

Use of Experts in Arbitration

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There is significant procedural flexibility regarding the use of experts in arbitration. For example, experts can be party or tribunal-appointed. Tribunal-appointed experts make recommendations to the tribunal on specific issues. There is also a growing practice of using experts as decision makers, particularly in certain industry specific contexts like construction arbitration. These decision-making experts are often empowered by the parties to decide only limited technical issues that the tribunal then integrates into a broader award but can also be empowered by the parties to decide the matter entirely.

The disclosure and role of experts in an arbitration will be determined by the arbitration clause and applicable procedural rules. Unless expressly limited by parties' arbitration agreement, the decision to include or exclude expert evidence is left to the discretion of the arbitrators under their general authority to determine the relevance, admissibility, and weight of evidence (*i.e.*, Daubert challenges are generally not a part of arbitration procedure).

In line with procedural flexibility related to experts, it is common for tribunals to examine experts directly. This can include direct questioning, soliciting joint reports, conducting expert conferencing or "hot tubbing" where multiple experts are examined by the tribunal collectively, or deliver presentations rather than requiring direct examination by a lawyer.

Additional sources:

- Joe Skilton & Abi Harris, *Expert Evidence*, Global Arbitration Review, (May 24, 2024), <https://globalarbitrationreview.com/guide/the-guide-energy-arbitrations/sixth-edition/article/expert-evidence>.
- Frances P. Kao et al., *Into the Hot Tub – A Practical Guide to Alternative Expert Witness Procedures in International Arbitration*, 44 Int'l Litigation 1035 (2010) <https://scholar.smu.edu/til/vol44/iss3/7>



- Lexis Nexis Guide to Witness Conferencing in Arbitration found at <https://www.lexisnexis.co.uk/legal/guidance/witness-conferencing-in-arbitration>.
- *That litigation technique called hot tubbing: what's so hot about it?* Asia IP (Nov. 30, 2024), <https://asiaiplaw.com/section/in-depth/that-litigation-technique-called-hot-tubbing-whats-so-hot-about-it>.