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22 June 2016

Clerk to the Establishment Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Miss Sharon LO)

Dear Miss LO,

**Establishment Subcommittee
Follow-up to the meeting on 8 June 2016
EC(2016-17)10**

In response to the request by Members at the Establishment Subcommittee (ESC) meeting held on 8 June 2016, I write to provide a copy each of the following for members' reference –

- (a) an extract of the Code of Banking Practice issued by the industry associations and endorsed by the Hong Kong Monetary Authority on the requirements relating to debt collection by authorized institutions and their debt collectors (see **Annex A**); and

- (b) the relevant licensing conditions on licensed money lenders imposed by the Licensing Court under the Money Lenders Ordinance (Cap. 163) on the requirements relating to debt collection by them and their debt collectors (see **Annex B**).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Paul Wong', written over a horizontal line.

(Paul WONG)

for Secretary for Financial Services and the Treasury

C.C.

Hong Kong Monetary Authority
Financial Services and the Treasury
Bureau (Treasury Branch)

(Attn: Mr Leonard TSO)

(Fax: 2878 1396)

(Attn: Ms Isabel CHENG)

(Fax: 2147 5236)

Chapter 5 - Recovery of Loans and Advances

42. Application

This chapter applies to debt collection activities of institutions, whether undertaken directly by institutions or through third party debt collection agencies.

43. Debt Collection Activities

- 43.1. It is essential that debt collectors, no matter whether they are the staff of the institutions who are assigned the duty of debt collection or the staff of third party debt collection agencies appointed by the institutions to collect debts on their behalf, should act within the law, refrain from action prejudicial to the business, integrity, reputation or goodwill of the institutions for whom they are acting and observe a strict duty of confidentiality in respect of customer information.
- 43.2. Debt collectors must not resort to intimidation or violence, either oral or physical, against any person in their debt recovery actions. In addition, they should not employ harassment or improper debt collection tactics such as the following -
 - (a) Harassment tactics
 - (i) putting up posters or writing on the walls of the debtor's residence or other actions designed to humiliate the debtor publicly;
 - (ii) pestering the debtor with persistent phone calls;
 - (iii) making telephone calls at unreasonable hours; and
 - (iv) pestering the debtor's referees, family members and friends for information about the debtor's whereabouts.
 - (b) Other improper tactics
 - (i) using false names to communicate with the debtor;
 - (ii) making anonymous calls and sending unidentifiable notes to the debtor;
 - (iii) making abusive or threatening remarks to the debtor; and
 - (iv) making false or misleading representation with an intent to induce the debtor to make a payment.
- 43.3. Institutions and their debt collection agencies should not try to recover debts, directly or indirectly, from third parties including referees, family members or friends of the debtors if these persons have not entered into a formal contractual agreement with the institutions to guarantee the liabilities of the debtors. Institutions should issue written instructions to their debt collection agencies, or include a clause in the contract with their debt collection agencies, to this effect.
- 43.4. Institutions should enter into a formal, contractual relationship with their third party debt collection agencies. Institutions should specify, either in the contract or by means of written instructions, that the debt collectors employed by the debt collection agencies should, among other things, observe the requirements stated in sections 43.1, 43.2 and 43.3 above.
- 43.5. The contract between institutions and their debt collection agencies should make it clear that the relationship between the institution and the debt collection agency is one of principal and agent. Institutions should remain accountable to customers for any complaints arising out of debt collection by third party debt collection agencies and should not disclaim responsibility for misconduct on the part of the debt collection agencies. Institutions should specify in their contract

with debt collection agencies that the debt collection agencies should not subcontract the collection of debts to any other third parties.

- 43.6. Institutions intending to use third party debt collection agencies should specify in the terms and conditions of credit or card facilities that they may employ third party agencies to collect overdue amounts owed by the customers. Institutions which reserve the right to require customers to indemnify them, in whole or in part, for the costs and expenses they incur in the debt recovery process should include a warning clause to that effect in the terms and conditions.
- 43.7. Institutions should not pass information about referees or third parties other than debtors or guarantors to their debt collection agencies. If the referee is to be approached for information to help locate the debtor or guarantor, this should be done, without causing nuisance to such third parties, by staff of the institution.
- 43.8. Institutions should give the customer advance written notice (sent to the last known address of the customer) of their intention to commission a debt collection agency to collect an overdue amount owed to the institution. The written notice should include the following information -
 - (a) the overdue amount repayable by the customer;
 - (b) the length of time the customer has been in default;
 - (c) the contact telephone number of the institution's debt recovery unit which is responsible for overseeing the collection of the customer's debt to the institution;
 - (d) the extent to which the customer will be liable to reimburse the institution the costs and expenses incurred in the debt recovery process (if the institution requires the customer to indemnify it for such costs and expenses); and
 - (e) that the customer should in the first instance report improper debt recovery actions taken by the debt collection agency to the institution.
- 43.9. Institutions should not engage more than one debt collection agency to pursue the same debt in one jurisdiction at the same time.
- 43.10. Institutions should require their debt collection agencies, when collecting debts, to identify themselves and the institution for whom they are acting. Institutions should issue authorization documents with no account details to their debt collection agencies which should be presented to the debtor upon request for identification purposes.
- 43.11. Institutions should promptly update the amount of repayment(s) made by customers and establish effective communication with their debt collection agencies to update so that the debt collection agencies will stop immediately all recovery actions once the debts are settled in full by the customers.
- 43.12. If a customer owes several debts to more than one institution that are being collected by the same debt collection agency, the customer has the right to give instructions to apply repayment to a particular debt.
- 43.13. Institutions should stop their debt collection activities on a debtor once they become aware that a bankruptcy order has been issued in relation to the debtor.
- 43.14. Where the debt collection process is ongoing, the institution should as far as practicable provide periodic reminders to the customer concerned of the overdue amount repayable by the customer.

