



BERMUDA

DEBT COLLECTION ACT 2018

2018 : 61

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WHEREAS it is expedient to provide for the Debt Collection Licensing Authority to regulate debt collectors; to prohibit unfair debt collection practices and provide criminal and civil penalties for contravention; to provide for a Tribunal to adjudicate debt collector's and debtor's complaints against the Debt Collection Licensing Authority; and to provide for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Debt Collection Act 2018.

Interpretation

2 In this Act—

“the Consumer Affairs Board” means the Board constituted under section 3 of the Consumer Protection Act 1999;

“credit reporting agency” means a person who furnishes reports relating to the credit worthiness of a person for gain or profit or who furnishes such reports on a routine, nonprofit basis as an ancillary part of a business carried on for gain or profit;

“creditor” means a person to whom a debtor owes a debt or who has extended credit to a debtor, including credit in the form of a sale on credit, a loan of money or the provision of goods and services, and the term “creditor”—

(a) includes any officer or employee of a creditor who, in the name of the creditor, collects debts for such creditor;

(b) does not include a creditor who, in the process of collecting his own debts, uses any name other than his own;

“debt” means a monetary obligation enforceable at law owed by a debtor, which includes a purchase on credit, accounts receivable, a loan of money or the provision of goods or services;

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“debt collection business” means the business of pursuing and collecting a debt—

- (a) on behalf of another person; or
- (b) on behalf of a person who has purchased the debt that is in arrears,

from a debtor under any name that differs from that of the creditor to whom the debt is or was originally owed or asserted to be owed, regardless of where or to whom the payment is made;

“debt collection licence” or “licence” means a licence granted by the Authority under section 9;

“Debt Collection Licensing Authority” or “Authority” means the Debt Collection Licensing Authority established under section 4;

“Debt Collection Officer” or “Officer” means the public officer appointed under section 6(1);

“Debt Collection Tribunal” or “Tribunal” means the Debt Collection Tribunal constituted under section 31;

“debt collector” means a person who is licensed as a debt collector under section 9 to carry on debt collection business;

“debtor” means an individual who has an obligation for a debt, the payment for which debt is past due, and includes—

- (a) the owner of a sole proprietorship;
- (b) a member of a partnership; or
- (c) an individual who has provided a personal guarantee;

“Minister” means the Minister responsible for consumer affairs;

“unfair debt collection practice” means the following unfair debt collection practices as provided under Part 4—

- (a) conduct which harasses or oppresses, under section 16;
- (b) the use of false, deceptive or misleading representation, under section 17;
- (c) the use of unfair or unscrupulous practices, under section 18;
- (d) charging commission and fees in excess of the amounts provided under section 19;
- (e) conducting collection activities with respect to a debt contrary to the requirements for validation of the debt under section 20; and
- (f) applying a payment to a disputed debt in the case of multiple debts under section 21;
- (g) giving or obtaining information from the files of a credit reporting agency about another person contrary to section 22.

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Application

- 3 (1) This Act does not apply to any of the following persons, that is to say—
- (a) the Provost Marshal General and any bailiff appointed under the Provost Marshal General Act 1965;
 - (b) a liquidator, receiver or trustee acting in pursuance of his duties under the Companies Act 1981;
 - (c) a public officer or public authority who carries on the business of collecting, requesting or demanding payment of debts owed to the Government of Bermuda and the public authority.
- (2) Except as is provided in this section, the provisions of this Act apply to any person conducting debt collection—
- (a) who is a creditor;
 - (b) who is a barrister and attorney holding a current practising certificate issued under section 10 of the Bermuda Bar Act 1974 who derives 50% or more of his gross earnings by means of the collection of debt on behalf of creditors.
- (3) The following provisions of this Act do not apply to a person referred to in subsection (2)(a)—
- (a) Part 3, providing for licensing of debt collectors;
 - (b) Part 4 with respect to section 19, providing for debt collection fees and charges;
 - (c) Part 5 with respect to sections 24, 25 and 26, providing for inspections and investigations of debt collectors; and
 - (d) Part 6 with respect to section 27, providing power to revoke a debt collector's licence.
- (3A) In the case of a barrister and attorney holding a current practicing certificate issued under section 10 of the Bermuda Bar Act 1974 who derives less than 50% of his gross earnings by means of the collection of debt on behalf of creditors, this Act applies except for the following provisions—
- (a) Part 3, providing for licensing of debt collectors;
 - (b) Part 5 with respect to sections 24, 25 and 26, providing for inspections and investigations of debt collectors; and
 - (c) Part 6 with respect to section 27, providing power to revoke a debt collector's licence.
- (4) The Minister may by order, subject to the negative resolution procedure, amend the provisions of this section.

