

Thailand's new debt collection law provides a measure of protection

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Debt collection has long been associated with deceptive and unscrupulous practices. In Thailand, it is not uncommon to hear stories of collectors tricking debtors into paying by giving false information or even resorting to abusive language, violence and blackmail.

In an effort to stamp out these practices, the National Legislative Assembly has passed the Debt Collection Act. The new law, which will take effect on Sept 2, seeks to establish fair and standardised collection rules. It applies to all debt collectors, from institutional lenders such as banks to individual creditors. Importantly, however, while it applies to individual debtors, debtor companies are not protected by the law.

Under the law, the way creditors collect debts will be more tightly regulated. Debtors will also have increased protection and rights.

The law defines "debt collector" as a creditor who makes a loan to a debtor. The debt can be legal or illegal. In other words, even loan sharks are subject to the Act.

Further, a creditor's authorised representative (such as an attorney), a debt collection agency and its authorised representative are all categorised as "debt collectors". A "debt collection business" means any business hired to collect a debt, directly or indirectly. Lawyers who collect debts for clients are not considered a "debt collection business".

A "debtor" means any natural person obligated to pay a debt. This includes an individual debt guarantor.

Under the law, debt collectors can only communicate with the debtor or another person authorised by the debtor (such as a lawyer). A collector can only contact third parties to acquire information or learn the debtor's location. The collector is also limited to identifying himself and inquiring about the debtor's whereabouts to a third party. The collector cannot tell the third party that the debtor owes a debt unless the third party is a spouse, parent or child of the debtor.

The collector is also required to communicate confidentially with the third party. He cannot use any language, symbol, mark or business name of the debt collector on any correspondence that may indicate the communication is related to debt collection.

The collector can contact the debtor only between 8am and 8pm Monday to Friday and between 8am and 6pm on holidays. The collector can also only contact the debtor at a place indicated by the debtor.

Attorneys for debt collectors must state their names, agency, creditors' names and the debt amount. If the collector seeks to collect the debt in person or demands performance, he must show his power of attorney to the debtor. If the debtor pays the debt, the collector must give the debtor evidence of payment such as a receipt.

When collectors try to collect a debt, they cannot do the following:

Threaten to use violence against the debtor or any action that injures the body, property or reputation of the debtor;

Notify and disclose any debt of the debtor to third parties who are not related to the collection;

Use profane or other language that insults the hearer or reader;

Use false information to deceive a debtor -- for example, by falsely claiming to have a court order or be a state official or lawyer; or by falsely threatening to seize the debtor's assets or salary.

In addition, and much like when contacting third parties, collectors cannot disclose that the nature of their communication is to collect a debt. They cannot contact debtors by postcard, open letter, fax or any other "non-discreet" method that shows the communication is related to collection.

Moreover, even if the communication is discreet, the collector can only indicate the collector's business name -- as long as it does not indicate the business is a debt collector.

The collector cannot collect any fees or expenses over an official limit set by the Committee Governing Debt Collection, appointed under the Act. Also, the collector cannot convince a debtor to pay by cheque if the collector knows the debtor cannot afford the debt.

Failure to comply with the law is a criminal offence. Anyone who is aware of a violation can report it to a district office or police station. A collector who threatens or causes injury to a debtor's person, property or reputation can be fined up to 500,000 baht and/or jailed for up to five years.

Individual directors, managers and representatives of corporate debt collectors can also be criminally liable. If a juristic person violates the law, and the offence falls within the scope of duty of the director, manager or representative, these individuals can be punished for the same offence as that committed by that juristic person.

While the best way for debtors to minimise the risk of dealing with unscrupulous collectors is to borrow from reputable lenders, the Debt Collection Act provides a measure of protection for those who do not have this option. Prudent lenders should understand the law.