44. Management of Debt Collection Agencies

- 44.1. Institutions should have proper systems and procedures in place for the selection of third party debt collection agencies and the monitoring of their performance. These systems and procedures should be subject to regular review and should consist of the following essential elements -
- (a) a review of the background information of the debt collection agency including a company search to identify the owners and directors of the debt collection agency;
 - (b) a basic assessment of the financial soundness of the debt collection agency;
 - (c) a site visit to ascertain the business address of the debt collection agency;
 - (d) an evaluation of the operation of the debt collection agency; and
 - (e) in the case of appointing a new debt collection agency, a procedure to obtain references from at least two of the existing clients (preferably authorized institutions) of the agency.
- 44.2. Institutions should encourage their debt collection agencies to aspire to the highest professional standards and, where appropriate, to invest in suitable systems and technology.
- 44.3. Debt collection agencies should not be given a free hand as to recovery procedures. Institutions should establish effective procedures to monitor continuously the performance of their debt collection agencies, particularly to ensure compliance with the provisions in sections 43.1, 43.2 and 43.3 above.
- 44.4. Institutions should evaluate on a regular basis whether the charges of the debt collection agencies employed by them are reasonable having regard to the prevailing market practices. They should assess the reasonableness of any charge before passing it on to the customer concerned.
- 44.5. Institutions should require debt collection agencies to inform customers that all telephone communication with customers will be tape recorded and the purpose of doing so, and to keep records of all other contacts with customers. Such records should include information on the debt collector making the contact; the date, time and place of contact; and a report on the contact. Both the tape and the records should be kept for a minimum of 30 days after the contact is made.
- 44.6. Institutions should make unscheduled visits to the agencies to inspect their professionalism, operational integrity, the involvement of suitably trained personnel and the adequacy of resources to cope with the business volumes assigned to them and to ensure agencies' compliance with their contractual undertakings.
- 44.7. Institutions should have established procedures to handle complaints received from debtors. They should carry out a careful and diligent inquiry into the complaint to check whether there is any misconduct on the part of the debt collection agency and whether there is any violation of the requirements contained in this Code. Institutions should require debt collection agencies to take appropriate remedial actions if necessary.
- 44.8. Institutions should maintain a register of complaints about improper actions taken by their debt collection agencies and should respond promptly to the complainants after investigation.
- 44.9. Institutions should not delegate authority to debt collection agencies to institute legal proceedings against customers without the institutions' formal approval.
- 44.10. Where institutions are aware that their debt collection agencies perform similar functions for other institutions, the sharing of information as to their performance, approach, attitude, behaviour etc. is encouraged.
- 44.11. Institutions should bring apparently illegal behaviour by debt collection agencies to the attention of the Police. Institutions should also consider whether to terminate the relationship with a debt collection agency if they are aware of unacceptable practices of that agency or breaches of its contractual undertakings.

Annex B

- (a) The money lender and his debt collectors shall not try to recover debts, whether directly or indirectly, from anyone unless such person is in law indebted to him.
- (b) The money lender shall take all practicable steps and measures to ensure that personal data collected in the course of his business are protected against unauthorized or accidental access, processing, erasure or other use by any debt collectors, and shall at all times comply with the Personal Data (Privacy) Ordinance, Cap 486, Laws of Hong Kong, in the collection, use, holding and processing of such information or personal data.
- (c) The money lender and his debt collectors shall not, while trying to locate the whereabouts of debtors, harass anyone, adopt unlawful or improper debt collection practices.
- (d) The money lender shall, so far as reasonably practicable, maintain and monitor proper systems and procedures for handling complaints and/or inquiries relating to the loans lent by him in the ordinary course of business and the debt collection activities arising therefrom.
- (e) The money lender shall, so far as reasonably practicable, keep updated and accurate records of the debt collection activities of his debt collectors during the term of the licence.