[Section 3 amended by BR 95 / 2020 para. 2 effective 24 August 2020]

PART 2

DEBT COLLECTION LICENSING AUTHORITY

Establishment of Debt Collection Licensing Authority

4 (1) There is established the Debt Collection Licensing Authority which shall regulate debt collectors.

(2) The Authority shall, subject to the general direction and control of the Minister, be under the supervision of a public officer who shall be known as the Debt Collection Officer and shall consist of such number of public officers as may from time to time be authorized by the Minister.

Functions of Debt Collection Licensing Authority

5 The functions of the Debt Collection Licensing Authority are—

- (a) to license and authorize the practice of debt collection;
- (b) to advise the Minister on matters relating to the oversight and licensing of debt collectors for the purposes of this Act;
- (c) to keep and maintain a register of debt collectors;
- (d) to determine and review the requirements to be satisfied by persons or firms seeking to be licensed as debt collectors under this Act;
- (e) to determine, review and adopt—
 - (i) the codes of professional conduct and ethics for debt collectors; and
 - (ii) the standards, methods, and procedures to be applied by debt collectors;
- (f) to inform the public on adverse terms of contracts, including terms relating to fees, interest rates and other charges;
- (g) to publish on the Authority's website the applicable fees, interest rates and other charges of each debt collector and of creditors; and
- (h) generally to do all such acts, matters and things as are necessary to be carried out under this Act.

Debt Collection Officer and other staff

6 (1) The Debt Collection Officer shall be responsible for the proper administration and management of the functions and affairs of the Authority.

(2) The Minister may appoint any other person to act in the place of the Officer when he is unable to perform his duties for any period because of absence from Bermuda, illness or any other reason.

(3) The Minister may, on the recommendation of the Consumer Affairs Board, appoint and employ, on such terms and conditions as the Minister may determine, such

other officers, employees, consultants and agents as may be necessary for the effective performance of the functions of the Authority.

(4) The Minister may designate the Officer and other persons to be inspectors for the purpose of the enforcement of this Act and the regulations, and shall furnish every such person with a certificate of his designation signed by the Minister and the person so designated.

PART 3

LICENSING DEBT COLLECTORS

Prohibition on carrying on debt collection business without a licence

7 (1) A person shall not carry on debt collection business in or from Bermuda unless that person holds a debt collection licence under this Act.

(2) A person who contravenes this section is guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$60,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; or
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Application for licence

8 (1) An application for a debt collection licence may be made to the Authority in such form as may be prescribed by the regulations.

(2) An application for a licence shall be accompanied by—

- (a) in the case where the applicant—
 - (i) is an individual, photographic identification showing that the individual is over twenty-one years;
 - (ii) is a company, a copy of the certificate of incorporation issued under the Companies Act 1981;
 - (iii) is a limited liability company, a copy of the certificate of formation issued under the Limited Liability Company Act 2016; or
 - (iv) is a limited partnership, a copy of the registration certificate issued under the Limited Partnership Act 1883;
- (b) a business plan setting out the nature and scale of the debt collection business which is to be carried on by the applicant;
- (c) a statement indicating the physical and postal addresses of the debt collection business;
- (d) particulars of the applicant's arrangements for the management of that business;

