

CONSTRUCTION | NOVEMBER 2023

NEW GUIDELINES ISSUED REGULATING THE WORK OF DUBAI COURTS EXPERTS.

Decree No. 183 of 2023 has been issued, setting out guidelines for regulating the work of court experts appointed by Dubai Courts (the "Guidelines").

The new decree and the Guidelines set out therein became effective on 27 October 2023. The Guidelines apply to all judicial experts registered on Dubai Courts Expert Roster ("Roster") and appointed by Dubai Courts.

The stated objective of the Guidelines is to set out the methodology to be followed by court experts in the performance of their appointments, in order to achieve the desired goals of such specialist technical assistance i.e. to reach considered judgments and to achieve justice.

The Guidelines consist of instructions and guidance derived from various sources such as Law No. 13/2020 on the Regulation of Expertise Before the Judicial Entities in the Emirate of Dubai, other relevant legislation and procedures established by custom.

The compilation of such guidance into one set of definitive Guidelines provides all parties to litigation in Dubai Courts with greater clarity and transparency about the court expert procedure.

We summarise below a selection of the Guidelines which may be of interest to parties considering, or preparing for, litigation in Dubai Courts:

Language of the court expert procedure

The expert is to conduct meetings and correspondence with the parties in Arabic.

However, if the expert speaks the same language as a non-Arabic speaking party, the expert may translate that party's submissions into Arabic to present to the Arabic speaking parties and must record this in the meeting minutes.

If the expert does not speak the same language as any of the parties or their legal representatives, then the expert may agree to the attendance of a translator (to be hired by the respective party).

Alternatively, the expert may hire a legal translator, whose fees shall be included within the expert's expenses.

Meetings between the expert and the parties

The expert has full discretion to choose how meetings are held, which may include technical means by video or phone calls.

The expert is required to listen to all of the litigants and to give them sufficient and equal opportunity to declare their statements and defences.

The meetings must be recorded in meeting minutes and the expert must obtain the parties' signatures on the minutes or note on the minutes any reasons why a party refuses to sign.

In the event that any party invited to a meeting with the expert fails to attend, the expert may progress the meeting and mandated work, in the absence of the party.

Adjournments of planned meetings by the litigant parties or by the expert may not result the time period for the expert's report exceeding the time period stipulated in the expert's court mandate.

Experts' assistants

Experts may hire other experts, to assist them, with the permission of the competent court and provided that the specialisation of the expert to be hired differs from that of the original expert. The fees of the hired expert shall be included within the expenses of the original expert.

Assistants and personnel hired by the expert may undertake the duties of communicating with the parties to arrange meetings and may record the minutes of expert meetings and receive memoranda and documents submitted by the litigant parties.

However, assistants and personnel hired by the expert may **not**:

- Discuss the details of the dispute with the litigant parties.
- Direct the expert in any of the expert works or discuss the expert meetings.
- Request the parties to provide any information or documents, except as agreed and recorded in the minutes of the expert meetings.
- Prepare any part of the expert report without a prior approval by the competent court.
- Undertake any site inspection on behalf of the expert.
- Perform any acts which applicable legislation prohibits the expert to undertake.

Witness evidence

Witnesses shall be heard by the expert without administering the oath.

The testimony of each witness must be heard individually. It is wholly inadmissible for the expert to combine hearing of testimony from two or more witnesses.

Defence witnesses should be heard in one hearing, if possible.

The expert must only ask the witness about issues related to the expert's mandate.

If a witness has an excuse which prevents them attending a meeting with the expert to present their testimony, then the expert may relocate the meeting to the premises of the witness, with the permission of the competent court.

The expert may accept written witness testimony, provided the witness signs the same in front of the expert, after verifying their identity with identification documents.

Also, the expert may accept written testimony issued by a witness residing outside the United Arab Emirates, provided this testimony is attested by the concerned authorities in the country or state in which the witness is present.

Preparation of the expert report

Before preparing the report, the expert must permit the litigants to submit their memoranda, documents and defences, and to exchange final memoranda, under the supervision of the expert and within the specified time period.

The expert's report must comprise of all the procedures carried out by the expert and must specify all the memoranda, documents and claims submitted to the expert. The report must be prepared in clear language, order and sequence according to the scope of the expert's mandate.

The report is to be prepared on valid legal, scientific, and technical bases and the conclusions of the report should be clear, definitive, and predicated upon the evidence supplied by the parties.

The expert is to present the initial report to the litigants and give them a time period of not less than 3 working days to comment on the report.

Then, the expert must review and reply to all of the litigants' comments within 5 working days of receiving the same.

The expert may then file the final report (including the litigants' comments, the expert's reply and final opinion) with the competent court. A copy of the final report shall be sent to each litigant.

If the expert cannot file the completed final report within the time period set forth in the court's mandate, the expert may request the competent court to extend the period for filing the report and shall indicate the reasons for the requested extension.

Bias and Confidentiality

The expert is not permitted to perform any expert assignments in which the expert or the expert's relatives (up to the fourth degree) have a direct or indirect interest.

The expert is required to maintain the confidentiality of the concluded expert opinion, save where a competent court has granted prior permission to disclose such details.

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