

(Draft)
**Extract of Minutes of meeting between Legislative Council Members
and Sha Tin District Council Members
on 29 November 2001**

Action

A. Recovery of debts from referees

2. Given that lending activities were increasingly common in Hong Kong and the procedures for obtaining loans from some finance companies were very simple, STDC Members said that quite a number of people had their names put down as referees by borrowers without their knowledge. In case of default by the borrowers, their families and friends, and even the referees could become targets of debt recovery and suffered from unnecessary harassment. STDC Members were concerned that there was a need for the Government to review and strengthen its control and regulation on finance companies and debt collection agencies.

3. STDC Members noted the existing mechanism for regulation and the latest developments in this respect. According to the non-statutory Code of Banking Practice (the Code), the role of referees was confined to providing information about the borrowers. Referees had no legal or moral obligation to repay any liabilities of the borrowers unless they had entered into a formal agreement to act as guarantors. Recently, the Hong Kong Monetary Authority (HKMA) had reviewed the Code and put forward a number of recommendations to strengthen the regulation on the use of debt collection agencies by banks and relevant institutions. In view of the public's concern about the improper practices adopted by some debt collection agencies to recover sums due, the Law Reform Commission (LRC) had also set up a subcommittee in 1998 to study the matter. The subcommittee released a consultation paper on the "Regulation of Debt Collection Practices" in July 2000 recommending a range of measures to address the problem, including the creation of a new criminal offence of harassment of debtors. The subcommittee was currently reviewing its recommendations in the

light of the comments received and it was expected that a final report would be issued by mid-2002.

4. STDC Members considered that before the said criminal offence was created, the Administration should put in place other measures to curb the practices of illegal harassment used by debt collection agencies. Their specific recommendations were as follows:

- (a) On receiving complaints about illegal practices of debt collection agencies, the regulatory authority should disclose the names of those banks and debt collection agencies 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 and contact the persons concerned to verify their consent to act as referees; and
- (c) Debt collection agencies should be required to keep a record of all debt collectors under their employment for easy checking.

5. A STDC Member was also concerned that debt collection agencies would always resort to protecting privacy as an excuse for not disclosing any information about their clients. As such, debtors who were harassed would have no way to approach the banks or institutions involved and settle the matter with them directly. He thus considered that the subcommittee formed under LRC should also examine the relevant issues.

6. LegCo Members agreed that the problems and specific recommendations raised by STDC Members should be referred to the Panel on Financial Affairs for follow-up when the Code was discussed so that such views could be reflected to HKMA directly. The Convenor also informed STDC Members that on a wider

perspective, the Panel on Financial Affairs would also pursue with HKMA the ways to strengthen protection for users of banking services.

CAS(C)

7. Mr LAU Kong-wah considered that as both LRC's study and the amendments to the Code were not specifically focussed on the problem of harassment on the referees, the specific cases mentioned by STDC Members should be referred to the Complaints Division for follow-up. A case conference with HKMA and other relevant departments should be arranged to discuss the various issues involved. Other LegCo Members agreed to Mr LAU's suggestion. In this connection, the Convenor asked STDC Members to supply the Secretariat with some representative cases for illustration purpose. She requested STDC Members to delete all sensitive personal data in such cases before passing them to STDC Chairman for onward transmission to the Secretariat.

STDC
Chairman

CAS (C)

8. A STDC Member pointed out that many advertisements were posted by debt collection agencies in public areas of public rental housing (PRH) estates such as lift lobbies. However, the Housing Department (HD) could only remove such notices and it had no authority to impose any penalties. In this regard, Mr LAU Kong-wah considered that HD and the private management agencies should be charged with the responsibility of taking enforcement actions. LegCo Members agreed that the issue would also be dealt with in the same case conference.

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2001年11月29日
立法會議員與沙田區議會議員舉行會議的紀要擬稿
(節錄)

經辦人／部門

A. 向諮詢人追收債務

2. 沙田區議會議員表示，鑒於現時香港借貸活動日趨普遍，一些財務公司的借貸手續過分簡單，致令不少人在不知情的情況下被貸款人填報為諮詢人。若貸款人沒有履行還款承諾，其家人、朋友，甚至諮詢人均可能成為追討還款的對象，備受不必要的滋擾。沙田區議會議員關注到，政府有需要因此檢討及加強對財務公司和收數公司的監管。

3. 沙田區議會議員獲告知目前的規管情況及有關的最新進展。根據不具法律約束力的《銀行營運守則》(下稱“該守則”)所訂，諮詢人的作用僅限於向有關機構提供貸款人的資料。除非諮詢人正式成為擔保人，否則諮詢人在法律上或道義上均沒有責任替貸款人償還債務。香港金融管理局(下稱“金管局”)最近曾檢討該守則，提出了多項建議，以加強對銀行及有關機構聘用收數公司的監管。此外，鑒於公眾關注部分收數公司採用不當手法追討欠款，法律改革委員會(下稱“法改會”)在1998年成立了一個小組委員會進行研究。在2000年7月，該小組委員會發表《規管收債手法》諮詢文件，提出多項措施以解決此問題，包括建議訂立一項騷擾債務人的新刑事罪行。小組委員會現正因應接獲的意見檢討各項建議，預計會在2002年年中發表最後報告。

4. 沙田區議會議員認為在訂定新的刑責之前，政府當局應採取其他方法，遏止收數公司的不法滋擾行為。他們提出的具體建議包括：

- (a) 當局若接獲收數公司使用不法手段的投訴，應公開有關銀行及收數公司的名稱，希望藉輿論壓力使其收儉；
- (b) 要求銀行或發咭公司主動聯絡有關人士，核證其是否同意成為諮詢人；及
- (c) 規定收數公司備存收數員的紀錄，方便查證。

5. 一名沙田區議會議員亦關注到，收數公司往往以私隱為理由不肯透露委託公司的資料，令受到滋擾的欠債人無所悉從，無法向有關銀行或機構清楚作出交代。他認為，法改會的小組委員會亦應研究有關問題。

總主任(1)6 6. 立法會議員同意，沙田區議會議員在席上提出的問題及各項具體建議應轉交財經事務委員會在討論《銀行營運守則》時一併跟進，以便將有關意見直接向金管局反映。召集人亦告知沙田區議會議員，在較廣闊的層面上，財經事務委員會日後亦會與金管局討論如何加強對銀行服務使用者的保障。

總主任(申訴)
沙田區議會主席 7. 劉江華議員表示，鑒於法改會的研究和《銀行營運守則》的修訂均非以諮詢人被滋擾為對象，他認為應將沙田區議會議員所接獲的具體個案轉介申訴部，以便安排與金管局及有關部門舉行個案會議，討論所涉及的各项問題。其他立法會議員表示贊同。召集人遂要求沙田區議會議員整理一些有代表性的個案，並將當中所涉及的個人資料刪除，然後經由沙田區議會主席轉交秘書處作出跟進。

總主任(申訴) 8. 一名沙田區議會議員指出，公共屋邨如電梯口位置經常有收數公司的廣告張貼，但房屋署(以下簡稱“房署”)只能加以清理而沒有權力作出懲處。關於此事，劉江華議員認為應責成房署及屋邨管理公司採取跟進行動。立法會議員同意在上述個案會議上一併討論此問題。

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