

## inBrief

**Unification of Federal and Local Judicial Principles: key decisions relating to civil procedure and cheques**

By Chatura Randeniya, Nazim Hashim, and Ramesh Fernando

08 February 2024

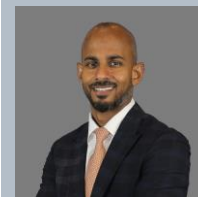
The Commission for the Unification of Federal and Local Judicial Principles (the “**Commission**”) recently issued a number of decisions aimed at harmonising certain “judicial principles”. Since the doctrine of *stare decisis* is not followed in the UAE, there have been instances of incongruities in the application of law by the UAE courts. The Commission was established under Federal Law 10 of 2019 (the “**Federal Law**”), recognising a need to avoid such inconsistencies.

In terms of Article 18 of the Federal Law, decisions of the Commission are binding on all on-shore courts of the UAE, including courts of emirates which are not part of the federal judicial system (Abu Dhabi, Dubai, and Ras Al Khaimah) – with the fail-safe that an inconsistency between a judgment and a “judicial principle” recognised by the Commission may constitute a ground for appeal of a judgment which otherwise would be final. Requests for unification of judicial principles can be submitted by the heads of supreme courts in the UAE, the federal public prosecutor, and local prosecutors.

The following are some of the key decisions issued by the Commission.

**1. Scope of Article 667 of the Commercial Transactions Law (enabling direct execution proceedings for cheques dishonoured for insufficient funds) expanded to include cheques dishonoured due to account closure**

- In terms of Article 667 of Federal Decree Law 50 of 2022 (the “**Commercial Transactions Law**”), the bearer of a cheque which was dishonoured due to “unavailability” or “insufficiency” of funds is able to rely on the cheque as a writ of execution to file execution proceedings (as opposed to asserting a substantive claim) against the drawer of the cheque. This provision was introduced following the decriminalisation of the act of drawing a cheque without having a sufficient balance in the account to honour the cheque. Readers are reminded that not all acts concerning cheques were decriminalised.

**The Authors****Chatura Randeniya**

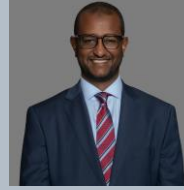
Partner

crandeniya@afриди-angell.com

Tel: +971 4 330 3900

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 ranked practitioner by Chambers and Partners and Legal 500.

- The Commission has expanded the scope of Article 667 of the Commercial Transactions Law to include instances where a cheque is dishonoured due to an account being closed. Therefore, bearers of cheques which are dishonoured for this reason are now able to file execution proceedings directly against the drawer for the value of the cheque.
  - It should be noted that the act of closing an account prior to issuing a cheque or presenting it to the drawee for payment still constitutes an offence punishable by a term of imprisonment of up to two years. Therefore, until further clarification is provided, the prudent view is that this act has not been decriminalised.
- 2. Federal Supreme Court / Courts of Cassation power to reverse judgments extended to criminal matters**
- In terms of Article 190 of Federal Decree Law 42 of 2022 (the “**Civil Procedure Law**”), the Federal Supreme Court or Court of Cassation (as applicable), is empowered to ‘reverse’ final civil judgments issued by it, on its own volition or upon an application being made by the party against whom the judgment was issued, in any of the following circumstances:
    - if the judgment contains a procedural error committed by the court or its auxiliary bodies and such error affected the outcome of its decision or judgment;
    - if the decision or judgment is based on an abrogated law, and the application of the correct law would have materially altered the court’s judgment; or
    - if the judgment is issued in violation of any judicial principles prescribed by the Commission, among others
  - The Commission has widened the ambit of Article 190 of the Civil Procedure Law to cover judgments issued by the Federal Supreme Court or Court of Cassation (as the case may be) in criminal cases.
- 3. Court of Appeal to decide on the substance of the claim if it declines to grant a payment order**
- Payment Orders are mechanisms that enable a creditor to obtain summary relief where, among others, there is a confirmed debt owed to it. Prior to the current decision of the Commission, a judgment on an application for a Payment Order could be appealed to the Court of First Instance (if the value of the claim is less than AED 50,000), or to the Court of Appeal (if the value of the claim exceeds AED 50,000). If the Court of Appeal found that a Payment Order should not be granted, and absent an appeal to the Court of Cassation (available only on issues of law and where the claim exceeds AED 500,000) the applicant was required to file ordinary proceedings anew to claim its debt.



**Nazim Hashim**  
Senior Associate  
nhashim@afridi-angell.com  
Tel: +971 4 330 3900

Nazim practices in the firm’s dispute resolution group. He has substantial experience in all aspects of civil and criminal litigation from case intake through to final disposition at trial. He handles a heavy caseload at a busy litigation practice, which includes conducting research and drafting memoranda used to support court pleadings. Nazim is a member of the Sudanese Bar Association.



**Ramesh Fernando**  
Associate  
rfernando@afridi-angell.com  
Tel: +971 4 330 3900

Ramesh has considerable experience in litigation and dispute resolution, with extensive abilities in contract negotiations and handling large-scale disputes. Ramesh advises on and drafts legal opinions and agreements for large Multi-National Corporations and other non-Governmental entities and investors when retained to advise on potential legal issues, regulatory steps, and changes to applicable legislation.

- Following the current decision of the Commission, if the Court of Appeal finds that a payment order should not have been granted, it must proceed to adjudicate the applicant's claim against the counterparty as it would in ordinary proceedings.
- While this is advantageous to a creditor in the sense it no longer has to incur the time and expense to file ordinary proceedings anew in the Court of First Instance, it also means that the parties lose one level of appeal, unless the value of the claim exceeds AED 500,000 (thus enabling an appeal to the Court of Cassation on an issue of law). ■

## **Afridi & Angell**

Founded in 1975, Afridi & Angell is a full-service UAE law firm in its fifth decade at the forefront of the legal community. From the beginning, our hallmarks have been a commitment to quality, unsurpassed knowledge of the law and the legal environment, and crafting of innovative business solutions. Licensed in the three largest Emirates of Abu Dhabi, Dubai and Sharjah as well as the Dubai International Financial Centre, our practice areas include banking and finance; corporate and commercial law; arbitration and litigation; construction; real estate; infrastructure projects; energy; project finance; maritime (wet and dry); and employment. We advise local, regional and global clients ranging in size and sophistication from start-ups, sole proprietorships, family-owned businesses, entrepreneurs and investors to some of the world's largest public and private companies, governments and quasi-government institutions. We attract and retain clients with our dedication to practical guidance focused on their business needs supported by decades of experience here in our home jurisdiction, the UAE.

Afridi & Angell is the exclusive member firm in the UAE of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms, and World Services Group.

[www.afridi-angell.com](http://www.afridi-angell.com)