

A Consultation Paper on Regulation of Debt Collection Practices Published

A sub-committee of the Law Reform Commission today announced the publication of a consultation paper on proposals to reform the law governing the way in which creditors, debt collection agencies and debt collectors collect debts in Hong Kong outside the court system.

The Chairman of the Sub-committee on Regulation of Debt Collection Practices, Mr Justice Litton, said that the proposals were in response to public concern at the improper practices used by some involved in debt collection. At present, while the criminal law provided some protection against abuses, there was no overall framework for regulating the activities of debt collectors.

Mr Justice Litton said that the sub-committee had examined the way in which the law regulated debt collection in a number of other jurisdictions before recommending a range of measures to address the problem.

The main recommendations in the Consultation Paper are: -

(a) A new criminal offence of harassment of debtors should be created, so that it will be an offence if a person, with the object of coercing another person to repay a debt -

* harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are likely to subject him or members of his family or household or any other person to alarm, distress or humiliation;

* falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;

* falsely represents himself to be authorised in some official capacity to claim or enforce payment; or

* utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not.

(b) Debt collection agencies should be licensed by a new licensing authority, and it should be a criminal offence to operate a debt collection agency or undertake debt collection work for others without a valid licence.

(c) The proposed licensing regime should cover both consumer debts and commercial debts, and both individual and corporate debt collectors.

(d) A code of practice should be formulated, the breach of which may result in the suspension or revocation of a debt collector's licence. The provisions in the code of practice should be drawn up by the regulatory body after consultation with market operators and a review of similar codes of practice adopted in other jurisdictions.

(e) There should be a review of the existing limitations imposed on the collection and use of certain positive credit data taking into consideration the types of positive credit data available to credit providers in other major financial centres. Efforts should also be made to increase participation in the sharing of information by increasing the type of information shared.

Certain persons would be exempt from the requirement to obtain a licence. These would include authorised financial institutions and a creditor collecting his own debt.

Mr Justice Litton stressed that the paper was issued to obtain the public's views. These were the sub-committee's preliminary recommendations and the final proposals would take account of the responses to the consultation paper.

The sub-committee was set up in November 1998 and includes representatives from the legal profession, academia, the Police Force, the Hong Kong Monetary Authority, the Money Lenders Section of the Companies Registry, the banking sector, and the Security Bureau.

Copies of the consultation paper are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong, or can be download from the Internet at <http://www.info.gov.hk/hkreform>.

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