BOUNCED CHEQUE AS AN ENFORCEABLE INSTRUMENT: A COMPARATIVE STUDY BETWEEN THE UNITED ARAB EMIRATES (UAE) & FRENCH LEGISLATIONS

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ABSTRACT

Purpose: This research aims to define the bounced cheque, which is considered an Enforceable Instrument, and to clarify its cases, implementation procedures, and the conditions associated with this execution through a comparative study of the prevailing legal provisions in both Emirati and French law.

Theoretical reference: The study examines the concept of a bounced cheque as an Enforceable Instrument under the legal frameworks of the UAE and France. It analyzes the criteria, cases, and procedural requirements for executing a bounced cheque in both jurisdictions, highlighting the differences and similarities in their legislative approaches.

Method: A comparative analysis was conducted, scrutinizing the legal provisions and enforcement procedures related to bounced cheques in Emirati and French law. The study involved reviewing relevant statutes, case laws, and legal commentaries to understand the practical implications of treating a bounced cheque as an Enforceable Instrument in both countries.

Results and Conclusion: The research reveals that in UAE law, a bounced cheque is considered an Enforceable Instrument as soon as the bank notes the absence of sufficient funds or that the drawer’s account has been closed. In contrast, French legislation grants Enforceable Instrument status to an unpaid cheque only after a thirty-day period, allowing the drawer time to settle the cheque's value or reach a settlement with the beneficiary. The study concludes that while both legal systems recognize the enforceability of bounced cheques, they differ significantly in the timing and conditions under which this enforceability is granted.

Implications of research: The findings suggest that while the immediate enforceability of bounced cheques in the UAE provides swift recourse for beneficiaries, the French approach of granting a grace period offers a more balanced consideration for the drawer. The research implies that incorporating a reasonable time frame for fulfilling the value of the bounced cheque, as suggested in the recommendations, could harmonize the interests of both parties involved.

Originality/value: The research provides a comprehensive comparative analysis of the enforcement of bounced cheques in Emirati and French law, offering valuable insights into the strengths and weaknesses of each system. The proposed recommendation of a balanced time frame for cheque fulfillment contributes to the ongoing discourse on optimizing legal procedures for financial instruments, potentially influencing future legislative reforms.

Keywords: Bounced Cheque, Unpaid Cheque, Cheque as an Enforceable Instrument, Forced Execution, UAE Legislation.

CHEQUE DEVOLVIDO COMO INSTRUMENTO EXECUTÓRIO: UM ESTUDO COMPARATIVO ENTRE OS EMIRADOS ÁRABES UNIDOS (EAU) E AS LEGISLAÇÕES FRANCÊSAS

RESUMO

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Objetivo: Esta investigación visa definir el cheque devolvido, que es considerado un título ejecutivo, e esclarecer los casos, procedimientos de implementación y las condiciones asociadas a esta ejecución a través de un estudio comparativo de las disposiciones legales vigentes tanto en la ley de los Emirados como en la francesa.

Referencial teórico: El estudio examina el concepto de cheque devolvido como instrumento ejecutivo en el ámbito de los Emirados Árabes Unidos y de Francia. Analiza los criterios, casos y requisitos procesales para ejecutar un cheque devolvido en ambas jurisdicciones, destacando las diferencias y similitudes en sus abordajes legislativos.

Método: Se realizó un análisis comparativo, examinando las disposiciones legales y los procedimientos de ejecución relacionados con los cheques devueltos en las leyes emiratí y francesa. El estudio implicó revisar estatutos, jurisprudencia y comentarios legales relevantes para comprender las implicaciones prácticas de tratar un cheque devolvido como un instrumento ejecutivo en ambos países.

Resultados y conclusión: La pesquisa revela que en la legislación de los Emirados Árabes Unidos, un cheque devolvido se considera un instrumento ejecutable tan pronto como el banco constata la ausencia de fondos suficientes o que la cuenta del sacador fue cerrada. En contrapartida, la legislación francesa concede el estatuto de título ejecutivo a un cheque no pagado solo después de un período de treinta días, permitiendo al sacador tiempo para liquidar el valor del cheque o llegar a un acuerdo con el beneficiario. El estudio concluye que, aunque ambos sistemas jurídicos reconocen la aplicación de los cheques devueltos, difieren significativamente en el momento y las condiciones en que esta aplicabilidad es concedida.

Implicaciones de la investigación: Las conclusiones sugieren que, aunque la aplicabilidad inmediata de los cheques devueltos en los EAU proporciona un recurso rápido a los beneficiarios, la abordagem francesa de conceder un período de carência ofrece una consideración más equilibrada para el sacador. La investigación implica que la incorporación de un prazo razonable para el cumplimiento del valor del cheque devolvido, conforme sugerido en las recomendaciones, podría harmonizar los intereses de ambas partes envueltas.

Originalidad/valor: La pesquisa fornece uma análise comparativa abrangente da aplicação de cheques devueltos na legislação de los Emirados Árabes Unidos, ofreciendo información valiosa sobre los puntos fuertes y fracos de cada sistema. La recomendación propuesta de un plazo equilibrado para el cumplimiento de los cheques contribuyó a este estudio sobre la optimización de los procedimientos legales para instrumentos financieros, influenciando potencialmente futuras reformas legislativas.

