دائـــرة الـقـضـــاء
JUDICIAL DEPARTMENT
عام التسامح
YEAR OF TOLERANCE

Abu Dhabi Judicial Academy

Judicial chambers constituted of judges and experts (Expert Chambers)

Workshop « Legal Controls for the Chambers of Foreign Experts in Commercial and Labor Courts »

held at the Abu Dhabi Judicial Academy, On Wednesday, April 24, 2019

Doctor/Ahmed Abdel Zaher
Legal Counselor at the Judicial Department- Abu Dhabi

Abu Dhabi Judicial Academy

Judicial chambers constituted of judges and experts

(Expert Chambers)

Working paper submitted to the workshop «Legal Controls for the Chambers of Foreign Experts in Commercial and Labor Courts
held at the Abu Dhabi Judicial Academy, On Wednesday, April 24, 2019

Doctor

Ahmed Abdel Zaher

Legal Counselor at the Judicial Department – Abu Dhabi

Introduction

Judicial chambers may either be Minor; constituted of one judge, or Major; constituted of more than one judge whose total membership is always odd. Originally, judicial chambers, whether minor or major, are constituted of judges only. However, under Federal Law No. 10 of 2017, the legislator introduced chambers formed by a judge assisted by two experts. These chambers, which we might call "Expert Chambers", will be the subject of this study paper.

Study plan

The first requirement: The Legal Basis of the Expert Chambers.

The second requirement: The Formation of the Expert Chambers and the Guarantees of the Independence of their Members.

Third requirement: Competence of the Expert Chambers.

The fourth requirement: the Working System of the Expert Chambers.

The fifth requirement: the Appealing of the Judgments issued by the Expert Chambers

First requirement

The Legal Basis of the Expert Chambers.

Article (30) *(bis)*, of the Federal Civil Procedure Law, made under Federal Law No. 10 for the year 2017, provides that «The Minister of Justice or the head of the local judicial entity may each according to their competence, refer all or some of the cases that are within the competence of Major Chambers outlined in item (2) of Article (30) of this Law to one or more chamber presided over by a judge assisted by two local or international experts. Judgments are made under the same procedures and controls in Chapter one of section nine of this law. The judge shall sign the judgment and the experts sign on the draft thereof. Judgments of Chambers referred to in item (1) of this article before the appellate chambers provided for in this Decree Law. »

According to Article (30) (bis), (1) of the same law, made under decree Law No. 10 for the year 2017, « the Minister of Justice or head of the local judicial entity shall, each according to their competence, issue the regulatory decisions on the following:

(A) The controls for referring cases before the Chambers referred to in Article (30) (bis) of this decree law.

(B) The controls of the selection and appointment of experts and determine their remuneration or salaries and distributing them to the chambers formed according to Article 30 (bis) of this Decree Law (1).

Experts referred to in item (1) of Article 30 (bis) of this decree shall take an oath before the minister of justice or the head of the local judicial entity prior to assuming their duties, as the case may be, in the following wording: (I swear by

Almighty God to serve justice, to respect laws and to perform my mission with honesty and sincerity).

"The same provisions concerning the non-competence, recusal or suing of the judges' shall apply to the experts referred to in item (1) of Article 30 (bis) of this decree. They shall abide by the same duties of the other judges and be subject to the same disciplinary accountability procedures and inspection of their work as provided for in the relevant laws and regulations of the judiciary."

Based on the legislative mandate outlined in the above-mentioned article, the decision of the chairman of the Judicial Department No. (6) for the year 2019 regarding the chambers created under Article (30) (bis) of the Federal Law No. 10 of 2017 amending certain provisions of the Civil Procedure Law .

The second requirement

The Formation of the Expert Chambers and the Guarantees of the Independence of their Members

Formation of the Expert Chambers

According to article 30 (bis) of the Federal Law of Civil Procedure, made under the Federal Law by Decree No. (10) for the year 2017, the expert chambers are formed by one presiding judge assisted by two local or international experts.

