



Asia Pacific
Institute of Experts



INSIDE THIS ISSUE

PG. 6-7

Jonathan Ellis from Secretariat updates on how expert witness in the Singapore Courts are impacted by the revised Rules of Court.

PG. 8-10

Kim Chua from Brookes Bell shares more on the perceptions and expectations of experts.



FOREWORD

UPDATE BY THE PRESIDENT, PROFESSOR LESLIE CHEW, PBM, SC

“ It is with great pleasure and joy that I launch this inaugural issue of our Newsletter.

The Newsletter is intended to keep you informed of the events and activities of our Institute and also to have members share views on expert work. To that end, this issue includes 2 excellent articles written by two of our members.

I hope that through this issue of the Newsletter, you will all enjoy keeping up to date with our activities and the articles featured in this issue. It is also my hope that all of us will contribute to our Newsletter by reporting on events and activities.

More importantly, it is my hope that members will contribute articles based on personal experiences and of course, based on professional views and opinions on subject matters in each of your specialized expert areas.

[Continued on page 2]

In this first issue of our Newsletter, I would also like to take the opportunity to thank all those who helped to produce the Newsletter. In particular, and on your behalf, I would like to acknowledge and thank our Treasurer Ben Chester Cheong for organizing and producing this inaugural issue of our Newsletter. It is hoped that we will publish two issues each year.

Finally, let me take this opportunity to wish one and all a joyous Christmas! ”



PHOTO: PIXABAY

The Committee of the Asia Pacific Institute of Experts (APIEx) for the period from 2021 to 2023 comprise of the following individuals:

President
Prof Leslie Chew SC

Vice President
Gregory Vijayendran SC

Secretary
Melvin Loh Guo Wei

Treasurer
Ben Chester Cheong

Committee Member
John Gibson

Committee Member
Jonathan Matthew Ellis

Committee Member
Iain Potter

Committee Member
Assoc Prof Tan Teng Hooi

APIEX SEMINAR: THE UNEXPECTED CONSEQUENCES OF EXPERT EVIDENCE

A FOCUS ON THE ISSUES THAT COULD ARISE FROM THE PROVISION OF EXPERT EVIDENCE (17 NOVEMBER 2022)

The Asia Pacific Institute of Experts (APIEx) conducted a seminar on the unexpected consequences of expert evidence. The seminar was made up of a panel consisting of Professor Leslie Chew, President of APIEx, Mr Chew Xiang, Partner at Rajah & Tann, and Mr Jonathan Ellis, Managing Director at Secretariat. The panel explored the issues that could arise from the provision of expert evidence, both when experts did not fully consider all of the facts presented (either through their own omission, through limitation of their scope, or through their instructions) and when their evidence had additional consequences. Additionally, the panel explored the immunity of experts and the circumstances when this immunity might not hold, including the issues of trying to limit liability.

Click on the link to see more photos of the seminar: <https://photos.app.goo.gl/1vd3umXLdaXptSPP8>



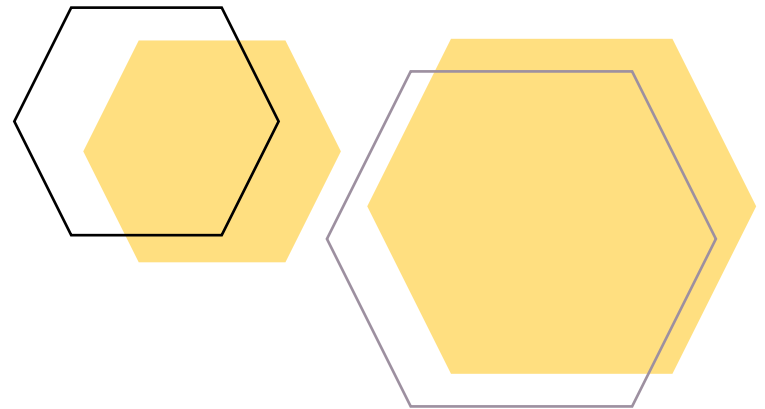


APIEX CONFERENCE: EXPERT EVIDENCE IN A POST PANDEMIC WORLD

A FOCUS ON WITNESS CONFERENCING AND SINGLE JOINT EXPERTS (2 SEPTEMBER 2022)

As part of Singapore Convention Week 2022, the Asia Pacific Institute of Experts (APIEx) organized a hybrid conference focusing on Witness Conferencing and Single Joint Experts. There were two panel sessions, with presentations by the speakers followed by a lively Q&A. The first session explored the nuances of witness conferencing (hot tubbing) and what users should consider if appropriate and when setting the appropriate protocol. The second session focused on the Single Joint Expert (SJE) including the practical circumstances in which parties should consider retaining a SJE and its implications for parties, counsel and the court.

