

# DEBT RECOVERY IN THE UAE

## Introduction

Until the passing of the insolvency and bankruptcy laws in the UAE, debt recovery in the UAE was a persistent issue. Unlike western jurisdictions, unpaid debts and bounced cheques activate criminal liability, which has led to a high incidence of debtors fleeing the country during economic downturns in order to avoid detention or financial ruin.

## Debt under UAE law

Debts can be between individuals and/or institutions. Express contracts like borrowed money, security cheques, credit products and any due amounts, or implied financial obligations requiring extrinsic evidence, constitute debts. Bounced cheques however are considered to automatically trigger criminal liability.

Federal Law No. 5 of 1985 of the Civil Code Articles 246(1) imposes a good faith requirement on all contractual obligations while Article 710 defines loans, their terms, conditions and due dates as per explicit contractual terms. Along with debtor definitively proven acknowledgement of financial obligations, the above establishes liability. In practice, an obligation's extent ambiguity occasions further legal analysis, which is why creditors advisably chronicle and catalogue all correspondence with debtors, expiration of due dates, underlying agreements, formal notarized notices/demands, or insufficiency of funds in cheque-issuing debtor's bank account etc.

## Pre-Claims

To preserve commercial relationships, businesses usually consider options like constructive credit facility arrangements, discounted installment-based debt-settlements with reciprocal good faith undertakings to avoid default normalization, or even cease goods and services provision as an escalation, always weighing economization of civil litigation and/or arbitration outcomes. Debtor solvency, partial settlements and future enforcement always trumps getting nothing, yet creditors must note that any new settlement arrangement substitutes the original debt.

However, Federal Law No. 5 (1985) of Code of Civil Transactions Articles 336 & 400's statute of limitations time-bars any action by individual or institutional lenders 15 years. In practice, debts continue to exist, even if rendered legally 'prescribed' and unrecoverable. Should a claim pass on procedural ground its outcome fails on merit since a court may question why a lender "slept on his right". This nonetheless does not prevent the police from detaining an individual debtor, making it risky to travel or transit in the UAE 15 years after a debt – except for bounced cheques that are typically prescribed by 6 months.

## Claims

### *Civil*

Commercial debt disputes between businesses are initially referred to the non-binding Ministry of Justice's Reconciliation & Settlement Committee to facilitate amicable settlement, failing which creditors can launch civil claims in local Courts (where all docs must be Arabic) or arbitration tribunals (in English). Court fees are based on claim value and are capped at AED 40000 in Dubai with no cap in Abu Dhabi. The DIFC's Small Claims Tribunal is useful for low-value claims.

Creditors typically file civil claims against individual debtor during or after procuring criminal judgments against them, as the latter do not secure their pecuniary rights, but are deployed as adequate 'civil' evidence thereafter. This assures that defendants don't flee the jurisdiction after satisfying *only* the Criminal Court judgment.

Ignoring adequately received court summons, or non-existence of defaulting company HQ/branch occasions default judgments in absentia. Individual debtors or defendant entities' representatives must attend to evidentially argue their case, after which no further submissions, amendments, or joining of new defendant is permitted. Thereafter accepted except, again in limited exceptions for clarification motions. Upon judicial assessment, judgment is issued. Judgments can't be issued against insolvent JVs, but only against constitutive partnering entities, and of course always against individuals.

Alternatively, Dubai's Tribunal for Settlement of Cheque Disputes Relating to Real Estate Transactions<sup>1</sup> is delegated exclusive jurisdiction to settle complaints concerning dishonored cheques to issued real estate developers by purchasers, usufructuaries, and leaseholders.

### *Arbitration*

Arbitration clauses often protect wider interests and may deliberately reserve creditor right to ascribe claims to Court jurisdiction, and their designated tribunals held only *if* they accept the assignment. Other arbitral adjudicatory limitations apply.<sup>2</sup>

### *Criminal Claims (individuals)*

Criminal claims against debtors are filed with the police. The Public Prosecutor (PP) determines the prima facie worthiness of the case based on creditor's documentary evidence, proceeding therefrom to notify the debtor (incidentally - a final notice for debtor to settle the debt before the police through a kafala bail, his or a guarantor's passport to PP's satisfaction). Failing that, the PP formally files the case with the Criminal Division of the Courts and may order detainment of the defaulter until adjudication. Absconding or summons-ignoring debtors again risk default judgments in absentia. Both parties make pleadings and submissions after which the Court may, in exceptional, discretionarily make motions to re-hear for clarification of particulars.

<sup>1</sup> Issued under Decree No 56 (2009) by Dubai's Ruler.  
<sup>2</sup> Riyadh Convention Article 37

Penal Code Article 401 provides for detention (1 month – 3 years) and fining (AED 1000 – 30000) of issuer of bounced cheques with possible prohibition order against debtors' future chequebook transactions from individual<sup>3</sup>. Article 401 is substituted by a new provision in 2005 allowing Courts & Public Prosecutor to extinguish a criminal case against bounced-cheque issuer upon settlement *before* judgment. All judgments at this stage are automatically executable.

Alternatively, “One Day Courts” in Dubai, Abu Dhabi, and RAK expediently adjudicate minor bounced cheque cases within 24 hours to reduce the docket/stress on Police, PPs, and Criminal Courts. Additionally, Dubai PPs can simply issue “criminal orders” of fines (AED 5000 – 10000) against simple crime offenders (cheques < AED 200000), precluding detention. Should objections be filed (within 7 days), Criminal Courts recourse reappeals.

### **Execution**

Upon obtention of favorable civil judgment against either individuals or businesses, creditors must file for an execution order at the Execution Court, whose judge, upon certification (should debtors' objections fail), orders the enforcement of the order by attaching institutional debtor's assets, stocks, bonds, Shares, property etc. This includes circumstances when individual debtors default on spousal/child support, which liability is construed as “civil”.

Debtors then make all prospective payments directly to the Court's Accounting Department or creditor's bank account (with proof), failure of which activates debtor confinement until all obligations, or guarantees thereof, are met.

### **Appeals**

The Court of Appeals permits parties to file further submissions and evidence based on findings of fact and/or law for full re-adjudication within 30 days of First Instance judgment date, failing which it becomes executable. In bankruptcy/insolvency cases, creditors must submit their claims to liquidators within 10 days of any final published bankruptcy ruling for priority allotment.

<sup>3</sup> Article 643 of Commercial Transaction Code.

Further appeals to the Court of Cassation only permit submissions on findings of law, are subject to certain monetary limits, and within 60 days (or 30 days for insolvency/bankruptcy cases) of Court of Appeal judgment date. Such judgments are enforceable even during Cassation Court adjudication, except if the latter accepts the appeal, after which an appellant debtor can petition for recovery of attached/appropriated assets.

### **Enforcement in Foreign Jurisdictions**

Enforcement against individuals and entities with assets abroad is based on various international and bilateral agreements – namely the 10<sup>th</sup> June 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified by UAE 21st August 2006), the 1983 Riyadh Convention, the 1996 GCC Convention among others.

The Riyadh Convention is the most authoritative and wide-ranging, covering the general remit of<sup>4</sup>, acceptance<sup>5</sup> & rejection<sup>6</sup> criteria, exceptions<sup>7</sup>, real estate attachment authorization<sup>8</sup>, of UAE judgment enforcement and execution<sup>9</sup> orders in foreign signatory states, even including extradition<sup>10</sup> against individuals facing criminal consequences for unpaid debts.

4 Article 25(a).

5 Article 29.

6 Article 30.

7 Article 25(b).

8 Article 27.

9 Articles 31 & 34.

10 Article 40 & 41.

## Key Contacts

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