Controls of Selection of Experts and their Recruitment Mechanism

Article no. 5 of the decision of the Chairman of the Judicial Department No. (6) for the year 2019 on chambers made under Article (30) (bis), stipulates the controls of selection of experts and assigning them to the chambers: « specialized experts shall be selected from among local or international experts by a decision of the Chairman based on the recommendation of the Council and the Judicial Inspection. The expert selected under this decision for the membership of these chambers, shall have the experience that suits the nature of the disputes referred to them. »

Oath- Taking Process

Under the title « oath- Taking » article No. (6) of the Judicial Department Chairman's decision No. (6) for the year 2019 concerning chambers made under Article (30) (bis) sets forth that «Appointed experts designated for the membership of the Chambers referred to above shall take, before assuming their duties, the legal oath before the Chairman or whomever he mandates for this, in the following wording: (I swear by Almighty God to serve

justice, to respect laws and to perform my mission with honesty and sincerity). The oath shall be taken once by experts working at the Judicial Department, and will be taken repeatedly by experts not working the Judicial Department every time they get appointed to the membership of the Chambers ».

Disciplinary Measures, Reasons for Incompetence, Recusal, Suing, and Inspection of the Experts

Under the title « Disciplinary Measures, Reasons for Incompetence, Recusal, and Suing, and Inspection of the Experts», Article (7) of the Judicial Department Chairman's decision No. (6) for the year 2019 concerning chambers made under Article (30) (bis) sets forth that, *"The same provisions concerning the judges' non-competence, recusal or suing shall apply to the experts referred to in item (1) of Article 30 (bis) of this decree. They shall abide by the same duties of the other judges and be subject to the same disciplinary accountability procedures and inspection of their work as provided for in the relevant laws and regulations of the judiciary."*

Third requirement

Competence of Expert Chambers

Expert Chambers ad valorem competence

According Article (30) *(bis)*, of the Federal Civil Procedure Law, made under Federal Law No. 10 for the year 2017, provides that «The Minister of Justice or the head of the local judicial entity may each according to their competence, refer all or some of the cases that are within the competence of Major Chambers outlined in item (2) of Article (30) of this Law to one or more chamber presided over by a judge assisted by two local or international experts». This means that the value-based competence of the Expert Chambers is the same as that of the Major Chambers specified in item (2) of Article 30 of the Law of Civil Procedure.

And upon perusing article 30 of the Federal Civil Procedure Law, amended by the federal decree law No. (18) for the year 2018 , we find that it provides that:

« 1 – Minor chambers composed of one Judge shall have competence to issue judgments at first instance in :

A – Civil, commercial, and Labor lawsuits, and the counter lawsuits regardless of their worth.

B – Personal status lawsuits, common money distribution lawsuits, signature – validation claims, and lawsuits related to demanding Wages and salaries and the like regardless of their worth.

And the Implementing Regulations of this Law shall determine the quorum value for these chambers, and the quorum values of the final judgments.

And subject to a decision made by either the Minister of Justice or the Chair of the Local Judicial entity as the case may be, a chamber or more of the chambers specified in this clause may be designated to dispose the cases presently on the

roll in one session. And the Implementing Regulations of this law shall set forth the measures followed before these Chambers, the judgments issued , the appeals lodged and the enforcement thereof.

2 –A three- judge chamber will have the competence on the following:

A - Disposing of all civil, commercial, and labor lawsuits which are not in the scope of the Minor Chambers competence.

B – Administrative lawsuits, and Real Estate cases whether original or ancillary regardless of their Worth.

C – Determining summary procedures, interlocutory orders, interim orders, and any other applications associated with the original claim regardless of their worth or type.

D - Bankruptcy and financial conciliations.

E – All cases that are, by law, subject to their competence ».

According to Article 23 of the Implementing Regulation of Federal Law No. 11 of 1992 on the Federal Civil Procedure Law, " The Minor Chambers, provided for in paragraph 1of Article 30 of the Law, shall have the jurisdiction to issue judgments at first instance in civil, commercial and labor cases not exceeding the value of one million dirhams, and counter-suits of whatever value ».

By combining the above-mentioned articles, it would be justifiable to say that the value-based jurisdiction of the Expert Chambers includes cases in excess of one million dirhams.

