

For information
on 26 February 2002

LegCo Panel on Financial Affairs

Recovery of Debts by Banks¹ from Personal Referees

I. Background

The issue of recovery of debts by banks from personal referees was raised at the meeting held between Members of the Legislative Council and the Sha Tin District Council (STDC) on 29 November 2001. STDC Members noted that many people had their names put down as referees by borrowers without their prior knowledge. In case of default by the debtors, these referees, among others, could become targets of debt recovery action and hence suffer from unnecessary harassment. They expressed the view that there was a need for the Government to review and strengthen its control and regulation of finance companies and debt collection agencies.

2. More specifically, the STDC Members recommended that the following measures should be considered by the Government:

- (a) on receiving complaints about illegal practices of debt collection agencies (DCAs), the relevant authorities should disclose the names of those banks and DCAs for public information in the hope that such activities would be curbed;
- (b) banks and credit-card issuing institutions should be required to take the initiative to contact the persons concerned to verify their consent to act as referees; and
- (c) DCAs should be required to keep a record of all debt collectors in their employment for easy checking.

II. Regulation of Debt Recovery Practices under the Code of Banking Practice 2001

¹ The HKMA has supervisory powers over institutions authorized under the Banking Ordinance, which include licensed banks, restricted licence banks and deposit-taking companies. In this paper, authorized institutions are generally referred to as banks for drafting purposes.

3. The Hong Kong Monetary Authority (HKMA) has been aware of public concern in relation to malpractice that may arise from debt recovery actions of banks. Therefore, the HKMA actively pursued with the industry the incorporation of appropriate provisions in the Code of Banking Practice (the Code) to curb malpractice in debt recovery actions, including those against personal referees, when the Code was first issued in 1997. These provisions were further strengthened when the Code was subject to a major review in 2001.

4. Under section 9.3 of the Code, banks should “require applicants for banking services to confirm that they have obtained the prior consent of the referees for their names to be used. If the applicant fails to give such confirmation, banks should not approach the referees.” Furthermore, section 9.4 of the Code provides that banks should not attempt to seek repayment of debt from a customer’s referees who are not acting as guarantors. Unlike a guarantor, there is no undertaking on the part of the referee to pay the debts of the borrower if the latter fails to do so.

5. Banks should not pass information about referees to their DCAs. If the referee is to be approached for information to help locate the debtor, this should be done by staff of the bank without causing nuisance to the referee (section 36.4).

6. In addition to regulating debt collection practices of banks or their DCAs, the Code contains other provisions requiring banks to have proper systems and procedures in place for the selection of DCAs and the monitoring of their performance, including their compliance with the Code. These include, among others, making unscheduled visits to the DCAs to inspect their operation; having effective procedures to handle and investigate debt collection complaints received; and in serious cases, terminating the relationship with a particular DCA. The Code further encourages the sharing of information among banks as to the performance, approach, attitude, behaviour, etc. of DCAs.

7. DCAs may be employed by other credit providers which fall outside the supervision of the HKMA. In order to help promote the proper use of DCAs by these other institutions, the HKMA has written to the Finance Houses Association and the Money Lenders Association to encourage them to adopt the revisions of the Code into their respective industry Codes².

² The Finance Houses Association has a Code of Finance House Practice which basically mirrors the Code of Banking Practice and the Money Lenders Association intends to issue a similar one shortly.

8. The HKMA expects all banks to comply with the Code and will continue to monitor compliance as part of its regular supervision. To step up its efforts in this aspect, the HKMA has introduced a new self-assessment framework and banks are required to file an annual assessment report to the HKMA starting in September 2002. In addition, focussed on-site examinations will be conducted if any problem areas are identified.