Click on the link to see more photos of the event:
<https://photos.app.goo.gl/ADT2q7F4ww8FDSKi9>



MOU SIGNING WITH IPOS

APIEX ENTERED INTO A MEMORANDUM OF UNDERSTANDING WITH INTELLECTUAL PROPERTY OFFICE OF SINGAPORE (7 SEPTEMBER 2022)

As part of IP Week 2022, the Asia Pacific Institute of Experts (APIEx) entered into a memorandum of understanding (MOU) with the Intellectual Property Office of Singapore (IPOS). The partnership will promote and train technical and valuation experts for intellectual property and technology disputes. It will enable Singapore to offer effective and efficient intellectual property and technology dispute resolution services as well as intangible asset valuation expertise. Professor Leslie Chew, President of APIEx, signed the MOU with Mrs. Rena Lee, Chief Executive, IPOS.

Click on the link to see more photos of the ceremony:
<https://photos.app.goo.gl/fMs7psspwknB488N8>





MEMBERSHIP ACCREDITATION COURSE

APIEX HELD ITS INAUGURAL MEMBERSHIP ACCREDITATION COURSE FOR PARTICIPANTS (11 AUGUST 2022)

The Asia Pacific Institute of Experts (APIEx) held its inaugural membership accreditation course for participants who come from a technical background with aspirations of acting as an expert witness. The course also provides a basic refresher for those who are already practicing as expert witnesses.

The course introduced the world of experts and expert evidence and examined the role of evidence in dispute resolution, both in the courts and before other tribunals such as arbitral tribunals. Participants were acquainted with the law relating to opinion evidence (expert testimony), the role of experts in dispute resolution and the relevant Singapore law application to expert evidence.

Candidates were required to take a 90-minute examination in class. Participants who successfully completed the course were issued a certificate of completion and entitled to apply for APIEx membership with the relevant exemptions for a specimen report.

Click on the link to see more photos of the course:
<https://photos.app.goo.gl/AV4tACy3cvYsqWCD7>

LAUNCH OF THE APIEX CODE OF CONDUCT

APIEX LAUNCHED ITS CODE OF CONDUCT FOR ALL MEMBERS (11 AUGUST 2022)

The Asia Pacific Institute of Experts (APIEx) launched its Code of Conduct for APIEx members following the conclusion of its inaugural membership accreditation course.

The Code of Conduct is a concise statement of ethical standards that APIEx members are expected to observe at all times in order to safeguard the reliability and integrity of the expert evidence process. At the conclusion of the launch of the Code of Conduct, invited guests and course participants were invited to a networking session.

Click on the link to see more photos of the launch of the Code of Conduct and the networking session:
<https://photos.app.goo.gl/CqEU1i91M8vLNCgV6>

Click on the link to view the Code of Conduct, applicable to all APIEx members: <https://apiex.org/membership/code-of-conduct>. APIEx members are encouraged to familiarize themselves with the Code of Conduct.



APIEX WEBINAR: SINGLE JOINT EXPERTS

SINGLE JOINT EXPERTS – A NEW BALANCE IN SINGAPORE’S NEW CIVIL PROCEDURE? (29 MARCH 2022)

The new Rules of Court came into effect on 1 April 2022. As a general rule and as far as possible, parties must agree on one common expert. This procedural change envisages a new Single Joint Expert (SJE) that has already been well recognized in other leading jurisdictions.

An expert panel comprising lawyers as well as experts who have acted as SJE's outside Singapore shared their insights and wisdom with attendees. The discussion focused on whether this new hybrid would result in a new type of expert that trumps all other experts. It also considered whether this would lead to a new balance in litigation that cures the mischief underlying this reform in the civil justice reform reports. In addition, there was a discussion on how the new procedure and process is likely to work (including modalities for questioning in court).

Click on the link to see more photos of the webinar: <https://photos.app.goo.gl/ifu37ce1oDAG8CJB9>

APIEX ANNUAL GENERAL MEETING 2022

APIEX HELD ITS ANNUAL GENERAL MEETING 2022 (28 JANUARY 2022)

The Asia Pacific Institute of Experts (APIEx) held its annual general meeting on 28 January 2022.

