

# Law Reform Commission Report on the Regulation of Debt Collection Practices

## Report on the Administration's Response

### I. PURPOSE

- 1.1 This report sets out the Administration's response to the various recommendations put forward in the *Law Reform Commission Report on the Regulation of Debt Collection Practices* (the Report).

### II. BACKGROUND

- 2.1 In November 1998, the LRC appointed a sub-committee to consider and advise on the present state of the law and to make proposals for reform in relation to debt collection practices in Hong Kong. The sub-committee's terms of reference are as follows –

*“To consider the adequacy of the existing law governing the way in which creditors, debt collection agencies and debt collectors collect debts in Hong Kong without recourse to the court system, and to recommend such changes in the law as may be thought appropriate.”*

- 2.2 Following public consultation in July 2000, the LRC published the Report in July 2002. Specifically, it put forward 11 recommendations covering how debt collection practices in Hong Kong should be regulated and related matters. The recommendations fall into three broad categories.

- 2.3 First (recommendation 1 of the Report), the LRC recommended that a **criminal offence of harassment** of debtors and others should be created, such that it would be an offence if a person, with the object of coercing another person to repay a debt –

- (a) harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are likely to subject him or members of his family or household or any other person to alarm, distress or humiliation;
- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
- (d) utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not.

- 2.4 Second (recommendations 2 – 10 of the Report), the LRC recommended that debt collection agencies and individual debt collectors should be subject to a **statutory licensing system** under which it would be a criminal offence to collect debt as a business without a valid licence. For this purpose, a licensing authority should be established with various statutory powers and duties in relation to the issuance, renewal, suspension and revocation of licences. The licensing authority should also be required to formulate a code of practice to provide guidance on the standard of conduct of debt collectors.
- 2.5 Third (recommendation 11 of the Report), the LRC recommended that the **sharing of consumer credit data** be kept under review with a view to further alleviating bad debts and abusive debt collection practices.
- 2.6 An extract from the Report summarising these recommendations is at Annex A.

### III. CONSIDERATIONS

- 3.1 The Administration has thoroughly studied the findings and recommendations of the Report. The following agencies have participated in the process –
- (a) Security Bureau
  - (b) Financial Services and Treasury Bureau
  - (c) Economic Development and Labour Bureau
  - (d) Home Affairs Bureau
  - (e) Administration Wing of Chief Secretary for Administration's Office
  - (f) Business Facilitation Division of Financial Secretary's Office
  - (g) Hong Kong Police Force
  - (h) Social Welfare Department
  - (i) Companies Registry
  - (j) Department of Justice
  - (k) Hong Kong Monetary Authority.

In addition, we have sought comments from the Judiciary on judicial process efficiency.

- 3.2 In formulating its response to the Report's recommendations, the Administration has taken into account a number of factors and considerations, as well as developments subsequent to the publication of the Report. These are elaborated in the ensuing paragraphs.

#### **Rights of Creditors and Debtors**

- 3.3 At the outset, we agree with the LRC<sup>1</sup> that credit providers and their agents are entitled to take reasonable steps to ensure that debtors meet their

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<sup>1</sup> See paragraph 10.2 of the LRC Report.

obligations. This is a necessary incident of the debtor-creditor relationship and should be duly respected. Otherwise prudent credit providers would be discouraged from providing credit, and the efficient functioning of proper business operators and the trade as a whole would be unnecessarily inhibited. An appropriate balance should be struck between the legitimate needs of creditors to collect debts on the one hand, and the rights of debtors not to be subject to unreasonable pressure and of third parties not to be unduly disturbed on the other. In this connection, we note that during the LRC's public consultation on the subject prior to its finalization of the report on debt collection, there was concern among credit providers and collection agencies at the proposed harassment offence.

### **Complaints Regarding Debt-collection Practices**

3.4 According to Police's records, statistics on debt collection-related reports received from 2001 to 2004 are as follows –

	<b>Offence/Complaint</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Crime Reports</b>	Criminal damage	1 497	1 482	1 558	1 534
	Criminal intimidation	261	166	215	305
	Serious assault	90	77	71	64
	Arson	41	22	22	11
	False imprisonment	23	20	18	15
	Others	47	61	109	59
	<i>Sub-total</i>	<i>1 959</i>	<i>1 828</i>	<i>1 993</i>	<i>1 988</i>
<b>Non-crime Reports</b>	Telephone nuisance	4 793	6 578	6 503	3 685
	Nuisance by visits	4 188	5 254	6 505	3 521
	Minor assault	46	403	25	29
	Others	4 326	5 668	5 410	3 259
	"Low Threat" cases	-	-	-	9 935 <sup>2</sup>
	<i>Sub-total</i>	<i>13 353</i>	<i>17 903</i>	<i>18 443</i>	<i>20 429</i>
	<b>TOTAL</b>	<b>15 312</b>	<b>19 731</b>	<b>20 436</b>	<b>22 417</b>

3.5 It can be noted that whilst the number of crime reports has remained stable in the past few years, the number of non-crime complaints has recorded an increase. The reports in the latter category included making numerous dunning telephone calls, making repeated visits to the victims' place of

<sup>2</sup> With effect from 1 June 2004, Police's practice in dealing with the debt collection activity has been further streamlined. Non-crime Reports are further classified as "high-threat" and "low-threat" cases. "High-threat" reports are those likely to escalate into criminal activity.

residence or work, posting of debt collection notices and so on.

