

Debt Collection Guidelines for Licensed Corporations

It has come to the SFC's attention that some licensed corporations employ debt collection agencies to recover overdue debts from their clients. The SFC is concerned that if the licensed corporations were seen to be employing debt collection agencies which use inappropriate means to recover debts, it would be damaging to the status and standing of the licensed corporations concerned, and the financial industry in general. In view of this concern, the SFC had issued a set of debt collection guidelines in November 2001 to govern the debt collection practices of licensed corporations.

For the purposes of the Securities and Futures Ordinance, the SFC republishes the following guidelines under section 399 of the Ordinance. They are applicable to all licensed corporations who engage debt collection agencies. (Registered institutions are excluded as they are already subject to the debt collection provisions of the Code of Banking Practice which are no less stringent than the guidelines.)

1. Licensed corporations should take adequate steps to monitor and control the manner of operation of the debt collection agencies employed by them. To discharge this duty, licensed corporations should bring these guidelines to the attention of the debt collection agencies that they hire, and require these agencies to undertake that they shall abide by the requirements set out in the guidelines. In the event that licensed corporations discover that any agency has failed to comply with these requirements, the licensed corporations should cease using that agency. This is particularly so when repeated complaints against the same agency are received.
2. Licensed corporations should not pass information about referees or third parties other than debtors or guarantors to their debt collection agencies. Licensed corporations' attention is drawn to the relevant provisions of the Personal Data (Privacy) Ordinance.
3. Licensed corporations and their debt collection agencies should not try to recover debts from persons other than debtors and their guarantors, including referees, family members or friends of the persons concerned who have not entered into a formal contractual agreement with the licensed corporations to guarantee liabilities of the debtors.
4. Licensed corporations and their debt collection agencies should not cause public humiliation or harassment to the person, members of his family or any other person in the course of recovering debts, such as putting up debt notices on the walls of their residence.
5. A debt collector should not resort to violence or use any intimidating or illegal means in connection with the collection of any debt.

The guidelines are not intended to undermine the legitimate manner in which licensed corporations carry out their business activities and should not be interpreted in anyway so as to prejudice their legitimate contractual rights in respect of their clients.

The guidelines should not impose any additional regulatory burden on licensed corporations as they do not set a higher compliance standard. They merely outline in writing the minimum debt collection practice standards which licensed corporations have been expected to adopt and should have been adopting. Non-compliance may constitute misconduct and a cause for disciplinary action. Further, illegal or unconscionable tactics used by debt collection agencies seeking to collect debts on behalf of licensed corporations could damage the image of licensed corporations.