Palabras clave: Cheque Devolvido, Cheque no Pago, Cheque como Instrumento Ejecutivo, Ejecución Forzada, Legislación de los Emirados Árabes Unidos.
cuenta del librador ha sido cerrada. Por el contrario, la legislación francesa otorga el estatus de instrumento ejecutivo a un cheque impago sólo después de un período de treinta días, lo que permite al librador tener tiempo para liquidar el valor del cheque o llegar a un acuerdo con el beneficiario. El estudio concluye que si bien ambos sistemas legales reconocen la exigibilidad de los cheques sin fondos, difieren significativamente en el momento y las condiciones bajo las cuales se otorga dicha exigibilidad.

Implicaciones de la investigación: Los hallazgos sugieren que, si bien la aplicabilidad inmediata de los cheques sin fondos en los Emiratos Árabes Unidos proporciona un recurso rápido para los beneficiarios, el enfoque francés de otorgar un período de gracia ofrece una consideración más equilibrada para el librador. La investigación implica que incorporar un plazo razonable para pagar el valor del cheque sin fondos, como se sugiere en las recomendaciones, podría armonizar los intereses de ambas partes involucradas.

**Originalidad/valor:** la investigación proporciona un análisis comparativo integral de la aplicación de cheques sin fondos en las leyes emiratíes y francesa, ofreciendo información valiosa sobre las fortalezas y debilidades de cada sistema. La recomendación propuesta de un marco temporal equilibrado para el cumplimiento de los cheques contribuye al discurso actual sobre la optimización de los procedimientos legales para los instrumentos financieros, lo que podría influir en futuras reformas legislativas.

**Palabras clave:** Cheque Rebotado, Cheque Impago, Cheque Como Instrumento Ejecutable, Ejecución Forzosa, Legislación de los EAU.

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**1 INTRODUCTION**

**1.1 CHEQUE GUARANTEE PAYMENT**

Considering the important role that cheques play in economic life; viewing them as a means of payment like cash as a general principle, legislations of various countries are keen on surrounding them with several safeguards to ensure the fulfilment of their value and prevent their return to the holder without disbursement. Among these safeguards are punitive measures, such as public prosecution, civil aspects, like personal right claims or orders for performance, and procedural elements, such as conferring the status of an Enforceable Instrument on the returned cheque in specific cases.

Few countries consider the returned cheque as an enforceable instrument, thereby allowing the beneficiary or the holder to directly resort to the competent enforcement authority. This enables the collection of the cheque amount through legal means of forced execution, without the need to file a criminal or civil lawsuit or order for performance by the beneficiary against the drawer. This is to obtain a judgment or a court order requiring the drawer to pay the cheque amount.

In the Arab world, we find that the United Arab Emirates has recently granted the status of an Enforceable Instrument to the returned cheque in specific cases. Previously, the legislator...
required, for the collection of the amount of the returned cheque, obtaining a judgment or a court order compelling the drawer to pay the cheque amount to the beneficiary or the holder. So that ultimately, he can resort to competent authority for forced execution.

As for French legislation, it stands out as one of the prominent Western laws that have long granted the status of an Enforceable Instrument to the unpaid cheque (Chèque impayé), without the need for a judgment or a court order.

1.2 RESEARCH IMPORTANCE

In the pursuit of attracting investments and capital to their territories, various countries worldwide tend to simplify procedures for creditors to obtain their rights in the easiest and quickest ways, especially those backed by written evidence, notably cheques. This is due to the impact it has on the growth of the national economy. One of the most significant facilitations related to the collection of cheque amounts lies in the enactment of legislation in some countries, granting the status of an Enforceable Instrument to the cheque in specific cases.

This research examines and analyses cases where a cheque is considered an Enforceable Instrument. In these instances, the beneficiary of the cheque can compel the drawer – and any guarantors, if present – to fulfil their obligations by resorting to the competent authority for forced execution, similar to the execution of the contents of other Enforceable Instruments such as judgments and court orders. The study also includes an exploration of the electronic execution of returned cheques. The significance of this research lies in the fact that comparative jurisprudence rarely delves into this type of procedural protection for cheques.

1.3 RESEARCH PROBLEM

The problem of this research lies in determining whether granting the status of an Enforceable Instrument to the returned cheque is absolute or limited to specific cases. In other words, does every returned cheque qualify as an Enforceable Instrument under the relevant legislation for comparison in this study, regardless of the reason for its return? Or are there specific circumstances under which the cheque is considered as such? Additionally, what procedures can the holder of the cheque follow to collect the amount from the drawer or guarantors, if any?
1.4 OBJECTIVES & SCOPE OF RESEARCH

This research aims to define the bounced cheque, which is considered an Enforceable Instrument, and to clarify its cases, implementation procedures, and the conditions associated with this execution, in light of the prevailing legislation in both the United Arab Emirates and France. Additionally, it will address the stance of both jurisprudence and diligence whenever possible. This research will not delve into the criminal or commercial protection that may ensure the fulfilment of the cheque's value.