Subject- matter Jurisdiction of the Expert Chambers

In accordance with article 3 of the Judicial Department Chairman's decision No. (6) for the year 2019 regarding the Chambers created under Article 30 (bis) , under the heading « Procedures for referring cases to the Chambers » , « Cases that may be referred to the Chambers structured by this decision are as follows:

- Civil, commercial and labor lawsuits that are not within the jurisdiction of the Minor Chambers.
- Administrative lawsuits, and Real Estate cases whether original or ancillary regardless of their Worth..
- Cases of bankruptcy and financial conciliation.
- All cases that are, by law, subject to the Major Chambers competence.

Referable lawsuits within the cases mentioned shall be identified by a decision of the Council upon the proposal of the Judicial Inspection Council ».

According to article (4) of the same decision, the Chambers referred to, shall have the competence to decide on all the applications associated with the original claim whatever their value or type is, they are also having competence to consider all summary procedures, interlocutory and interim orders.

Fourth requirement

The Working System of the Expert Chambers

With regard to the working system of the Expert Chambers, Article 30 (bis) of the Federal Civil Procedure Act, concerning the chambers created by Federal Law No. 10 of 2017, sets forth that « … the judgments shall be issued with the same procedures and controls as in the first chapter (9) of this law. The judge alone shall sign the judgment, and the experts shall sign the draft thereof … ». Thus, with regard to the issuance of «experts» of their judgments, the previous article refer to the procedures and controls contained in chapter (1) of section (10) of the Federal Civil Procedure Law, with the addition of the language that « the judge alone shall sign the judgment and the experts sign the draft thereof».

And under the title of "The working system of the Expert Chambers", and in accordance with Article No. (9) of the Judicial Department Chairman's decision No. (6) for the year 2019 regarding the chambers created under Article (30) (bis) , « The Chambers its sessions meetings in accordance with the judicial system work at the Judicial Department and as required by the Council (i.e. the Judicial Council) and issue their judgments under the same procedure and controls stipulated in the chapter (1) of section (9) of the Civil Procedures Law referred to, and the judge shall sign alone on the judgment and the experts sign on the draft thereof, and their judgments are appealed before the Appellate Chambers under the applicable provisions stipulated in this law. We can conclude from this text that there are two rules governing the system of work of the Expert Chambers: First, the holding of hearings is in accordance with the

system of judicial work in the Judicial Department and the Judiciary Council. The second is the issuance of judgments in the same procedures and controls as in Chapter (1) of section (9) of the Federal Civil Procedure Law.

Given its composition, and the different language of experts from that of the judge and the adversaries, we believe that some of the problems surrounding the work of these Chambers need to be highlighted, and to be taken into account by indicating the views on many issues related to the work of the expert Chambers, As follows:

The language of the minutes

Article (14) of the Implementing Regulations of the Federal Law No. 11 of 1992 on the Civil Procedure Law that «a clerk shall attend with the judge in the sessions who writes the minutes and sign it electronically or on paper, and the minutes of the meeting is considered an officially document». The question arises as to the language of the minutes of the meetings, whether it should be Arabic only, as it is the case of chambers composed of judges only, or whether the minutes of the meetings should be translated into English in order to enable the international experts to read them. and If it is translated into English, is it necessary to sign the record after it has been translated by both the translator and the author together, or is it sufficient to be signed by the translator only?

In answering this question, we believe it is necessary to translate the minutes of the sessions into English, and get them signed by the translator.

Deliberations between the Judge and the Experts

Article 49 of the Implementing Regulations of Federal Law No. (11) for the year 1992 concerning the Law of Civil Procedure states that « Subject to the provisions of Article 30 (bis) of the law: 1. The deliberation in the judgments shall be confidential between the judges together and shall be attended by only the judges who heard the pleading. 2. The presiding judge collects the views according to seniority of the judges, and then gives his view, the judgments are issued unanimously or by majority, otherwise, and in case of split in opinion, the less number team shall join the bigger number team, or the team comprising the junior judge(s) shall join that of the senior judge(s), after taking the opinions a second time 3. The judgment is issued by the judge or chair of the Chamber as the case may be ».

We conclude from the previous text that the legislator determines, as a general principle, that the deliberation of judgments is confidential among the judges together, without prejudice and subject to the provisions of Article 30 ((bis)) of the Law. Needless to say, as already noted, article 30 ((bis)) of the Act relates to the Chambers of Experts. "Without prejudice and subject to the provisions of Article 30", is intended to take into account that the "deliberation" for the Chambers of Expertise shall be between the judge and the two experts. Only judges (in the case of ordinary Chambers), and judges and experts (in the case of Expert Chambers) may participate in the deliberation. In any event, the deliberation should be confidential, so that no other person shall see it other than the members of the Court. The question arises, however, for the Expert Chambers, in the case of a lack of proficiency in the language of experts and lack of expert

proficiency in the language of the judge, which requires an interpreter during the deliberation.

