

NEW LAW ADDRESSES HARASSMENT BY CREDITORS

Consumers and consumer activists welcomed the passage this past September of a new law aimed at controlling the behaviour of creditors during the collection process. The Demand for Payment of Debt with Fairness Act (DPDF) represents a major effort to control the ongoing problem of harassment of debtors by protecting their rights.

The main objective of the DPDF was to address the concerns of consumers and consumer advocacy groups over the increasingly aggressive tactics employed by creditors in the loan and credit card businesses. With no specific statute to control or otherwise limit the behaviour of creditors, there was little that could be done to protect the rights of debtors. Further, previous Bank of Thailand regulations and procedures addressing the issue of debt collections for financial institutions did not extend to non-financial institutions and collection companies, leaving few effective tools for curbing the harassment of debtors.

The DPDF places limits on unfairness in collections by banning aggressive and/or threatening actions against debtors. Forbidden creditor actions include the making of numerous telephone calls to debtors in a single day or calling at night, and the sending of inappropriate or harassing written communications to a debtor's place of work. In addition, it is forbidden for a creditor or his or her agents to contact persons unrelated to the debt or to act in any way that is intended to discredit the reputation of the debtor.

Specifically, the DPDF seeks to control the behaviour of all persons authorised to demand payment of debts ("debt collectors") by noting collectors:

- ◆ may not contact any person who is not a debtor, except to ask for a debtor's contact information;
- ◆ may not threaten, take aggressive action, or commit an affront against a debtor or against any other person in furtherance of their debt collection efforts;
- ◆ may not disclose confidential information related to the debt or the debtor to any third person when conducting collection activities. There may be a limited number of exceptions, however, for information shared with counsel or related parties in the course of pre-litigation or litigation efforts;
- ◆ may neither act in an excessive manner nor make repeated telephone calls in a single day to the debtor or to a person unrelated to the debt;
- ◆ may not act in any way to harass or annoy the debtor or any person unrelated to the debt;
- ◆ may not make false or misleading statements in demand for payment of debt. For example, they may not falsely deceive a debtor into believing they represent the court, a law firm, or a

government body seeking recovery of assets;

- ◆ may not make unfair demands for payment, such as charging unreasonable fees and expenses;
- ◆ may not contact the debtor by post, facsimile, or other means using language or symbols that clearly identify the communication as a debt collection notice;
- ◆ may not call or otherwise communicate with a debtor during the hours of 8 pm to 8 am on weekdays and 6 pm and 8 am on weekends.

These efforts go a long way toward changing the historically unbalanced landscape and providing a number of personal privacy protections to consumers. However, the scope of this protection has been limited, whether by accident or design, in a number of ways, including the following.

First, the DPDF limits "debts" to only those related to credit. The DPDF further defines "credit" as loans, buying bills of exchanges, buying instruments, credit card services, hire purchases, leasing to individual persons, and other types of business transactions that may be announced from time to time. This limiting language may result in many other debt classifications, such as sales and purchases and non-individual leases, being excluded from DPDF protection.

Second, the DPDF states that the creditor must be a juristic person only. If the creditor is an individual, the debtor is not afforded protection. This could effectively mean that the DPDF cannot be used to control the inappropriate behaviour of individual creditors or their agents.

Third, the DPDF similarly states that the debtor must be an individual person only. Therefore, a company debtor will not receive protection under the DPDF.

In conclusion, the drafters of the DPDF engaged in an honest effort to address creditor harassment of debtors. Unfortunately, the results of their efforts leave many creditor abuses untouched or inadequately punished. Until such time that the DPDF can be redrafted to resolve these inadequacies, debtors must carefully assess their rights, the potential for harassment, and the protections under the DPDF.

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