC Berkeley. They are all eminent experts in their field of research and gave me the best academic training that a student could have. My practice mentor is Madame Wang Hongsong, the former secretary-general of BAC/BIAC. She was the founder of BAC/BIAC and made it stand out among the arbitration institutions in China within a very short time. I have learned so much from her over the years that no words could express my gratitude to her. All my efforts in the field could be regarded as just following her footprints to make BAC/BIAC an internationally recognised arbitration institution.

Chen Fuyong is the deputy secretary-general of the Beijing Arbitration Commission/Beijing International Arbitration Centre and the vice-president of Asia Pacific Regional Arbitration Group (APRAG). He is a qualified PRC lawyer with an LLB from China University of Political Science and Law, an LLM from Peking University and a PhD from Tsinghua University. Chen was a visiting researcher (2007-08) at the Law School of UC Berkeley and is a research fellow of the Centre for the Study of Dispute Resolution at Renmin University of China. He is the general editor of Beijing Arbitration Quarterly and has published more than 10 journal articles on commercial dispute resolution, including “Striving for Independence, Competence and Fairness: A Case Study of Beijing Arbitration Commission” in *The American Review of International Arbitration*, v.18/no.3. His dissertation titled “The Unfinished Transformation: An Empirical Analysis of the Current Status and Future Trends of China’s Arbitration Institutions” was awarded 2010 Beijing Excellent Doctoral Dissertation. Chen is also the co-author of Chinese Arbitration Law (LexisNexis 2015) and China Arbitration Handbook (Sweet & Maxwell 2011). He has extensive experience in handling various commercial disputes through arbitration and mediation and is a regular speaker at international conferences and seminars.