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Become An Expert In Experts: A Practical Client Guide To Working With Experts In International Arbitration, Part 1

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Experts can make or break a case. In this two-part article, we consider how to get the best results at trial looking at the why, the who and the how of working with experts.

Why (Do We Need Experts)?

Experts opine on matters that the parties to proceedings, and their lawyers, are unable to provide evidence on, usually on complex matters requiring specialist expertise in a particular field, such as valuation, market practice, professional standards, delay (for example in construction projects) or other technical matters.

Who (Should Be Instructed)?

The most important thing is to **get the right expert**. A well-qualified expert who comes across as reliable and professional can significantly improve the chances of success of cases. Some key considerations when selecting an expert are:

- Map out expert discipline(s) needed early – some examples include foreign law (often foreign lawyers/academics), quantum (to determine the amount of loss suffered by a party, often forensic accountants), and technical/scientific issues.
- Find the right person– For particularly specialist areas, identifying the person with the right qualifications, industry and practical experience can be a challenge. You may need recommendations from your own or your lawyers' networks or use expert databases or relevant professional bodies. Some arbitration institutions hold expert lists.
- Beyond professional qualifications, consider the expert's hearing/cross-examination experience. An expert with prior experience of the process is often preferable.
- Check what has been said about, or by, any potential expert in court reports, publications, speaking engagements, or in your professional network. English courts can make findings about the credibility of experts in public judgments.

Once the expert candidate is found, **engage them as soon as possible**. This is especially important in disputes where very niche specialist expertise is needed and required and the few experts in the field might be snapped up quickly – including by your adversary in the proceeding. Instructing experts early can also help you and your legal team understand technical issues in the dispute early and so impact the assessment of the merits of the case, the strategy and the approach to potential settlement.

How (To Work With Experts)?

Our experience is that the best process involves:

- Clear instructions – Provide clear and well-defined instructions so that the expert focuses on the key matters. A teach-in session at an early stage of the case (led by the lawyers you instruct on the arbitration, with input from the relevant individuals at your organisation) to discuss the technical and factual background to the case with the expert can clarify any uncertainties about their instructions. It is also a good opportunity to remind the expert of their duty of independence – experts are not supposed to be a mouthpiece for your side of the dispute, but need to provide their independent opinion to the Tribunal.
- Documents – Your lawyers will set in place document management processes to make sure your expert has all they need to prepare their report. You can assist by ensuring that any document requests are dealt with promptly.
- Regular check-ins – Your legal team will keep in touch with the expert to ensure the report is proceeding to any deadlines, and addresses the necessary issues. It is also advisable to keep the expert updated on any major developments in the case – this will help them remain involved up to the final hearing.

In the next part, we will discuss what expert reports should cover, some practical tips regarding expert meetings and tips for oral testimony.

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