Click on the link to see more photos of the annual general meeting: <https://photos.app.goo.gl/h63jMYnEz4w2Ne4N8>



FEATURES

How expert witnesses in the Singapore Courts are impacted by the updated Rules of Court

By Jonathan Ellis, Managing Director at Secretariat



PHOTO: PIXABAY

Introduction

On 1 April 2022 the rules that apply to matters being heard in the Singapore courts were updated (the “Rules of Court” or “ROC”).¹ The new ROC (the “ROC 2021”)² will apply to matters commenced or filed on or after 1 April 2022, matters that were already commenced will still apply the previous ROC (the “ROC 2014”).³

While the underlying principles of the obligations of experts in court proceedings have remained broadly similar, there are some substantial revisions to the ROC that bring more control to the Court in how experts are to be used and the format of their evidence.

Under the ROC 2014, expert evidence was governed by Order 40 and Order 40A (for court experts and experts of the parties, respectively).⁴ Under the ROC 2021, the use of experts has been consolidated into a single order which covers all experts used in court proceedings.⁵

In this article, we review some of the key differences between the ROC 2014 and the updates that came into force with the ROC 2021, including how these would impact the appointment of experts and the evidence that they provide.

The use of an expert witness – no need unless necessary

The use of expert witnesses is not new, they have been used by courts and tribunals in commonwealth jurisdictions for over 200 years.⁶ While the use of expert witnesses particularly where technical matters are key to the outcome is relatively commonplace, they are not necessarily required for all disputes.

The ROC 2021 sets out that, “No expert evidence may be used in Court unless the Court approves”⁷ with the clarification that the Court

¹ Additionally, the Singapore International Commercial Court Rules were also modified and came into force on the same date (the “SICC Rules 2021”). The full applicability of the SICC Rules 2021 are set out in Order 1 r 2 of the SICC Rules 2021.

² While the ROC 2021 come into effect on 1 April 2022, they were gazetted on 1 December 2021.

³ The full applicability of ROC 2014 is set out in Order 1 r 2(2) of the ROC 2021 and the First Schedule to the ROC 2021.

⁴ Order 40 and Order 40A of the ROC 2014.

⁵ Order 12 of the ROC 2021.

⁶ In *Folkes v Chadd* (1782) 3 Doug KB 157, the court allowed an engineer to give expert technical opinion on siltation.

⁷ Order 12, r 2(1) of the ROC 2021.

*“must not approve the use of expert evidence unless it will contribute materially to the determination of any issue in the case”⁸ and it is unable to be resolved by “an agreed statement of facts or by submissions based on mutually agreed materials”.*⁹

While the rationale for adducing expert evidence was, hopefully, similarly considered under the ROC 2014, the underlying principle that experts should only be used as necessary have been codified, with the primary position being that no expert evidence should be used.

Single joint expert (as far as possible) and a common set of facts

Once the court and the parties have established that there is a requirement for expert evidence, the ROC 2021 then directs that parties, as far as possible, should agree on one common expert.

While there is still the ability for parties to appoint their own expert (in certain cases, multiple experts with the Court’s approval), there appears to be a push to centralise the expert role and to give more control of the expert process to the Court and the parties.

The new requirements for the parties to agree on a list of issues for the expert and a *“common set of agreed or assumed facts that the experts are to rely on”* will certainly assist both with a single joint expert and also party appointed experts.¹⁰ Further, the agreed issues and facts are effectively mandatory, given that if the parties are unable to agree to them, then the Court must step in and decide both the issues and the common assumptions and facts.¹¹

While it is common for Courts and parties to seek to narrow the issues for experts, this new protocol hardens the requirements for parties to set out an agreed factual matrix, as far as possible, within which the experts are to provide their opinion.¹² With the added incentive that if they are unable to agree, then the Court will step in and decide on the playing field for the parties.

Panel of experts – Court takes more control of the process

While the ROC 2014 gave provision for concurrent evidence,¹³ it was only ordered when the parties provided consent for the panel evidence and a *“waiver of the right to submit no case to answer”*.¹⁴

Under the ROC 2021, there is no direct provision for parties to consent to the panel evidence with the Court having the power to order concurrent evidence and also cross examination and re-examination (in any sequence).¹⁵

Under the ROC 2014 it sets out that experts may pose question to one another, with the leave of Court, similar to the concurrent evidence process mostly seen in Australian Courts.¹⁶ However, under the ROC 2021 this provision appears to have been removed, albeit that it may still be within the Court’s power to order the experts to give their views on the issues referred to them and to comment on one another’s views.¹⁷

While the updates to experts (and other witnesses) providing concurrent evidence is now given more Court guidance, it may be that in practice the process may remain broadly similar under both sets of the ROC, albeit it will be up to the Court to decide how the ROC are actually implemented.

