



Expert of the Future

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A&M recently hosted an insightful panel discussion titled "Expert of the Future," exploring the evolving role and challenges facing experts in arbitration at the 2024 Swiss Arbitration Association Summit.

The panel comprised distinguished experts from across the arbitration spectrum including A&M's Luke Steadman representing the view of the expert witness, Angelina Petti of von Segesser providing input as arbitrator and Clarisse von Wunschheim of Altenburger acting as counsel. A&M's Julia Heidelberg acted as moderator.

Key discussion points and takeaways from the discussion include:

#### **1. Role of Tribunal-Appointed vs. Party-Appointed Experts:**

The panel discussed the nuanced roles of tribunal-appointed experts compared to party-appointed experts. Tribunal-appointed experts are expected to maintain impartiality and independence, akin to the standards upheld by arbitrators. This requirement stems from their duty to assist the tribunal impartially, making their selection and the integrity of their opinions crucial to the fairness of the arbitration process.

On the other hand, while there's a consensus that party-appointed experts should conduct their assessments independently, without undue influence, the panel debated the need for formal rules enforcing this. The potential for such rules to be used strategically by parties to challenge opposing evidence was highlighted as a counterproductive risk.

#### **2. Expert Evidence Management:**

The panel discussed the management of expert evidence within arbitration and emphasized the importance of early engagement with experts and clear communication between experts and counsel to ensure that expert reports are both relevant and aligned. The idea of experts meeting to discuss methodologies and harmonize their approaches was suggested as a beneficial practice.

#### **3. Tribunal's Role in Managing Expert Evidence:**

Panelists advocated for a proactive role for the tribunal in managing expert evidence. From setting clear guidelines at the outset to facilitating discussions on methodologies, the tribunal's involvement was seen as key to preventing incompatible expert reports and ensuring that expert evidence effectively informs the tribunal's decision-making.

#### **4. Examination of Experts and Hot-Tubbing:**

The examination of experts, including techniques like hot-tubbing, was discussed. The panel shared experiences where direct

tribunal questioning of experts, after initial presentations by counsel, led to more efficient and informative sessions. However, the effectiveness of such approaches depends significantly on the tribunal's preparedness and the specific circumstances of the case.

## **5. Impact of AI on Expert Evidence:**

The panel explored the potential impact of Artificial Intelligence (AI) on expert evidence. While AI tools are already in use for data analysis and document review, the consensus was that AI is unlikely to replace human experts fully, especially in areas requiring nuanced judgment and interpretation. The balance between embracing technological advancements and preserving the essential human elements of arbitration was underscored.

## **Conclusion:**

A&M's "Expert of the Future" discussion at the 2024 Swiss Arbitration Association Summit offered a deep dive into the challenges and opportunities facing experts in arbitration. Through a blend of theoretical insights and practical experiences, the panel provided valuable perspectives on improving the efficacy and integrity of expert involvement in arbitration processes. The session underscored the importance of impartiality, independence, and proactive management of expert evidence, alongside recognizing the evolving role of technology in arbitration.

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