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**EXPERT IN ARBITRATION:
DUTY BEFORE FRIENDSHIP**

Summary

1. The issues of expert participation in international arbitration proceedings are not getting enough attention in the scientific literature and practical recommendations for conducting arbitration. Although these issues are covered in detail in the literature on civil, commercial, and criminal proceedings, these studies can hardly be applied to arbitration by virtue of its fundamental differences from litigation proceedings (in the broad sense) in the state courts.
2. At the legislative level (particularly in Ukraine) the legal regulation does not detail the rules of engaging an expert in arbitration, in contrast to the participation of an expert in state courts, which is regulated in detail by the Law “On the Judicial Examination”, the procedural codes, a number of by-laws and departmental regulations, ranging from the “occupational clearance” and ending with detailed instructions regarding the form and content of court expert’s conclusions.
3. The main purpose of the expert should be to assist arbitration and the parties on the issues that require special knowledge.
4. Guidelines and rules for arbitration provide for two types of experts:
 - a) an expert appointed by the arbitral tribunal;
 - b) an expert appointed by one of the parties (the so-called “expert witness”).

The principal difference lies in the fact that appointment of experts by arbitral tribunal presumes a fairly regulated procedure of ensuring his/her legitimacy, which, in my opinion, results in greater independence of the expert.

As regards the expert witness, he should be referred to the sphere of proof and evidence provided by the parties, which makes it more likely for the party to affect the opinion of the expert.

5. This difference becomes more pronounced with regard to legal experts provided by the party. The contrast of experts' opinions on fact related issues can not vary that much, since the expert gives an opinion on the circumstances that exist objectively, and to some extent can be objectively verified. Whereas a legal expert gives an opinion on the content of law of a particular jurisdiction or on private international law that may allow for multiple interpretations, taking into account the peculiarities of its application at exact time and the parties involved. Furthermore the expert bases his judgment on legal regulations and interprets them in the light of scientific sources (doctrine) and court practice (jurisprudence).
6. In light of the above, relevance of the topic of my presentation becomes clear and includes the following: expert appointed by the party, especially an expert on law, can get into a conflict of interest if his opinion or interpretation does not correspond to the expectations of the appointing party.
7. In my opinion, the issue of the legal expert's degree of independence engaged by one of the parties is very complex and must be resolved at the level of the arbitration rules or at the level of ethic documents of the International Bar Association. In any case, the expert must have a prior discussion with party that called upon him regarding the possibility of an interpretation, which would be contrary to the position of this party in the case. I think that the expert can not and should not do the party's bidding and insist on remaining independent in his opinion. A fruitful approach may be for the expert and the party to air out their fundamental positions on controversial issues of application of the law, which will be examined, prior to entering into any contractual agreements.
8. And now the last point that I would like to make. While participating in arbitration proceedings as a legal expert, appointed by the party, I noticed that there are different opinions about the role of the expert and the scope of expert's conclusions: some colleagues believe that the expert should not only give an interpretation of the law applicable to a particular fact, but also assess the circumstances of the case, including relevant findings on the merits. In my view, this approach turns the expert into an actual

counsel to the party, which undermines the credibility of his expert opinion. My basic position is that the expert must stick to the interpretation of the law, relying on the doctrine and jurisprudence. While parties' counsels must prove their position on the case, based on the facts of the case and evidence, including legal expert's opinions.