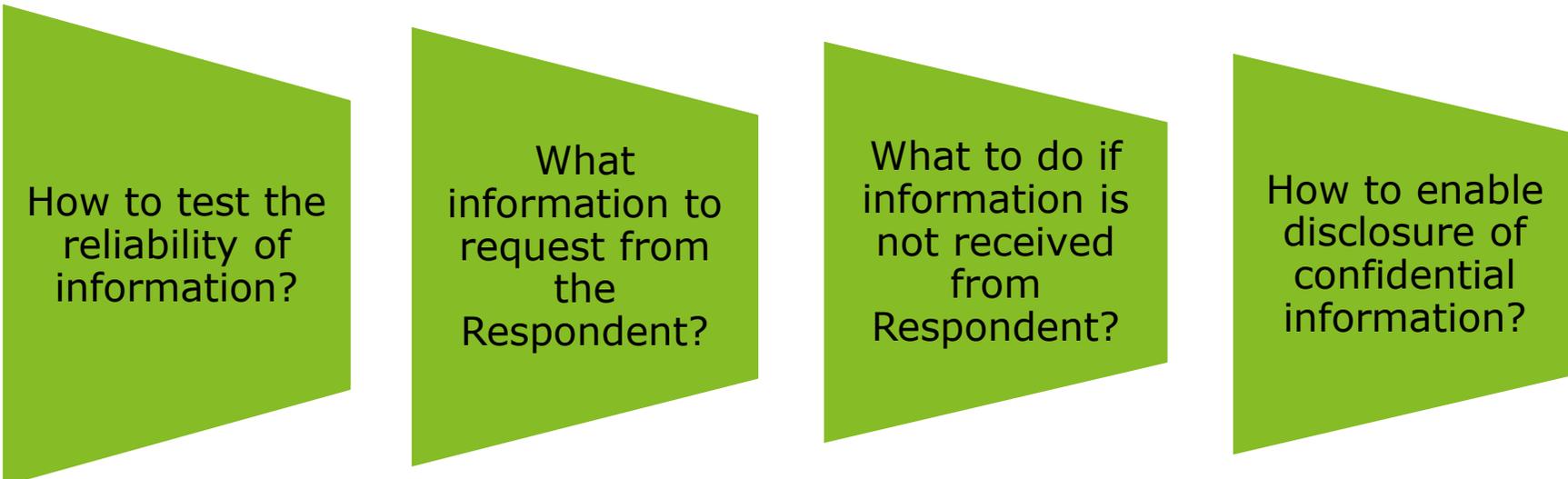




## I. Introduction

The challenge in quantifying damages depends on **amount** and **reliability** of information available



How to test the reliability of information?

What information to request from the Respondent?

What to do if information is not received from Respondent?