- 3.6 Since March 2002, all authorised institutions (AIs) are required to submit a quarterly return to the Hong Kong Monetary Authority on the number of complaints received against the debt collection agencies that they employ. The results of the survey are set out in the following table –

Year	Quarter	No. of debt collection agencies-related complaints reported by AIs
2002	2 <sup>nd</sup>	374
	3 <sup>rd</sup>	283
	4 <sup>th</sup>	260
2003	1 <sup>st</sup>	231
	2 <sup>nd</sup>	181
	3 <sup>rd</sup>	166
	4 <sup>th</sup>	139
2004	1 <sup>st</sup>	101
	2 <sup>nd</sup>	88
	3 <sup>rd</sup>	90
	4 <sup>th</sup>	62

It can be seen that the number of complaints has been on a decreasing trend.

### **Existing Criminal Sanctions and Enforcement**

- 3.7 At present, a number of legislative provisions are already in place to combat abusive practices employed by debt collection agencies. These cover, inter alia, offences set out in the following table –

Ordinance	Section	Offence
Crimes Ordinance (Cap. 200)	24	Intimidation
	25	Assaults with intent to cause certain acts to be done or omitted
	60	Destroying or damaging property
	61	Threats to destroy or damage property
Theft Ordinance (Cap. 210)	23	Blackmail

<b>Ordinance</b>	<b>Section</b>	<b>Offence</b>
Offences Against the Person Ordinance (Cap. 212)	15	Sending letter threatening to murder
	17	Wounding with intent to do grievous bodily harm
	19	Wounding or inflicting grievous bodily harm
	39	Assault occasioning actual bodily harm
	40	Common assault
	42	Forcible taking or detention of persons
Summary Offences Ordinance (Cap. 228)	4(22)	Disturbing any inhabitant by pulling or ringing any door bell, or by knocking or striking at any door without lawful excuse
	8	Writing upon, soiling, defacing or marking any building, wall, fence or paling with chalk or paint or in any other way whatsoever; or wilfully breaking, destroying or damaging any part of the building, wall, fence or paling, or any fixture or appendage thereof, without the consent of the owner
Societies Ordinance (Cap. 151)	19(2)	Being any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any unlawful society
	20(2)	Acting or claiming to be a member of the triad society
Post Office Ordinance (Cap. 98)	32(1)(f)	Sending by post any obscene, immoral, indecent, offensive or libellous writing, picture or other thing

3.8 It is evident that there is a wide range of criminal sanctions to deal with unscrupulous tactics employed by debt collection agencies. Nevertheless, as set out in the LRC Report<sup>3</sup>, according to experience many crimes involving debt collection are not reported to the Police. Debtors and victims of the reported cases may also be reluctant to cooperate with the Police. Possible reasons are that the debtors do not wish to disclose their debt problems, or the circumstances leading to the debt, to their families, business associates or others. In cases where the victims are unwilling to report the crime or to identify the culprits, despite the availability of existing criminal law, the Police will not be able to undertake the necessary investigation or initiate prosecution. The extent to which such factors may affect the effectiveness of new criminal sanctions will, therefore, need to be carefully considered.

<sup>3</sup> See paragraph 6.1 of the LRC Report.

- 3.9 As regards law enforcement practices, the Police have specific procedures for the handling and investigation of debt collection related cases. A Criminal Investigation Team (CIT) looks into all crime reports as well as “high threat” non-crime reports related to debt collection. Crime reports are those involving criminal activities. “High-threat” non-crime reports are those having one or more of the following characteristics –
- (a) the act itself has aggravating factors (e.g. common assault, show of force, triad affiliation etc);
  - (b) the collection of debt is pursuant to a debt arising from an illegal activity (e.g. gambling, loansharking, smuggling);
  - (c) the collection of debt is pursuant to a legitimate debt but with hidden and exorbitant charge(s) in seeking the loan or for default in payment; or
  - (d) any other cases which in the opinion of the Assistant Divisional Commander (Crime)/Chief Inspector (Crime) should be investigated by a Crime Team.

Unlike other non-crime reports, the CIT will take initial action to investigate the non-crime reports related to debt collection classified as “high-threat”. Within 48 hours of receiving the report, the team Inspector will submit the case papers to his or her senior who will decide whether it should remain with the CIT.

