

Executive Summary
of
Consultation Paper on Regulation of Debt Collection Practices
issued by
Sub-committee on Debt Collection
of the Law Reform Commission of Hong Kong

(This Executive Summary is an outline of the Consultation Paper issued to elicit public response and comment on the Sub-committee's preliminary recommendations. Those wishing to comment should refer to the full text of the Consultation Paper which can be obtained either from the Secretary, Law Reform Commission, 20/F, Harcourt House, 39 Gloucester Road, Hong Kong, or on the Internet at <<http://www.info.gov.hk/hkreform>> during the consultation period. Comments should be submitted to the Secretary by 30 September 2000. References in this Executive Summary to paragraph numbers are to paragraphs in the Consultation Paper.)

Preface

1. The Law Reform Commission has been asked *"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, and to recommend such changes in the law as may be thought appropriate."*

Chapter 1

Debt collection in Hong Kong (paragraphs 1.1 – 1.5)

2. Debt collection involves the exertion of pressure on the debtor. There is sometimes only a fine line between lawful and unlawful debt collection activities. Some of the tactics employed are outrageous, and such incidents are often reported in the headlines. Concern has been expressed that the activities of debt collection agencies are not sufficiently regulated.

3. The range of debts referred to debt collection agencies is wide, and includes gambling debts incurred locally and in Macau, commercial debts, defaults on personal loans, credit card accounts, mobile phone accounts, and commission owed to estate agents and others. In 1997, there were 447 cases of criminal complaints relating to debt collection activities. The figures rose to 1,672 in 1998 and 3,323 in 1999. These figures do not include nuisance-type complaints.

4. The Hong Kong Monetary Authority has also compiled some statistics on abuses in connection with debt collection. From April 1996 to February 1999, a total of 834 complaints were received : about 78% (i.e. 648 cases) complained of nuisance, including repeated phone calls with foul language,

frequent visits, the sticking up of posters and spraying paint; about 18% (i.e. 154 cases) related to intimidation, including the use of intimidatory words and threats of arson; and about 4% (i.e. 30 cases) involved the use of violence, including throwing toxic substance, jamming door locks and actual arson.

5. The Office of the Privacy Commissioner for Personal Data has also received complaints concerning debt collection activities. Malpractices alleged include passing excessive personal data to debt collection agencies, posting debt notices, sending demand letters to non-parties, making nuisance calls, continuing demand after the settlement of debts, and sending open faxes to debtors' workplaces. In 1997, 20 complaints were received. The number rose to 44 in 1998.

Industry overview (paragraphs 1.6 – 1.11)

6. The debt collection industry in Hong Kong comprises a wide spectrum of market operators, including large reputable international and local agencies, medium sized agencies, as well as some poorly managed and unscrupulous agencies which might have employed people with triad background. Although the authorities do not have official statistics on the number of debt collection agencies operating in Hong Kong, it is believed by some market operators that there are about 30 active operators of which not more than 6 operators are generally considered well-managed and sizeable with over 50 members of staff.

Chapter 2

Some features of extra-judicial debt collection (paragraphs 2.1 – 2.6)

7. The debt collection process can usually be divided into 3 stages:

- (1) the creditor or an agent acting on his behalf makes informal attempts at collection;
- (2) the creditor brings a court action for recovery of the debt; and
- (3) the court makes an order for payment, which is followed by attempts at enforcement.

8. Given the Sub-committee's terms of reference, this Consultation Paper will examine only the first stage of debt collection.

9. Debt collection activities can be broadly categorised into three types : those which are legitimate, those which include some form of harassment, and, lastly, those which involve activities which are clearly criminal in nature.

What causes abusive debt collection? (paragraphs 2.14 – 2.20)

10. A consumer's failure to repay a debt may arise from a variety of circumstances. In some cases a consumer may deliberately try to avoid repayment. In others, default arises from over-commitment or changes in financial circumstances resulting from unemployment, business failure, health problems or divorce. Default may also arise because of dispute as to the validity or amount of the debt. Factors which have led to abusive debt collection include -

- the nature of the debt collection process
- the lack of professionalism among some debt collectors

- loose-lending
- economic downturn
- the judicial process in debt recovery.

Chapter 3

Existing criminal sanctions against abusive debt collection in Hong Kong

Criminal law sanctions (paragraphs 3.2 – 3.32)

11. Various criminal offences can be deployed against abusive debt collection. If a person threatens any other person with any injury to the person, reputation or property of such other person with intent to alarm the person so threatened or any other person, he shall be guilty of the offence of intimidation as set out in section 24 of the Crimes Ordinance (Cap 200). A recent case *R v Chan Kai Hing* [1997] 3 HKC 575 shows how section 24 applies to debt collection activities.

12. If a debt collector damages or destroys property belonging to another, or threatens to do so, such acts may be covered by sections 60 and 61 of the Crimes Ordinance (Cap 200) if the required intention or recklessness is proved. Arson charges under section 60 were, for example, brought for debt collection activities in *R v Shum Hon Kai & Another* [1988] HKC 279.

13. If any person maliciously sends any letter or writing threatening to kill or murder another, he may be guilty under section 15 of the Offences Against the Person Ordinance (Cap 212).

14. The offence of blackmail is applicable to debt collection cases. Since goods obtained by blackmail are to be regarded as stolen goods, debt collectors who recover debts by blackmail may also be convicted of theft. Under section 23 of the Theft Ordinance (Cap 210), a person commits blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces. A demand with menaces is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making the demand, and that the use of the menaces is a proper means of reinforcing the demand. The case of *R v Lam Chiu Va* [1996] 1 HKC 302 illustrates the application of the offence of blackmail to debt collection activities.

15. Offences relating to assaults are found in the Offences Against the Person Ordinance (Cap 212). Assault is an act by which the defendant intentionally or recklessly causes a person to apprehend immediate and unlawful physical violence; and if physical violence does occur, it amounts also to the offence of battery. Even words may constitute an assault. Relevant offences under the Offences Against the Person Ordinance (Cap 212) are wounding with intent to do grievous bodily harm under section 17, wounding inflicting grievous bodily harm under section 19, assault occasioning actual bodily harm under section 39, and common assault under section 40.

16. False imprisonment is a common law offence which is committed if a defendant unlawfully and intentionally or recklessly restrains another's freedom of movement from a particular place. *R v Chan Wing Kuen and Another* [1995] 1 HKC 470 can be considered as reference.

