

# AMERELLER

**Client Alert: Are Post-Dated Checks Still an Effective Form of Security? In Dubai, Maybe Not.**

19 October 2017

**By Jonathan P. Noble**

Post-dated checks (including undated signed checks, are referred to in this article as “PDCs”) are a longstanding form of security in commercial transactions in the United Arab Emirates (UAE), particularly in Dubai. This has especially been the case for international suppliers and local traders seeking collateral for sales on credit to dealers and distributors. The consequence of default was detention and imprisonment. A recent change of law in Dubai appears to significantly reduce their effectiveness as a form of security.

## **PDCs as Commercial Security**

The legal foundation underlying the use of PDCs as security is Article 401 of the UAE Penal Code (Federal Law No. 3 of 1987), which makes it a criminal act, punishable by confinement, if an individual in bad faith:

1. draws a check without an existing or drawable provision;
2. after issuing a check, withdraws all or part of the funds to that the balance becomes insufficient to settle the amount of the check;
3. orders the drawee not to pay the check;
4. deliberately makes or signs the check in such a manner as to prevent it from being paid; or
5. endorses or delivers to another a check payable to bearer, while knowing that there are no funds available to cover the value, or that the funds cannot be withdrawn.

Authorities generally assumed the culpable mental state once the bounced check was included with a criminal complaint, with the burden of proof falling on the signatory, not the complainant. Non-payment of obligations underwritten by PDCs has historically resulted in confinement for the company manager or individual signing the checks.

Payment of existing obligations is the intent of Article 401. The penal action of “confinement” lapses “if payment is made or waived after the crime has occurred but before it has received a final ruling. If [payment] occurs after the ruling has become final, execution is stayed.”

Article 401 provided a blunt, but effective way for creditors to pressure debtors into repayment. When threatened with confinement, debtors have frequently found a way to make good on their debts.

## **Penal Law No. 1 of 2017 Reduces the Likelihood of Confinement for Writing Dishonored PDCs**

Dubai Penal Law No. 1 of 2017 on the facilitation of speedy rulings on minor cases (the “**2017 Law**”), issued by the Ruler of Dubai on 30 January 2017, and effective from 8 March 2017, was passed to accelerate the resolution of minor disputes with a “One Day, One Decision” procedure to streamline the judicial system and reduce costs.

PDCs are included as minor disputes, and the 2017 Law considerably reduces the threat of detention or imprisonment for failure to honor a PDC in Dubai.

The 2017 Law applies to crimes in the Emirate of Dubai that are punishable by a fine only, imprisonment and a fine, and other crimes to be determined by the Public Prosecutor. Article 4 of the Law permits the Public Prosecutor to order fines as punishment for these crimes instead of other, more severe, penalties.

# AMERELLER

The Public Prosecutor is authorized to order fines instead of jail time for bounced checks. These penalties can be a fraction of the actual value of the PDC. The debtor has a right to appeal the fine within 7 days of a verdict.

Once the fine is paid, the criminal claim against the drawer is dismissed, and the creditor must resort to a civil claim in the Dubai courts or other tribunal with jurisdiction over the transaction, to recover unpaid sums.

Because the drawer does not face confinement for his actions, this diminishes the value of PDCs as an effective form of security considerably.

## Exploring Effective Security Arrangements

The use of PDCs as security, and the threat of imprisonment for dishonment, while effective, has, on occasion, been criticized by the business community for being overly burdensome, and decreasing risk taking and innovation.

Dubai's new approach will encourage businesses to resort to other forms of security, and the new federal Bankruptcy Law in the event a debtor truly becomes insolvent. Creditors may still be able to pursue claims in Abu Dhabi and other Emirates for confinement, travel bans, and criminal prosecution, to the extent that the prosecutors are not following Dubai's new approach.

Other security arrangements in commercial transactions available in the UAE include personal guarantees, retention of title, and various pledges.

For more information on taking security in the UAE please see our previous Client Alert published in December 2016 available [here](#).

Businesses trading in Dubai will want to reconsider their approach to security in commercial transactions in light of the new provisions of the 2017 Law.

---

### If you would like more information about this topic then please contact us.

Jonathan P. Noble  
Senior Associate  
Dubai  
[noble@amereller.com](mailto:noble@amereller.com)

**DUBAI** | Amereller Legal Consultants | One at Business Bay, 14th Floor | P.O. Box 97706 | Business Bay | Dubai | UAE  
t: +971 4 332 9686

**RAS AL KHAIMAH** | Amereller Legal Consultants FZE | P.O. Box 16462 | Ras Al Khaimah Free Zone | Ras Al Khaimah | UAE | t: +971 7 204 6255

**This client alert is a public document for informational purposes only and should not be construed as legal advice. Readers should not act upon the information provided here without consulting with professional legal counsel. This material may be considered advertising under certain rules of professional conduct.**

**Copyright © 2017**