

Employee liable for action if he signed the firm's dud cheque



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LEGAL VIEW

Q: I have been working as an engineer in a construction company in Dubai since 2011. In order to negotiate contracts, I was enlisted as a manager in 2015. Prior to that, my signature was added to the company's bank account as a joint signatory only to release payments. It is worthwhile to mention that I do not have the authority to borrow money or sell on behalf of the company. The problem started when the cheques I signed on behalf of the company bounced. In 2018, I was arrested for the bounced cheque cases. I was released in October 2020, but was arrested again on November 13 for civil cases, before being released in December. I have never broken any law prior to these bounced cheques. How can I hold the company liable for these cases and the damages I have suffered because of the situation? Can I file a lawsuit against the company? What is your legal advice to employees who are being asked to be a signatory for a company's cheques?

A: Pursuant to your queries, we assume that you are a manager in a construction company incorporated as a limited liability company on the mainland of Dubai (the Employer). Further, as the cheques issued by the Employer which were signed by you were subsequently dishonoured, the provisions of Federal Law No. (3) of 1987 on Issuance of Penal Code (the UAE Penal Law) are applicable. As you are an employee, the provisions of Federal Law No. (8) of 1980 Regulating Employment Relations in the UAE (the Employment Law) are also 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 UAE 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, you were imprisoned in 2018 and released in 2020 on grounds of dishonour of cheques.

We assume that the creditor/s of your Employer obtained judgements in their favour. Therefore, the said creditors may have commenced the execution proceedings against your Employer. They may have filed an application to the relevant court in the UAE to issue an arrest warrant against you as the manager of the Employer until the execution amount/are paid.

As a result, you as the manager may have been arrested once again in November 2020 and you are currently out on bail. However, based on the aforementioned provision of law, you may file a civil case against your Employer and its shareholders in the relevant court and submit that you had acted in good faith during your tenure as manager with the Employer.

Once you file a civil case against your Employer and its shareholders, you need to provide relevant documentary evidence to the court, stating that you were only the employee and were authorised only to sign the cheques related to day to day operations of the Employer. You should state that you did not have any powers to borrow any monies from your Employer or any financial institutions in the UAE on behalf of your Employer.

Further, it is essential on your part to satisfy the court that you acted within the scope of your prescribed authority; that you acted in a transparent and ethical manner which were in the best interests of your Employer. On the other hand, as the employee, if you are not paid your entitlements while you were imprisoned since 2018, you may also file an employment complaint with the Ministry of Human Resources and Emiratisation.

General advice to employees who sign cheques on behalf of their employers

It is recommended that the employees — who act on behalf of their employer specifically with regards to financial matters — obtain a written declaration signed and stamped by the shareholders or from the authorised signatory that they are acting on the instructions of the employer.

The said declaration may also include that any dispute should be indemnified by the employer if any criminal or civil proceedings are filed against the employer or the employee. In case of an employee obtaining such declaration from the employer, the employee who has acted in good faith and in the best interests of the employer may submit the same to the court in the UAE if any criminal or civil proceedings are filed.

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