17. The common law offence of false imprisonment has some overlap with section 42 of the Offences Against the Person Ordinance (Cap 212) on forcible detention, which makes it an offence to take away or detain against his or her will any man, boy, woman or female child, by force or fraud, with intent to procure a ransom or benefit for his or her liberation. In *R v Chan Yau Hang and Another* [1983] 1 HKC 107, for example, some debt collectors were charged with section 42.

18. If debt-collectors claim that they are triad members or office-bearers in the debt collection process, they may also be guilty of offences under sections 19 and 20 of the Societies Ordinance (Cap 151). Whether a defendant has joined a triad society is a question of fact, and a "bald admission" may in some unusual circumstances be regarded as sufficient evidence that an offence under section 20(2) has been committed, though in most cases proof of other facts to indicate membership, whether by way of admission by the defendant or otherwise, would be required.

19. By virtue of section 20 of the Summary Offences Ordinance (Cap 228), any person who (a) sends any telephone message which is grossly offensive or of an indecent, obscene or menacing character; or (b) sends by telephone any message, which he knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to any other person; or (c) persistently makes telephone calls without reasonable cause and for any such purpose as aforesaid, shall be liable to a fine of \$1,000 and to imprisonment for 2 months.

20. The scope of the section is also somewhat restrictive. As long as a debt is in fact outstanding, there is a reasonable cause to make the call, and if the telephone messages are not indecent or of a menacing character, a debt collector can persistently make telephone reminders without violating this section.

21. As for the Post Office Ordinance (Cap 98), by virtue of section 32(1)(f) of the Ordinance, a person who sends by post "any obscene, immoral, indecent, offensive or libellous writing, picture or other thing" is guilty of an offence punishable by a fine of \$20,000 and imprisonment for 6 months.

Criminal sanctions for participation (paragraphs 3.33 – 3.38) ***The principal***

22. Abusive debt collection activities are often carried out by more than one person. Where there are several participants in a crime, the principal is the one whose act is the most immediate cause of the *actus reus*. It is possible to have two or more principals in the first degree to the same crime. Hence, if two debt collectors both agree to attack and do attack a

victim to pressure the victim into repaying a loan, then both are guilty of assault as joint principals.

Secondary participation

23. In other cases, where there is participatory conduct by one person, another may have to bear or share criminal responsibility under section 89 of the Criminal Procedure Ordinance (Cap 221). This states that any person who “aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence”. There is a large body of case law on this area of law and application of the principles is not free from difficulty. Applied to debt collection cases, a creditor or other party may be liable in various situations.

24. Intention to aid – As long as it is proved that a person intended to do the acts which he knew to be capable of assisting or encouraging the commission of the crime, it is not necessary to prove his intention that the crime be committed. Therefore, a creditor or other person who knew that the debt collectors would employ illegal means to collect debts, and either drove the debt collectors to commit the crime or provide weapons and tools to the debt collectors, that person may be liable as a secondary party.

25. Common Purpose – A secondary party will be liable for the acts of the principal party if the principal party has in the course of endeavouring to carry out the common purpose committed another crime. Hence, if the creditor and the debt collector have the common purpose to cause grievous bodily harm to the debtor, and the debt collector, endeavouring to do so, kills the debtor, both the creditor and debt collector are guilty of murder.

26. Transferred malice – If a secondary party has a common purpose with the principal party to injure A, and the principal party, endeavouring to injure A, wounds B accidentally, then both the secondary party and the principal party is liable for wounding under the doctrine of transferred malice.

27. Participation by inactivity – Where one person has the right to control the actions of another and he deliberately refrains from exercising it, his inactivity may be a positive encouragement to the other to perform an illegal act, and, therefore, an aiding and abetting. Hence, if a creditor hires some debt collectors to collect debt, and the creditor just stands by and watches while the debtor is being beaten up, the creditor may be liable for assault as a secondary party.

Vicarious liability (paragraphs 3.39 – 3.40)

28. An employer may be held vicariously liable for the criminal acts done physically by his employee. Unlike the law of tort, an employer is not generally liable for the acts of the employee performed in the course of employment under the criminal law. An employer may, however, be held vicariously liable for the criminal acts of an employee under the “delegation” principle. There is a real possibility that a debt-collector’s employer may be held vicariously liable for the illegal acts of the debt-collector if the

debt-collector is given full conduct of the debt collection work and decisions are delegated to the employee.

Corporate liability (paragraph 3.41)

29. Corporate liability stems from the legal principle that a corporation is a legal person. A corporation acts through its controlling officers whose acts and states of mind are imputed to the corporation whenever they are acting in their capacity as controlling officers. There are certain limitations on corporate liability, the major one being that a corporation can only be convicted of offences which are punishable with a fine.

Chapter 4

Existing civil remedies for abusive debt collection

30. If any person is wronged by abusive debt collection activities, that person may bring civil proceedings seeking civil remedies, which are likely to include damages and injunctive relief. Civil claims may be brought under numerous heads, and those often applicable to debt collection activities are described below.

Trespass to the person (paragraphs 4.2 – 4.4)

31. The tort of trespass to the person includes assault, battery and false imprisonment. This tort has its counterpart in the criminal law. In many situations involving this tort, the claimant has the choice of seeking redress in tort, or under the criminal law or both.

32. Threats may amount to assault not only when the plaintiff and the defendant are face to face, but also over the telephone. In *Wong Kwai Fun v Li Fung*, [1994] 1 HKC 549, the defendant endeavoured to recover debts by threats of physical violence and death on various occasions including in the presence of the plaintiff and his family, on the telephone and the intercom system. The defendant had struck the plaintiff and members of his family on previous occasions. The court held that the threats constituted actionable wrongs and amounted to assault.

33. For assault and battery, if no actual injury has been caused, only nominal damages can be awarded. If some actual physical injury has been caused, damages will be assessed in accordance with law.

False imprisonment (paragraphs 4.5 – 4.7)

34. A false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. It appears that neither the use of force nor any direct physical contact is necessary to constitute false imprisonment, and neither is the plaintiff's present knowledge of the confinement.

Intentional physical harm other than trespass to the person / Intentional infliction of emotional distress (paragraphs 4.10 – 4.15)

35. The tort of intentional infliction of physical harm other than trespass to the person covers any act or statement of the defendant which is intended to cause physical harm to the plaintiff and which in fact causes illness or injury. Mere shock, fear or mental suffering is not enough; some outward and physical result of that emotion, for example, illness resulting from nervous shock is required.

