

For information

Legislative Council Panel on Security

Regulation of Debt Collection Practices

Purpose

As requested by Members at the Security Panel Meeting held on 10 April 2008, this paper explains the existing measures for regulating debt collection practices.

Existing Criminal Sanctions and Law Enforcement

2. The Administration appreciates the public's concern about debt collection practices involving harassment, and has always attached importance to combating illegal debt collection activities. At present, a number of statutory provisions are in place to effectively combat undesirable debt collection practices employed by debt collection agencies. The offences covered by these provisions are set out at the **Annex**.

3. The Police have been strictly enforcing the law. They have spared no effort in combating illegal debt collection practices and in carrying out intelligence-led, in-depth investigation into cases. They have also set up a dedicated team on crimes relating to debt collection to formulate preventive measures and operational strategies, etc. In addition, the Police have joined hands with other government departments to deal with matters relating to undesirable debt collection practices.

4. The Police have devised procedures for the handling of debt collection-related cases. Cases that involve criminal offences (such as criminal damage or intimidation) will be referred to the Criminal Investigation Teams for investigation. Enforcement actions will be taken depending on the circumstances and prosecutions will be instituted in accordance with the law. "Non-crime reports" are classified into "low threat" and "high threat" cases. Although "high threat" reports do not involve any criminal offences, as the debts are suspected to have arisen from illegal activities (e.g. from gambling or imposition of exorbitant handling charges) or the debt collection agencies have a triad

background, the activities of the debt collection agencies may later develop into criminal activities. Thus, same as crime cases, they are referred to the Criminal Investigation Teams for investigation.

5. Most of the “non-crime reports” are “low threat” cases and do not involve criminal offences. The classification of these reports is reviewed by an officer at the rank of Chief Inspector or above in the district concerned to ensure that the classification is correct. Although such cases do not involve criminal elements and hence no criminal investigation is carried out, police officers on patrol in the district will pay particular attention to the relevant locations. If any special development (e.g. when it is suspected the case may evolve into illegal activities) comes to their attention, they will make a report to their seniors. An officer at the rank of Chief Inspector or above will review the case to see if it is necessary to adjust the classification of the case and conduct appropriate checks or enforcement actions. Whenever there is suspicion that a case may develop into one involving criminal element, the Criminal Investigation Teams will investigate the case. Furthermore, even if it is confirmed after investigation that the debt collection practices adopted by the debt collector do not involve any illegal activities, the Police will mediate where necessary so as to prevent the matter from deteriorating or developing into any unlawful activity.

6. In addition, since many of the crime cases involving debt collection are related to triads or loanshark syndicates, the Police will, where necessary, carry out intelligence-led investigations and conduct undercover operations to gain knowledge about the mode of operation of illegal syndicates or illegal debt collection activities and to collect evidence to combat illegal activities. Moreover, as many triad activities involve cross-boundary crimes, the Police and their counterparts in Macau and the Mainland carry out anti-triad operations, including operations targeting loansharking and illegal debt collection activities, from time to time.

7. The effectiveness of the relevant legislation and enforcement actions often hinges on the willingness of debtors and victims of the reported cases to cooperate with the Police. If the victims are unwilling to report the case, provide information or identify the culprits for various reasons (such as not wishing to disclose their debt problems or the circumstances leading to the debt to their families, business associates or others), the effectiveness of the existing criminal law will be undermined, and it will be difficult for the Police to continue with the investigation or

initiate prosecution. Therefore, the Police encourage the victims to report their case and to cooperate with the Police.

8. In addition, in order to crack down on illegal debt collection, the Police appeal to the public through the television programme “Police Report” and distribute promotional leaflets in residential properties. The Police also liaise with the management companies of public housing estates and private estates, and appeal for their assistance in preventing loanshark syndicates from carrying out promotional activities or putting advertisements within their estates or residential buildings. Besides, the Police also liaise with the management or security company of the estates where individual debtors reside so that they will stay alert and prevent debt collection agencies from carrying out any possible illegal activities in their estates.