Conclusion

With the new ROC, the obligations of expert witnesses have remained broadly similar. However, there appears to be a move to give more control of the expert process to the Court and a drive for cost efficiency (i.e. not allowing expert evidence or trying to limit the evidence to a single joint expert). The proof will be in the pudding as to whether the Court’s control will change the steps taken and a potential increase in advisory costs. There is a case to be made that the total costs incurred by the parties may not necessarily be reduced.

References

1. ROC 2021: https://sso.agc.gov.sg/SL/SCJA1969-S914-2021?DocDate_20211201#P11-PO1-pr2- (accessed 25 October 2022).
2. ROC 2014: https://sso.agc.gov.sg/SL/SCJA1969-R5/Historical/20160601?DocDate_20160929 (accessed 25 October 2022).

⁸ Order 12 r 2(1) of the ROC 2021.

⁹ Order 12 r 2(2) of the ROC 2021.

¹⁰ Order 12 r 4(2) of the ROC 2021.

¹¹ Order 12 r 4(3) of the ROC 2021.

¹² The ROC 2021 go further to state that, *“as far as possible, the issues must be expressed in the form of questions which can be answered with ‘yes’ or ‘no’”* (Order 12 r 4(4) of the ROC 2021).

¹³ Order 40A r 6(1) of the ROC 2014.

¹⁴ Order 40A r 6(2) of the ROC 2014.

¹⁵ Order 12 r 6 of the ROC 2021.

¹⁶ Order 40A r 6(4) of the ROC 2014.

¹⁷ Order 12 r 6 of the ROC 2021.

FEATURES

EXPERTS AS PROFESSIONAL SAVIOURS?

By Kim Chua, Managing Metallurgist at Brookes Bell

In September 2022, APIEx launched its Code of Conduct for Experts to provide APIEx members with the ethical standards that they are expected to observe at all times, primarily that they “must conduct themselves in accordance with any overriding duty they may owe to the courts or tribunals to which their opinions may be provided”.

Ethical Standards:

1. Diligence and Competence
2. Conflicts, Confidentiality and Impartiality
3. Overriding Duty
4. Accountability
5. Expert’s Conference
6. Advertisement and Publicity
7. Continuing Obligations

These ethical standards are generally not new to experts who have been trained and accredited by their relevant institutions.

For example, in the APIEx Code of Conduct for Experts, it states that the APIEx member must “conduct themselves with honesty and integrity, both in the course of their expert witness practice and in their dealings with instructing parties, opposing parties and experts and courts, tribunals or other bodies, to which they have provided expert opinion”.

This is a similar requirement, part and parcel of chartership with the Engineering Council, which is underpinned by four fundamental principles that engineering professionals have a duty to. These guidelines were first published in 2005 by the Engineering Council and the Royal Academy of Engineering and updated in 2017 in collaboration with other engineering discipline institutions.

Principles to Guide Engineering Professionals

1. **Honesty and Integrity:** Engineering professionals have a duty to uphold the highest standards of professional conduct including openness, fairness, honesty and integrity.
2. **Respect for life, law, the environment and public good:** Engineering professionals have a duty to obey all applicable laws and regulations and give due weight to facts, published standards and guidance and the wider public interest.
3. **Accuracy and rigour:** Engineering professionals have a duty to acquire and use wisely the understanding, knowledge and skills needed to perform their role.
4. **Leadership and communication:** Engineering professionals have a duty to abide by and promote high standards of leadership and communication.

Source: Engineering Council UK, 2022¹

Within these four pillars, there are more specific guidelines such as:

- “be alert to the ways in which their work and behaviour might affect others and respect the privacy, rights and reputations of other parties and individuals”.
- “perform services only in areas in which they are currently competent or under competent supervision”.
- “present and review theory, evidence and interpretation honestly, accurately, objectively and without bias, while respecting reasoned alternative views”.

¹ “Statement of Ethical Principles”, Engineering Council <<https://www.engc.org.uk/standards-guidance/guidance/statement-of-ethical-principles/>> accessed 11 November 2022.

As a chartered engineer, I am already bound to the Engineering Council's Statement of Ethical Principles. These guidelines and pillars support and enable experts as individuals to achieve integrity and impartiality when the perception of natural bias still exists. How does that then differentiate the various levels of professionalism?

