香港信貸及收帳管理協會
Hong Kong Credit and Collection Management Association

Date: 31 March 2012

Dear Sir/Madam,

The Consultation Paper on Stalking has created a lot of discussions in our Association, namely because the nature of the legislation would potentially have a number of profound impact to credit practitioners. On behalf of the HKCCMA, I would like to share our comments with you.

Before we move on to the comments, it is imperative that I give you a quick introduction to our Association and whom we are representing. The Hong Kong Credit and Collection Management Association (HKCCMA) have been established since 1999 and is the only association representing credit practitioners in Hong Kong. Among its members, there are individual credit managers, credit information and collection agencies, global credit insurers and law firms. The Executive Council of the HKCCMA is comprised of a team of highly experienced credit practitioners from well-known multinational companies as well as local credit agencies. For more information about the HKCCMA, please refer to the website hkccma.com.

The HKCCMA represents lawful creditors spanning from industrial raw material suppliers to commercial services providers. Our common consensus on the consultation paper is over-legislation on debt collection rather than on stalking which the debtors could use as means to escape from their obligations. 2.11 of the consultation paper stated that there is no statistics on stalking per se, but the number of non-criminal debt collection-related harassment cases reported to the Police average over 14,000 each year in the last three years.

The HKCCMA found the manner in which the statistics being portrait disturbing. First, cases being reported to the Police were not legal judgments and it seemed to imply that debt collection is a form of harassment. Secondly, a debtor has a legal obligation to repay their debt and debt collection activities only begin when there is non-payment from them. Thirdly, despite the lack of formal statistics, there is a common consensus among industries that there is a growing trend of professional debtors. One good way to delay the creditor's action is to report the case to the Police and the HKCCMA fear that the proposed legislation on stalking would provide a means for the debtors to avoid their obligation.

I would also like to raise your attention to 3.12 of the consultation paper about debt collection. When debt collection is mentioned, the general public would mostly associate the activity as being unlawful and unethical. The HKCCMA fear that the LRC is taking the same stance. Debt collection in fact is a common and standard process of credit management without which commercial or consumer credit will not work.

I am the APAC head of credit management of a substantial multinational company in the manufacturing of industrial chemicals with a global annual sales turnover in excess of €10 billion and can testify that commercial debt collection is an integral part of any business. In our day to day business operation, there are customers who run into financial difficulties hence stopping them from fulfilling their obligations. Almost invariably they first start by delaying payments, stop answering phone calls and beginning to come up with excuses. To protect the company's interests, we need to find the debtors and discuss with them on their repayments. According to our contract with the customers, we have the right to stop supply on an overdue account and that might trigger a production line stoppage at their manufactory. To sum up, in a typical collection process, we might need to call the customers who have been avoiding us a number of times in order to locate them and if we decided to stop the material supply, the customers might feel alarm and distress. Should that happen, are we in breach of the proposed legislation?

Looking at the consultation paper, there seems to be inadequate provisions to protect legal and lawful creditors from debtors whom might abuse the use of the proposed legislation. The general public tends to forget that industrial and commercial organizations give free and unsecured credit to facilitate the customers. Our only means of defence is via prudent credit management where debt collection is an integral part.

3.22 (i) of the consultation paper mentioned that a person who pursues a course of conduct which amounts to harassment of another, he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence. And 3.22 (ii) further states that for the purpose of this offence, the harassment is serious enough to cause the person alarm or distress. These are rather subjective provisions and could easily be employed by debtors. Despite the fact that the HKCCMA have every confidence in our legal system, it is difficult to prevent debtor using it as a tool to avoid making payment.

On legitimate debts, whether it is a commercial or consumer debt, it necessary follows that the debtor must have obtained a consideration either in the form of goods or monetary equivalent. With that in mind the debtor has a legal obligation in the form of a contract. Putting unnecessary constrains on debt collection would unbalance this equation and detrimental to the granting of commercial credit. Needless to say, businesses would be severely affected because of restrictive credit caused by the proposed legislation.

While looking at the defences, 3.38 (a) stipulates that the pursuit of the course of conduct was reasonable in the particular circumstances. The HKCCMA is again in the belief our legal system would stand by legal and lawful debt collection, nevertheless, this provision does not provide sufficient clarity to protect creditors.

In conclusion, the HKCCMA object the proposed legislation on stalking. We strongly felt that with debt collection specifically mentioned and integrated, the proposed legislation could be abused. We request the committee to seriously consider every means to isolate legal and lawful debt collection from the proposed stalking legislation to avoid debtors using it as a tool to delay payments that they are obliged to make.

Yours faithfully,

Stephen Lo
Chairman
The Hong Kong Credit and Collection Management Association.