

**For information on  
16 March 2004**

**Legislative Council Panel on Security**

**The Law Reform Commission's Report on  
"The Regulation of Debt Collection Practices"**

**Purpose**

This paper summarizes the recommendations of the report of the Law Reform Commission (LRC) entitled "The Regulation of Debt Collection Practices" (the report) released in July 2002, and informs Members of progress of the Administration's consideration of the recommendations.

**Background**

2. At present, a number of legislative provisions are already in place to combat illegal practices employed by debt collection agencies. These cover, inter alia, offences of intimidation, assaults with intent to cause certain acts to be done or omitted, destroying or damaging property and threats to destroy or damage property under the Crimes Ordinance; blackmail under the Thefts Ordinance; sending letters threatening to murder and forcible taking or detention of persons under the Offences Against the Person Ordinance.

3. 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, specifies that authorised institutions (AIs) should prohibit their debt collection agencies from collecting debts by harassment or other improper means. Hong Kong Monetary Authority (HKMA) monitors AIs' compliance with the Code as part of its regular supervision. Since March 2002, all AIs are required to submit a quarterly return on the number of complaints received against the debt collection agencies that they employ, so as to encourage AIs to tighten up their monitoring of debt collection agencies.

4. In 1998, the LRC appointed a sub-committee comprising representatives from the HKMA, Privacy Commissioner for Personal Data, Security Bureau (SB) and the Police 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. The sub-committee released a public consultation paper in July 2000. The

LRC subsequently published the report in July 2002. No further public consultation on the subject has been conducted since.

### **Report Recommendations**

5. The key recommendations of the LRC report are as follows -
- (a) harassment offence - a criminal offence of harassment of debtors and others should be created;
  - (b) licensing regime - 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;
  - (c) licensing authority – a licensing authority should be established with various statutory powers and duties in relation to the issuance, renewal, suspension and revocation of licences;
  - (d) code of practice – the licensing authority should be required to formulate a code of practice to provide guidance on the standard of conduct of debt collectors; and
  - (e) consumer credit data – sharing of consumer credit data should be kept under review with a view to further alleviating bad debts and abusive debt collection practices.

### **Consideration of the LRC report**

6. Relevant bureaux and departments, including SB, Financial Services and the Treasury Bureau, HKMA and the Police are studying the LRC report's recommendations. More specifically, we are looking into the following areas –

- (a) Debtor-creditor relationship - We recognise that credit providers and their agents are entitled to take reasonable steps to ensure that debtors meet their obligations. This is a necessary incident of the debtor-creditor relationship without which prudent credit providers would be discouraged from providing credit. An appropriate balance should be struck between the legitimate needs of creditors to collect debts with the rights of debtors not be subject to unreasonable

pressure and of third parties not to be unduly disturbed.

- (b) The case for legislation – In determining whether a case for legislation exists, we need to consider whether it is practicable to define sufficiently and clearly a particular form of behaviour in law so as to criminalise it, and whether any scheme to be devised is capable of effective implementation. For instance, the LRC's proposal of criminalising harassment would require a clear distinction between abusive and unacceptable debt collecting behaviour on the one hand, and reasonable steps to recover debts from uncooperative debtors on the other. As acknowledged by the LRC in the report, however, what constitutes harassment may vary according to the specific circumstances of each individual case. In addition, as set out in the LRC report, despite the availability of existing criminal law, many crimes involving debt collection are not reported to the Police. Debtors and victims of the reported cases may also be reluctant to co-operate with the Police. The extent to which a new harassment offence could overcome these enforcement difficulties should be carefully considered.
- (c) Impact on existing / prospective business operators - According to the LRC report, there are only about 100 to 150 debt collection agencies in Hong Kong. Imposing a licensing regime on such a small number of agencies could mean a relatively high compliance cost. We need to carefully assess the regulatory impact of the proposed licensing regime on legitimate debt collection agencies, so as not to inappropriately or unnecessarily inhibit the development of the industry.
- (d) Guidelines and code of practice - As pointed out above, the Hong Kong Association of Banks has already issued the Code of Banking Practice to specify that AIs should prohibit their debt collection agencies from employing abusive debt collection practices. We need to consider whether another set of code is required and, if so, the interface between the two sets of guidelines.

## **Way Forward**

7. The Administration is mindful of public concern over abusive debt

collection practices. We are now carefully studying the recommendations in the LRC report, taking into account the various considerations set out in paragraph 6. In the meantime, we will continue to enforce existing laws to combat illegal practices in debt collection.

**Security Bureau**  
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