

**Motion Debate on
“Legislating to regulate debt collection practices”
at the Legislative Council Meeting on 18 June 2008**

Progress Report

Purpose

At the sitting of the Legislative Council on 18 June 2008, the motion on “legislating to regulate debt collection practices” was passed. The motion invites the Government to regulate, by way of legislation, debt collection agencies and their debt collection practices, so as to protect the public against harassment and threat in their daily life. This paper updates Members on the follow-up actions taken by the Administration.

Enhanced Law Enforcement

2. The Administration is well aware of the community’s concern about problems related to undesirable debt collection practices. A number of statutory provisions are already in place to combat undesirable debt collection practices (such as blackmail, criminal intimidation, criminal damage and common assault) commonly employed by debt collection agencies. The Police will continue to strictly enforce the law, adopting an intelligence-led approach in conducting in-depth investigation into the cases, sparing no effort in combating illegal debt collection practices.

3. To enhance the effectiveness of law enforcement, the Police will also devise targeted measures to combat different types of undesirable debt collection practices. For example, in view of the difficulty in collecting evidence to prove the offence of “unlawful detention” in detention cases involving debt collection problems, Tuen Mun Police District has, since April this year, adopted a specially designed questionnaire to ensure that statements provided by debtors are concrete and detailed, so as to enable sufficient evidence to be obtained for taking prosecution action against debt collectors suspected to have violated the law. Moreover, in June this year, in the context of a case involving a debtor involuntarily disclosing information concerning himself and his family members to debt collectors, the Tuen Mun Police District has successfully charged two debt collectors for “unlawful detention” and “theft”. The dedicated team coordinated by the Police Headquarters responsible for offences related to debt collection will make reference to

the successful experience in Tuen Mun Police District and consider recommending suitable preventive measures and operation strategies to other Police Districts.

4. The Police will also continue to combat illegal money lending and debt collection activities at source. Recently, a number of agencies claiming to be legal money lenders displayed loan advertisements on pull-up display stands in public places. The Police suspected that the agencies concerned were actually intermediaries, referring borrowers to registered money lenders to apply for loans instead and charging them costly handling fees in the process. Targeting on this modus operandi, the Police will, where appropriate, consider taking enforcement action against the intermediaries concerned in accordance with the offence stipulated under section 26(3) of the Money Lenders Ordinance (Cap. 163) regarding publishing advertisement which does not clearly show the number of the licence of the money lender. The Police will also conduct in-depth investigation into those agencies concerned to ascertain whether they had engaged in loansharking activities. With the vigorous actions taken by the Police, the number of cases involving similar modus operandi has recently decreased considerably.

5. The number of debt collection-related reports for both crime cases and non-crime harassment cases decreased continuously since 2005. For the first six months of this year, the Police received 889 debt collection-related crime reports; during the same period, 6 895 non-crime harassment reports were received. Compared to the same period last year, debt collection-related crime reports and non-crime harassment reports dropped by 6.2% and 4.2% respectively while the overall figure dropped by 4.4%.

Administrative measures

6. The relevant regulatory bodies will continue to take effective measures to narrow the scope of survival for unscrupulous debt collection agencies. As part of its regular supervision, the Hong Kong Monetary Authority (HKMA) monitors the compliance of authorized institutions with the Code of Banking Practice which requires that the debt collection agencies they employed should not collect debt by improper means. According to the figures submitted to the HKMA by authorized institutions, the number of complaints received against their debt collection agencies decreased steadily from 717 in 2003 to 103 in 2007 while the number of complaints received during the first half of 2008 is 50, which shows that the relevant complaint figures have stayed at a low

level in recent years. This demonstrates the effectiveness of measures adopted by authorized institutions.

7. Furthermore, the Securities and Futures Commission will continue to request licensed corporations to observe its guidelines on debt collection practices. The Companies Registry will continue to carefully process every application for and renewal of money lender licence. Moreover, the Hong Kong S.A.R. Licensed Money Lenders Association will continue to require its members to observe its Code of Money Lending Practice in their operation to ensure that their debt collection agencies do not engage in improper debt collection activities.

Legislation

8. After further detailed deliberation, the Administration considers that the introduction of a licensing system through legislation will not eradicate deliberate acts of collecting debts by illegal means or debt collectors adopting such practice. However, the Constitutional and Mainland Affairs Bureau (CMAB) is actively following up on the recommendations of the Law Reform Commission's Report on Stalking. The need to regulate harassment in relation to debt collection activities will be considered in the context of examining the feasibility of legislating against stalking. CMAB will report to the Panel on Constitutional Affairs of the Legislative Council after deciding on the way forward.

9. The Security Bureau will continue to closely monitor developments and, having regard to the result of CMAB's study of the Report on Stalking aforementioned, consider whether there is a need to further adopt other complementary means or regulatory measures to ensure that the problems arising from debts can be even better handled.

Security Bureau
August 2008