

## **Judicial accounting and judicial auditing and their various uses in judicial expertise**

**Prepared by:**

**Dr. zeroual Alaeddeine**

zeroual-alaeddeine@univ-eloued.dz

university of Eloued, Algeria

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### **Abstract:**

In view of the development, growth and complexity of legal cases, particularly those of an economic and financial nature for companies and economic and financial institutions, public and even private, on the one hand, and the limited knowledge magistrates and judicial executives in most economic and financial issues and developments, particularly with regard to the accounting and financial aspect of companies, on the other hand, the judicial authorities must Activate judicial expertise by calling on people with experience and knowledge in economic, financial and accounting aspects. Thus, we will try, through this research, to approach the judicial accounting and the judicial audit and their various uses in the judicial expertise.

**Key words:** Judicial expertise, Judicial accounting, judicial auditing.

### **Introduction:**

Judicial expertise has become one of the methods that the judge may follow whenever technical evidence is needed when he does not have sufficient knowledge of the subject of the dispute. He may appoint an expert to provide his technical opinion on the subject he is assigned. The judicial expert must be organized by the competent authority, and the expert may be specialized in accounting, banking, insurance, engineering, medicine, information technology, and other fields. The parties to the judicial dispute may also agree to nominate a certain expert who must be specialized in the field of the judicial dispute.

The economic and financial fields are among the most prominent and important fields in which the judge resorts to technical experts to investigate and decide on cases related to those fields, which led to the existence of both judicial accounting and judicial auditing.

Judicial accounting is concerned with the financial inventory of assets, liabilities, revenues, expenses, and other financial and accounting banks of the financial statements presented to the court. Judicial accounting is also used in different contexts such as managing inheritances, divorce, dissolution of partnerships, and others.

Judicial auditing, on the other hand, is concerned with confronting fraud, corruption, financial violations and methods of reducing them, investigating cases of manipulation in the digital information environment, money laundering, smuggling funds, financing terrorism, manipulation in accounting, finance and insurance, and tax and commercial disputes.

This research seeks to present the various fields in which the judge seeks experts in both judicial accounting and judicial auditing within the framework of judicial expertise.

The research problem was therefore as follows: What are the various fields of using both judicial accounting and judicial auditing within the framework of judicial expertise?

**First Theme: The Theoretical Foundation of Judicial Expertise**

**First: The Concept of Judicial Expertise**

This procedure is one of the investigative procedures that various judicial authorities resort to in order to investigate certain facts, given their specificity and the inability of the competent judge to understand the technical aspects of many sciences such as medical sciences, engineering, accounting, etc. This justifies the attention of various legal scholars to this procedure, as evidenced by the different definitions they have provided to determine the meaning of judicial expertise.

Judicial expertise is a technical consultation regarding certain matters that require special knowledge or expertise not available to the investigator. Examples include autopsy to determine causes of death, handwriting comparison to detect forgery, and analyzing seized material to determine its nature. Expertise is a means of proof aimed at uncovering certain clues or determining their meaning using scientific information. In this sense, expertise differs from testimony, as the witness's role is limited to stating what he saw, heard, or perceived without making assessments, while the expert must provide an opinion regarding a specially natured matter that requires technical understanding.

It is defined as clarifying the opinion of experts regarding the material aspects of facts that the trial judge is unable to understand from merely reviewing the documents and which he cannot judge based on his personal knowledge.

Judicial expertise is limited to technical matters beyond the judge's ability to grasp, while legal matters remain within his jurisdiction.

The Algerian legislator did not define the procedure of expertise but listed its provisions in Articles 125 and following of the Code of Civil and Administrative Procedure, stating that "expertise aims to clarify a purely material, technical, or scientific fact for the judge." Expertise is also listed among investigative procedures in Article 85 of the Tax Procedures Code.

### **Second: Characteristics of Judicial Expertise**

Judicial expertise has several characteristics, including:

- **Technical nature**
- **Procedural nature**
- **Optional nature**
- **Subordinate nature**
- **Written nature**

### **Third: Types of Judicial Expertise and Classification of Judicial Experts**

Judicial expertise includes:

- First expertise
- Second expertise
- Counter expertise
- New expertise
- Complementary expertise

Experts are classified as:

- Appointed experts
- Exceptional experts

### **Fourth: Fields of Using Judicial Expertise**

The judge may resort to experts in fields including:

- Forensic medicine
- Murder, theft, drug and weapon trafficking
- Forgery, fraud, embezzlement, corruption
- Engineering, industry, construction
- Cybercrime

- Real estate and tax disputes
- Traffic accidents
- Money laundering and terrorism financing
- Commercial company disputes
- Economic issues
- Financial and accounting aspects of companies
- Auditing companies' activities
- Other economic and financial cases

## **Second Theme: Judicial Accounting and Its Uses in Judicial Expertise**

### **First: The Concept of Judicial Accounting**

Judicial accounting is defined as a method for investigating financial operations and business problems to reach the truth and prepare an expert opinion regarding potential fraud. It is divided into:

- Litigation support
- Investigative or fraud accounting

Judicial accounting involves a legal examination process that provides a high degree of certainty, is comprehensive and complete, and allows the issuance of an independent professional opinion.