Signature of the judgment and the draft thereof

The legislator decides that "the judge shall sign the judgment alone and the experts shall sign the draft thereof. " We believe that objective of the legislator that both the judge and the experts sign the draft judgment; it is not envisaged that the intention of the legislator is that the experts only sign the draft. The copy of the original judgment is to be signed by the judge alone. Thus, the legislator distinguishes between signing the draft judgment and signing the same judgment, requiring the signature of all members of the chamber on the draft, while only the judge signs the copy of the judgment by which enforcement will be carried out.

This distinction between the draft judgment and the original copy of the judgment in respect of their signature is not limited for the expert chambers, but rather, it is an established rule in the Federal Civil Procedure Law with regard to the signature of sentences in general. Item (4) of Article 128 of the Federal Civil Procedure Law stipulates - before its repeal by the issuance of the Regulation of Federal Law No. 11 of 1992 on the Law of Civil Procedure - that "the judges who participated in the deliberation must attend the recitation of the judgment. If any of them has an impediment that changes his mandate, he must sign the draft of the judgment, provided that it is proved in the minutes of the hearing. " Article 129 of the Federal Civil Procedure Law provides that : (1) In all cases, the judgments shall include the grounds on which they were based and the draft of the judgment containing the reasons thereof shall be signed by the President and the judges when it is pronounced and be kept in the case file. 2. In summary procedures, if the judgment is pronounced in the hearing, the draft containing its reasons may

be filed within three days at most from the date of its pronunciation in the case file. 3. The draft containing the operative sentence and its reasons shall be kept in the file of the case. 4. Violating the provisions contained in paragraphs (1) and (2) will nullify the judgment ». Article 131 of the Federal Civil Procedure Law provides that : (1) The hearing's Chair and the clerk thereof shall sign the copy of the original judgment containing the facts of the case, the reasons and the judgment, within three days of the filing of the draft in summary procedure cases and ten days in other cases and the copies be kept immediately in the case file. 2) If the hearing's Chair, for any reason, couldn't sign the copy of the original judgment causing harm to justice or the interests of the litigants, the original judgment may be signed by the President of the Court or his representative , and if the cause of AD a male writer of the meeting may be the President of the book signed instead All this is proved on the margins of the original judgment , and as for the clerk who couldn't sign the, the chief clerk can sign along with proving this on the margin of the original judgment. " Also, it should be noted that Article 219 of the Federal Law of Criminal Procedure states that « upon pronouncing its judgment, the court must deposit in the registry of the court the reasoned draft thereof signed by the Chair and the judges, and the copy of the original judgment must be signed as soon as by the President of the Court and its clerk» .

However, with the promulgation of the Regulation of the Federal Law No. 11 of 1992 on Civil Procedure Law, and taking into consideration the technological development in the computerized writing of judgments by computer, the legislator decided to dispense with the idea of distinguishing between the original copy and its draft, sufficing himself with issuance of the judgment without any reference to the draft thereof – in clarification of this is that the first item of article (50) of the Regulation stipulates that «In all Cases , the judgment must include the grounds on which it was built, and be deposited in the case file signed

by the President and the judges either electronically or manually». Article (52) of the Regulation stipulates that "the judges shall sign a copy of the judgment containing the facts of the case, the reasons and the operative judgment and shall be kept in the case file." Thus, evolution has led to differences and divergences between expert chambers composed of a judge and two experts and between ordinary chambers composed of judges only.

The language of the draft judgment

Since the experts involved in the composition of the court may not know the Arabic language, the question arises about the language in which the draft judgment is written, whether it is written in both Arabic and English, and how this writing is done. We believe that it is necessary to write the draft sentence in both languages, so that the page is divided into two longitudinal sections. The sentence is written in Arabic on the right side of the page and translated into English to the left of the page, so that the court members will grasp the purport of the judgment and acknowledge it.

