

# THE RELEVANCE OF EXPERTS IN CONSTRUCTION ARBITRATION

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## INTRODUCTION

In construction and infrastructure arbitration, experts play a pivotal role in ensuring fair and efficient proceedings by bridging the gap between legal interpretation and technical complexities. Their specialized knowledge enables arbitrators to make well-informed decisions.

Construction disputes frequently involve delays, cost overruns, and technical challenges, making expert intervention essential. Experts provide independent analysis, technical assessments, and professional insights to assist tribunals in evaluating claims objectively.

A key area where experts contribute is delay assessment. Parties often plead multiple delay claims concerning construction execution. Experts assist the tribunal in pinpointing delays that affect project completion and the critical path. This enables the tribunal to focus on critical events only and, then determination of responsibility for delays through contractual interpretation for assessment of cost entitlement.

## **JUDICIAL RECOGNITION OF EXPERTS IN CONSTRUCTION ARBITRATION**

There are cases that reinforces the broader judicial recognition that complex construction disputes cannot be resolved solely through legal arguments and documentary evidence but require independent technical assessment to ensure fair and well-reasoned decisions. Few such judgement which highlighted the necessity of expert involvement in construction disputes are as follows:

Struthers v. Davies, [2022] EWHC 333 (TCC) (UK), where the court relied on expert testimony to determine the existence and extent of construction defects, as well as the reasonableness of the remedial measures undertaken. The judgment highlighted that, in disputes concerning defective or incomplete works, expert evidence is essential in providing the court with a clear and informed perspective on technical matters.

Panther v. MESC [2019] DIFC TCD 003, where DIFC Court's underscores the critical role of expert testimony in assessing delays and the retrospective evaluation of project schedules. The Court relied on expert analysis to determine the existence and extent of project delays. This judgment highlights that, in disputes concerning delayed or disrupted construction works, expert evidence is essential in providing the Court with a clear and informed perspective on technical scheduling matters.

### **APPOINTMENT OF EXPERTS**

The appointment of experts in construction arbitration follows specific processes to ensure credibility and impartiality. Experts may be appointed by either party (Party-Appointed Experts) or by the tribunal itself (Tribunal-Appointed Experts), depending on the arbitration framework. The selection process typically considers the expert's qualifications, experience, independence, and subject matter expertise.

### **TYPES OF EXPERTS IN CONSTRUCTION ARBITRATION**

In construction arbitration, experts are typically categorized into three main types based on their area of specialization: Delay Experts, Quantum Experts, and Technical Experts. Each plays a distinct role in assisting the arbitral tribunal with specialized assessments and objective evaluations:

1. **Delay Experts:** Delay experts analyze project schedules, identify the critical path and causes of delays, and assess their impact on the key milestones of the project, which are either subject to Liquidated Damages or represents project completion. Their reports help the tribunal understand the extent of time-related claims and whether a contractor is entitled to extensions of time or compensation for prolonged project durations.
2. **Quantum Experts:** Quantum experts focus on financial aspects, including cost overruns, claims for additional payments, and loss of productivity. They assess the valuation of variations, disruption costs, and damages arising from delays or contractual breaches. By applying industry standards, contract provisions, and cost analysis methodologies, they provide independent evaluations that help the tribunal in determining fair compensation.
3. **Technical Experts:** Construction projects inherently involve complex technical issues, as their engineering principles and execution rely on specialized knowledge. Given this, technical experts play a vital role in arbitration when disputes arise over design, construction methodologies, differing pre-bid and actual site conditions or compliance with engineering standards. Their expertise is sought in cases where technical fundamentals are in question, providing independent assessments to clarify disputed matters. These experts may specialize in various fields, including geotechnical engineering, structural design, wind load analysis, material science, or mechanical systems, depending on the nature of the dispute. Their evaluations help the tribunal understand intricate engineering challenges, ensuring that decisions are based on objective technical reasoning.

## **ROLE OF EXPERTS IN ASSISTING THE TRIBUNAL**

Experts play a crucial role in helping the arbitral tribunal understand complex construction disputes by providing independent, fact-based analysis. Their expertise ensures that the tribunal has the necessary technical and financial insights to make well-informed decisions. Experts assist in the following keyways:

1. **Clarifying Technical Matters:** Construction disputes often involve highly specialized engineering and contractual issues. Experts break down these complexities into clear and understandable explanations, enabling the tribunal to grasp critical technical aspects without requiring in-depth industry knowledge.

2. **Providing Objective and Independent Opinions:** Experts offer assessments based on industry standards, contracts, and factual evidence, distinguishing valid claims from unsupported allegations.
3. **Supporting the Evaluation of Claims:** Construction disputes frequently involve claims related to delays, cost overruns, and technical defects. Experts analyze project records, schedules, and financial data to determine the validity and extent of these claims.
4. **Joint Reports:** Experts produce joint reports identifying areas of agreement and disagreement. These reports help the tribunal narrow the dispute by focusing on the key contested issues, facilitating a more efficient resolution process.
5. **Assisting in Cross-Examinations:** Experts explain methodologies, findings, and conclusions in a clear and logical manner aids the tribunal in assessing the credibility and reliability of evidence presented. Sometimes when experts have differing opinions, the tribunal can seek clarification during cross-examination by asking targeted questions to understand the basis of each expert's opinion. This process helps the tribunal reach a well-informed conclusion by evaluating the reasoning behind conflicting expert views.
6. **Advising on Industry Best Practices:** Experts provide insights into standard engineering practices, cost estimation, and project management principles to evaluate whether parties adhered to professional norms.

## CONCLUSION

Experts are vital in construction arbitration, ensuring that technical complexities are properly interpreted and legally applied. They play a crucial role in breaking down complex technical elements into easy-to-understand conclusions, assisting tribunals in making technically sound awards. By offering objective assessments, they enhance the tribunal's ability to deliver fair and well-informed decisions. Their involvement upholds the credibility and efficiency of arbitration, ultimately fostering confidence in dispute resolution processes.