

Insights

BCLP ARBITRATION SURVEY 2021: EXPERT EVIDENCE IN INTERNATIONAL ARBITRATION

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The use of party-appointed experts in international arbitration has been the subject of debate for many years. The primary role of experts is to assist the tribunal on matters within his or her expertise that might be outside the expertise of the tribunal. However, in practice, the role of expert can be far broader.

In many cases, experts are retained to provide advisory and arbitration support at an early stage, before becoming a testifying independent expert. The party-appointed expert treads a delicate line, however, as there is often a perception that they are essentially hired guns or advocates in disguise. This can have an adverse impact on the evidential weight that tribunals give to their evidence.

In this year's International Arbitration Survey, we focused on the perceived problems with party-appointed experts. Are there practical steps that could or should be taken to mitigate them and, if so, who should take the lead in implementing them? Are there better alternatives for adducing expert evidence in arbitration? In other words, what can be done to save the party-appointed expert?

This year's survey respondents looked like this:

- They work in Central and South America, North Africa, Western Europe, East and South East Asia, Australasia, the Middle East, Latin America and the Caribbean, Eastern Europe (including Russia and CIS), West and East Africa, and North America.
- The majority (75%) were from a common law background and 44% were expert witnesses.
- They were involved in disputes across a wide range of sectors, including construction and engineering (67%), energy and natural resources (53%), international trade and commodities (27%), maritime and shipping (24%).

Among the survey results:

- 96% of respondents thought it was important that parties should have the right to rely on the evidence of a party-appointed expert.

- 52% of respondents did not think there should be greater control over the use of party-appointed experts.
- 93% of respondents thought a tribunal should give limited weight to the evidence of a party-appointed expert who breaches his/her duty to remain independent and assist the tribunal.
- 21% of respondents felt rules allowing the disclosure of counsel-expert communications would promote greater independence and objectivity on the part of party-appointed experts.

The full survey report can be downloaded [here](#).

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