
QICCA 3rd International Arbitration Conference

The Use of Experts in Arbitration in the Region

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The Use of Experts in the Region

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?

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