- 3.10 The Police have also introduced guidelines on investigative practices for dealing with Macau loansharking cases, and have maintained close liaison with the Macau Police on investigation of such cases.

### **Existing Administrative Measures**

- 3.11 Apart from legislation, there are also various administrative measures governing debt collection practices. The Code of Banking Practice (the Code), issued by the Hong Kong Association of Banks and DTC Association, specifies that AIs should prohibit their debt collection agencies from collecting debts by harassment or other improper means. The Hong Kong Monetary Authority monitors AIs’ compliance with the Code as part of its regular supervision. It also encourages AIs to tighten up their monitoring of debt collection agencies and to ensure that they comply with the Code through the requirement for quarterly returns (para.3.6 above). Since the introduction of the survey, the number of debt collection agencies-related complaints in relation to AIs has been decreasing, indicating that AIs have strengthened their supervision over the conduct of debt collection agencies.
- 3.12 Apart from regulation, timely counselling and welfare assistance are provided to needy persons with debt problems. A range of services are provided by both the Social Welfare Department and non-governmental organisations in

this regard.

- 3.13 The Social Welfare Department has an extensive network of Integrated Family Service Centres in the Special Administrative Region providing counselling and assistance to the needy, including those in debt, to tackle their personal and family problems. Social workers of these centres provide counselling, arrange welfare assistance and organise support groups to help them enhance their stress-coping skills and work out positive ways to resolve their debt problems. Services by clinical psychologists or psychiatric treatment will be provided as necessary for those who are in a state of depression or severe emotional distress because of their debt problem.
- 3.14 The following services are provided by non-governmental organisations to help those with debt problems –
- (a) The Family Crisis Support Centre of the Caritas runs the “Debt Counselling Project”, with lawyers and accountants providing professional legal and financial advice to those in need.
  - (b) The Tung Wah Group of Hospitals, through its “Healthy Budgeting Family Debt Counselling Centre”, renders financial counselling and free professional accounting consultation.
- 3.15 Furthermore, various forms of housing assistance may be offered to people with debt problems. For instance, those in long-term financial problem such as bankruptcy and negative equity property ownership with properties surrendered to the banks may be recommended for compassionate rehousing, having regard to their social and/or medical circumstances. Public housing tenants being intimidated by their creditors may be recommended to the Housing Department for consideration of a housing transfer.
- 3.16 Any further regulatory or administrative measures should be implemented only if they could bring about enhancement or added benefits to the existing measures.

### **Judicial Process Efficiency**

- 3.17 During the public consultation carried out by the LRC in 2000 and at other forums, it was suggested that the long-term solution to the problem of abusive debt collection should lie in strengthening the judicial process both in terms of adjudication of debts and enforcement of judgments. In other words, the efficiency of the judicial process for recovering debts should be an integral part of the overall review of the problem of abusive debt collection.
- 3.18 In this regard, we understand that over the years the Judiciary has taken forward a number of initiatives to improve judicial process efficiency. Some of these initiatives were formulated or introduced subsequent to the publication of the LRC Report.

- 3.19 First, in February 2000 the Chief Justice appointed a Working Party on Civil Justice Reform to review the civil rules and procedures of the High Court, and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed. The Final Report of the Working Party was published on 3 March 2004. One of the recommendations of the Working Party was the introduction of a system of “sanctioned offers and payments” which may encourage earlier settlement of actions including actions for the enforcement of debts. This involves one party making offers or payments into court to settle a dispute. If the other party does not accept the offer, he runs the risk of costs and interest sanctions if he or she subsequently fails at the trial to better what was offered, even if he or she wins the action. Though not specifically targeted at the problem of debt collection, it may directly assist in that parties would be encouraged to settle cases at an early stage and thus avoid prolonged and expensive litigation.
- 3.20 In addition, the Judiciary has reviewed the procedures of civil proceedings in the District Court and Small Claims Tribunal in the past few years, with a view to further enhancing access to justice. The jurisdictional limit of the District Court was increased from \$120,000 to \$600,000 from 1 September 2000, and subsequently further to \$1 million with effect from 1 December 2003. This has enabled claims involving amounts in this range to be dealt with by the District Court, which should involve lower costs, everything else being equal. The number of civil cases handled by the District Court has seen an increase since implementation of the new initiatives, i.e. by 12% from 32 515 in 2000 to 36 460 in 2004. In the same period, the waiting time in respect of civil cases has reduced from 82 days to 54 days.
- 3.21 As for the Small Claims Tribunal, its jurisdictional limit was increased from \$15,000 to \$50,000 in October 1999. Since then, its caseload has seen a significant increase, from 57 442 in 1999 to 88 242 in 2004, representing a jump of 54%. This suggests that over the years an increasing number of creditors are making use of the judicial process to recover debts.
- 3.22 It is also worth noting that the waiting time for enforcement of court orders in respect of judgment debts has stayed reasonably at 10 days.