I recently came across "The Oath of the Engineer"² (Oath) that engineering graduates in Canada and parts of the US were invited to take.

The Oath reads:

"I am an Engineer. In my profession I take deep pride. To it I owe solemn obligations.

As an Engineer, I pledge to practise integrity and fair dealing, tolerance and respect; and to uphold devotion to the standards and dignity of my profession, conscious always that my skill carries with it the obligation to serve humanity by making the best use of the Earth's precious wealth.

As an Engineer, I shall participate in none but honest enterprises. When needed, my skill and knowledge shall be given without reservation for the public good. In the performance of duty and in fidelity to my profession, I shall give my utmost."

I find that the wordings of the Oath is such an honourable way to chart the path for young professionals. This can be likened to a torch to light up their career paths in their selected professions. Professionalism instilled from youth.

Professional code of conduct provides an assurance that the professionalism of experts has been vetted to a set of standards.

Of course, one may argue that we are imperfect individuals as human beings and natural bias is inevitable. However, it is really inevitable? Consider this, where does this natural bias originate? Upbringing, society, culture? Could it be the unspoken (tacit) "code of conduct" instilled in us when we were young by our culture? Perhaps it is a matter of untangling ourselves from a cultural code of conduct and switching to a professional code of conduct?

When I joined Brookes Bell, it has always been made clear to us as experts, that our duty as an expert witness is to the court. In practical terms, our duties to our clients are to provide and explain the technical data. That way, our clients can comprehend their position better and prepare accordingly to face their opponents, without relying on experts as their hired guns.

So far, clients who have instructed me have been respectful of my duty as an expert. I understand that this may not be the case all the time or for everyone. However, expert witnesses can certainly hope that such a day, where this becomes a common practice, will happen sooner rather than later. I am certainly grateful that at Brookes Bell, I have the security to uphold my impartiality as a chartered engineer and as an expert in my duty to my profession and to the court.

Furthermore, it appears to me that bringing hired guns to the courts these days is so frowned upon. This is akin to bringing water guns into the courts. No toys allowed.

Similarly, badgering of witness in court is objectionable. What is considered badgering? This term is associated with hostility, derision, and a fine line of over-aggressiveness.

As we all can understand and appreciate, lawyers are hired to advocate for their clients. From the standpoint of clients, they would of course expect their lawyers to win the case for them, hence it is not surprising for lawyers to take their clients' side. If lawyers have been trained to badger witnesses, it can take some time to rid a habit that they have been trained to do and one that has been honed over the years. However, the level of aggression that lawyers adopt in their attempt to be thorough with their questioning may, at times, cross that fine line of being aggressive and hostile.

I believe that an understanding of the fundamental differences between lawyers and technical professionals may assist parties to reach a middle ground that is conducive to all and beneficial to the tribunal or court.

Fundamentally, there is a stark difference in the classroom trainings right from the school level.

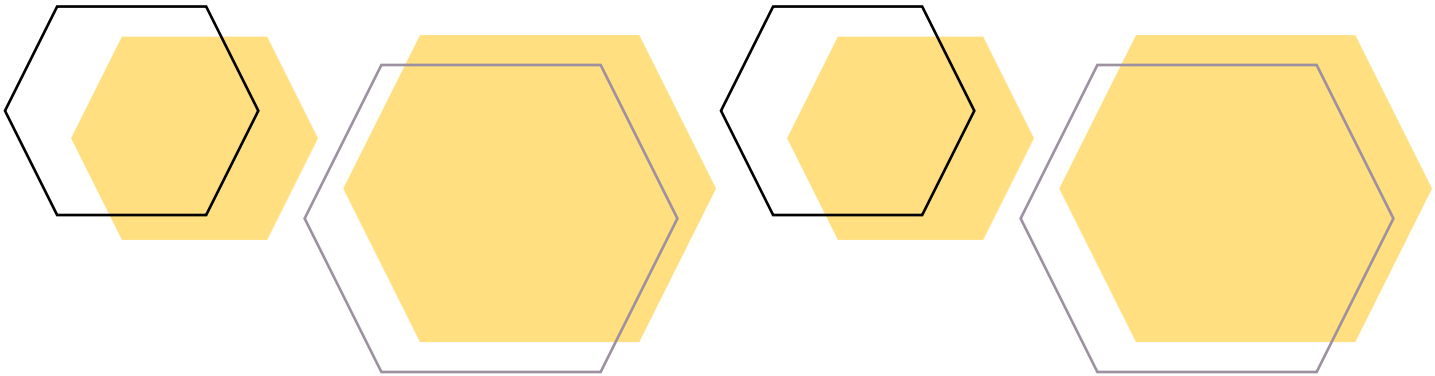
² Joan Cordiner, "Ethics Series - A Circle of Trust", The Chemical Engineer (September 2022, Issue 975) <<https://www.thechemicalengineer.com/features/ethics-series-a-circle-of-trust/>> accessed 11 November 2022.