The judge may appoint an accounting expert registered as a judicial expert according to Executive Decree No. 95-310.

### **Second: Importance of Judicial Accounting**

Judicial accounting derives its importance from:

- A modern and important field
- Integrates accounting and law
- Provides in-depth investigations
- Supports legal claims
- Enhances external auditing
- Helps detect financial crimes

### **Third: Objectives of Judicial Accounting**

Forensic accounting aims to investigate cases of fraud and financial manipulation, clarify the validity of submitted claims and their resulting effects based on financial evidence, and identify illegal or suspicious points in the financial statements through a comprehensive examination of specific items within the financial statements and the provision of appropriate recommendations. Forensic expertise in accounting is characterized by its narrow yet deep scope of work, unlike financial auditing, which is broad in scope but superficial.

In general, the objectives of forensic accounting are as follows:

- Identifying areas or legal activities that facilitate the commission of fraud, gathering sufficient evidence, and submitting a report that includes an impartial professional technical opinion that helps issue sound judgments in legal cases.
- Providing specialized forensic auditors who possess integrated knowledge of accounting, auditing, and investigative skills in light of legal knowledge, to serve as experts or consultants who help support legal claims, enlighten the judiciary, assist it, and achieve justice.
- Protecting public funds from fraud and misuse and contributing to enhancing the efficiency and effectiveness of external accounting functions.

- Examining and investigating any matters related to fraud and errors within the business organization under accounting review and reviewing all books, information, and disclosures related to the financial statements.
- Preparing the forensic accounting report at the level of comprehensive examination rather than sampling company operations as a whole, allowing for the achievement of outcomes that external auditors cannot achieve.

#### Fourth: Forensic Accounting Services

Forensic accounting services are as follows:

- **Investigative services:** These services include forensic accounting services not related to potential or actual litigation and include performing analyses and inquiries, which use the same skills as legal support services but are not used in litigation processes. Investigative work is a systematic gathering of evidence aimed at providing testimony to resolve disputes related to illegal activities such as fraud or to review financial statements that may indicate any suspicion or reveal illegal activities.

The forensic accountant may perform the following investigative services:

**Criminal investigation:** The forensic accountant may be asked to prepare a specific report whose purpose is to provide evidence in a professional manner.

| **Partnership and shareholder disputes:** The accountant may be asked to perform preferred analyses of several accounting records to resolve disputes related to shareholders' compensation and benefits.

1 **Personal injury claims:** The accountant determines economic losses resulting from a specific  
incident such as economic damages due to misconduct, medical errors, or wrongful dismissal.

**Fraud investigation:** Such as tracing funds and identifying missing assets and their uses.

| **Assessment of business economic losses:** In contract and construction disputes, asset confiscation, patent infringement, commercial transactions, losses from agreement termination, or professional negligence.

- **Legal support services:** These services acknowledge the expert witness role, which consists in providing assistance in potential, pending, or actual legislative or legal procedures before an investigating judge with the aim of resolving disputes between different parties. Legal support services include:
  - ↳ **Expert witness services:** The accountant presents his opinion in court in the case under dispute.
  - ↳ **Consulting services:** The accountant provides his opinion regarding facts or issues related to a specific subject without testifying as an expert witness.
  - ↳ **Other services:** The accountant acts as a judicial expert, private arbitrator, court expert, or mediator in forensic accounting fields.

## **Fifth: Requirements for Practicing Forensic Accounting**

Among the requirements that must be met by a person practicing forensic accounting are:

- Holding the required academic qualifications in accounting and financial sciences.
- Possessing deep understanding of advanced accounting sciences and international accounting and auditing standards.
- Having integrated knowledge of internal control procedures and how to manage risks and detect fraud.
- Holding a professional certificate that qualifies him to be a forensic accountant and fraud examiner.
- Deep understanding of creative accounting methods and approaches.