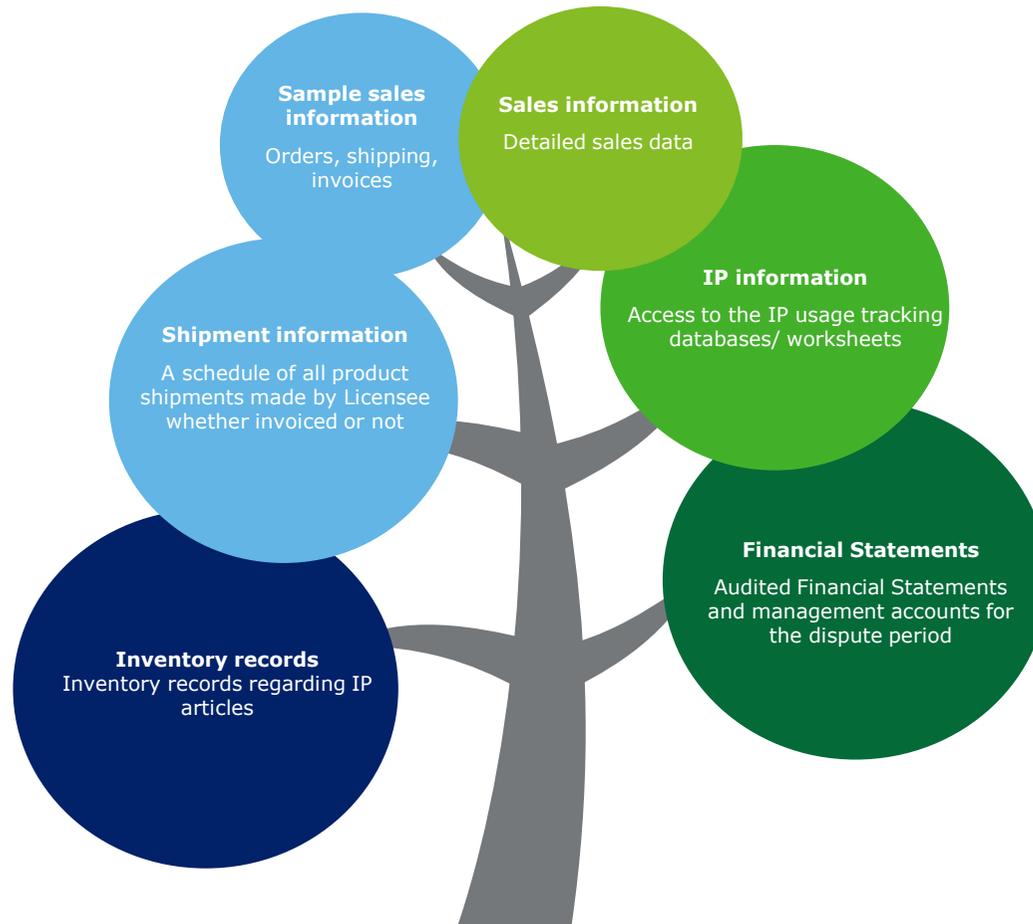
How to enable disclosure of confidential information?

## II. Assessing reliability of information

Example methods used by the Expert to test the reliability of the information provided by the Respondent