Here is an example from the engineers' perspective. When I was in engineering school, there were no compulsory courses containing debates or classes on how to win an argument. This has not changed even after I have worked in the industry and participated in my interns' universities' industry liaison programs in the recent years.

A typical classroom training that involves group discussions are usually brainstorming sessions that students learn to bounce off ideas with the aim to generate an ultimate brilliant novel idea, and not to pin down the other person. To put it simply, engineers are trained to develop technologies by being receptive of someone else's ideas and at the same time offer one's own ideas in an open discussion. In contrast, lawyers have a different training regime, with the aim of being a winner through effective arguments and discrediting an opponent's points.

Within Brookes Bell, "survival" training is provided to our experts to fend off badgering in courts. This is because, honestly but unfortunately, badgering can still exist, as the global jurisdiction and industry progresses towards a culture of accepting the impartiality of experts and the experts' sole duty to the court, becomes the norm.

Therefore, the APIEx Code of Conduct for Experts provides a framework to establish a standard of practice in this region where experts are not expected to be, and do not become, hired guns.



CALL FOR CONTRIBUTIONS

APIEX INVITES MEMBERS TO WRITE FOR THE APIEX E-NEWSLETTER



PHOTO: PIXABAY

The Asia Pacific Institute of Experts (APIEx) invites all APIEx members or their contacts to consider contributing a feature article to the APIEx e-Newsletter. The APIEx e-Newsletter is a bi-annual publication of the APIEx. We are looking for contributors to contribute articles on a topical expert witness and/or expert evidence issue, preferably between 1,200-1,500 words, with an upper limit of 2,000 words.

The APIEx Committee's decision to accept the article for publication is final, although we will be sure to clear any changes with you before publication. Please note that there is an editorial process that can take some time, as it involves the Committee.

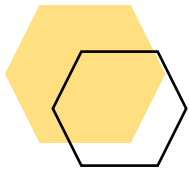
The APIEx e-Newsletter working group is made up of the following members:

- Prof Leslie Chew SC
- Assoc Prof Tan Teng Hooi
- Ben Chester Cheong

SPONSORS

APIEX IS GRATEFUL TO ALL ITS SPONSORS

The Asia Pacific Institute of Experts (APIEx) is an ambitious start up society that seeks to plug a gap in Singapore's role as a leading disputes resolution hub, as there is no organization or group that addresses the needs of the community of experts who provide expert evidence in the courts and in other tribunals. APIEx's work would not be possible without the generous support of our term sponsors, to whom we owe a debt of gratitude. We acknowledge them below. Should you wish to support our work as a Term Sponsor, please contact June Tan of our APIEx Secretariat at: secretariat@apiex.org.sg.



CALLING FOR MEMBERS

APIEX INVITES INTERESTED INDIVIDUALS IN EXPERT EVIDENCE TO JOIN OUR GROWING NETWORK

The Asia Pacific Institute of Experts (APIEx) is a Singapore-based registered society which aims to spearhead the development of professional expertise in the field of Expert evidence both locally and in the Asia Pacific region. A core mission of the society is to develop and provide a framework for the accreditation of Experts to meet international standards. This mission will be achieved through education, training and collaboration in local and regional conferences and workshops in the Asia Pacific region. APIEx will provide an avenue for practicing Experts and those who aspire to become accredited practicing Experts, to develop their expertise and to connect with other Experts and consumers of expert evidence.

APIEx members enjoy benefits such as discounted rates at APIEx webinars, seminars, training courses, conferences and networking events, discounted rates at partner events to which APIEx members have been extended preferential rates, listing on the APIEx Membership Directory, opportunity to participate in the work of APIEx through working on or with the Committee, Sub-Committees, working groups and task forces, and opportunity to be consulted on any APIEx consultation papers, research and surveys, and to have your views represented to key stakeholders. APIEx members can also use the member logos based on their current membership category. For more details on the membership logos, please visit: <https://apiex.org/membership/apiex-member-logo>.

For more information on our membership categories and signing-up procedures, please visit: <https://apiex.org/membership>. If you have any queries, please reach out to our APIEx Secretariat at: secretariat@apiex.org.