1.5 RESEARCH METHODOLOGY

This research follows a descriptive, analytical, and comparative approach to studying the legal provisions related to the returned cheque. These provisions categorize it as an Enforceable Instrument, granting the holder or beneficiary the right to directly report to the competent authority for forced execution. This is applicable in both the United Arab Emirates, as one of the Arab countries that recently bestowed the returned cheque with the status of an Enforceable Instrument, and France, as one of the Western countries that made the same determination long ago. The study also extends to examining the legislations of other countries whenever necessary. The goal is to identify the most effective means for the rightful claimant to obtain the amount of the returned cheque through legal avenues of forced execution.

2 DEFINITION OF CHEQUE

Two definitions shall be raised in this part of our Research: Legislative and Jurisprudential.

2.1 LEGISLATIVE DEFINITION OF CHEQUE

Most legislations, countries did not directly define a cheque but rather contented themselves with specifying the information that a cheque must include and outlining its provisions. Examples of this approach can be found in the legislations of Saudi Arabia, Egypt, Yemen, and others. In contrast, few legislations have directly defined a cheque, including:

In the past, the French legislator had defined a cheque at the beginning of Article 1 of Law No. 14 of June 1865 concerning cheques. It defined a cheque as a bond used by the drawer,
in the form of an order for payment, through which the drawer can withdraw, for his benefit or the benefit of others, all or part of the funds deposited and available in his account with the drawee [1]. However, there is no direct definition of a cheque in the current French Commercial Law.

The Emirati legislator defined a cheque in Article 483 of the Commercial Transactions Law (Old) issued by Federal Law No. 18 of 1993, which is now Article 514 of the Commercial Transactions Law (New) issued by Federal Decree-Law No. 50 of 2022 (Came into effect on January 2, 2023) [2]. The definition states that a cheque is a commercial paper that includes an order issued by the drawer to the drawee bank, directing the latter to pay, on the specified date of issuance, a specific amount in currency to the beneficiary of the cheque or its holder.

Similarly, the Jordanian legislator defined a cheque in Article 123/J of the Trade Law No. 12 of 1966 as a written bond, according to specific conditions stipulated in the law. It includes an order issued by the drawer to the drawee, directing payment to the beneficiary or based on his order or to the holder of the cheque, for a specified amount upon reviewing it.

Despite the significant similarity between the two preceding definitions, we observe a difference in determining the maturity date of the cheque. The Emirati legislator specified this maturity on the day mentioned in the cheque as its issuance date, while the Jordanian legislator determined it upon the mere reviewing of the cheque.

2.2 JURISPRUDENTIAL DEFINITION OF CHEQUE

The definitions provided by legal scholars and jurists for a cheque are identical or similar, especially in that it is considered a document, bond, or written commercial paper created according to specific legal conditions and stipulated data. It includes an order issued by the drawer to the drawee - be it a bank or financial institution - directing payment from the available balance to the beneficiary of the cheque or its order or holder for a specific amount of money [3]. However, there is a difference in determining the time when the drawee must settle the cheque amount. Some hold that the cheque becomes due upon the drawee's inspection of the cheque, irrespective of the written issuance date [4]. Others contend that the cheque becomes due on the written issuance date. We believe that this divergence stems from the legislator's perspective on the maturity date of the cheque, which scholars and legal experts relied on, in formulating their definitions.

Some legislations stipulate that the cheque becomes due upon inspection; that is, as soon as the cheque is presented by the beneficiary or its holder to the drawee bank, as in the Saudi
Commercial Paper System Issued on 24/02/1964 [5]. Article 102 states: 'The cheque is due for payment upon inspection, and any statement to the contrary shall be considered as if it did not exist. If the cheque is presented for payment before the specified date of issuance, it must be honoured on the day of presentation.' The Egyptian legislator also stated a similar provision in Article 503 of the commercial Law [6], and the French legislator as well in Article L. 131-31 of the Monetary and Financial Code issued in 2000.

On the other hand, other legislations determine the due date of the cheque based on the written issuance date, as in the UAE Commercial Transactions Law. Article 648/1 specifies that 'the cheque is due for payment on the day mentioned as its issuance date, and presenting the cheque for payment before this date is not permissible.' Therefore, presenting the cheque for payment before the written issuance date is not allowed, and the drawee bank cannot fulfil the cheque's value if presented to it before this date. If the bank does so, it bears the responsibility for this payment, as ownership of the payment obligation does not transfer to the holder of the cheque, according to the mentioned article, except on the date written as the issuance date [7].

Additionally, in our view, we find that the UAE provision is more effective and beneficial from a practical perspective, especially for those dealing with cheques to fulfil commitments arising from contracts and agreements with delayed execution, such as contracts for construction, supplies, property rentals, and others.

3 A BOUNCED CHEQUE DEFINITION & CRUCIAL REASONS FOR BEING REJECTED

3.1 DEFINITION OF A BOUNCED CHEQUE (CHÈQUE REJETÉ):

The bounced cheque is sometimes referred to as a "returned cheque," "insufficient funds cheque," or "bad cheque." It denotes a cheque that the bank or financial institution drawn upon refuses to honour, either in full or in part. The cheque is returned or rejected by the presenter, whether they are the payee or the holder, due to one or more legal reasons that allow the bank not to fulfil its payment [8].