The extent to which the translator must sign the draft judgment

As we have already said, the translator may perform the translation process during the deliberation. The translator, as well, translates the draft into English for the experts' review. Experts may consider adding a paragraph or deleting a paragraph of the draft judgment before signing it. Needless to say, the experts will edit what they stated in English, and translated by the translator into Arabic to inform the judge. In light of the important role played by the interpreter in the process of establishing a judgment, it is essential that the translator sign the draft judgment.

The language of judgment

The question arises as to the language of judgment, which is signed by the judge alone, and whether it is the official language of the state, i.e., the Arabic language alone, or both languages (Arabic and English), especially since the draft sentence may be edited in both languages. The language consistency between the judgment and its draft should therefore be taken into account.

Similarly, the question arises about the legal status if the content of the judgment written in Arabic (its operative part or reasons) is different from the content of the judgment written in English (its operative part or reasons). It is conceivable that translation errors or inaccuracies in the translation of certain terminology may happen. Is the procedural way of dealing with this situation to submit a request for an explanation to the Chamber itself, or is the way to remedy this situation is to challenge the judgment. If the appeal is lodged, will the relying be placed on the judgment written in Arabic or the judgment written in English?

The value of the draft judgment

In explaining the legal texts on the rules of sentencing in general, some jurisprudence says that « what the legislator required to edit and requests that the court president and the clerk of the court sign the original copy of the judgment, and as for the draft that precedes the judgments has no legal value in itself; it is just a draft, and therefore may not be invoked, and the court may amend it, as it is not related to any right. As a result, it is not permissible to challenge the judgment because there is a difference between what is stated in the draft and what is stated in its original version, and if this difference is proved, then what is stated in the original version will count and apply. If the draft is flawed, but this defect did not appear in the original copy, the judgment is true. If the legislator

requires that the judgment be filed within a certain time otherwise the judgment will be deemed null and void, and having the draft filed within that time shall not preclude the nullity if the original copy has not been filed. The sole importance of the draft is that if a judge is impeded from appearing during the pronunciation of the judgment, then it is enough to have his signature on the draft ».

We believe that this explanation cannot be adopted with regard to the Chambers of Experts, since the draft judgment is issued signed by both the judge and the experts, and it is the most expressive of the will of the judge and the experts involved in the composition of the Court. It cannot be accepted that the draft in respect of the Chambers of Experts is merely a draft judgment; it is the same judgment that reflects the Court's decision.

The extent of the right of the litigants to obtain a copy of the draft judgment

Legislator has regulated how to obtain a copy of the original judgment the original appended with the enforcement seal and who are entitled to obtain it, and cases where it is permissible to obtain a second enforceable copy of the same judgment, and have the right to obtain a certified copy of the copy of the judgment, where Article (53) of The Regulation Federal Law No. 11 of 1992 on the Law of Civil Procedure that « 1. Copy of the enforceable judgment shall be stamped with the seal of the court and be signed by the competent staff after appending the enforcement seal and be given only to the party who is having interest in getting the judgment enforced, and requires that the judgment be enforceable, or affixed with the enforcement seal electronically if obtained online. 2. A second enforceable copy may not be delivered to the same interested party unless the first copy is lost or can not be used upon an order from the judge or

the chair of the chamber as the case may be. 3. A certified copy of the judgment (hard or soft) may be given to the stakeholders who request it, and can't be given to others except with the permission of the judge or chair of the chamber, as the case ». in summary a copy of Judgment is given to the party interested in the execution of the judgment. A certified copy of the judgment may be given to requesting concerned parties. No certified copy of the judgment may be given to others except with the permission of the judge or the chair of the chamber as the case may be.

As we have already seen, the idea of distinguishing between a copy of a judgment and its draft is no longer in force after the Regulation of Federal Law No. 11 of 1992 on the Law of Civil Procedure. Hence, it is no longer possible to question the right of the parties to obtain a copy of the draft judgment issued by the ordinary Chambers composed of judges only. However, this question arises with regard to the expert Chambers, in which the legislator retained the idea of distinguishing between the copy and the draft. The reason behind this question is that the draft judgment is issued by both the judge and the experts, which is the most expressive of the will of the judge and the experts involved in the construction of the court .