Existing Administrative Measures

9. Apart from combating undesirable debt collection practices through law enforcement, there are various administrative measures governing debt collection practices. For instance, the Code of Banking Practice, issued by the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies, provides that authorized institutions should strictly prohibit the debt collection agencies they employ from collecting debts by harassment or any improper means. If the debt collection agencies contravene this requirement, authorized institutions should consider terminating their relationship with the agencies. The Hong Kong Monetary Authority (HKMA) monitors authorized institutions’ compliance with the Code in the course of its regular supervision of the industry. Since March 2002, the HKMA has requested all authorized institutions to submit a quarterly return on the number of complaints received against their debt collection agencies. Since the introduction of this reporting arrangement, the number of complaints against debt collection agencies employed by authorized institutions decreased from 717 in 2003 to 103 in 2007. This indicates that authorized institutions have closely monitored the conduct of their debt collection agencies.

10. Apart from regulation of debt collection practices, the Administration also provides counselling services and welfare assistance to persons with debt problems. At present, there are 61 Integrated Family Service Centres, run by the Social Welfare Department or non-governmental organisations all over the territory, providing counselling

and tangible assistance to the needy (including those in debt) to tackle their personal and family problems.

11. Housing assistance is also offered to people with debt problems. For instance, those in long-term financial problem (such as bankruptcy and negative equity property ownership with properties surrendered to the banks) may be referred to the Housing Department for consideration of compassionate rehousing, having regard to their individual circumstances. In addition, public housing tenants being intimidated by their creditors may be referred to the Housing Department for consideration of a housing transfer.

Recommendation on Further Legislation to regulate Debt Collection Practices

12. The Law Reform Commission published the Report on the Regulation of Debt Collection Practices in July 2002. Recommendations of the report include, inter alia, the creation of a criminal offence of harassment of debtors and others and the setting up of a statutory licensing system to monitor debt collection agencies.

13. As explained to the Panel on Security in September 2005 (please see LegCo Paper No. CB(2)2565/04-05(01)), the Administration is of the view that there are already various effective legislative provisions (see Annex) to combat illegal debt collection practices of debt collection agencies. There is thus no need to introduce any new legislative provisions. The law enforcement departments have been strictly enforcing the relevant legislation. As regards stalking associated with debt collection, the Administration will consider the issue in its study of the Law Reform Commission Report on Stalking.

14. As regards the proposed licensing regime, the Administration, after detailed deliberation and judging from the operational experience of the law enforcement agencies, considers that whether from the perspective of effective law enforcement or maintenance of law and order, it is unlikely that unscrupulous debt collectors would apply for licences and seek to be regulated under the licensing regime. It is, therefore, very doubtful whether such a licensing regime could effectively regulate the activities of the debt collection industry.

15. This notwithstanding, the Administration is well aware of the community's concern about problems associated with undesirable debt

collection practices. We will continue to strictly enforce the existing legislation and adopt a multi-agency approach in combating undesirable debt collection practices.

**Security Bureau
Hong Kong Police Force
April 2008**

Legislative provisions combating illegal debt collection activities

Ordinance	Section	Offence
Crimes Ordinance (Cap. 200)	24	Intimidation
	25	Assaults with intent to cause certain acts to be done or omitted
	60	Destroying or damaging property
	61	Threats to destroy or damage property
Theft Ordinance (Cap. 210)	23	Blackmail
Offences Against the Person Ordinance (Cap. 212)	15	Sending letter threatening to murder
	17	Wounding with intent to do grievous bodily harm
	19	Wounding or inflicting grievous bodily harm
	39	Assault occasioning actual bodily harm
	40	Common assault
	42	Forcible taking or detention of person

Ordinance	Section	Offence
Summary Offences Ordinance (Cap. 228)	4(22)	Disturbing any inhabitant by pulling or ringing any door bell, or by knocking or striking at any door without lawful excuse
	8	Writing upon, soiling, defacing or marking any building, wall, fence or paling with chalk or paint or in any other way whatsoever; or wilfully breaking, destroying or damaging any part of any building, wall, fence or paling, or any fixture or appendage thereof, without the consent of the owner
Societies Ordinance (Cap. 151)	19(2)	Being an office-bearer or professing or claiming to be an office-bearer; and managing or assisting in the management of any triad society
	20(2)	Being or acting as a member of a triad society or professing or claiming to be a member of a triad society
Post Office Ordinance (Cap. 98)	32(1)(f)	Sending by post any obscene, immoral, indecent, offensive or libellous writing, picture or other thing