- Commitment to professional behavioral standards.
- Completing specialized training courses and programs in forensic accounting, including knowledge of its importance, the requirements for preparing a forensic accounting expert, understanding fraud and its sources, and the risks and effects of fraud on financial statements and reports of companies of all types.
- Knowledge of investigative and inquiry procedures.
- Adequate knowledge of laws and regulations.
- Adequate knowledge of criminal procedures and litigation procedures.
- Being creative, distinguished, confident in performing tasks, and capable of understanding matters.
- Persistence and diligence in performing work, strong communication skills, and the ability to compete and argue in legal cases.
- High experience in obtaining information, intelligence, sharp observation, and skill in paying attention to small details and conducting investigations.
- Developing skills in structured and systematic thinking to solve problems.
- Acquiring computer skills and proficiency in accounting software.
- Acquiring distinguished verbal and written personal communication and IT skills.
- Acquiring effective communication skills to present evidence and reports before judicial or arbitration authorities.
- Possessing professional skepticism when implementing audit programs.

Thus, the forensic accountant must have a combination of skills drawn from the professions of judges, lawyers, public prosecutors, police investigators, accountants, auditors, and legal practitioners in litigation procedures, alternative dispute resolution, case analysis, and reaching judicial decisions. They must also possess full knowledge of accounting, auditing, and accounting profession laws, and full investigative and inquiry skills for all types of cases (civil, criminal, commercial, administrative), and must develop these through behavioral skills training. They must also have advanced computer skills (programming, networking, internet, cyber security) to face cybercrimes and track offenders.

#### **Sixth: Fields of Using Forensic Accounting within Forensic Expertise**

There are several uses of forensic accounting, which plays a major role in investigating many economic and financial cases, including:

- Investigating fraud and reducing it.
- Investigating financial fraud and reducing it.
- Providing consulting to establish strategies to prevent fraud in companies.
- Analyzing and evaluating commercial transactions.
- Government investigations and assisting government authorities in assessing banking and accounting records of suspects.
- Providing consulting to resolve disputes related to professional liability and civil lawsuits.
- Preventing fraud by identifying and correcting situations that may lead to fraud (risk analysis).
- Assessing compliance with regulations governing grant and subsidy payments, and performance auditors may also use such methods when reviewing government programs.
- Use in cases of financial and administrative corruption to prove or refute suspicions and identify those involved.

- Ensuring the adequacy and implementation of internal control systems in government units (administrative and economic public institutions) and non-governmental entities.
- Tax, customs, insurance, banking, investment, industrial, commercial, exploration, contracting, and construction disputes and others.

### **Third Section: Judicial Auditing and Its Uses in Forensic Expertise**

#### **First: Concept of Judicial Auditing**

Judicial auditing is a principle under which the actions of the legislative and executive authorities in the state are subjected to review and possible annulment by the judiciary. Any court granted judicial review authority may annul an act of the state when it appears inconsistent with the law or the constitution. Judicial review authorities reflect the separation of powers in modern governmental systems by contributing to the independence of the judiciary from other branches of government.

This principle is applied differently across various judicial systems worldwide, and therefore its details vary across countries.

Judicial auditing is a process in which executive or legislative actions are reviewed by the judiciary. A court with judicial review authority may annul laws, acts, or governmental procedures that do not conform to a higher authority: an executive decision may be annulled for being illegal, or a law may be annulled for violating constitutional provisions. Judicial review is one of the checks and balances in the separation of powers: the judiciary supervises the legislative and executive powers when they exceed their authority. The doctrine varies by jurisdiction, so the procedures and scope of judicial review differ across and within countries.

Judicial auditing is a set of processes of recording, sorting, reconciling, and verifying accounting data and preparing reports to resolve legal disputes. It is the art and science of investigating funds and individuals and presenting an impartial technical opinion to different bodies for the purpose of achieving justice in various financial cases.

Judicial auditing is a process that consists of analyzing the legality and effectiveness of various legal acts and decisions applied within the company. These auditing processes are mainly preventive and aim to detect and prevent legal irregularities. Judicial expertise is an investigative procedure ordered by the court relating to a matter in which the judge lacks sufficient technical knowledge to decide.

Judicial auditing combines accounting, auditing, and law, and merges accounting, behavioral, and legal skills to detect illegal activities, fraud, and manipulation related to the company's financial records.