### **Harassment in General**

- 3.23 Another area of the LRC’s recent work deals with harassment and this may be also relevant in the present context. Following public consultation in 1998, the LRC published its *Report on Stalking* in October 2000. The concerns that the report seeks to address have some similarity with those covered by the *Report on the Regulation of Debt Collection Practices*<sup>4</sup>. The LRC has also identified debt collectors as an example of possible stalkers.

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<sup>4</sup> For example, some definitions of “stalking” quoted in the report include “the pursuit by one person of what appears to be a campaign of harassment or molestation”, “behaviour which subjects another to a course of persistent conduct, whether active or passive, which taken together over a period of time amounts to harassment or pestering”.

3.24 The LRC Report on Stalking has recommended, inter alia, the creation of a new offence of harassment, as follows -

- (a) a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence;
- (b) for the purpose of this offence, the harassment should be serious enough to cause that other person alarm or distress; and
- (c) a person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other.

An extract from the LRC Report on Stalking summarising its recommendations is at Annex B.

3.25 The general harassment offence proposed in the LRC Report on Stalking seeks to deal with behaviour regardless of its ultimate purpose, if any, and is not industry or sector-specific. The Administration has studied the report carefully and is considering how best to take the subject forward, including the feasibility of an alternative approach. Whether there should be a general harassment offence has yet to be decided.

#### **IV. THE ADMINISTRATION'S RESPONSE**

4.1 Against the above background and considerations, the Administration presents its response to the specific LRC recommendations in this section.

##### **Proposed Offence of Harassment (Recommendation 1 of the LRC Report)**

4.2 From the legal perspective, the Department of Justice has advised that existing criminal offences including blackmail, criminal intimidation, false imprisonment, common assault, making, possessing and using a false instrument are sufficient to combat most of the undesirable debt collection activities in general. Specifically, the department has examined each of the modes of committing the proposed offence as reproduced in paragraph 2.3 above. It has come to the conclusion that the first (harassing the other with demands for payment) mode is already substantially covered under existing law. In addition, for this mode of committing the proposed offence, the LRC has provided some elaboration and further recommended that a person may be guilty if he consents with others in the taking of such action, notwithstanding that his own course of conduct does not by itself amount to harassment. Legal advice is that the statutory provisions and common law relating to joint enterprise, secondary participation and offences of incitement, conspiracy and attempt are sufficient to cover the situation described by the LRC. No

express provision is considered necessary in the context of unlawful harassment of debtors and others.

- 4.3 We have also considered the second and third modes of committing the proposed offence (false representation regarding criminal proceedings and official capacity) in consultation with the Department of Justice. We note that in some cases criminal proceedings may indeed lie for failure to pay a debt. For example, the representation can be true if the debtor dishonestly evades his liability to pay a debt by deception under s.18B of the Theft Ordinance (Cap.210). It is also unclear as to what "official capacity" means exactly. More importantly, given that the main target of the proposed harassment offence is the alarm, distress or humiliation caused by abusive debt collection activities, whether the representation is false or not does not appear to be a material consideration in the proposed offence. In any case, depending on the circumstances of the individual case, false representation with a view to obtaining money should already be covered by existing criminal offences (e.g. fraud or deception) or the common law offence of conspiracy to defraud.
- 4.4 As regards the fourth mode of committing the proposed offence (uttering a document falsely represented by a person to have some official character or purporting to have some official character which he knows it has not), legal advice is that it is already covered under existing law.
- 4.5 The "residual" elements of the proposed offence are therefore chiefly the stalking and similar activities undertaken by debt collectors and their associates. The Department of Justice is of the view that they would be sufficiently covered under a general offence of harassment along the lines of the proposed offence in the LRC Report on Stalking.
- 4.6 Prima facie, it would appear that the same form of behaviour (harassment) leading to the same result (alarm or distress) should be subject to the same treatment. In the same way that it is not necessary to create a specific offence to cover, say, murder for debt collection purposes only, we are not fully convinced that a specific offence of harassment for debt collection purposes only is necessarily the best approach to dealing with the **residual** elements of the proposed offence.
- 4.7 We note that in the Report the LRC has pointed out that harassment in the stalking context entails a concept of persistence and hence the proposed stalking offence refers to "a course of conduct". In this regard, LRC has registered its concern that the harassment offence proposed in the Report on Stalking may not be adequate to deal with cases involving only a single incident.
- 4.8 At the same time, we notice that in paragraph 6.21 of the Report on Stalking, the LRC expressed its view that "[a] single act, no matter how bizarre, should not attract criminal liability". In addition, according to the Police's experience in dealing with complaints about debt collection, the vast majority of cases involve repeated attempts to pester the victims. As explained in

paragraph 3.5 above, many non-criminal reports to the Police include making numerous dunning telephone calls and making repeated visits to the victims' place of residence or work. In many instances the debt collectors resort to a combination of various tactics which in aggregate amount to a course of conduct.