3.2 CRUCIAL REASONS FOR REJECTING A BOUNCED CHEQUE

Most legislations addressing cheques do not explicitly state the reasons that allow the bank to reject the payment of a cheque. However, these reasons can be inferred from various
legal provisions governing cheques, especially those imposing specific penalties for violations [9]. **Among the most important reasons are:**

- If the amount available in the Drawer's Account does not cover in whole or in part the cheque value [11], the Cheque in this case shall be rejected, which is the most prevalent situation in practical reality;
- If the Drawer informs the Drawee bank not to cash the Cheque after being issued;
- If the Cheque includes an error, such as a scratch, cross-out, or a change in the signature, the Cheque shall be rejected as well;
- If the Drawer's Account has been closed or frozen, the Cheque is submitted to the Drawee bank.

The different legislations of countries impose various penalties on such cases, such as fines, imprisonment, withdrawing the chequebook from the drawer, and more, as a protection for the cheque. What matters to us in this research is the enforcement aspect of the returned cheque, namely, the creditor's collection of the cheque amount from the drawer (the issuer) through the competent enforcement authority.

4 ENFORCEABLE INSTRUMENT DEFINITION

4.1 LEGISLATIVE DEFINITION OF AN ENFORCEABLE INSTRUMENT

Procedural legislation in most countries generally mentions the bonds considered as Enforceable Instruments without providing a specific definition for the Enforceable Instrument. However, there is a common understanding that the enforceable instrument is presumed essential for forced execution. Forced execution typically requires an Enforceable Instrument that includes a realized right, a specific amount, and a performance status [11]. Among the significant bonds mentioned in the UAE and French legislations are judicial judgments, orders, and other documents endowed with this characteristic [12]. Notably, bounced cheques, whether fully or partially unpaid, fall within the scope of these documents [13].

4.2 JURISPRUDENTIAL DEFINITION OF AN ENFORCEABLE INSTRUMENT

Most definitions provided by legal scholars and experts tend to consider the Enforceable Instrument as a written bond drafted according to the formal requirements specified by the law. It includes a confirmed right, a specific amount, and a performance status, granting its holder
the right to seek Forced execution from the competent authority against their debtor [14]. The legislation of each country determines the bonds considered as Enforceable Instruments and specifies their objective and formal conditions.

5 LEGAL BASIS FOR CONSIDERING A BOUNCED CHEQUE AS AN ENFORCEABLE INSTRUMENT

5.1 ACCORDING TO LAWS IN FORCE IN FRANCE

According to Article (L.111-3) of the Civil Enforcement Procedures Law No. 783 of 2012, the returned cheque is not considered an Enforceable Instrument. The document that qualifies as an Enforceable Instrument is the one granted by the judicial officer to the creditor based on an unpaid cheque submitted to him according to the procedures stipulated by the law [15].

5.2 ACCORDING TO LAWS IN FORCE IN THE UAE

Originally, issuing a cheque without sufficient funds to cover its value was considered, under the provisions of the Commercial Transactions Law issued by Federal Law No. 18 of 1993, a punishable offence with a criminal penalty [16]. However, with the issuance of Federal Decree-Law No. 14 of 2020, amending certain provisions of the mentioned Commercial Transactions Law, the criminalization of issuing a cheque without sufficient funds to cover its value was abolished. According to Article 2, which introduced Article (635) bis into the mentioned law, a returned cheque due to insufficient funds was made an Enforceable Instrument for the first time [17].

The judiciary in Abu Dhabi mentioned that legislative amendments regarding the provisions regulating cheque transactions as Enforceable Instruments align with international best practices, ensuring swift legal procedures to enforce rights in a record time. This reinforces the leading position of the United Arab Emirates as an investment hub in the region, attracting investors and talent worldwide [18].

This principle was solidified by Article 667 of the new Commercial Transactions Law issued by Federal Decree-Law No. 50 of 2022, stating: "1- A cheque that is returned due to the lack of sufficient funds or insufficiency of funds is considered an Enforceable Instrument. Its holder can request its full or partial enforcement through forced execution. 2- The provisions,
procedures, and rules of the Civil Procedure Law apply to the enforcement request and any disputes related to it."

As a result, the beneficiary of the cheque or its holder no longer needs to pursue both criminal and civil legal actions at various levels if the cheque is returned due to insufficient funds. Instead, they can submit a request to the competent Execution Judge to obtain the executive formula and collect the cheque amount, along with expenses, against the drawer. This includes taking enforcement measures, such as seizing the drawer's funds up to the required amount and selling them through public auction [19]. This streamlines the old procedures, accelerates the beneficiary's collection of their rights, and enhances the trust of cheque users more and more.