#### **Second: Objectives of Judicial Auditing**

The objectives of judicial auditing can be identified as follows:

- Protecting public and private funds from fraud and misuse, and contributing to improving the efficiency and effectiveness of external auditing.
- Providing specialized and independent judicial auditors who possess the necessary knowledge of accounting, auditing, and investigative skills in light of legal knowledge, to serve as experts or advisors who help resolve financial legal disputes and assist legal professionals in affirming rights and achieving justice.
- Providing financial and accounting information for legal purposes, as this represents the link between the accounting system and the legal system, thus providing accounting analysis prepared according to the needs of the judiciary to resolve disputes.
- Identifying illegal or high-risk activities that facilitate fraud, collecting essential evidence, and submitting a report containing an impartial professional opinion that contributes to deciding legal claims.



- Prevention and detection of fraud, corruption, and misuse of public and private funds.
- Enhancing the efficiency and effectiveness of the auditing profession and fulfilling its responsibilities within governance requirements.
- Restoring the trust that was shaken due to financial and economic collapses of states and companies by reducing the audit expectation gap.

### **Third: Reasons for the Increased Importance of Judicial Auditing**

The importance of judicial auditing has increased due to the following:

- Development of methods and techniques of administrative and financial corruption and fraud.
- Inability of traditional financial auditing to meet the needs of stakeholders, especially under governance and total quality.
- Financial collapses in economic and financial companies and countries, including some audit firms.
- Ethical and professional failures in financial, administrative, and other fields.
- The need to support the integrity of financial statement users.
- The judiciary's need for experts and auditors capable of providing financial and accounting information for legal purposes.
- Insufficient scientific qualification of auditors to detect fraud and deception in financial statements, and the necessity for auditors to gain the skills of judicial auditors, such as raising professional skepticism and mastering forensic investigation methods.
- Deficiencies in external auditing in detecting fraud, in addition to the audit expectation gap.

### **Fourth: Methods of Judicial Auditing**

Judicial auditing methods include the following:

- **Data mining method:** Aims to search vast amounts of data to discover complex relationships between patterns, events, and trends, providing relevant information for detecting weaknesses in internal controls.
- **Data analysis method:** Used to identify weakness areas in internal control procedures and establish appropriate control procedures.
- **Critical point auditing method:** Used to identify fraud indicators within ordinary financial operations that are concealed, through examining and analyzing books, records, and financial statements to detect material deviations.

### **Fifth: Features of Judicial Auditing**

Judicial auditing is characterized by the following features:

- Enhances and strengthens control mechanisms to protect business organizations from financial crimes such as embezzlement and repeated thefts.
- Plays an important role in institutions subject to regulatory authority examination by helping ensure regulatory compliance.
- Helps protect organizations from long-term damages and can be used to assist in dispute resolution.
- Improves efficiency by identifying loss areas and detecting and documenting potential conflicts of interest among managers and executives, thereby enhancing transparency and integrity.

### **Sixth: Fields of Using Judicial Auditing within Forensic Expertise**

Judicial auditing is used in several fields, playing an important role in investigating many economic and financial cases, including:

- Fraud, embezzlement, financial corruption, and administrative and financial violations.

- Manipulation cases in companies' digital information environments.
- Cases of money laundering, money smuggling, and terrorist financing.
- Legal and financial consulting.
- Accounting (especially creative accounting), finance, banking, insurance, and financial markets.
- Tax and commercial disputes.
- Corporate governance cases.
- Forensic accounting investigative services and legal support.
- Corporate digital information and services cases.

### Conclusion

Forensic expertise is one of the essential investigative procedures that the judge may order by assigning a specialized expert in specific fields, in which the judge lacks the technical knowledge required to investigate and decide, which necessitates relying on a forensic expert. Among the fields in which judges rely on forensic experts are economic and financial fields, where they rely on both forensic accounting and judicial auditing.

Forensic accounting focuses on investigating financial operations, detecting fraud and financial manipulation, providing consulting to prevent corporate fraud, analyzing and evaluating commercial transactions, assisting in government investigations and evaluating banking and accounting records of suspects, providing consulting to resolve disputes related to professional liability and civil lawsuits, assessing compliance with regulations governing grants and subsidies, dealing with cases of financial and administrative corruption, verifying the adequacy of internal controls in government and non-government entities, and addressing tax, customs, insurance, banking, investment, industrial, commercial, exploration, contracting, and other disputes.

Judicial auditing likewise deals with fraud, embezzlement, financial and administrative corruption, manipulation in digital information environments, money laundering, money smuggling, terrorist financing, legal and financial consulting, accounting (especially creative accounting), finance, banking, insurance, financial markets, tax and commercial disputes, corporate governance, forensic accounting investigation and legal support services, and cases related to corporate digital information and services.

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