- 4.9 Given that the more unacceptable behaviour associated with undesirable debt collection practices is already covered by existing criminal laws, the Administration does not consider that there are strong justifications for introducing a stand-alone piece of legislation to outlaw the residual elements of the proposed offence of harassment in relation to debt collection only. Accordingly, we will not pursue the idea on its own. Consideration of the subject will be taken forward in the context of the study on the LRC Report on Stalking.

### **Proposed Licensing Regime (Recommendations 2 - 10 of the LRC Report)**

- 4.10 The Administration has carefully studied the justifications put forward by LRC supporting the case for licensing. After detailed deliberations, the general consensus reached is that these justifications do not constitute a sufficient case to introduce a statutory licensing regime.
- 4.11 First, it is doubtful whether a licensing system will be an effective means to regulate the conduct of the debt collection industry. Judging from operational experience of the enforcement agencies, delinquent debt collection operators are unlikely to come forward for licensing in the first instance. The system would likely only cover prudent and ethical market operators, who would not engage in abusive activities even in the absence of a licensing regime.
- 4.12 In terms of enforcement, the Administration is not satisfied that licensing will prevent undesirable elements from engaging in debt collection. There is no strong ground from the law and order angle to justify licensing.
- 4.13 Drawing reference from existing licensing schemes, the Administration takes the view that a licensing regime should not merely be a "negative" system which sets out rules that should not be violated. Rather, the licensing framework should spell out the criteria that should be fulfilled for entering the market and the requirements to be met to ensure professionalism and business ethics of the licensees.
- 4.14 The Administration notes that the LRC Report indeed justified a statutory licensing system by, inter alia, the need to ensure fair competition and raise professional standards. Given that there is no barrier to entry for the debt collection market, the issue of fair competition does not arise. It would be inappropriate to compare law-abiding debt collectors, and their law-breaking counterparts in considering whether there is "fair" competition. The latter, of course, are already subject to criminal sanctions.

- 4.15 Furthermore, the Administration is not convinced that the introduction of a licensing system would significantly raise the level of professional standards in the debt collection industry, given the deficiencies of such a system mentioned above. It is envisaged that unscrupulous debt collectors, particularly those operated by the triads, would not come forward and seek to be licensed. As regards those law-abiding debt collectors, the Hong Kong Monetary Authority has already required AIs to monitor more closely the tactics employed by their debt collection agents, with a view to ensuring that these companies comply with the relevant provisions of the Code of Banking Practice. With respect to money lenders, there is currently a licensing arrangement where an application for a money lender licence is made to the Registrar of Companies (being appointed the Registrar of Money Lenders pursuant to the Money Lenders Ordinance) who is to lodge the application to the licensing court (magistrate sitting alone) which will hear and determine the application. In Hong Kong, therefore, there is already regulation at the level of AIs and money lenders. Besides, the Hong Kong S.A.R. Licensed Money Lenders Association has issued a Code of Money Lending Practice requiring its members to make sure that their debt collection agents do not engage in improper collection activities.
- 4.16 We note that in many instances the regulation of the debt collection industry overseas is done within the broader context of regulating trade practices or commercial agents, and a dedicated agency for licensing or regulating debt collectors alone is not that common. The corresponding administrative arrangements also reflect this. For example, in the United Kingdom and Queensland, Australia, the matter comes under the purview of the Office of Fair Trading, and in South Australia, the Office of Consumer and Business Affairs. In Victoria, Australia, on the other hand, the Magistrates' Court receives and considers applications for licensing from commercial agents, including debt collectors.

#### **Proposed Sharing of Consumer Credit Data (Recommendation 11 of the LRC Report)**

- 4.17 The Administration agrees with the LRC's recommendation that further sharing of consumer credit data should be kept under review with a view to further alleviating bad debts and abusive debt collection practices. In this regard, significant progress has been made since publication of the Report in July 2002.
- 4.18 One notable development on this front has been the sharing of positive consumer credit data in Hong Kong. In August 2002, in relation to the financial industry's proposal on the sharing of positive credit data, the Privacy Commissioner for Personal Data released a consultation document, proposing revisions to the Code of Practice on Consumer Credit Data issued under the Personal Data (Privacy) Ordinance.
- 4.19 Having examined the comments received, the Privacy Commissioner took the view that the proposal for the greater sharing of credit data, when

implemented with appropriate measures to safeguard privacy protection, would enhance the transparency of credit information and would be beneficial to the credit environment. This would in turn benefit both lenders and borrowers. The Privacy Commissioner accordingly revised the Code of Practice on Consumer Credit Data, pursuant to his power under section 12(3) of the Personal Data (Privacy) Ordinance, to give effect to the greater sharing of credit data starting from June 2003. The scope of positive data refers to information in relation to all lending extended to individuals other than residential mortgage loans.