Trespass to chattels (paragraphs 4.16 – 4.17)

36. If a debt collector dispossesses the plaintiff of his chattel or damages it, he may be liable for trespass to chattels. The act of the defendant must be intentional, and there is no liability for accidental acts. The defendant may be liable even he does not appreciate that his interference is wrongful. If a plaintiff's goods are destroyed or disposed of by the defendant, the plaintiff is entitled to recover the full value of the goods. Full value is market price or the cost of replacement. If a plaintiff's goods are merely damaged but not destroyed, the normal measure of damages is the amount by which their value is diminished.

Defamation (paragraphs 4.18 – 4.19)

37. The tort of defamation is unlikely to be too useful to debtors in debt collection cases. First, if the contents of a defamatory statement are true (i.e. if the debtor is in fact indebted to the creditor) the debt collector has a complete defence even if the publication was actuated by spite or malice. Second, the cost of bringing a defamation case is likely to be high, and legal aid is generally not available for defamation cases.

Employer's liability (paragraphs 4.20 – 4.31)

38. The employer is liable for the torts of the employee so long as they are committed in the course of the employee's employment. The nature of the tort is immaterial and the employer is liable even where liability depends upon a specific state of mind and his own state of mind is innocent. In the context of debt collection, if a debt collector is the employee of ABC Ltd, and a tort is committed by the debt collector in the course of his employment, then both ABC Ltd and the debt collector are regarded as joint tort-feasors.

39. Difficult questions may arise as to whether or not a person is an employee of another. There are various tests to determine the matter. The modern approach is to abandon the idea of a simple test and to take a 'multiple factor' approach by taking into consideration all aspects of the relationship, including whether the employer has the right to control the work method, whether the worker provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. This approach was approved by the Privy Council in *Lee Tin Sang v Chung Chi*

Keung [1990] 2 AC 374.

40. Where the relationship of employer and employee exists, the employer is liable for the torts of the employee only if they are committed in the course of the employee's employment. Even if the act in question is expressly prohibited by the employer, he may still be liable in some circumstances. In circumstances where the employer either expressly or by implication gave the employee a discretion which he must exercise in the course of his employment, the employer will be liable for the wrongful exercise of such a discretion. If tasks have been delegated to the employee in very general terms, then the implication is that the employee is granted the discretion to decide how the tasks may best be completed.

41. An employer would be able to avoid liability if it is shown that the employee was doing something totally unconnected with his job. The question depends on the degree of deviation by the employee.

Employer's liability for independent contractors (paragraph 4.32)

42. As a general rule, an employer is not liable for the tortious acts of an independent contractor in the course of execution of the work. The law has, however, imposed liability on employers in some circumstances. If the law imposes on an employer a strict or absolute duty, often described as 'non-delegable' duty, then he is liable even though the immediate cause of the damage is the contractor's wrongful act or omission. Such 'non-delegable' duties may arise either by statute or at common law.

Liability for an agent (paragraphs 4.33 – 4.34)

43. The relationship between the creditor and the debt collector is often regarded as one of principal and agent. However, both employees and independent contractors may be classified as 'agents', for they are both persons who do work for another. Clerk & Lindsell submits that there are no special rules in the law of tort peculiar to 'principal and agent' except for fraud cases. Winfield & Jolowicz also believes that "agency in its most precise legal sense is a predominantly contractual concept ...".

Personal Data (Privacy) Ordinance (paragraph 4.35)

44. If any data protection principle is contravened, victims of abusive debt collection activities may have a civil cause of action under section 66 of the Personal Data (Privacy) Ordinance (Cap 486).

Chapter 5

Other types of control on debt collection

Administrative control (paragraphs 5.1 – 5.3)

45. At present, debt collection agencies and debt collectors operating in Hong Kong are not required to be registered or licensed. The only administrative requirement is to obtain a business registration certificate

under the Business Registration Ordinance (Cap 310).

Self-regulation by authorised institutions

Code of Banking Practice 1997 (paragraphs 5.4 – 5.6)

46. The Hong Kong Association of Banks and the DTC Association have jointly issued a non-statutory Code of Banking Practice 1997 (“the Code”). Although the Code was issued on a voluntary basis, the Hong Kong Monetary Authority (“the HKMA”) monitors its compliance as part its regular supervision. Chapter 5 of the Code lays down guide-lines on debt collection work conducted by parties other than authorized institutions.

47. To monitor and improve compliance with the Code, the HKMA conducts regular surveys which require authorised institutions to file returns on their compliance level with the clauses above. Since April 1999, the HKMA has started to conduct on-site examinations on authorised institutions’ compliance with the Code, in particular, the provisions on their monitoring of debt recovery by debt collection agencies. The HKMA also monitors compliance through processing customer complaints on authorised institutions. If a complaint reveals weakness(es) in controls and/or non-compliance with the Code, the HKMA will pursue this with the authorised institution concerned.

Personal Data (Privacy) Ordinance (Cap 486) and the Code of Practice on Consumer Credit Data 1998

Personal Data (Privacy) Ordinance (paragraphs 5.7 – 5.10)

48. The Personal Data (Privacy) Ordinance (“the Ordinance”) lays down six data protection principles which are essentially general statements of some breadth. Two of the data protection principles are of particular relevance to debt collection activities.

49. Data Protection Principle 2(1) requires that all practicable steps be taken to ensure inaccurate personal data are not used. Consequently, a creditor should not disclose inaccurate personal data to a debt collection agency, and a debt collection agency should not use inaccurate personal data for debt collection. This could include disclosure by a creditor to a debt collector of a previous address of a debtor. It also includes the situation where a debt collection agency deliberately sends demand letters to neighbouring addresses to humiliate the debtor.

50. Data Protection Principle 3 limits the use of personal data to purposes for which the data are to be used when collected unless the consent of the data subject has been obtained. A creditor, therefore, should disclose to a debt collection agency only data necessary for carrying out debt collection. Copies of the debtor’s identity card and the referee’s information, for example, are generally considered not necessary for debt collection.

51. Contravention of a data protection principle is not an offence, but the data subject suffering damage has a civil cause of action which would include damages for injury to feelings. On receipt of a complaint, the Privacy

Commissioner would investigate and would in an appropriate case issue an enforcement notice containing specific directions requiring future compliance with a data protection principle. Non-compliance with an enforcement notice constitutes an offence.

