

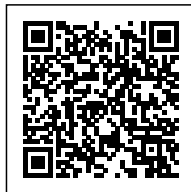
USING EXPERT WITNESSES MORE EFFICIENTLY

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With cost and timing issues a key factor for parties' in litigation and arbitration, the efficient use of expert financial witnesses can have a positive impact on both, insists Fernando Cuñado, a Director in KPMG's Madrid-based EMEA Forensic Dispute Advisory Services Group

Con el coste y el tiempo como factores fundamentales en el uso del arbitraje por las partes, el uso eficiente de los peritos puede tener un impacto positivo en ambos, dice Fernando Cuñado,

Director dentro del grupo
de EMEA Forensic Dispute
Advisory Service.

"The growing complexity of business relations and of accounting principles to be applied in the valuation of more sophisticated structures demands ever more detailed analysis when disputes arise. But the involvement of independent experts from the outset can help to focus strategies - the most significant legal issues may not always reflect the most important financial questions. We are getting much more involved, as Independent Experts, in early case assessments providing advising on the economic approach to follow and potential strengths within the quantum"

The quality of the information available to experts, and thus their analysis, can also be maximised by establishing a clear relationship with the party itself, always bearing in mind the Independence requirements, which should prevail in any case, says Cuñado. The best litigation or arbitration results often result from when there is a coordinated point of reference, to someone with the insight and authority to access information that may be stored in the deepest ledgers.

"This also extends to the relationship with external law firms, to ensure the legal strategy matches the demonstrable facts. It may not always be the best advice to maximise a financial claim. Some issues may be clear others much less so, and it is the grey areas that are always the points of most contention."

Within Spain, he notes that beyond dispute resolution methods such as mediation it remains uncommon for experts to agree facts from the outset. But it can be useful to ensure that experts are starting their analysis from the same foundations.

"What can be significant, where there is a strong divergence of opinion, is to test the assumptions on which experts are working - this is something arbitration panels are

particularly adept at. Assessments of quantum may prove wildly different because experts are using the same tools but starting from different points."

While a judge or arbitration panel may occasionally seek an independent third expert opinion, it remains uncommon for parties to share witnesses. Indeed, an arbitration may allow experts to even challenge each others' findings, says Cuñado.

"The scale of many disputes, the stakes involved, and divergent opinions, means that parties still prefer to appoint their own experts, rather than relying on the one-shot which might be provided by a jointly appointed expert. Conflict of interests may also get in the way. In arbitration particularly, certain issues may ultimately be agreed but when it would be wrong in an expert determination process is to target a middle position from the outset."