- 4.20 There are multiple benefits arising from this initiative. First and foremost, it has enabled banks to improve their credit assessment, strengthened their credit risk management systems and allowed them better control over the growth in bad debt. This is conducive to the healthy development of the consumer credit market in the long term.
- 4.21 Furthermore, greater sharing of credit data promotes market competition which would be beneficial to consumers who would enjoy more options in the choice of credit facilities at a lower cost. An increasing number of banks have launched new products which charge interest based on the creditworthiness of individual customers. This will benefit borrowers with good credit standing. Without positive data sharing, this development is unlikely to have occurred in our market. Many banks have also indicated that greater sharing of positive credit data has enabled them to offer more competitive products to consumers.
- 4.22 As evident from the table below, the number of personal bankruptcy cases has been declining. This can be attributed to a number of factors, including improving economic conditions, more prudent lending policies by financial institutions, and better credit decisions by banks as a result of the sharing of positive consumer credit data.

<b>Year</b>	<b>Month</b>	<b>No. of personal bankruptcy cases</b>
<b>2003</b>	January	3193
	February	2640
	March	3119
	April	2710
	May	1989
	June	2014
	July	1521
	August	1908
	September	1683
	October	1936

<b>Year</b>	<b>Month</b>	<b>No. of personal bankruptcy cases</b>
	November	939
	December	1270
<b>2004</b>	January	1 700
	February	1 470
	March	1 518
	April	1 134
	May	1 042
	June	1 260
	July	999
	August	1 107
	September	1 005
	October	1 006
	November	869
	December	483

## **V. CONCLUSION**

- 5.1 The Administration is fully aware of the community's concern at problems associated with undesirable debt collection practices. At the same time, introduction of any industry-specific regulation will inevitably have repercussions on the trade and should only be done with full justifications. We have therefore been adopting a multi-disciplinary approach to addressing the various issues arising from and related to delinquent debts. Such issues extend well beyond the boundaries of law and order and legislative means alone will not be adequate. Any meaningful assessment must accordingly look beyond the unscrupulous debt collection behaviour, to such areas as the cause of delinquent debts, the welfare needs of those with debt problems and their family members, and the availability and efficiency of other means for creditors to recover outstanding debts owed to them.
- 5.2 In line with this holistic approach, the agencies concerned have already been taking proactive measures to tackle the problems associated with debts from different perspectives. For instance, the Judiciary's initiatives as outlined in paragraphs 3.17 to 3.22, though not specifically targeted at the problem of debt collection, would hopefully result in a more efficient and accessible judicial channel for creditors.
- 5.3 Looking at the root of the problem, there are a number of factors contributing to delinquent debts, one being the lack of positive consumer credit data to

enable financial institutions to make informed credit decisions. As described in paragraphs 4.17 to 4.22, the initiative of sharing of positive consumer credit data amongst financial institutions introduced in June 2003 has addressed this deficiency in the financial infrastructure. With banks making better and more informed credit decisions, it will help alleviate personal indebtedness problems, which in turn will reduce the incidents where banks or their agencies need to take action for the recovery of delinquent debts.

- 5.4 At the same time, the Administration is mindful of the welfare needs of those with debt problems. As stated in paragraphs 3.12 to 3.15, the Social Welfare Department, Housing Department and non-governmental organisations provide a wide range of services to those in need. Such services not only address the immediate financial and welfare needs of the debtors and their families, but can also help educate and prevent the debtors from engaging in further debts.
- 5.5 The Administration is grateful to the LRC for its recommendations in the Report. We have taken the opportunity to take stock of our current laws and practices. We will continue to adopt a multi-disciplinary mode in providing the necessary infrastructure, support, service and statutory safeguards to the various parties.

**Security Bureau  
September 2005**

**Extract from the LRC Report on the Regulation of Debt Collection Practices**

## **Chapter 11**

### **Summary of recommendations**

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(The recommendations of this report are to be found in Chapter 10)

**Recommendation 1 : The criminal offence of unlawful harassment of debtors and others (paragraphs 10.4 – 10.20)**

A criminal offence of harassment of debtors and others should be created, such that it would be an offence if a person, with the object of coercing another person to repay a debt –

- (a) harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are likely to subject him or members of his family or household or any other person to alarm, distress or humiliation;
- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
- (d) utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not.