Code of Practice on Consumer Credit Data 1998 (paragraphs 5.11 – 5.12)

52. A Code of Practice on Consumer Credit Data was issued by the Privacy Commissioner for Personal Data in February 1998. Although the provisions of the Code are not legally binding, breach of any provision by a data user will give rise to a presumption against the data user in any legal proceedings under the Personal Data (Privacy) Ordinance (Cap 486). The Code is designed to generally promote good practice among data users involved in the handling of consumer credit data. The Code covers credit reference agencies, and credit providers in their dealings with credit reference agencies and debt collection agencies. With respect to debt collection agencies, the Code is only concerned with the disclosure of information by credit providers to such agencies and their use of such information. The Code has no application to commercial credit.

Chapter 6

**Deficiencies of the existing controls
on abusive debt collection practices**

Criminal law (paragraphs 6.1 – 6.2)

53. There is a range of criminal sanctions which can be deployed against abusive debt collection practices. These come with heavy custodial and financial penalties to deal with abusive debt collection practices. Criminal sanctions, however, cannot be the complete answer because:

- (a) Many crimes involving debt collection are not reported to the Police. Debtors and victims may also be reluctant to co-operate with the Police for various reasons.
- (b) Whilst the criminal law is effective in dealing with outrageous debt collection practices, it is far less effective against nuisances caused by non-criminal tactics or those activities on the borderline of propriety.
- (c) The onus of proving a crime is high and the prosecution has to prove beyond reasonable doubt all the required elements of the crime. Because of these safeguards, it may often be difficult to secure convictions.
- (d) There are also enforcement problems. There are problems in the identification of the offenders, because these activities are normally conducted late at night, and when debt collectors resorted to illegal tactics, the debtors would normally repay the debt immediately and would then be reluctant to pursue the case further.

Civil claims (paragraphs 6.3– 6.4)

54. It remains to be considered how effective civil remedies are as a control on abusive debt collection practices. In an outrageous case such as

Wong Kwai Fun v Li Fung discussed in Chapter 4 civil remedies may be useful. In less outrageous cases, civil remedies are not usually useful to debtors because a civil action will involve expense and delays, as well as uncertainties as to a successful outcome. The average debtor is unlikely to have the courage, much less the means, to sue his creditors for damages for excessive or unreasonable collection practices.

Code of Banking Practice 1997 (paragraph 6.6)

55. The guidelines in the Code of Banking Practice, albeit practical and useful, suffer from several deficiencies:

- (a) Limited scope of application - The Code applies only to authorised institutions, that is, banks, restricted licence banks, and deposit-taking companies. Other creditors including individuals, trading companies, mobile telephone companies, and even money lenders are not subject to the Code.
- (b) Unfair competition – The debt collectors acting for other creditors are able to take stronger measures towards the debtor than those acting for banks which are bound by the Code. This limited application of the Code may thus also lead to unfair competition among debt collectors as most debt collectors earn their fees on a contingency basis.
- (c) Uncertainty as to effectiveness - Surveys on compliance with the Code of Banking Practice are based on returns completed by authorised institutions themselves. Information on the second compliance survey on the Code of Banking Practice shows that there is still room for improvement in some aspects. The primary objectives of the Hong Kong Monetary Authority (“the HKMA”), the body responsible for monitoring compliance with the Code, are to protect depositors and to promote the general stability and effective working of the banking system. Since the problem of abusive debt collection affects primarily the banker-customer relationship, and not banking stability, the HKMA has relied largely on moral suasion to ensure compliance.

Personal Data (Privacy) Ordinance (Cap 486) and the Code of Practice on Consumer Credit Data 1998 (paragraph 6.7)

56. Given that the primary legislative intent of the Personal Data (Privacy) Ordinance is to protect the privacy of individuals in relation to personal data, the Ordinance, and hence the Code of Practice on Consumer Credit Data, are not an effective general means of regulating debt collection activities. The requirements of the Ordinance are by no means applicable to the whole range of abusive behaviour in which some debt collection agencies engage. When the requirements apply, they may not always be an effective means of protecting individuals from the abusive practices concerned. The investigative powers of the Privacy Commissioner’s Office are limited, and the Ordinance has only limited deterrence against malpractices in debt collection.

Chapter 7

Legislation in other jurisdictions

57. Compared with Hong Kong, debt collectors and debt collection agencies are subject to more regulation and control in many other jurisdictions, including the United Kingdom, Australia, Canada and the United States of America. Apart from the traditional criminal and civil sanctions, debt collection is regulated by specific statutory provisions in these jurisdictions.

United Kingdom

The criminal offence of unlawful harassment of debtors (paragraphs 7.2 – 7.8)

58. The Administration of Justice Act 1970 introduced the criminal offence of unlawful harassment of debtors which is set out in section 40(1) of the Act, which reads:

“A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract, he -

- (a) 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 calculated to subject him or members of his family or household to alarm, distress or humiliation;*
- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;*
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or*
- (d) 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.”*

59. According to section 40(3), sub-paragraph (a) has no application in respect of anything done which is reasonable (and otherwise permissible in law) for the purpose of:

- (i) securing the discharge of an obligation due, or believed by him to be due, to himself or to persons for whom he acts, or protecting himself or them from future loss; or*
- (ii) the enforcement of any liability by legal process.*

Protection from Harassment Act 1997 (paragraphs 7.9 – 7.20)

60. The Protection from Harassment Act 1997 was enacted to protect persons from harassment and similar conduct. Harassment of a person includes causing alarm or distress. The Act creates two criminal offences and one civil remedy. The criminal offences are for harassment and for putting people in fear of violence. The civil remedy is for harassment.

Malicious Communications Act 1988 (paragraphs 7.21 – 7.24)

61. The preamble of the Malicious Communications Act 1988 states that it was enacted to make provision for the punishment of persons who send or deliver letters or other articles for the purpose of causing distress or

anxiety. By virtue of section 1 of the 1988 Act, it is an offence if any person with the purpose of causing distress or anxiety to another, sends to another person either a letter or other article which conveys (a) a message which is indecent or grossly offensive; (b) a threat; or (c) information which is false and known or believed to be false by the sender. Any other article which is, in whole or in part, of an indecent or grossly offensive nature is also covered by the section.

62. A defence is available to exonerate legitimate debt collection activities. A person would not be held guilty of conveying a threat if he could show that the threat was used to reinforce a demand which he believed he had reasonable grounds for making, and that he believed that the use of the threat was a proper means of reinforcing the demand.

