

Party Appointed Experts in International Arbitration: Asset or Liability?

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Overview

- ▶ The role of the expert witness
- ▶ Reform in domestic common law courts
- ▶ Current practice in international arbitration
- ▶ Proposed best practice directions

The role of the expert witness

Provide opinions based on witness evidence and documents



Party or tribunal appointed experts
Common law versus civil law tradition

Role of the Expert

Domestic Reform

Practice in IA

Best Practice

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Reform in Domestic Common Law Courts

- ▶ The Woolf Report
- ▶ Reform in UK Courts
- ▶ Reform in Australian Courts

Role of the Expert

Domestic Reform

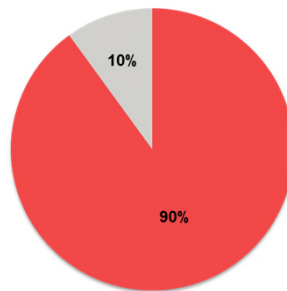
Practice in IA

Best Practice

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Issues in International Arbitration

- ▶ Party-appointed experts overwhelmingly common in IA
 - » 90% of all experts used in arbitrations are party-appointed



Friedland and Brekoulakis, 2012 *International Arbitration Survey: Current and Preferred Practices in the Arbitral Process*

Role of the Expert	Domestic Reform	Practice in IA	Best Practice	5
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Issues in International Arbitration

1

Concerns in common law translated to IA

- Bias of party-appointed arbitral experts

2

Challenges for arbitrators and counsel from civil law backgrounds

- Inexperience with problems requiring reform in common law jurisdictions

3

Current practice in IA

- IBA Rules on Taking of Evidence 1999
- CIArb Protocol 2007

Role of the Expert	Domestic Reform	Practice in IA	Best Practice	6
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Proposed Best Practice Directions

The Challenge: inefficient evidentiary hearings
and expert bias

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Proposed Best Practice Directions

The Challenge: inefficient evidentiary hearings
and expert bias



The Solution: limiting the differences

Role of the Expert Domestic Reform Practice in IA **Best Practice** 8

Proposed Best Practice Directions

1. Identification of disciplines
2. Establishment of common list of questions
3. Deferral of production of expert reports until factual evidence is available
4. Production of joint expert reports identifying areas of agreement and disagreement
5. Production of individual expert reports on areas on disagreement only
6. Production of "reply" expert reports that conduct a "figures-as-figures" analysis

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Hot-tubbing and witness conferencing

- ▶ Only after applying the proposed directions will the hot-tubbing process be most effective



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Expert Access Protocol

Delivering the experts to the Tribunal



Role of the Expert

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