Without affecting the generality of paragraph (a), provision should be made that if any person in making demands for payment sends to another a letter or any article which : (i) is, in whole or in part, of an indecent or grossly offensive nature; or (ii) conveys information which is false and known or believed to be false by the sender, this would also constitute harassment.

Provision should also be made for paragraph (a) to have no application in respect of anything done which is reasonable for the purpose of either securing the discharge of an obligation due, or believed to be due, or for the enforcement of any liability by legal process.

Further, that a person may be guilty of an offence by virtue of paragraph (a) above if he consents with others in the taking of such

action as is described in that paragraph, notwithstanding that his own course of conduct does not by itself amount to harassment.

Express provision should be made to ensure that harassment and representations conveyed by electronic means of communication are covered by the proposed offence.

**Recommendation 2 : Licensing (paragraphs 10.21 – 10.28)**

Debt collection agencies should be subject to a statutory licensing system under which it should be a criminal offence to collect debts as a business without a valid licence.

**Recommendation 3 : Commercial vs consumer debts (paragraphs 10.29 – 10.31)**

The proposed licensing regime should cover both consumer debts and commercial debts.

**Recommendation 4 : Licensing authority (paragraphs 10.32 – 10.34)**

The Administration should have due regard to the experience of other jurisdictions in determining the appropriate body to carry out the licensing of debt collectors and in devising an efficient and cost-effective licensing regime.

**Recommendation 5 : Collection agencies and collectors (paragraphs 10.35 – 10.38)**

The licensing requirement of the proposed statutory licensing regime should include individual debt collectors as well as debt collection agencies, but support staff of collection agencies who are not involved in communicating with any debtors, referees or their families and friends, would not require licensing. Communication in this context includes written, verbal, electronic and personal visits forms of communication.

**Recommendation 6 : Exemptions from licensing (paragraphs 10.39 – 10.46)**

The categories of creditors and persons listed below be exempted from the requirement to obtain a licence under the proposed licensing scheme for debt collectors:

- (i) a creditor collecting his own debt, provided he did not become a creditor by an assignment of the debt;

- (ii) a creditor who became a creditor by virtue of an assignment of debt, provided the assignment was made in connection with a transfer of business, other than a debt collecting business;
- (iii) legal officers, as defined in section 2 of the Legal Officers Ordinance (Cap 87);
- (iv) barristers acting in that capacity;
- (v) solicitors acting in that capacity;
- (vi) receivers, liquidators and trustees in bankruptcy;
- (vii) court bailiffs;
- (viii) authorized institutions, as defined in the Banking Ordinance (Cap 155).

Provision be made for particular organisations to be exempted from the licensing requirement by inclusion in a list in the legislation that is subject to amendment by a suitable body or official.

**Recommendation 7 : Collecting debts as a business or otherwise (paragraphs 10.47 – 10.48)**

Only a person or corporation carrying on business as a debt collector in Hong Kong, or advertising, announcing or holding itself out as so conducting itself, should require to be licensed under the proposed licensing scheme. The general law may be relied upon to determine what constitutes carrying on business in this context.

**Recommendation 8 : Criteria for licensing (paragraphs 10.49 – 10.57)**

An applicant for the granting or renewal of a debt collection licence should be required to satisfy the licensing authority that it, in the case of a corporate applicant, or he, in the case of an individual applicant, is a fit and proper person to engage in debt collection activities, having regard to all relevant circumstances, and in particular whether the applicant, and, in the case of a corporate applicant, his employees, agents or associates have –

- (a) contravened the offence of unlawful harassment of debtors and others, or any offence involving fraud or dishonesty, or violence;
- (b) committed any triad-related offences;
- (c) carried on business under a name which is misleading or otherwise undesirable; or
- (d) committed any breach of code of practice.

In addition, an individual debt collector should be required to be at least 18 years of age, and a resident of Hong Kong. As for a corporate applicant, it should be required to provide suitable training to its

collection staff and to formulate effective supervisory methods.

An appropriate appeal mechanism against the decision of the licensing authority should also be devised.

**Recommendation 9 : Statutory powers and duties (paragraphs 10.58 – 10.63)**

The licensing authority should be vested with statutory powers:

- to make inquiries regarding the applicant before issuing or renewing a licence and should have statutory powers to investigate;
- to refuse the granting or renewal of a licence and to suspend or revoke a licence;
- to inquire into any complaint or alleged contravention of the legislation or code of practice, and require any person to provide any information the licensing authority considers relevant;
- to apply to a court for an order to enter relevant premises to search, examine, remove, or take extracts from or obtain copies of any records, books, documents or things which are relevant.

Certain statutory duties should be imposed on debt collection agencies:

- to provide the licensing authority with reports of their financial affairs signed by auditors;
- to provide the auditors with access to books and records of the business;
- to maintain all their records, files, documents, etc created or received in their business for a prescribed period;
- to deposit all money collected from debtors in trusts accounts maintained in banks. This, however, does not preclude direct payment of funds by the debtor into the creditor's own account.