Australia

Federal legislation (paragraphs 7.25 – 7.30)

63. The Trade Practices Act 1974 is the only federal legislation affecting general debt collection practices in Australia.

64. Section 60 of the Act provides that the use of physical force, undue harassment or coercion in connection with the supply of or payment for goods or services by or to a consumer is prohibited. The prohibition, it seems, is not limited to conduct directed to the debtor only, but extends to conduct directed to the debtor's family or associates. The Act has not further defined what constitutes "physical force, undue harassment or coercion".

65. Section 53 prohibits the making of a false or misleading statement concerning "the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy" in connection with the supply of goods or services. Although it is possible that this prohibition extends to the making of false or misleading statements concerning a creditor's remedies upon default, it is more likely that the section is limited to false or misleading statements concerning the debtor's rights as a purchaser.

66. Section 52 prohibits the use in trade or commerce conduct which likely to mislead or deceive. It is clear that intention to deceive is not necessary, nor is it necessary that any person is in fact deceived.

67. The Trade Practices Act 1974 imposes both civil and criminal remedies for breaches of sections 53 and 60, but only civil remedies are available for breaches of the general prohibition on misleading or deceptive conduct referred to in section 52.

Provisions against abusive collection tactics (paragraph 7.31)

68. There are various sanctions against abusive debt collection practices. Criminal penalties are imposed for the following activities:

By licensed debt collectors

- Entry onto private premises without lawful authority. (In Queensland and Victoria)
- Suggesting to debtors that additional authority is conferred upon

a licensee by reason only of his licence. (In all jurisdictions)

By all debt collectors

- Demanding payment of money by threatening detriment to any person's credit rating or eligibility for credit, except where the money is owed to the person by whom or on whose behalf the demand is made and the threats relate simply to future extension of credit by that person. (In Queensland)
- Misleading conduct, which includes disguising the creditor's own collection department as independent debt collection agencies, and using debt collection agencies stationery when creditors write their own debt collection letters. (In South Australia)
- The deceptive collection tactic of using forms of demand which resemble court forms. (In all jurisdictions except Tasmania and the Australian Capital Territory)

The United States of America

The Fair Debt Collection Practices Act 1977 (paragraphs 7.33 – 7.44)

69. In 1977, the Federal Government enacted the Fair Debt Collection Practices Act ("the FDCPA"), which is applicable only to the collection of consumer debts by collection agencies. It does not apply to collection of commercial accounts, or to creditors collecting their own debts. Under a 1986 amendment to the FDCPA, attorneys who collect debts on a regular basis are also covered by the FDCPA. The FDCPA was enacted to eliminate abusive debt collection practices, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses.

70. A debt collector may be subject to civil liability under the Act. A debt collector who fails to comply with any provision of the Act with respect to any person is liable for the actual damage sustained by that person as a result of such failure. A person allegedly harmed by proscribed debt collection practices directed towards the collection of *another person's* debt has standing to sue under the Act.

71. A debt collector is generally prohibited from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Usually, whether conduct harasses, oppresses or abuses any person is a question of fact.

72. The FDCPA also prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of debt. The threat to take any action which cannot legally be taken or which is not intended to be taken constitutes a prohibited false, deceptive, or misleading representation or means in connection with the collection of debt. The "least sophisticated debtor" standard applies to an allegation that the debt collector made a threat to take any action that could legally be taken. Thus, in evaluating the tendency of language to deceive, the court looks to the least sophisticated readers; the standard of ability and conduct to which a debtor should be held is only the low end of the spectrum of the "reasonable person".

73. There are also restrictions on communications with the debtor and third parties.

Canada

Federal (paragraph 7.45)

74. The federal government had attempted to introduce a Borrowers and Depositors Protection Act in 1976, but did not succeed. Debt collection legislation in Canada, therefore, is a matter for the provinces.

Alberta (paragraph 7.46)

75. In Alberta, as early as 1965, the Collection Agencies Act 1965 was enacted. The current legislation is the Collection Practices Act 1980, and a list of prohibited practices applicable to collection agencies is found in section 13 of the Act. For example, collection agencies are not allowed to:-

- *enter into any agreement with a person for whom he acts unless a copy of the form of agreement is filed with and approved by the Administrator;*
- *use any form or form of letter to collect or attempt to collect a debt unless a copy of the form or form of letter is filed with and approved by the Administrator;*
- *charge any fee to a person for whom he acts in addition to those fees provided for in the form of agreement or in the information pertaining to fees filed with the Administrator;*
- *if a collector, collect or attempt to collect a debt without using his true name and the name of the collection agency that employs or authorises him to act as a collector, as that collection agency's name is shown on the collection agency's licence;*
- *make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as full and final settlement without the prior written approval of the creditor;*
- *make any personal call or telephone call for the purpose of demanding payment of a debt on any day except between 7.00 a.m. and 10.00 p.m.*

76. If any collection agency or collector has contravened any provision of the Act, the Administrator may issue an order directing the agency or collector to stop engaging in any practice.

Other jurisdictions (paragraphs 7.48 – 7.49)

77. In Mainland China, there is no national legislation specifically dealing with abusive debt collection activities. There is, however, a provision in Article 238 of the Criminal Law stipulating that “whoever unlawfully detains or takes somebody into custody for the purpose of demanding the payment of a debt” may be duly punished with the offence of unlawful detention or

deprivation of personal freedom. Withholding personal property for the purpose of debt collection is also a criminal offence.

78. Singapore, New Zealand and the Republic of Ireland do not have specific legislation dealing with debt collection agencies or debt collection practices.

Chapter 8 Licensing

United Kingdom (paragraphs 8.2 – 8.12)

79. The Consumer Credit Act 1974 introduced a comprehensive regulatory regime by requiring all proprietors of consumer credit business or consumer hire businesses to be licensed. Debt collection agencies are required to be licensed because they fall within the definition of ancillary credit business. Debt-collecting is defined as the taking of steps to procure payment of debts due under consumer credit agreements or consumer hire agreements.

80. To obtain the necessary licence, the applicant must satisfy the Director General of Fair Trading (“the Director”) that : (a) he is a fit person to engage in the activities covered by the licence, and (b) the name under which he applies to be licensed is not misleading or otherwise undesirable. In determining whether an applicant is a fit person to engage in the activities, the Director must have regard to all relevant circumstances, and in particular any evidence tending to show that the applicant, his employees, agents or associates whether past or present have -

- “(a) *committed any offence involving fraud or other dishonesty, or violence,*
- (b) contravened any provision made by or under this Act, or by or under any other enactment regulating the provision of credit to individuals or other transactions with individuals,*
- (c) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business, or*
- (d) engaged in business practices appearing to the Director to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not).”*

81. It is an offence to operate without a licence when one is required. The civil consequence of not obtaining a licence is that any agreement for the services is unenforceable against the other party without an order of the Director. Hence, a debt collector may not be able to collect his fees or commission without such an order from the Director.