6 THE CONDITIONS REQUIRED FOR A BOUNCED CHEQUE AS AN ENFORCEABLE INSTRUMENT

6.1 ALL CHEQUE'S MANDATORY DATA

To be considered an enforceable instrument, a cheque must first comply with all the mandatory information stipulated by the law. It should include the word "شيك" (cheque), contain an unconditional order to pay a specific amount of money, state its date of creation, and bear the signature of the drawer... [20]

6.2 FAIL TO COLLECT THE CHEQUE THROUGH NORMAL PROCEDURES

The beneficiary of the cheque or its holder cannot directly resort to the competent enforcement authority to compel the debtor, the drawer of the cheque, to fulfil its value. This can only be done after exhausting the natural course of collecting the cheque amount by presenting it first to the drawee bank. If the drawee bank refuses to pay the cheque amount in full or in part, it is incumbent upon the drawee bank to provide the beneficiary with evidence of such refusal, according to the following details:

6.2.1 In The UAE

According to the provisions of the Commercial Transactions Law, if a cheque is presented to the drawee on its due date, and it is found that there is no balance whatsoever to
cover it, the drawee bank must endorse it without delay and return it to the beneficiary or to the holder who presented the cheque. The drawee cannot refuse to annotate the mentioned statement on the cheque if requested by the holder. However, the drawee is entitled to request a grace period not exceeding three working days following the presentation of the cheque, even if it is presented on the last day of the cheque presentation period (Article 663).

If it turns out to the drawee that there is a balance, but it is insufficient to cover the entire amount of the cheque, then it is obligatory to fulfill the available amount. However, unless the holder refuses this partial payment, the bank must indicate each partial payment on the back of the cheque and return the original cheque to the holder with a certificate of such payment (Article 648/2).

Article No. 673 of the Law in question refers to the cases in which a Drawee bank denies cashing a submitted Cheque, whether in whole or in part, without Legal Justification, despite that sufficient Balance is available in the Drawer's Account, violating the truth deliberately, in addition to their refusal to issue a certificate to that effect or to return the original Cheque. The Drawee Bank in committing one or more of these cases shall be punished as per the Commercial Transactions Law with a fine of not less than 10% of the Cheque Value, provided that it is not less than 5000 UAE Dirhams and not more than double the amount of the Cheque.

The legislator, under the first paragraph of Article 635 reiterated from the old Commercial Transactions Law (which became number 667 in the new Commercial Transactions Law issued by Federal Decree-Law No. (50) of 2022), has deemed the cheque that is dishonoured due to lack of funds or insufficiency thereof as an enforceable bond. It has granted the holder the right to seek its execution in full or in part through Forced measures.

There is no disagreement among the various courts of the United Arab Emirates, both federal and local, regarding the consideration of a bounced cheque as an enforceable bond when the reason for its dishonour is the lack of sufficient funds to cover its value. However, disagreement arises concerning a bounced cheque for reasons other than these two; particularly, when a cheque is dishonoured due to the closure of the drawer's account for any reason. In such cases, is such a bounced cheque considered an enforceable bond or not?

The issue was presented to both the Dubai Court of Cassation and the Abu Dhabi Court of Cassation. Each of these courts adopted conflicting principles on this matter, with the former endorsing a narrow interpretation and the latter adopting a broader interpretation of the content mentioned above in the first paragraph of Article 635 reiterated. Due to this contradiction, the Attorney General of the United Arab Emirates submitted a request to the Unified Judicial Principles Authority, established under Federal Law No. 10 of 2019 regarding the regulation of
judicial relations between federal and local judicial authorities (Article 14). The authority
pronounced its decision on this matter as follows:

In appeal number 888 of the year 2022 in the commercial court, the Dubai Court of Cassation had decided that the text of the first paragraph of Article 635 reiterated from the Commercial Transactions Law considers the bounced cheque as an enforceable bond in only two specific cases, which are: 1- Non-payment of the cheque due to the lack of sufficient funds. 2- Insufficiency of the available funds to cover the full amount of the cheque. Therefore, this provision does not apply in the case of non-payment of the cheque for any other reason, such as the closure of the drawer's account or others. The Dubai Court of Cassation justified its decision by stating that when the legal text is clear in indicating its intended meaning, as in the case of the text of Article 635 reiterated, it is not permissible to interpret it in a way that contradicts its clear language.

While the Abu Dhabi Court of Cassation, in appeal number 460 of the year 2023 in the commercial court, has decided that the impossibility of honouring the cheque and its return due to the closure of the account is equivalent in its result to the lack of sufficient funds to cover its value, whether partially or in full. This makes the bounced cheque an enforceable bond according to the provisions of Article 635 reiterated from the Commercial Transactions Law. Therefore, the bounced cheque due to the closure of the account is also considered an enforceable bond. Consequently, the debtor cannot escape the consequences of the cheque simply by closing their account.

The Unified Judicial Principles Authority, in response to the previously stated conflict, examined the request submitted by the Attorney General of the United Arab Emirates, number 1 of the year 2023. The authority, by a majority decision, formally and substantively accepted the request and deviated from the principle previously adopted by the Dubai Court of Cassation in appeal number 888 of the year 2023 in the commercial court (as mentioned above). At the same time, the authority affirmed the legal principle reached by the decision of the Abu Dhabi Court of Cassation in appeal number 460 of the year 2023 in the commercial court (as mentioned above).

