

Bounced cheques: How to close case after clearing dues



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LEGAL VIEW

Q: I had a bounced cheque case against me when I defaulted on a rental payment. I have cleared the cheque now but my landlord is refusing to return my guarantee cheque that I gave while renting the apartment. I travelled outside of the UAE and now I have been told that my name is blacklisted and I could get arrested the moment I return to the country. I have already paid the due amount and don't owe a penny. How can I legally resolve this and return to the UAE?

A: We assume that your landlord has filed a criminal complaint against you for dishonour of a cheque in the emirate of Dubai. Therefore, the provisions of Federal Law No. (3) of 1987 on Issuance of the Penal Code amended by Federal Law No. (34) of 2005 (the 'Penal Law') and the Dubai Law No. (1) of 2017 related to Criminal Order (the 'Dubai Criminal Order Law') are applicable.

It should be noted that a dishonour of cheque is a criminal offence in the UAE. This is in accordance with Article 401 of the Penal Law, which states: "A punishment of confinement shall be inflicted on any person who, in bad faith draws a cheque without no existing or drawable provision, or who, after issuing the cheque, withdraws all or part of the fund to that the balance becomes insufficient to settle the amount of the cheque, who orders the drawee not to pay cheque, or deliberately makes or signs the cheque in such a manner as to prevent it from being paid.

Any person who endorses or delivers to another a cheque payable to bearer, whilst being aware that there are no existing funds covering its value or that it cannot be drawn shall be liable to the same punishment.

The penal action shall lapse if payment is made or waived after the crime has occurred and before it has received a final ruling. If this occurs after the ruling has become final, its execution shall be stayed."

Based on the aforementioned provision of law, even though the issuer of the cheque is subject to penalties or imprisonment or both, if the cheques are dishonoured, the latter part of the said provision of law states that punishment may be avoided if the amount of the cheque is paid in full to the payee or if the payee of the cheque waives his right to collect the proceedings of the dishonoured cheque.


Further, assuming that the criminal complaint was filed against you by your landlord in the emirate of Dubai for the dishonour of cheque, it may be noted that based on the provisions of the Dubai Criminal Order Law, if the cheque amount is less than Dh200,000, the punishment may be by fine and the fine may vary between Dh2,000 and Dh10,000

depending on the cheque amount.

Therefore, as you are outside the UAE, you may issue a power of attorney to a lawyer (the 'POA holder') in the UAE which should be notarised and legalised in the country where you are currently residing. Thereafter, the same needs to be attested by the Ministry of Foreign Affairs and International Cooperation in the UAE. The POA holder, on your behalf, may approach the Dubai Public Prosecution or the police station where the criminal complaint is filed against you by your landlord and present documentary evidence confirming that you have paid all rental amounts due to the landlord and the landlord should not have used the security cheque to file a criminal case against you.

The public prosecutor upon verifying all documents submitted by your POA holder may close the criminal case against you and open a criminal case against your landlord for misusing your cheques and filing a false complaint against you.

Know the law

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I found my wife's photos with another man. Can I file for divorce?

Q: I found some photographs of my wife in a compromising position with another man. It was a relationship she had in her home country before she got married to me. Can I file for a divorce based on the photographs? Can I file a criminal case against her in the UAE though the incident took place in another country?

A: Pursuant to your queries, we assume that you and your wife are expatriates living in the UAE. As you allege that you found the photographs of your wife with another man in a compromising position, the provisions of Federal Law No. (3) of 1987 on issuance of Penal Code (the 'UAE Penal Law'), Federal Law No. (35) of 1992 related to Criminal Procedure Law of UAE (the 'Criminal Procedure Law of UAE') and Federal Law No. (28) of 2005 on Personal Status (the 'Personal Status Law of the UAE') are applicable.

It may be noted that in the UAE, having an extramarital affair or engaging in a relationship (sexual) without being married is punishable by law. This is in accordance with Article 356 of the UAE Penal Law. However, the alleged incident of your wife with another man took place before her marriage to you and outside the UAE. Therefore, the

Know the law



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jurisdiction for any criminal proceedings against your wife shall not be in the UAE. This is in accordance with Article 16 of the UAE Penal Law, which states: "Provisions of this law shall apply to anyone who commits a crime within the territory of the State. The territory of the State shall include its lands and any place under its sovereignty, including territorial waters and air space above them.

A crime shall be considered to be committed in the territory of the State if any of its constituent acts occurs therein, or if its result has been realised or is intended to be realised therein."

Further, Article 142 of the Criminal Procedures Law of UAE, states: "Jurisdiction shall be determined by the place where the crime occurred."

Based on the aforementioned provisions of criminal laws, you may not be in a position to file criminal proceedings against your wife in the UAE.

Further, if you and your wife are expatriates, you are allowed to file for divorce in the UAE and may apply the provisions of law under which you had married in your home country or as per the personal law which govern you in your home country. This is in accordance with Article 1(2) of the Personal Status Law of the UAE, which states: "The provisions of this Law shall apply to citizens of the United Arab Emirates State unless non-Muslims among them have special provisions applicable to their community or confession. They shall equally apply to non-citizens unless one of them asks for the application of his law."

Based on the photographs of your wife in a compromising position with another man and supporting evidence, you may file a divorce case against your wife in the Personal Status Court of the emirate you are residing in. However, mere submission of photographs of your wife with another man in a compromising position prior to her marriage with you may be considered as a sufficient ground for divorce by the court in the UAE if the court is of the opinion that your wife breached your trust by concealing her previous relationship with another man. You may engage a legal counsel to advise you further in this matter.

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