Australia (paragraphs 8.13 – 8.33)

82. Licensing control systems are present in all Australian jurisdictions except in the Australian Capital Territory. Also, under Mutual Recognition legislation, commercial agents and subagents registered in one jurisdiction may be able to obtain registration in another jurisdiction through an administrative process.

83. The Australian Law Reform Commission has compiled a summary of the licensing criteria in the different states:

- (a) Age requirements. (Generally required).
- (b) Residence requirements. (New South Wales, Queensland, South Australia and the Northern Territory; in New South Wales, the residence need only be in Australia).
- (c) An applicant should be of good fame and character and be a fit and proper person to hold a licence, and must not have been convicted of certain offences or disqualified from holding a licence. (Generally required).
- (d) Adequacy of educational attainments or experience. (Required in New South Wales, Queensland, South Australia and Tasmania. But there is no training or examination requirements in any State or Territory).
- (e) No previous record of harassment of debtors. (In New South Wales, Victoria and Tasmania, such a record is a ground for refusal of a licence).
- (f) Disqualification for bankruptcy. (In Victoria, Tasmania and the Northern Territory, applicants must not be bankrupt. In other jurisdictions, bankruptcy or entry into a composition or scheme of arrangement with creditors is a ground for discipline).

Canada

Alberta (paragraphs 8.34 – 8.43)

84. In the Collection Practices Act 1980, there are provisions governing the licensing of debt collectors. An Administrator of Collection Practices (the “Administrator”) is appointed under section 2 to administer the implementation of the Act. A collection agency and a collector must have a licence before embarking on the business of a collection agency and acting as a collector respectively. No collection agency can employ or authorise any person who does not have a licence as a collector. Certain categories of persons are exempted under the Act. They include barristers and solicitors in practice and civil enforcement bailiffs.

85. The Administrator has statutory powers to investigate and make inquiries. The Administrator may inquire into any complaint or alleged contravention of the Act, and require any person to provide any information he considers relevant. In addition, the Administrator may inquire into the affairs of any person who is believed to engage in the business of debt collecting. He may also apply to court for an order to enter relevant premises to search, examine, remove, take extracts from or obtain copies of any records, books, document or things which are relevant. A certified true copy of a record, book or document obtained under this section shall be admissible in evidence in a court.

South Africa (paragraphs 8.44 – 8.53)

86. In South Africa, the Debt Collectors Act 1998 regulates the licensing of debt collectors. A Council known as the Council for Debt

Collectors (the “Council”) is established to exercise control over the occupation of debt collectors.

87. An application for registration as a debt collector shall be lodged with the Council in the prescribed form and with the prescribed fee. A person can be disqualified from registration in any of the following circumstances -

- (a) convicted of an offence with violence, dishonesty, extortion or intimidation as an element in the preceding 10 years;
- (b) guilty of improper conduct;
- (c) unsound mind and so declared or certified by a competent authority;
- (d) under the age of 18 years;
- (e) unrehabilitated insolvent; or
- (f) in the case of a company or close corporation, a director of the company or a member of the corporation is so disqualified from registration in the above terms.

88. The Council is also empowered, subject to the approval of the Minister of Justice, to adopt a code of conduct for debt collectors and publish such code in the Gazette which is binding on all debt collectors. Section 15 sets out certain conduct which may be regarded by the Council to be improper conduct, for example -

- (a) use force or threaten to use force against a debtor;
- (b) act towards a debtor in an excessive or intimidating manner;
- (c) make fraudulent or misleading representations;
- (d) spreads or threatens to spread false information concerning the creditworthiness of a debtor;
- (e) contravenes or fails to comply with any provisions of the Act; etc.

89. The Council may investigate any allegation of improper conduct of a debt collector. If the Council finds a debt collector guilty of improper conduct, the Council may -

- (a) withdraw his registration;
- (b) suspend his registration;
- (c) impose on him a fine;
- (d) reprimand him;
- (e) recover from him the costs incurred by the Council in connection with the investigation;
- (f) order him to reimburse any person whom the Council is satisfied has been prejudiced by the conduct of such debt collector;
- (g) any combination of the above.

Chapter 9

Proposals for reform

Introduction (paragraphs 9.1 – 9.3)

90. Harassment and coercion are widespread abuses in the area of debt collection. Users of consumer credit, as well as innocent third-parties, should be protected from abusive collection tactics. Whereas consumer protection in other areas can often be addressed by improved information

disclosure, enabling consumers to choose the supplier that best meets their particular needs, these mechanisms are less effective in addressing abusive debt collection, as a debtor is not in a position to choose his preferred collector.

91. In formulating proposals for reform, the Sub-committee also recognises that debt collection is a legitimate and necessary business activity, and that creditors and their agents are entitled to take reasonable steps to contact a debtor to collect the debts.

92. The problem of abusive debt collection has a number of causes. There is no single solution to the problem. The Sub-committee has taken into consideration the various factors which have contributed to the debt collection problem, the deficiencies of existing controls, as well as measures taken in other jurisdictions, and recommends a range of measures to address the problem.

Criminal law (paragraphs 9.4 – 9.10)

93. In order to strengthen the criminal law to deal with debt collection activities, the Sub-committee believes that section 40 of the UK Administration of Justice Act 1970, which was formulated with the specific aim of tackling common malpractices of debt collection, would cover most of the situations with which the Sub-committee is concerned. Subject to certain modifications made to section 40 in view of judicial interpretation and concerns raised about harassment of innocent third parties, the Sub-committee recommends that:

Recommendation 1

The criminal offence of harassment of debtors to be created, so that it will be an offence if a person, with the object of coercing another person to repay a debt –

- (a) 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;**
- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;**
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or**
- (d) 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.**

Without affecting the generality of sub-section (a), it is harassment if any person in making demands for payment sends to another a letter or any article which : (i) is, in whole or in part, of an indecent or grossly offensive nature;

or (ii) conveys information which is false and known or believed to be false by the sender.

Sub-section (a) has no application in respect of anything done which is reasonable for the purpose of either securing the discharge of an obligation due, or believed to be due, or for the enforcement of any liability by legal process.