In answering this question, it should be noted that Article 129 of the of Civil Procedure Law – before its cancellation by the issuance of the Regulation – stipulated that « 1. In all cases, the judgment shall include the grounds on which it was built, and a draft judgment containing its causes signed by the chair, and the judges when pronouncing it is deposited in the case file. 2. In cases of summary procedure, if the judgment is pronounced in the hearing, the draft containing its reasons may be filed within three days at most from the date of its

pronunciation in the case file. 3. The draft containing the operative sentence and its reasons shall be kept in the file of the case. 4. Violation of the provisions contained in paragraphs (1) and (2) will render the judgment null and void ». Thus, this article did not provide for the right of the parties to obtain a copy of the draft judgment or even just to have a look at it. In contrast, article 177 of the Egyptian Civil and Commercial Procedure Law provides that " a draft judgment containing its operative part and its reasons shall be kept in the file, and no copies shall be given thereof, but the adversaries may review it until the original copy of the judgment has been completed. "

In the absence of an express provision on the right of the parties to obtain a copy of the draft judgment from the Chambers of Experts, we believe that considerations of justice and transparency in the judicial process require the right of the litigants or parties to obtain a copy of the draft provision.

Judgment data

Article 51 of the Regulation of Federal Law No. 11 of 1992 on the Law of Civil Procedure provides that "the judgment shall state the court issuing it, the date of its issuance, its place, the type of case and the names of the judges who heard the pleading, and a member of the public prosecutor, who expressed his opinion in the case, and the names of litigants and their surnames and their positions and their addresses or place of work and their presence or absence ». The third item of the same article adds that "the shortcomings in the real reasoning for the judgment and the lack or serious error in the names and positions of the opponents, as well as the lack of names of the judges who issued the ruling result in the invalidity of the judgment."

Although the above-mentioned texts only mention the names of judges, they do not mention the names of the experts provided for in Article 30 (bis), we believe that "the names of the experts who participated in the judgment" is one of the essential statements that should be included in the judgment. This is supported by the fact that the legislator has given experts in the composition of such chambers a status similar to that of judges, with regard to their guarantees, accountability and inspection.

Structuring the judgment and its components

Article (51) item (2) of the Regulation of the Federal Law No. 11 of 1992 on the Civil Procedure Law that « the judgment must include an overview of the facts of the case and requests for litigants and concise summary of the fundamental defense of and the opinion of the public prosecutor and then the reasons for judgment and its operative part ». Third item of the same article states that « deficiencies in the real reasoning for judgment and the lack or serious error in the litigants capacities and their names as well as the lack of stating the names of judges who issued the judgment entail the nullity of judgment ». Item 4 of the same article adds that « the exception of the provisions of paragraphs (2) And (3) of this article, only the judgments issued in the Minor proceedings, the statement of the claimant's requests and a brief summary of the defense of the litigants and the opinion of the Public Prosecution - In the cases stipulated by the law - and the reasons for the sentence and its operative part, and this is not a deficiency in the practical reasoning and it does not result in the nullity of the judgment».

The point from this provision is that the structure of the sentence in the Major lawsuits is as follows:

- An outline of the case facts.
- Requests for parties.
- A brief cored summary of the defense of parties.
- Opinion of the Public Prosecution.
- Reasons for judgment.
- Operative sentence.

The structure of the judgment in Minor lawsuits is as follows:

- Statement of the claimant's requests.
- A brief summary of the opponents' defense.
- The opinion of the Public Prosecution in cases provided for by law.
- Reasons for judgment.
- Operative sentence.

Thus, the legislator distinguishes between structure in the judgments of Major cases and the judgments in the Minor cases, so that in the Major cases the sentence must include an outline of the facts of the case, while this is not an essential element in the structure of the judgment in Minor cases.

Given that the value- based jurisdiction of the expert chambers is the same of the as of Major Chambers, as well as the composition of these chambers of more than one member, we find the judgment structure adopted in Major cases.

The fifth requirement

the Appealing of the Judgments issued by the Expert Chambers

Article 30 (bis) of the Federal Law of Civil Procedure, made by under Federal Law No. 10 of 2017, sets forth that « ... judgments of the Chambers referred to in item (1) of this article are appealed in front of the appellate chambers provided for in this decree law » . This means that the appeal of the judgments of the expert chambers shall be made before the appellate chambers composed of judges only.