

# Dishonour of cheque is a criminal offence

LEGAL VIEW  
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One of our salesmen sold goods to an expatriate who gave us post dated cheques of different dates. After few months, the expatriate fled the UAE leaving us with the cheques that have bounced. From reliable sources we have learnt that he is in Kuwait and has started his own business. Whilst our amount was less than Dh200,000, we know of other companies like ours whom he has cheated and the total amount he owes is more than Dh1 million. One of the companies has filed a civil case and has got judgment in their favour. However, there is a very slim chance of the expat returning to the UAE. Also, his assets in the UAE are less than the court fees spent. My question is, is there any way for us to get the expatriate back to the UAE and make him pay our dues? If not, can we use the help of Interpol and if so, what is the procedure?

It is understood that you had sold certain goods to an expatriate individual in the UAE and against this sale, he had issued several post-dated cheques of various denominations and for different periods to you, which have all been dishonoured by the respective banks eventually. While the total amount(s) due to you is about Dh200,000, you have now learnt that he is currently staying in Kuwait and is running a business there.

It is assumed that you sold the goods to an individual, not a legal entity, and received personal cheques of this individual.

You may avail the option of filing a civil suit in respect of your claims against the individual concerned at a court of competent jurisdiction in the UAE, provided you possess all the supporting documents and resources in order to support your claims and arguments at the court. Subsequently,

in the event you are successful in getting a decree in your favour from the court, wherein the court finds the individual concerned liable to pay your dues, you may take the decree of the UAE court to Kuwait for its execution against the individual.

The execution of the UAE court's decree against the individual concerned has to be done by a court of competent jurisdiction or any other appropriate judicial or executive body in Kuwait which may have the powers to execute a GCC court's decree or ruling; and therefore you may have to file an execution petition before

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the appropriate authority in Kuwait. Subsequently, if the authority concerned is satisfied with your petition and the decree of the UAE court and it does not contravene any of the sovereign laws of Kuwait, the former may issue an order to the individual concerned to pay all the amounts due to you. While this is an overview of the whole procedure, you may consult legal practitioners in the UAE and also in Kuwait to know the exact procedures that you may follow in order to secure your payments from the individual.

Further, 'dishonour of a cheque' is a criminal offence punishable with detention or fine in accordance with Article (401) of the Federal Law No 3 of 1987 on the Issuance of Penal Code of UAE (the 'Penal

Code'), which states: "Detention or a fine shall be imposed upon anyone who, in bad faith, gives a draft (cheque) without a sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance, making the balance insufficient for settlement of the cheque, or if he orders a drawee not to cash a cheque or makes or signs the cheque in a manner that prevents it from being cashed.

The same penalty shall apply to any one who endorses a cheque in favour of another or gives him a bearer draft, knowing that there is no sufficient balance to honour the cheque or that it is not drawable."

Pursuant to the above provisions of the Penal Code, you may also lodge a criminal complaint with the local law enforcement authorities in the UAE against the con-

cerned individual on grounds of dishonour of cheque. Subsequently, upon obtaining a judgment against the debtor from the UAE authorities, you may enforce the judgment of the UAE courts in Kuwait against the debtor.

We are therefore of the view that you should consult a legal practitioner/lawyer, before you decide to avail the options available to you.

## Labour ban

Currently I am working for a reputed company in the UAE under an unlimited contract on a sales visa with a low salary of Dh3,500 (include benefit). My position is Logistics Assistant. I have completed one year and two months. Recently, I got an

offer from another company as Purchase Administrator with a salary offer of Dh6,500. Both the companies are not in the free zone. I have done my MBA and got my certificate attested by the departments concerned. If I accept the new offer, can I submit my new professional qualification certificate and avoid a likely ban?

It is understood that you have been working on an unlimited period contract with your current employer on a current salary of Dh3,500 for a period of 1 year and 2 months and now you have received an offer from a prospective employer offering a salary of Dh6,500. It is further understood that both the employers are entities which are not registered with any of the free zones in the UAE.

The Ministry of Labour had recently made announcements regarding labour bans in the UAE. As per the announcements, individuals working on an unlimited period contract, in order to join a new employment must fulfil the following criteria so as to avoid a labour ban against them:

- The individual must have completed one year of an unlimited contract;
- The individual should also secure a 'No Objection Certificate' (NOC) from the current employer; and
- It may also be required that the new job has the same job title as the old job.

The ministry also requires that individuals may avoid a labour ban if their new employer provides them a particular amount as salary pursuant to their educa-



tional qualifications. As such for graduates, the minimum salary requirement is Dh12,000 per month. Further, labour bans are not imposed upon individuals holding a professional degree and working in that profession.

With respect to the criterion mentioned above, while you have already completed one year of employment with your current employer, you may have to secure a no-objection certificate from your employer, wherein your employer should specify its non-objection with respect to your employment with a different

employer in the event you decide to join the new employer after leaving the current employer.

However, pertaining to the salary, your new employer is not providing you with a salary suitable to your educational qualifications. Further, holders of MBA degrees are not considered professional workers if they are not holding managerial positions in their existing employment.

In view of the circumstances, a ban may be imposed on you by the ministry. However, it would be prudent to contact the ministry to seek their opinion in this matter.

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