

Witness Evidence and Expert Evidence in Arbitration

CIArb (EAB) Nuts & Bolts Seminar | John Cock

19 March 2013

Agenda

- Introduction
- Nature and Form of Evidence
- Procedural Matters Relating to Evidence
- Witness Statements and Oral Evidence of Fact
- Expert Reports and Oral Evidence
- Weighing Evidence and Decision Making
- Q&A

Introduction

- What is evidence?
- Evidence v. law
- Rules of evidence

Nature and Form of Evidence

■ Nature of Evidence

- Direct or circumstantial?
- Percipient (“first-hand”) or hearsay (“second-hand”)?
- Primary or secondary document?
- Conclusive or presumptive of facts?

■ Form of evidence

- Oral evidence
- Documentary evidence
- Real or physical evidence

Nature and Form of Evidence

Some examples ...

Scenario	Nature	Form		
		Oral	Doc	Real

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Procedural Matters Relating to Evidence

- Arbitration law
- Arbitration rules
- Orders for directions

Procedural Matters Relating to Evidence

Arbitral Law (Hong Kong)

■ Arbitration Ordinance (Cap. 609) s.47:

- 1) The parties are free to agree on the procedure to be followed [*ML Art. 19(1)*].
- 2) If no such agreement, the tribunal may conduct the arbitration in the manner that it considers appropriate.
- 3) The tribunal is not bound by the rules of evidence and may receive any evidence that it considers relevant, but it must give the evidence adduced the weight that it considers appropriate.

Procedural Matters Relating to Evidence

Arbitral Rules (Example)

■ HKIAC Domestic Arbitration Rules (2012):

- Article 6.3: The Arbitrator shall have ... the widest discretion allowed by law to conduct the proceedings.
- Article 7 Submission of Parties' Written Statements and Documents
- Article 9 Hearings
- Article 11 Witnesses
- Article 12 Experts and assessors appointed by the Arbitrator
- Article 15 General and Additional Powers of the Arbitrator

Procedural Matters Relating to Evidence

Orders for Directions

- The means for the Arbitrator to exercise powers relating to evidence
- Not to restate applicable law or rules (but may refer)
- Examples:
 - Orders limiting oral evidence
 - Orders specifying timeframe and procedures for production and service of witness statements
 - Orders for disclosure and production of documents (“discovery”)
 - Orders for preparation and delivery of expert evidence
 - Orders for conduct of hearings

Witness Statements and Oral Evidence of Fact

- Written witness statements
 - Purpose
 - Form
- Oral adoption at hearing
- Cross-examination
- Re-examination

Expert Reports and Oral Evidence

- What is expert evidence?
- Who can be an expert witness?
- Expert reports
- Without prejudice meetings of experts
- Joint reports
- Oral adoption at hearing
- Cross- and re-examination

Weighing Evidence and Decision Making

Putting it all together

- How to “weigh” evidence?
- Applying evidence to the issues
- Closing submissions
- Burden and standard of proof

Q&A

■ Any questions?

Thank you

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