Harassment and representations conveyed by modern electronic means of communication should be covered by the proposed legislation.

Licensing (paragraphs 9.11 – 9.13)

94. The Sub-committee examined licensing regimes in the United Kingdom, New South Wales, Victoria, Alberta and South Africa in Chapter 8 of the Consultation Paper. The Sub-committee has considered different views on the effectiveness and the need of a licensing regime in addressing the problem of abusive debt collection practices. The Sub-committee is aware of the resource implications of a licensing regime, and has carefully considered the efficacy of a licensing regime in curbing abusive debt collection. At the present stage, the Sub-committee is more convinced by the arguments in favour of licensing. The fact that, despite the administration costs, many other jurisdictions have in place a licensing regime has also weighed in the Sub-committee's deliberation. The Sub-committee believes that a licensing regime, jointly with other measures, would help to curb both criminal and nuisance-type of debt collection activities. Having said the above, the Sub-committee is aware that licensing is not a panacea for all the problems associated with debt collection, and has recommended other measures to work in conjunction with licensing.

Recommendation 2

Balancing the arguments for and against the setting up of a licensing regime, the Sub-committee recommends that debt collection agencies should be licensed, and it should be a criminal offence to operate a debt collection agency or undertake debt collection work for others without a valid licence.

***Commercial vs consumer debts* (paragraph 9.14)**

95. The Sub-committee has also considered the issue whether the proposed licensing regime should cover both commercial and consumer debts. It has been suggested that commercial debts should not be covered by the proposed licensing regime because commercial debtors are capable of protecting their own interests. The Sub-committee is of the view that no distinction should be made between consumer and commercial debts. Whilst some well-established commercial entities can handle debts effectively,

many corporate entities are vulnerable small-scale operators. The fact that personal guarantees are often provided as security to commercial loans further blurred the distinction between the two types of loan. Abusive collection of commercial debts may well cause disturbance or anxiety of innocent third parties.

Recommendation 3

The Sub-committee recommends that the proposed licensing regime should cover both consumer debts and commercial debts.

Licensing authority (paragraphs 9.15 – 9.17)

96. The Administration should consider the pros and cons of creating an administrative body to oversee the licensing work, as well as the possibility of streamlining the licensing regime as far as practicable. Consideration should also be given to whether the merging of licensing of debt collectors into any existing licensing regime would achieve savings in resources.

Recommendation 4

Since the Administration is better placed than the Sub-committee to decide on the appropriate licensing authority, the Sub-committee has refrained from making recommendations on this matter. The Administration is urged to consider the experience of other jurisdictions and to devise a licensing regime which can be run efficiently and economically.

Collection agencies and collectors (paragraph 9.18)

97. In the United Kingdom, only one licence is required for each debt collecting business; there is no need for the employee debt collectors to be licensed. In New South Wales and Victoria, however, the business owner as well as the employees are required to obtain commercial agent licence and subagent licence respectively. The same is also true for Alberta and South Africa in that both the collection agency and its individual collectors must be licensed. In Hong Kong, the Security and Guarding Services Ordinance requires the business owner to obtain a security company licence and the employees to obtain security personnel permit. The Estate Agents Ordinance also requires both company licences and individual licences. On the other hand, both the Money Lenders Ordinance and the Travel Agents Ordinance require only the business owner to be licensed.

Recommendation 5

Although the licensing regime would be more elaborate if both individual debt collectors and collection agencies are required to be licensed, we recommend that individual debt collectors should be required to obtain licences since a major reason in favour of licensing is to exclude persons of questionable integrity from entering the business.

Exemptions (paragraph 9.19)

98. The following categories of creditors or persons should be exempted from obtaining a licence -

- (i) a creditor collecting his own debt, provided he did not become a creditor by an assignment of the debt;
- (ii) a creditor who became a creditor by virtue of an assignment of debt, provided the assignment was made in connection with a transfer of business, other than a debt collecting business;
- (iii) barristers acting in that capacity;
- (iv) solicitors acting in that capacity and their employees;
- (v) court bailiffs;
- (vi) authorised financial institutions.

Recommendation 6

We recommend that the above listed categories of creditors and persons be exempted from obtaining a licence.

Collecting debts as a business / profession or otherwise (paragraphs 9.20 – 9.23)

99. Related to the above recommendation on exempted persons, is the issue whether the licensing regime should cover only those who engage in debt collection as a business / profession or whether it should apply also to persons or companies undertaking isolated or one-off collection work for another. The major advantage of exempting 'non-business' debt collection is to avoid the licensing regime becoming too onerous for persons who have the occasional need to collect debt for another, whether for profit or otherwise. On the other hand, exempting 'non-business' debt collection may render the licensing regime less effective in dealing with abusive debt collection, as it may be difficult for the prosecution to prove that a business is being carried on.

100. Since the Sub-committee has proposed that both individual debt collectors and collection agencies should be licensed, the issue will have to be considered on two different levels. On the 'individual' level, there are situations which clearly should not be covered by licensing: for instance, if a friendly neighbour helps an old lady to recover rent from a delinquent tenant. On the other hand, if the rules are too lax, individual debt collectors may try to

abuse the exemption and claim to be friends of the creditor to avoid the need to be licensed. It is, therefore, crucial to formulate rules which can cater for the different situations. A possible approach is to require individuals who collect debts for another to be licensed if the individual is doing so for remuneration or as a business, and there is a rebuttable presumption that an individual is collecting debts as a business if he is collecting more than one debt at any particular time.

101. As for the 'corporation' level, the approach set out in the previous paragraph may also be adopted. If different considerations ought to be applied, the Sub-committee would be pleased to hear the views of the public.

102. The Sub-committee would defer making a recommendation on this issue of whether the licensing regime should cover only those who engage in debt collection as a business / profession, until the public's views are received and considered by the Sub-committee.

Criteria for licensing (paragraphs 9.24 – 9.27)

Recommendation 7

The licensing criteria set out in the UK Consumer Credit Act 1974 are satisfactory and should be considered as a basis for equivalent provision in Hong Kong. The Sub-committee further recommends that the licensing authority should be empowered to take into consideration whether the applicant or its employees has committed any triad-related offences, in addition to the types of offences mentioned in the UK licensing criteria. The Administration should consider including a residence requirement and an age requirement as is the case of some other jurisdictions.

