



Can a good expert make a difference and how to choose him

Summary of the key topics discussed

Dear Sir/Madam,

Thank you for attending our half-day conference. We hope that you found it helpful for conducting your business in the ever changing environment. For those who missed the conference, we have briefly summarised the key topics discussed and opinions shared among our panellists and the audience. Should you have any questions or comments, we would be glad to hear from you.

Yours faithfully,

Josef Kotrba
OMP
Deloitte

Jana Jandová
Assistant Director
Deloitte

The Role of an Expert in International Arbitration, Josef Kotrba, Office Managing Partner, Deloitte Czech Republic

Josef discussed the boundaries of an expert's work and the independence of an expert as well as the most common mistakes made by experts. Among other things, he recommended avoiding the use of unsupported or inconsistent assumptions, not relying on management forecasts without adequate due diligence, and testing the overall reasonableness of conclusions and quantum of loss as a whole.

Assessment of Damages and Recent Trends, Jana Jandová, Assistant Director, Deloitte

Jana summarised the three main methods for quantifying damage: incurred expenses, lost profits, and business value including the discounted cash flow method. Jana also touched upon issues such as the use of hindsight, taxation, discount rates and mitigation of damage.

Jana then pointed to recent cases in which either the lost profits or the discounted cash flow method were used. In the second half of the presentation she discussed the way in which the USD 50 billion award was reached in the Yukos arbitration. In her opinion, it was interesting that the tribunal relied on comparisons between Yukos and other companies rather than on the discounted cash flow method. She also touched upon the arbitrary 25% discount applied by the arbitral tribunal resulting from the allegation that certain actions of the claimants had contributed to their own injury.

How to Work Effectively with Your Expert, Rostislav Pekar, Partner, Squire Sanders

Rostislav spoke about his experience with international and local experts and stressed that the expert's credibility should be the main selection criterion. In Rostislav's view, the experts in international arbitration are rightly unwilling to aggressively advocate in favour of their clients as this would damage their reputation. Rostislav then discussed whether it is preferable to use an expert with valuation or forensic background and expressed preference for the latter as the forensic mindset is, in his opinion, closer to the contentious character of arbitrations. When asked about court-appointed experts in the Czech litigation practice, he warned against the risk of having "three ships passing in the night" when the two expert reports submitted by the parties' experts are supplemented by a third one prepared upon instructions from a court with limited understanding of economic matters.



The Costs of International Arbitration, Matthew Hodgson, Senior Associate, Allen & Overy

Matthew discussed the costs of international arbitration. Two important points that resulted from his recent study of over 200 cases are that successful investors are more likely to recover costs (53%) than successful states (38%) and that successful parties are much more likely to recover costs in UNCITRAL claims (69%) compared with ICSID claims (36%).

Matthew also discussed the tools for controlling the costs of arbitrations. Apart from drafting the right arbitration clause, selecting the right arbitral tribunal and the right lawyers, he stressed good case management practice. In his view, such practice encompasses, inter alia, agreeing on a procedural timetable at an early stage, complying with institutional rules and case deadlines, agreeing on a list of key issues, limiting the length of written submissions, avoiding repetition, limiting disclosure by limiting requests and rounds of document production, making appropriate use of technology (e.g. avoiding hard copies), and limiting witnesses to key persons.

Panel discussion

During the panel discussion, four panellists discussed topics such as whether the economic expert should be appointed by tribunal or by a party, whether the fact that wealthier clients can afford better advisors should play a role in reaching a decision by the tribunal, and how to resolve an issue when two experts arrive at two very different amounts of damage.

A lively discussion followed about the use of information that becomes available after the date of breach and whether or not it should be taken into account.

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