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The end of post dated cheques?

By Alexis Waller and Chloe Drew

When Dubai's property market was booming, many developers collected post dated cheques (PDCs) from buyers. Additionally, landlords and banks commonly collect PDCs for future lease and loan payments.

Dubai's Decree 56 of 2009 should serve to curb reliance on PDCs. It established a special judicial committee (the Committee) to resolve complaints involving bounced cheques issued to developers in connection with real estate transactions. The police, and any other judicial investigation authority, are obligated to refer these complaints to the Committee - the aim undoubtedly being to reduce the number of criminal cases before Dubai Courts involving bounced cheques.

The practice of using PDCs is not unique to the UAE: they are frequently used throughout the GCC. Recent changes to law in Qatar (which reversed a 2006 law to remove legal protection of PDCs by May 2010) show that PDCs are likely to be used for the foreseeable future. Saudi Arabia has introduced a law to increase the penalties for those failing to honour cheques, thereby attempting to uphold the use of PDCs, but reduce the increasing number of defaults.

Suggestions for securing future payments

It is a criminal offence under Federal UAE law (and laws of many of its surrounding countries) to knowingly issue a cheque with insufficient funds to clear that cheque. If a cheque is not honoured, the receiver must pursue the issuer to enforce payment. Whilst the issuer can be investigated or charged, the receiver could remain without payment.

In many jurisdictions, it is common for developers to carry out credit checks to limit their exposure to non credit-worthy buyers. A variety of companies can perform a search and issue a credit rating for an individual based on past records. For companies, company searches can be carried out and research into an investor's trading history can be undertaken. The introduction of Emcredit in Dubai has assisted in making some credit information available to lenders and members.

Here are some practical steps to help assess the ability of a buyer:

- request a bank reference;
- view originals and take copies of passports and visa pages (for individuals and company representatives);
- question how the investor proposes to finance the purchase;
- issue a due diligence questionnaire to obtain details about the investor's income and expenses;
- seek evidence of an offer in principle from the lender if the investor intends to utilise bank financing;
- check whether any international background checks can be made;
- request guarantees, either personal, from a bank or the parent company;
- request copies of company accounts for corporate purchasers.

The above list is by no means definitive, and parties should seek advice if they wish to incorporate or consider options to secure future payments under an agreement.

Conclusions

We are unlikely to see an end to the practice of collecting PDCs in the near future, particularly by banks, and landlords of short terms leases. It is important that both issuers and recipients of such cheques are clear on the issues surrounding them.

Decree 56 will go some way towards reducing the large volume of criminal cases before Dubai Courts involving bounced cheques. The effect on developers will be to ensure that they carry out due diligence at the outset and consider alternative means of securing payments.

It introduces a new step in the process of action being taken against a party who has not honoured a cheque and, as such, makes the practice of relying on PDCs for these types of transactions less favourable.

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