Powers of the licensing authority (paragraph 9.28)

103. Certain statutory powers are commonly given to the licensing authority in other jurisdictions. For example, the licensing authority:

- may make inquiries regarding the applicant before issuing or renewing a licence and should have statutory powers to investigate;
- may refuse to issue or renew a licence and may suspend or cancel a licence;
- may inquire into any complaint or alleged contravention of the legislation, and require any person to provide any information the licensing authority considers relevant;
- may apply to a court for an order to enter relevant premises to search, examine, remove, or take extracts from or obtain copies of any records, books, document or things which are relevant.

Statutory duties of collection agencies (paragraphs 9.29 – 9.30)

104. Legislation in other jurisdictions often imposes certain statutory duties on collection agencies. For example:

- collection agencies are required to provide the licensing authority with reports of their financial affairs signed by auditors, and to provide the auditors with access to books and records of the business;
- collection agencies are required to maintain all their records, files, documents, etc created or received in their business for a prescribed period.

105. The Sub-committee is aware that collection agencies in other jurisdictions are subject to some trust account requirements which may be included either in statutes or in a code of practice. The trust account requirements usually include:

- collection agencies are required to deposit all money collected from debtors in trust accounts maintained in banks;
- collection agencies must not withdraw money from trust accounts except for the purpose of deducting their commission and disbursements and paying the person on whose behalf the money is received;
- collection agencies are required to pay such money and interest to the person on whose behalf the money is received within a reasonable time.

Recommendation 8

As for the details of the licensing regime such as statutory powers and duties, we commend those referred to in paragraphs above for the Administration's consideration.

Code of practice (paragraphs 9.31 – 9.34)

106. To specifically address the nuisance-type of debt collection activities, a Code of Practice should be formulated in tandem with the licensing system, such that breach of the Code may also lead to the suspension or revocation of the licence.

Recommendation 9

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.

Consumer credit data (paragraphs 9.35 – 9.62)

107. During the course of the Sub-committee's deliberations, it has been suggested that over-aggressive lending and the proliferation of credit cards and other forms of credit have contributed towards the defaults by many debtors, which have, in turn, led to abusive debt collection activities. There is a body of opinion to the effect that the root of the problem lies in part in the indiscriminate provision of easy credit.

108. Financial institutions, on the other hand, maintain that, as a result of the operation of the Personal Data (Privacy) Ordinance and the Code of Practice on Consumer Credit Data, they do not have access to important information which is made available in other markets such as the United Kingdom and the United States by credit reference agencies or credit bureaux. Lenders in Hong Kong do not have reliable information on the debt to income ratio of individuals applying for credit, and such limitations have made it difficult for banks to make informed decisions on the credit exposure of applicants. It is noted that if a debtor chooses to repay 5% of his credit card debts each month, this repayment information will not be available to other lenders until the problem has become unmanageable when the debtor cannot repay even the 5% minimum.

109. Credit Information Services Ltd ("CIS") is the main consumer credit reference agency operating in Hong Kong. The business of a credit reference agency is to compile a central credit database using the data supplied to it by its member credit providers, and then supply the processed credit data to its member credit providers in response to their requests pursuant to specific credit applications they have received. Credit reference agencies are sometimes called national credit bureaux in other jurisdictions. Like credit bureaux in other countries, CIS was formed by co-operation between finance houses and banks. The database of CIS had grown to over one million records by 1998, about two thirds of which are in respect of individuals. In 1998, over two million enquiries were made through CIS by its members, and the same number of credit reports was produced for the year.

110. Credit reports usually include the following details: account seriously past due, account under legal action, bankruptcy or winding up, and finance-related writs, for example, taxation defaults, personal injury claims, construction claims and commercial claims.

111. It should be noted that CIS credit reports, albeit informative, cannot give a complete picture of an applicant's credit position because: first, some major retail banks have chosen to confine their sharing of information to certain types of debts only; and second, due to privacy concerns, limitations are placed on the type of information that is gathered.

112. According to statistics compiled by CIS, the average number of delinquent accounts held by individual consumers rose from 1.37 to 3.96 between the 2nd half of 1997 and that of 1999, representing an increase of almost two times. While such increases may be attributed partly to the economic downturn, it is likely that the problem can be alleviated if lenders

can make more informed decisions on individual credit applications. Suggestions have been made that the rules should be slightly relaxed so that credit reference agencies in Hong Kong would have access to information on an individual's aggregate active loans on hand.

113. On the other hand, there are those who believe that the easy credit situation cannot be improved even with more data being made available. They believe that regardless of improvements, some lenders, especially less reputable ones and new entrants, would try to compete and gain a larger share in the consumer credit market by targeting the bottom end of the market and extend high risk consumer credit at high interest rates.

114. The Sub-committee is of the view that the lack of reliable information on the credit exposure of debtors may well be a cause for the availability of easy credit. Lending decisions are made partly based on credit reference data and partly based on the individual lender's lending policy at the time.

Recommendation 10

The relevant authorities should review the existing limitations imposed on the collection and use of certain positive credit data from the angle of alleviating bad debts and abusive debt collection practices, and to take 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, as well as the categories of credit providers sharing information. Credit providers have to be convinced that sharing such information will be beneficial to their risk exposures without compromising their competitiveness in the market.

Self-regulation (paragraphs 9.68 – 9.69)

115. It has been suggested to the Sub-committee that self-regulation by debt collection agencies should also be considered as an economical and flexible option. The Sub-committee is aware that self-regulating associations for debt collection agencies are operating in the United Kingdom, the United States, Australia and Germany. In Hong Kong, the Hong Kong Credit & Collection Management Association has been set up recently. The Sub-committee invites views from the public and market operators on the effectiveness and desirability of self-regulation as a means to address debt collection problems.

Conclusion (paragraph 9.70)

116. There is a justifiable level of concern amongst sectors of the community to warrant consideration of the issue of abusive debt collection. Since abusive debt collection has a number of causes, the Sub-committee

has recommended a range of measures to address the problems. Some of our recommendations are aimed at deterring the bottom end of debt collection agencies (Recommendations 1 and 2), while other recommendations are aimed at regulating the average collection agencies (Recommendations 2 and 9). The top end of collection agencies will benefit from the more level playing field, which hopefully would encourage more collection agencies to operate at the top end of the market. Another recommendation (Recommendation 10) aims to improve the credit origination process. It is hoped that the level of bad debts, and hence, abusive debt collection, can be alleviated. The Sub-committee invites comments on the matters contained in, or on the issues raised by, the Consultation Paper.