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# **QICCA 3<sup>rd</sup> International Arbitration Conference**

## **The Use of Experts in Arbitration in the Region**

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**Andrew Woodward**

**Contact:** [andrew.woodward@qgs.global](mailto:andrew.woodward@qgs.global), [www.qgs.global](http://www.qgs.global)

# The Use of Experts in the Region

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## Use of Experts in Arbitration in the Region – an Expert's view

### Brief discussion to outline:

- Typical Expert Appointments
- Common appointments in the region
- Aspects of Expert Appointments
- Interesting observations from recent appointments
- Summary

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**Expert Appointments in the region – three primary types:**

- Court Appointed Experts
- Party Appointed Experts
- Tribunal Appointed Experts

Other offshoot appointments relate to **Expert Determinations**.

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## Most common appointments relate to Party Appointed Experts:

- **Frequently specialising in:**
  - Matters of Quantum
  - Matters of Delay
  - Or other specific technical matters deemed appropriate
- **Expert Duty is to the Tribunal, not to the Parties:**
  - Provide the Tribunal with an independent and impartial view on cost and time
  - Provide Expert Opinion, not witness of fact
  - Provide a matrix of Opinion to tally with Tribunal's potential decisions on liability
- **Tribunal Appointed Experts – appear to be rare appointments**

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## Are Court Appointed Experts different?

- **Significant difference** – Court Appointed Experts:
  - Operate within the Qatari Competent Court system, not in Arbitration
  - Predominantly Qatari Nationals – must be Arabic speaking
  - Appointed to ‘Decide’, rather than provide opinion

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## Typical Aspects of Party Appointed Expert Services:

- **Expertise in Construction:**
  - Experts hold extensive experience in the Construction Industry
  - Previous lives in front line construction delivery
- **Expertise in Arbitral Procedure:**
  - Familiar with the arbitral rule and procedures – CIArb, ICC, QICCA etc
  - Familiar with what the Tribunal want
- **Professional Ethics:**
  - Bound by Codes of Conduct through Memberships and associations – **RICS, ICE, CIArb** etc.

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## Are Experts Common in the Region?

- **Qatar, yes** – a number resident in Qatar
- **Wider GCC, yes** – a number based across Bahrain, UAE, Jordan etc
- **Outside of the GCC, yes** – plenty available in Europe, Hong Kong, Singapore etc:
- All appear to travel easily

## Are Expert Appointments common in the Region:

- **Yes** – Majority (if not all) of Arbitrations include appointment of Experts

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## Interesting observations common across appointments:

- **Delay:**
  - Overall delay easy to agree
  - Little agreement over analysis methodologies – Different methodologies giving different results
  - Passage of the critical path (critical delay) always disputed
  - P6 used to 'add weight' but complicate arguments:
    - P6 does not make delay easy to understand



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## Interesting observations common across appointments:

- **Quantum:**

- Presentation of costs for Audit – difficult to achieve
- Costs ‘in the alternative’ to match pleadings ‘in the alternative’ becomes complex
- Disruption Costs – the Parties struggle to identify their losses
- Huge documents – a problem for small disputes

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## Interesting observations common across appointments:

- **Both Quantum and Delay:**
  - **Imbalance of effort:**
    - One party wanting to limit cost of arbitration
    - The other, '*Money No Object*'
  - **Parties have very little understanding** of the Arbitral process and how the expert service fits in.
  - **Cost of service not always 'proportionate'** to the dispute at hand

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## Summary:

- **Experts are available across the region:**
  - No problem with supply
  - Plenty prepared to move around
- Dispute processes appear to **make good use of Experts**
- **Tribunals benefit from Experts:**
  - Help them digest and understand the big submissions
- **Cost of Arbitration is an issue:**
  - Parties have difficulty understanding the costs at outset
  - Procedure tends to lead to expense – becomes disproportionate

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## Any Questions?

**Andrew Woodward** – Executive Director Qatar and Technical Director  
andrew.woodward@qgs.global

### **Quantum Global Solutions**

950 Ibn Seena Street  
Al Muntazah  
PO Box 22521  
Doha, State of Qatar  
T: +974 4431 2826  
W: [www.qgs.global](http://www.qgs.global)