And among the reasons upon which the authority relied in its decision; is that the phrase 'freezing the cheque or closing the account' aligns in meaning with the expression 'lack of funds or insufficiency.' This corresponds to the inclusive interpretation of Article 667 of the new Commercial Transactions Law, leading to the stability of commercial and banking transactions. As for resorting to the narrow or literal interpretation of this provision and excluding its applicability to cases of account closure, it necessitates following ordinary judicial procedures.
and results in prolonging the litigation process. Meanwhile, the approach advocates for expediting time and procedures for the management of rights holders, in addition to the potential for debtors to evade payment of due cheques by closing their accounts, opening the door to circumventing the law in this regard. On the other hand, account closure may sometimes be more perilous than the lack of funds or insufficiency to cover the cheque value, considering that intentional account closure may be intended to harm the creditor, negatively impacting the economy and the rights of transacting parties [21].

Therefore, according to the authority's decision, a bounced cheque due to "account closure" is deemed, on par with a bounced cheque due to insufficient funds, as an enforceable bond. Consequently, the holder of such a cheque has the right to request its full or partial execution through Forced measures against the debtor. The drawer cannot escape the consequences of the cheque simply by closing the account.

In our belief, the implementation of the authority's decision mentioned will wide open the door to consider bounced cheques for reasons other than those mentioned in Article 667/1 of the new Commercial Transactions Law. This includes cases like differences in the signature on the cheque compared to the signature held by the drawee bank or any other reasons for returning the cheque to its holder without being honoured. Such cheques would be considered Enforceable Instruments if they fulfilled the measurement criteria adopted by the authority in its decision.

Therefore, we see the necessity for legislative intervention and the re-establishment of a legislative provision regarding cases of bounced cheques that render them Enforceable Instruments, taking into consideration situations that align with what is mentioned in Article 667/1 of the Commercial Transactions Law (new), particularly concerning the defect and purpose.”

6.2.2 In France

According to the French Law of Currency & Money, the following steps shall be followed to obtain a Cheque Value:

- The first paragraph of Article No. L. 131-73 of the related Law states that "Once the Cheque is submitted to the Drawee bank, and the latter verifies that there is not enough Balance. The Cheque accordingly shall be returned within 48 hours to the creditor with a Certificate clarifying that the Cheque Amount has been denied due to Lack of Balance or Insufficiency. The Beneficiary after that is required to resubmit the Cheque
to the Drawee bank within 30 days. If the amount of the cheque is not paid within this period, and an amicable settlement is not reached regarding it, and at request, he shall be provided with a certificate stating that the amount of the Cheque has not been paid;

- The Cheque Holder, or Beneficiary, hence, can submit the Non-Payment Certificate, referred to above, with the Original Unpaid Cheque, and a Statement including the Debtor's Address to the Forensic Reporter, requesting that the Debtor shall be obligated to pay the Cheque Amount. The amount of the cheque, along with the legal interest from the date the cheque was first presented to the bank, and according to the legal rate applicable at that time in France, in addition to any expenses incurred in this regard, such as those resulting from the return of the cheque, protest, and others;

- The judicial officer informs the drawer with a certificate of non-payment of the cheque, along with the creditor's demands for the cheque, interest, and expenses. This notification, carried out by the judicial officer or by the administration of judicial officers, constitutes an order for payment under the law (the third paragraph of Article 131-73);

- Paragraph 4 of Article No. L. 131-73 of the related French Law stipulates that if the Judicial officer does not receive a piece of evidence that the Cheque Amount with Interest and Expenses has been paid, within fifteen days after submitting the Notification to the Debtor, he proceeds to take Forced Execution Procedures, with no need for any other procedures or expenses.

In all cases, the expenses incurred in returning a Cheque that has no balance, of whatever nature, are all paid by the Drawer / Debtor, taking into consideration that the fees charged by the Drawee bank shall not exceed the limit indicated by Law as stated (the last section of Article L. 131-73.)

Finally, we may conclude that French Law offers the Debtor / Drawer more room to manage his affairs and pay the value of a Bounced Cheque, or if any settlement can be reached in this matter with beneficiary before the Beneficiary or Bearer resorts to the Competent Authority for Forced Execution. Perhaps this is what distinguishes French legislation from others in this regard; it may save a lot of time and effort [22], and prevent the need for Forced Execution regarding many bounced cheques, as debtors may promptly fulfil their value within the specified timeframe.
6.3 THE PARTIES REQUESTING IMPLEMENTATION

The application for execution regarding the payment of the cheque amount is submitted by the creditor, the beneficiary, either by themselves or by their legal representative, agent, deputy, or legal successor, or in confrontation with every person referred to as the debtor originally [23].

6.4 OBTAINING AN EXECUTIVE FORM OF THE CHEQUE

In order for the Enforceable Instrument to have enforceability allowing the debtor to be compelled to fulfil its value by the competent enforcement authority, the laws of some countries require this bond to take the form of an "executive copy," which is a copy of the Enforceable Instrument annotated with the Execution Formula [24]. In the UAE, for instance, the third paragraph of Article 212 of the Civil Procedure Law states: "Execution, except in cases provided for by law, shall not be carried out except according to a copy of the Enforceable Instrument annotated with the following Execution Formula: (The competent authorities shall proceed to execute this bond and take the necessary measures. They shall appoint someone to execute it forcibly when requested to do so)."