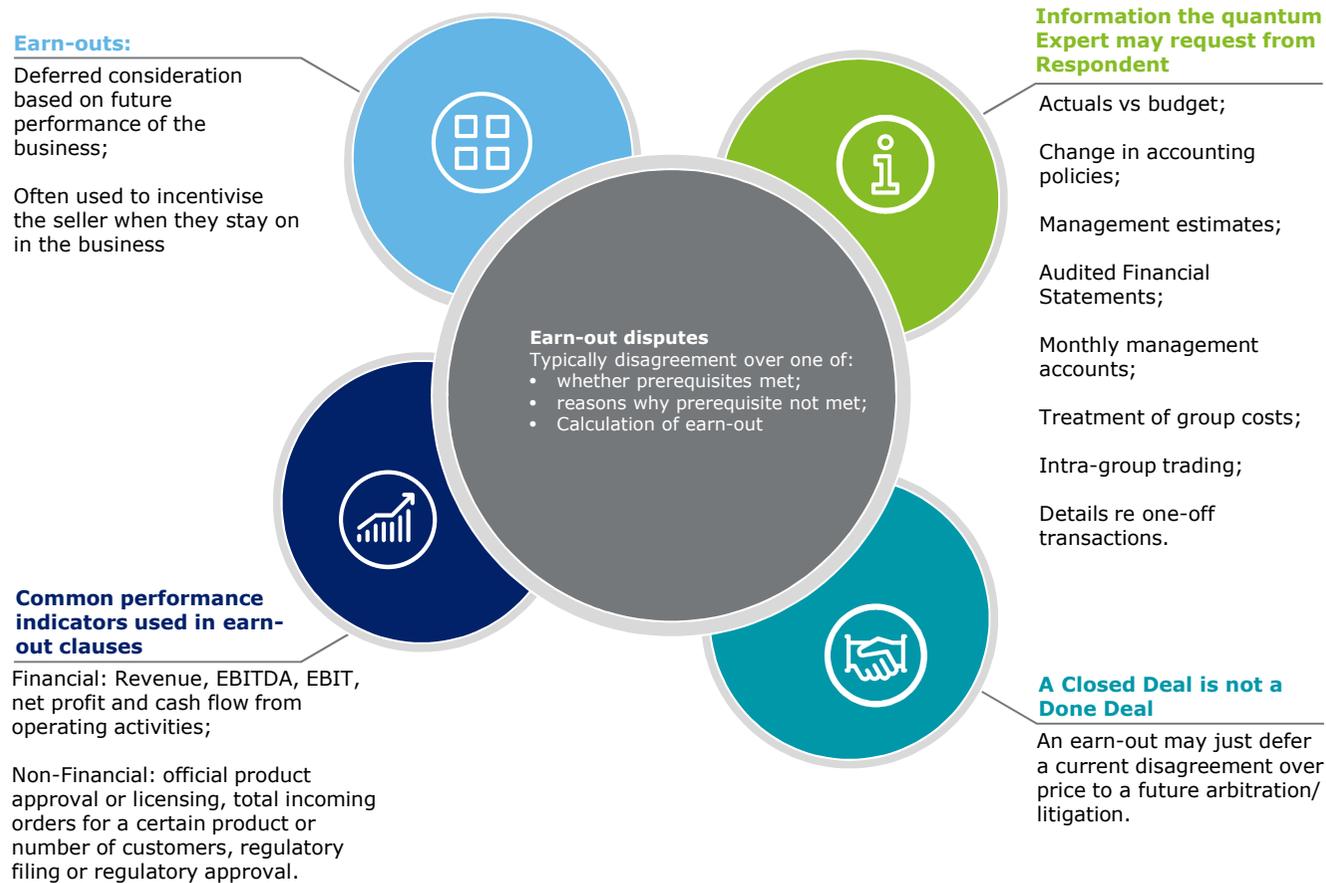
-  Reconciliation (e.g. audited Financial Statements; third party data)
-  Ratio analysis
-  Actual vs budget trend
-  Seasonality pattern
-  Benchmarking against competitors/industry information
-  Sampling (judgemental or statistical)
-  Data analytics

### III. What information to request from the Respondent? Example 1: Royalty dispute



# III. What information to request from the Respondent? (cont`d)

## Example 2: Earn-out disputes



## IV. What to do if information not received from Respondent?

Can make it very difficult, but use best efforts

-  Published accounts, if available
-  Competitor comparables
-  General industry statistics
-  Published accounts, if available
-  Public media information
-  Site visit
-  Data available in the opposing Expert's report
-  If information lost or destroyed, then perhaps secondary record held elsewhere
-  Application of discounts for uncertainty

# V. How to enable disclosure of confidential information?

## Some approaches

### Redaction

- Who will check that redactions are appropriate?
  - Claimant's counsel;
  - Tribunal;
  - Tribunal's secretary;
  - Independent third party
    - "Confidentiality Advisor"; "Verification Expert".

### Restricted access

- Confidentiality Clubs;
- Restricted inspection;
- Restricted references in written material, with separate "Confidential" submission.

### "Third party Neutral" or Expert

#### Governance:

- Damages Expert's Procedural Rules, Terms of Reference (ToRs), NDA;
- ToRs cross refer to Expert's engagement letter, which is addressed to parties and Arbitrator.

#### Role:

- Parties submit confidential information to the Expert, instead of to the Tribunal or other party;
- Expert prepares report, answering specific questions put by the parties and / or the Tribunal;
- If needs to give explanations that contain confidential information, refers to Tribunal for guidance.

# VI. Conclusion

## Takeaways



### Reliability of information

The reliability of the information on which the Expert counts on in the quantum computation can be tested in different ways



### Limited information

Use best efforts based on information available



### Information request

Information requested depends on:

1. Type of dispute
2. Quantum methodology



### Confidential information

Many ways to handle confidential information

**Thank you!**



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