

LEGAL
ALERT

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Debt Collection Act standardises mechanisms for debt collection

Prior to 2015, there were various problems with the practice of debt collection in Thailand. There were instances of collectors using physical violence, abusive language and public shaming against the debtors to push for repayment of debt. In an effort to curtail these practices, the Debt Collection Act (“the **Act**”) was passed in 2015 to provide for a fair and standardised collection mechanism.

The intention of the Act is to regulate the way creditors collect debts and applies to all debt collectors, from individual creditors, business operators and financial institutions. Debt collectors are defined as a creditor who makes a loan to a debtor, while debtor refers to a natural person and a natural person surety. The definition of debt collectors is also extended to a lawyer authorised by a creditor, debt collector and debt collection business and a debt collection business. Lawyers who collect debts on behalf of their clients are not considered as debt collectors.

The Debt Collection Supervisory Committee (“**Committee**”) has been set up and tasked with the role to execute and supervise the Act. The Act applies to all types of debts whether legal or illegal and aims to protect all natural persons against abusive debt collectors. This could lead to oversight by business operators due to the legal implication and regulatory framework under the Act. The definition of business operator is the same as under the consumer protection law which is defined as “a seller, a producer for sale, a person ordering or importing the goods into Thailand for sale or a person purchasing goods for resale or a person providing a service and also includes a person operating an advertising business”. This definition covers most, if not all, business entities and thus if you are operating a business and your customers/clients or the surety are natural persons, you are subject to certain limitations on how to collect your debt.

When collecting a debt

A debt collector is prohibited from contacting other persons who are not debtors. This means that communication must only be with the debtor or another person authorised by the debtor. A debt collector can only contact a third party to question or confirm the whereabouts of the debtor. In doing so, the debt collector is limited to only identifying themselves and enquire on the whereabouts of the debtor. Except in the case where the other person is the spouse, parents or children of the debtor, the debt collector is not allowed to disclose the debt of the debtor.

When communicating about the debt, the debt collector must maintain the confidentiality of the debtor. This means that they are not allowed to use any message, sign, symbol or business name of a debt collector on any correspondence that may indicate that the correspondence is related to debt collection.

When the debt collection is made by an authorised lawyer, the debt collector must inform his or her name, last name or the name of his or her organisation and those of the creditor and the amount of debt. If the lawyer collects the debt in person, the lawyer must also show evidence of authorisation for the collection of debt.



Mode of communication

In the event where contact is made in person or by post, it must be made to the debtor at the place indicated for debt collection purpose. Where no place is indicated, or the debtor remains uncontactable after multiple attempts, contact can be made at the place of domicile, place of residence or place of employment of the debtor or other places as allowed by the Committee.

The Act provides that debt collection by person, telephone, social media application or other types of information technology is limited to between 8.00 a.m. to 20.00 p.m. on the weekdays and 8.00 a.m. to 18.00 p.m. on weekends and public holidays. Effective from 21 November 2019, the Committee has announced that contact can only be made once per day. Given that the dictionary definition of “contact” is when the receiver receives the message from a sender, thus, in terms of the Act “contact” is when the debtor “obtains” the message from the collector and “understands” the content.

Where the debt collector is a business entity, it has to be aware that if any employee assigned to do the collection has already made contact that day, there should not be a repetitive debt collection message on the same day. A message in the like of “do not forget to repay” or “have you already paid the debt?” or similar is deemed as a debt collection. It is understood that where debt collection is made by way of:

- social media applications, it is assumed to have been received when the application show a signal or a message that the receiver has read or received the message, even if there is no reply from the debtor and the debtor should not be contacted again for repayment on that
- telephone to the registered number, it will be regarded as contact made when the debtor obtains the material content (to collect the debt). However, where the debtor does not answer or hang up before the debt collector can communicate the debt collection message, this means the material matter is not expressed and it does not count as a contact is made for the day.

In the event where the debtor cannot be contacted, then the debt collector is allowed to notify the enforcement of mortgage by announcement in the newspaper.

Similar to the prohibition for third parties, the debt collector cannot disclose that the nature of the communication signifies a debt collection and is not allowed to contact debtors by way of postcard, fax, open documentation or other non-discreet methods that is related to the collection. Moreover, even if the method is discreet, the debt collector can only indicate their name and not indicate that their business is debt collecting.

Proof of payment of the debt

In the case where a debt collector is asking for payment, they must show evidence of authorisation to receive payment from the creditor to the debtor or a person specified by the debtor for debt collection purpose. Upon receiving payment from the debtor, the debt collector should issue the proof of the payment of debt to the debtor.

If the debtor has, in good faith, paid the debt to the debt collector, the payment is deemed to be a legal payment irrespective of whether the debt collector has been authorised to receive the payment.





Prohibitions for debt collectors

The Act sets out the manner in which the debt collector is allowed to collect the debt. When doing so, they are prohibited to act in the following manner:

- threaten to use violence that will cause damage to the body, reputation and property of the debtor;
- use disrespectful languages;
- notify and disclose the debt to any party that are not related to the collection; or
- use false information to deceive the debtor, for example by falsely claiming to be a lawyer or government official;
- any other means of inappropriate debt collection practices as prescribed by the Committee.

Furthermore the debt collector cannot collect any fees or expenses that exceeds the limit set by the Committee and cannot convince a debtor to pay by cheque if the collector knows the debtor cannot afford the debt.

Penalties for Violations

Failure to comply with the law is considered as a criminal offence and any violations, a debt collector can be fined up to THB 100,000 or THB300,000 and/or jailed for up to one or three years for any violations. A debt collector who uses threat or violence in the performance of debt collection can be fined up to THB500,000 and/or jailed for up to five years. The Act also provides that individual directors and company's representatives of the debt collectors can be criminally liable. If a juristic person violates the Act, the commission of offence that fall within the scope of duty of the directors and company representatives, such persons can be punished for the same offences as that committed by the juristic person.

Because of the many restrictions and rather severe penalties for violation, business operators must be cautious in approaching debt collection against debtors. Internal measures should be put in place to ensure no repetition of debt collection is made by different personnel. The Act provides a measure of protection for the debtors and standardise the method of collection to ensure that at the end of the day both debtors and creditors are regulated.

If you have any questions or require any additional information, please contact [Threenuch Bunruangthaworn](#), [Archaree Suppakrucha](#) or [Panwadi Maniwat](#) of ZICO Law Thailand or the partner you usually deal with.

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