Accordingly, if we are required to implement the content of a Bounced Cheque, whether in whole or in part, the above-mentioned Execution Formula shall be written on a copy of that Cheque. However, it is remarkable to note that the Emirati Commercial Transactions Law, which considers this Cheque an Enforceable Instrument, does not refer to such a procedure.

Practically, and according to our review of what is happening in the Execution Courts, we have noticed that the Execution Judge is the one who decides to add the Execution Formula on a copy of the Cheque upon receiving a request for implementation, and after making sure that all legal conditions are met.

Conversely, we propose that an application for obtaining an executive copy of the returned cheque be submitted through a petition to the competent court or enforcement department. After verifying the legal conditions in the returned cheque that make it an Enforceable Instrument, the court orders the deposit of the original returned cheque with the court registry. Subsequently, the beneficiary is given an executive copy of it, i.e., a copy of the cheque with the Execution Formula mentioned above [25]. The beneficiary or holder then submits it to the enforcement file, and enforcement measures are taken based on it as a matter of procedure. This is because the judiciary is the official entity entrusted with the originals of
the bonds and documents submitted to it, and it is a necessary step for the application of Article 212 of the Civil Procedure Law.

7 LEGAL PROCEDURES OF FORCED EXECUTION

After the Creditor obtains the original copy of the Bounced Cheque with all attached data, or Statements or Documents that give the Cheque an Executive Status according to the legal rules, he therefore can refer to the Competent Enforcement Authority to collect the Cheque Amount, and per the procedures followed in the related Country.

7.1 IN THE UAE

According to the provisions of the Civil Procedure Law, "Execution shall be carried out under the supervision of the Execution Judge at the headquarters of each court of first instance, administration, or Execution Court - as the case may be - in each judicial district..." (Art. 206). The Execution Judge alone is competent to enforce the Enforceable Instrument, regardless of its type, and to urgently decide on all execution disputes - substantive and procedural - raised therein, and to issue judgments, decisions, and orders related thereto (Arts. 207/1 and 211/1).

Locally, Article No. 207/2 of the same Law emphasizes that "the Execution Jurisdiction is confined to the Judge of the court that has issued the Enforceable Instrument", whereas Article No. 211/2 states in some detail that “the Execution Jurisdiction shall be conducted by the Execution Judge of the court that has issued the judgment, or where the Enforceable Instrument has been documented or certified, or at the court in which home or funds of the convict are located.”

Considering that the cheque is not issued by a court, and there is no special text that shows the spatial jurisdiction to carry out the cheque content against the drawer, and regarding the Provisions of the two previous texts and what has taken place before Dubai courts, and confirmed at Dubai Government Website [26], under the title “Execution Service cheques”, we have noticed that this service is available to Litigants who have obtained or intend to obtain an executive Formula for their unpaid cheques that have submitted to Banks located within the boundaries of Dubai courts, and those litigants themselves do reside there as well. In our opinion, nothing stands against adding the jurisdiction of an Execution Judge where his court is located within the same area in which the Drawee Funds are available, as this goes in line with Article No. 211/2 already stated above.
Therefore, jurisdiction to enforce the contents of the cheque shall be by confronting the drawer debtor before the Execution Judge whose jurisdiction encompasses the issuance of the cheque, or where the drawee bank is located, or the domicile, residence, or assets of the debtor against whom enforcement is sought to be executed upon.

Moreover, Article No 211 / 3 of the UAE's Civil Procedures Law states that "if the creditor submits a request for execution before one of the Execution Judges mentioned above, and the matter requires one or more measures to be taken before another Execution Judge, such as, for example, an execution on Movables or Real Estate, belonging to the debtor, and located in more than one city, the Execution Judge, before whom the application has been filed, can proceed with the Execution Process in his court, or delegate another Execution Judge to the place where the action is required to be taken.

7.2 IN FRANCE

Article No. ML 121-5 of the French Civil Procedures Code confirms that the Public Prosecutor of the French Republic shall be in charge of executing Judgments as well as other Enforceable instruments, having the right to order the Judicial Officers within the Area of Competence to perform their duties, and due to his position, he should follow up the implementation of Judicial Decisions in cases specified by Law, and per (Article No. ML.121-6.) It should be noted, therefore, that Judicial Officers shall be responsible for the Execution Process, and as stipulated in Article No. ML 122-1, they can carry out acts of Forced Execution and Precautionary Seizure. Besides, Article No. ML 122-2 stipulates that the Judicial officer shall oversee implementing Executive Procedures, and for this, he might refer to the Execution Judge, or to the Attorney General, to give Permissions and take the necessary measures.

