

## inBrief



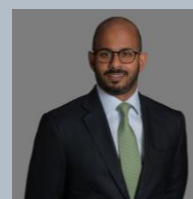
### The dishonour of a cheque for insufficient funds will no longer be a crime in the UAE after 2 January 2022

By Chatura Randeniya | 10 November 2021

Drawing a cheque which is dishonoured due to insufficient funds will not be a criminal offence after 2 January 2022, when Federal Decree No. 14/2020 (the **Decree**) comes into effect. Here is a quick primer on the changes that the Decree will introduce.

- The highlight of the Decree is the decriminalisation of the act of drawing a cheque which is dishonoured due to insufficient funds. The Decree repeals Articles 401, 402 and 403 of the UAE Penal Code which criminalised the acts of drawing (or endorsing), in bad faith, a cheque without a sufficient balance in the account to honour the cheque, writing a cheque in a manner that makes it unpayable, and ordering a drawee (i.e., a bank) not to make payment.
- It is important to note that the Decree does not decriminalise all cheque related offences. For example:
  - Deliberately writing a cheque in a manner rendering it unpayable (e.g., deliberately placing a wrong signature), closing an account or withdrawing all funds before a cheque is presented, and ordering a bank not to make payment of a cheque (except in the limited circumstances of loss of a cheque, bankruptcy, or the cheque being rendered stale) are punishable with a fine of not less than 10 per cent of the cheque's value, subject to a minimum of AED 5,000, and a maximum of double the value of the cheque and/or imprisonment for no less than six months.
  - Endorsing or delivering a bearer cheque with the knowledge that there are insufficient funds is punishable with a fine of not less than 10 per cent of the cheque value, subject to a minimum of AED 1,000, and a maximum of the value of the cheque.

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Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a recommended practitioner by Chambers and Partners and Legal 500.

- Forging a cheque, knowingly using a forged or counterfeit cheque, and knowingly accepting funds received by use of a forged or counterfeit cheque are punishable with a fine of between AED 20,000 and AED 100,000 and imprisonment of no less than one year.
- The court may 'name and shame' defendants found guilty of committing any of the foregoing crimes by publication of their name, profession and address in two widely-circulated dailies in the UAE.
- The court may prohibit a convicted defendant from conducting business for up to three years where the crime(s) were committed in relation to, or in the course of conducting business. Where the crimes have been committed in the name of or for the benefit of a corporate entity, the natural person managing the entity will not be criminally liable unless it is proved that s/he was aware of the crime or that s/he committed the crime for personal benefit or the benefit of third parties.
- The Decree facilitates civil remedies by deeming a cheque which is confirmed by the bank as being dishonoured due to insufficient funds to be an 'executive instrument'. As a result, a party holding a cheque dishonoured due to insufficient funds can, after January 2, initiate proceedings directly before the execution division of the courts to obtain payment, and seize assets of the drawer. The time and cost incurred with ordinary proceedings are bypassed as a result.
- The Decree permits partial payment of cheques, which will facilitate some payment being made under a cheque even where there are insufficient funds for the value of the cheque. Where the beneficiary requests partial payment, the bank must comply and thereafter inform the UAE Central Bank.
- The following provisions of the Decree are relevant to banks:
  - A bank must make partial payment of a cheque where there are insufficient funds for the whole value, unless the bearer declines partial payment.
  - A bank must report events of insufficient funds, where a drawer has emptied an account and cheques cannot be honoured, and where partial payment of a cheque has been made, to the UAE Central Bank.
  - Banks may be subject to a fine of not less than 10 per cent of the cheque value, subject to a minimum of AED 5,000 and a maximum of double the value of the cheque, where it refuses to make partial payment, or refuses to make payment of a cheque despite sufficient funds, among others.

Decriminalising the act of writing a cheque which is dishonoured due to insufficient funds, and restricting criminal sanctions to acts which are essentially fraudulent in nature, is undoubtedly a step in the right direction. The threat or use of criminal action to pursue civil rights has always been problematic, and the change introduced by the Decree will enhance the UAE's credibility in the financial world. It is also encouraging to see that the Decree has introduced provisions to make civil remedies in relation to cheques a more efficient process, thereby balancing the interests of the drawer and the beneficiary. The implementation of the Decree will no doubt be monitored with great interest. ■

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