III. Government Response to STDC's Recommendations

Disclosing the names of banks and DCAs

9. The HKMA has set up a complaint hotline (2878 1378) to handle complaints against debt collection practices of banks or their DCAs. Upon receipt of the complaints, the HKMA would promptly follow up with the banks concerned for investigation and any required remedial actions. The HKMA would welcome, and pursue with the banks concerned, reports of any cases of apparent breach of the provisions of the Code of Banking Practice relating to referees. However, the HKMA does not have any specific power under the Banking Ordinance to disclose the names of individual banks against which complaints are made³.

10. Nonetheless, we consider that disclosing the names of DCAs which have engaged in abusive debt collection practices would help to improve the overall situation. It may also be useful to banks in their selection and appointment of DCAs. In this connection, the Law Reform Commission's Sub-Committee on Debt Collection has been considering the issue of regulation of DCAs over the past few years. It has issued a consultation paper on this subject and recommended, amongst others, that a new criminal offence of harassment of debtors should be created, and that DCAs should be licensed by a new licensing authority. Should such a regulatory authority be established in the future, the power to publicly reprimand DCAs could be included as one of its sanctions.

Verification procedures for referees' consent

11. It is recognised that the existing practice of relying solely upon the customer to undertake that consent has been obtained from the personal referees may leave some room for abuse by the credit applicant. However, the situation does not seem to be very serious so far. In the past six years, only 36

³ In general, the Monetary Authority is required to maintain secrecy under section 120 of the Banking Ordinance, subject to the exceptions set out in that section.

complaints out of a total of 1,741 received by the HKMA hotline were made by referees (Annex). The number decreased from a peak of 22 recorded in 1996 to 3 cases in 2001, partly reflecting the effectiveness of the Code which was first issued in 1997. However, in view of public concern on safeguarding the interests of the personal referees, the HKMA will consider taking up the suggestion of the STDC with the Code of Banking Practice Committee⁴, in order to examine whether and what additional verification procedures should be required for referees' consent.

Keeping record of all debt collectors

12. Similarly, this issue may be addressed in the context of the Law Reform Commission's recommendation on setting up a licensing authority.

Hong Kong Monetary Authority
11 February 2002

Enclosure: Complaints received by the HKMA's Debt Collection Hotline

⁴ The Code of Banking Practice Committee is newly established by the industry Associations with representation from the HKMA. It is responsible for interpreting, reviewing and further developing the Code.

Complaints received by the HKMA's Debt Collection Hotline

(a) Analysed by nature of complaints

	Nuisance⁵	Intimidation⁶	Violence⁷	Defamation⁸	Total
1996 ⁹	200	70	10	2	282
1997	179	31	8	0	218
1998	245	46	10	0	301
1999	127	35	8	0	170
2000	252	66	21	0	339
2001	296	126	9	0	431
	1,299	374	66	2	1,741

(b) Analysed by status of complainants

	Debtors	Family members or friends of debtors	Non-related parties¹⁰	Referees	Total
1996 ¹¹	95	147	18	22	282
1997	104	98	12	4	218
1998	173	105	19	4	301
1999	108	57	4	1	170
2000	231	83	23	2	339
2001	272	119	37	3	431
	983	609	113	36	1,741

⁵ Nuisance – such as phone calls with foul language, persistent phone calls, anonymous phone calls, phone calls at unreasonable hours, frequent visits, pestering the debtor's referees, family members, friends, employer, or colleagues for information about the debtor's whereabouts, putting up posters/writing on the walls (i.e. spray paint) in the vicinity of the debtor's residence.

⁶ Intimidation – such as making abusive or threatening remarks to the debtor/the complainant (e.g. threat to set fire, ask the debtor/complainant to take care of personal safety, etc).

⁷ Violence – such as jamming the door lock, kicking the door or gate with great force.

⁸ Defamation – such as publicising the debtor's indebtedness in the vicinity of the debtor's residence or workplace.

⁹ Covering April – December only since the hotline was established in April 96.

¹⁰ Non related parties - Ex-tenant, ex-resident, debtor's employer or colleagues.

¹¹ See Note 5.