**Recommendation 10 : Code of practice (paragraphs 10.64 – 10.77)**

The licensing authority should be required to formulate a code of practice for debt collection following consultation with representative bodies of credit providers, debt collectors, consumers and other relevant bodies. Such a code should provide practical guidance on the

standard of conduct that individual and corporate debt collectors are expected to meet. The consequences of breach of the code should be formulated by the relevant authority following consultation as aforesaid, and having regard to the contents of the code. We further recommend that, in an appropriate case, breach of the code should entitle the authority to revoke, suspend or decline to renew the licence of the party in breach, and to impose other penalties such as reprimands and fines.

**Recommendation 11 : Consumer credit data (paragraphs 10.78 – 10.92)**

Whilst we welcome the progress made in terms of expanding the sharing of consumer credit data, the matter should be kept under review with a view to further alleviate bad debts and abusive debt collection practices.

Extract from the LRC Report on Stalking

## Chapter 10

### Summary of recommendations

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#### Recommendation 1

We recommend that the Administration should give consideration to reforming the law relating to domestic violence. (*Chapter 4*)

#### Recommendation 2

We recommend that:

- (a) a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence;
- (b) for the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress; and
- (c) a person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other. (*Chapter 6*)

#### Recommendation 3

We recommend that it be a defence for a defendant who is charged with the offence of harassment to show that:

- (a) the conduct was pursued for the purpose of preventing or detecting crime;
- (b) the conduct was pursued under lawful authority; or
- (c) the pursuit of the course of conduct was reasonable in the particular circumstances. (*Chapter 7*)

**Recommendation 4**

We recommend that the courts should take into account the rights and freedoms provided in Article 17 (privacy, family, home and correspondence), Article 19 (freedom of expression) and Article 21 (peaceful assembly) of the International Covenant on Civil and Political Rights when determining whether the pursuit in question was reasonable in the particular circumstances. *(Chapter 7)*

**Recommendation 5**

We recommend that:

- (a) a certificate issued by the Chief Executive or his designate stating that anything carried out by a specified person on a specified occasion related to security or the prevention or detection of serious crime should be conclusive evidence that the provisions of the anti-stalking legislation do not apply to the conduct of that person on that occasion; and
- (b) the term “serious crime” referred to in (a) above should be defined in the legislation with reference to the maximum sentence applicable to the offences that could be considered as falling within that description. *(Chapter 7)*

**Recommendation 6**

We recommend that:

- (a) a person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he knew amounted to harassment of the other, should be liable to a fine and to imprisonment for two years; and
- (b) a person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he ought to have known amounted to harassment of the other, should be liable to a fine and to imprisonment for 12 months. *(Chapter 8)*

**Recommendation 7**

We recommend that:

- (a) a court sentencing a person convicted of the offence of harassment may make an order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any other person, as the court thinks fit;
- (b) the restraining order may be made in addition to a sentence imposed on the defendant convicted of the offence of harassment, or in addition

to a probation order or an order discharging him absolutely or conditionally;

- (c) the restraining order may have effect for a specified period or until further notice;
- (d) the prosecutor, the defendant or any other person mentioned in the restraining order may apply to the court for it to be varied or discharged; and
- (e) a person who, without reasonable excuse, does anything which he is prohibited from doing by a restraining order should be guilty of an offence, which is punishable by imprisonment for 12 months. (*Chapter 8*)

### **Recommendation 8**

We recommend that the courts may require any person convicted of the offence of harassment to receive counselling, undergo medical, psychiatric or psychological evaluation, and receive such treatment as is appropriate in the circumstances. (*Chapter 9*)

### **Recommendation 9**

We recommend that:

- (a) a person who pursues a course of conduct which would have constituted the offence of harassment should be liable in tort to the object of the pursuit; and
- (b) the plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress. (*Chapter 9*)

### **Recommendation 10**

We recommend that:

- (a) where a civil court grants an injunction in an action for harassment, it should have the power to attach a power of arrest to the injunction;
- (b) a police officer should be able to arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached; and
- (c) the court dealing with the breach should have the power to remand the defendant in custody or release him on bail. (*Chapter 9*)

**Recommendation 11**

We recommend that:

- (a) where the court has not attached a power of arrest to the injunction, the plaintiff should be able to apply to the court for the issue of a warrant for the arrest of the defendant if the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction; and
- (b) if the defendant is arrested under such a warrant, the court dealing with the breach should have the power to remand him in custody or release him on bail. (*Chapter 9*)

**Recommendation 12**

We recommend that the Administration should give consideration to including the offences created under sections 70B and 119V of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) as specified offences under the Organized and Serious Crimes Ordinance (Cap 455). (*Chapter 9*)