

# Emerging International Best Practice In the Use of Party Appointed Experts in International Construction Arbitration

Indian Institution of Technical Arbitrators 4th International Conference

26 - 27 October 2018

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# Overview

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# Civil and Common Law Approaches to Experts

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## ➤ Civil law

- » Court appointed experts
- » Remunerated by the party which bears the litigation costs
- » Inquisitorial
- » Narrative form

## ➤ Common law

- » Party appointed experts
- » Remunerated by the appointing party
- » Adversarial
- » Cross-examination

# Implications for International Construction Arbitration

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- Use of party appointed experts in international arbitration is widespread
  - » Both common law and civil law lawyers are grappling with the challenges associated with party appointed experts
  
- Avoiding the "hired gun" in expert evidence
  - » Ensuring experts remain independent

# International Arbitration Guidelines

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IBA Rules on the Taking of Evidence



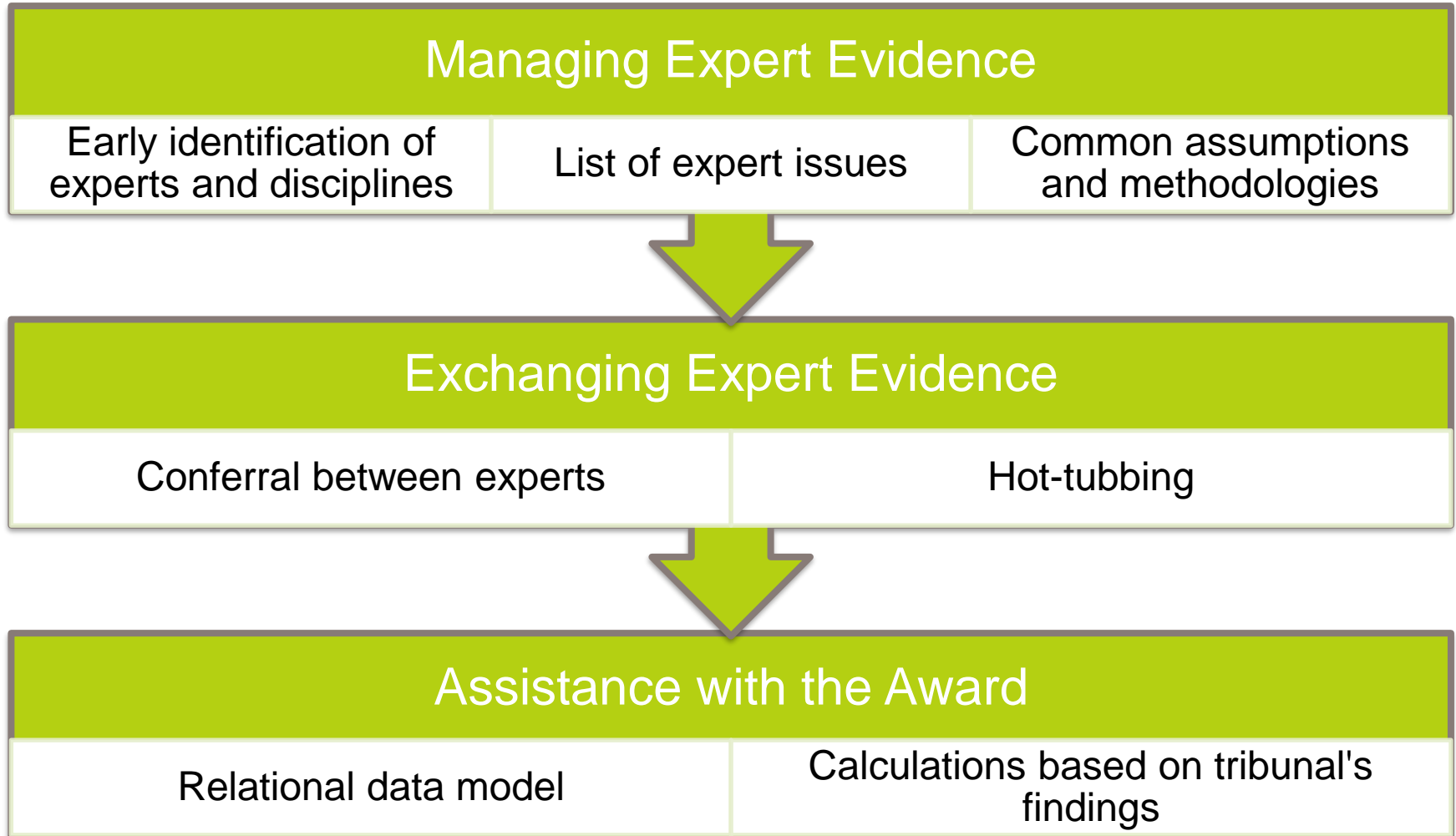
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**CIArb**

CIArb Protocol for the Use  
of Party Appointed Expert  
Witnesses

# Proactive Case Management Strategies

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# Concluding Remarks

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1. Overriding duty of experts is to assist the tribunal.
2. Experts should be impartial and independent from the party by whom they are appointed.
3. Key to best practice: international guidelines in conjunction with proactive case management strategies.

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