8 ELECTRONIC PAYMENT OF BOUNCED CHEQUES

Electronic litigation, also known as remote litigation, encompasses the legal procedures adopted by multiple countries, particularly following the emergence and global spread of the COVID-19 virus, for the enforcement of Enforceable Instruments, of these countries:
8.1 ELECTRONIC PAYMENT OF BOUNCED CHEQUES IN THE UAE

Both Federal, as well as Local Judiciary in the United Arab Emirates, have allocated an Electronic Service for Cheques Payment. For example, the Dubai Courts Website [27], being under the control of the Dubai Government, has facilitated the Implementation Process of Bounced Cheques, following the same procedures adopted by Dubai Courts, already stated above. All documents required to finalize the Implementation Process of a Bounced Cheque are shown on the Website, and they are as follows:

1. Fill in an Execution Regulation available electronically on the Website, it comprises a Request to write the Execution Formula on a copy of the Bounced Cheque, in addition to a Folder including documents required for implementing the Request, the most important of which is an Original Copy of the Bounced Cheque;
2. A Certificate of the Applicant's International Account Number shall be uploaded in PDF Format;
3. Download a Certificate from the Drawee Bank website, which includes a Copy of the Cheque in PDF Format, together with the following information:
   - Name of the Account's Holder in both Arabic and English;
   - His Address and E-Mail as listed on the Bank System;
   - Means of Communication as per the Bank System, in addition to the Contract concluded with the Account Holder;
   - Identity or Passport Number of the Account Holder with the Residence (if any);
   - Corporate Trade License with ID or Passport Number and the Manager's Residence;
   - Employer of the Account Holder with Work Data (if any);
   - Other accounts in the Drawee bank belonging to the Account Holder, and available Balances therein (an inquiry in advance);
   - Data of the drawer who has signed the Cheque, along with his Identity or Passport Number, and the Authorization Document;
   - Name of the Beneficiary receiving the Cheque Amount along with his Identity or Passport Number;
   - Data of the Cheque Value Recipient, including Address & Means of Communication;
   - Reasons for returning the Cheque without being cashed;
   - Date of Bounced Cheque with the Branch of Drawee Bank;
   - The Cheque Value with the amount disbursed and the remainder.
8.2 ELECTRONIC PAYMENT OF BOUNCED CHEQUES IN FRANCE

So far, there is no remote litigation that includes all types of lawsuits and requests, especially enforcement cases, as is the case in the United Arab Emirates. Traditional procedures remain the most applicable before the French judiciary [28].

9 CONCLUSIONS

9.1 RESULTS

We conclude from this research that the bounced cheque without full payment has, according to the Commercial Transactions Law, become an enforceable instrument in the UAE under two conditions: 1) when the cheque is not cashed due to no available funds, and 2) when the available balance is insufficient. The Judicial Principles Unification Committee, established under the Judicial Relations Regulation in the UAE, added a third scenario by acknowledging the principle previously decided by the Abu Dhabi Cassation Court, in appeal no. 460 of 2023/commercial, considering a bounced cheque due to account closure as an Enforceable Instrument.

In France, the French legislator granted the status of an Enforceable Instrument to an unpaid cheque accompanied by a certificate of non-payment of the cheque. However, this is done after allowing a grace period for the drawer to settle the matter and fulfil the cheque's amount or reach a settlement agreement with beneficiary. The certificate of non-payment of the cheque is only issued after 30 days have elapsed from the date of the initial presentation of the cheque to the drawee. Direct enforcement proceedings cannot be initiated before this period. This contrasts with the UAE, where a bounced cheque becomes an Enforceable Instrument immediately upon presentation to the drawee, and the holder is provided with a certificate of non-payment or the statement is recorded on the cheque itself, depending on the circumstances and in accordance with the conditions and procedures outlined in this research.

9.2 RECOMMENDATIONS

Like what is in force in France, we recommend that the UAE legislator give an opportunity of 30 or at least 15 days for the drawer of a returned Cheque to manage his affairs
and initiate the voluntary payment of the Cheque Value or to reach an amicable settlement in this regard with beneficiary, before giving the Cheque holder a Non-Payment document.

We recommend stipulating that the execution request, regarding the returned Cheque, be preceded by depositing the original of this Cheque in the treasury of the judicial authority in charge of execution, and that the latter is also competent to give an executive copy of it to the beneficiary or bearer, and official or ordinary copies to everyone related to the Cheque.

We also recommend amending the text of the first paragraph of Article 667 in the Commercial Transactions Law (new), and expanding the cases considering the bounced cheque as an enforceable instrument to include situations that are analogous in cause to the cases of insufficient funds or lack of balance, such as returning the cheque due to the drawer's account closure or intentional alteration of their signature...

We also recommend that countries that have not yet made the bounced Cheque an Enforceable Instrument, amend their laws in this regard, similar to the Emirati and French as the goal of the beneficiary of the Cheque in the first place is to obtain the amount of the Cheque in the shortest time and the easiest way.

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Article 675 of the UAE Commercial Transactions Law.

Article 212/2 of the UAE Civil Procedure Law, and Article L. 111-3 of the Civil Procedure Law of French Execution.

Article 667 of the UAE commercial transactions Law, and Article (L.111-3) of the Civil Procedures Law of French Implementation.


Article L111-3 of the Code of Civil Execution Procedures.

Article 401 of the old (repealed) UAE Penal Code.


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Article 246 of the UAE Civil Procedure Law.


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