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- (e) policies and procedures to be adopted by the applicant to meet the obligations under Part 4 of this Act;
 - (f) a statement indicating that the applicant has not been declared bankrupt under the law of any country and has not been a director of a company that has been declared insolvent;
 - (g) a statement indicating that the applicant has not been convicted of a financial crime or convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
 - (h) statements from three persons who are good standing members of the community as to the character of the applicant;
 - (i) a statement of the applicant's accounts from the financial year preceding the application;
 - (j) a letter of good standing from any professional body the applicant is a member of in relation to work completed as a debt collector;
 - (k) a statement providing evidence of a trust account held, or intended to be held, by the applicant as provided under section 15;
 - (l) evidence that the applicant has obtained the services of an accountant registered under the Chartered Professional Accountants of Bermuda Act 1973 to cause proper statements of its financial affairs to be maintained;
 - (m) evidence that the applicant has obtained the services of an auditor;
 - (n) a statement indicating that payments are up to date, or are intended to be made with respect to a newly formed entity, to the following—
 - (i) social insurance contributions paid under the Contributory Pensions Act 1970;
 - (ii) payroll tax required under the Payroll Tax Act 1995;
 - (iii) any fee required of a company under the Companies Act 1981 or a limited liability company under the Limited Liability Company Act 2016;
 - (iv) any registered body that the applicant is a member of in relation to work completed as a debt collector;
 - (o) an application fee as provided under section 14; and
 - (p) such other information or documentation as the Authority may determine.
- (3) An application may be withdrawn by notice in writing to the Authority at any time before it has been granted or refused.
- (4) Where a reference under this section to the term “the applicant” denotes an individual, the term shall include a director of a company or limited liability company or partner of a limited partnership.

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Grant and refusal of application for licence

9 (1) Subject to this section, the Authority may on an application duly made in accordance with section 8 accompanied with the application or renewal fee, and after being provided with all such information and documents as it may reasonably require under that section—

- (a) grant a licence; or
- (b) renew a licence,

for such a period as provided in section 10.

(2) The Authority shall not grant a licence unless it is satisfied that the applicant is a fit and proper person to be a debt collector.

(3) Subject to subsection (1), where the Authority grants an application for a licence or its renewal, the Authority shall, on payment of the fee, issue the licence.

(4) A licence granted under this section may be subject to such conditions on the scope of the debt collection services offered or the manner of operating the debt collection business as the Authority may determine.

(5) The Authority, on application made by a licensed debt collector, may vary or remove any condition imposed on the licence.

(6) Where proof of the loss or destruction of a licence is given to the satisfaction of the Authority, a duplicate licence may be issued by the Authority on payment of the fee.

Duration of licences

10 A licence is to be issued or renewed for such period as may be provided in the regulations, which period shall not exceed twenty-four months.

Revocation of licence

11 Subject to section 27, the Authority may revoke the licence of a debt collector if the Authority is satisfied that—

- (a) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the debt collector or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the debt collector;
- (b) the debt collector has failed to comply with any order imposed on it under sections 28, 29 or 30 or is carrying on business in a manner not authorized by its licence.

Register of debt collectors

12 (1) The Authority shall keep a register of all debt collectors, which shall contain—

- (a) the name of the debt collector;
- (b) the physical address of the debt collector's business;

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(c) such other information as the Authority may determine.

(2) The register shall be available for inspection by any member of the public during the hours that the office of the Authority is open to the public on payment of a fee of \$5.00.

Form, display and registration of licence

13 (1) A licence shall be in such form as the Minister may prescribe in the regulations.

(2) A debt collector shall at all times keep the licence on display in Bermuda at its principal place of business.

(3) The Authority shall publish in the Gazette a notice of every grant of a licence under this Act.

Licensing fee

14 (1) A debt collector shall pay such fees as may be prescribed under the Government Fees Regulations 1976—

(a) on the application for a licence; and

(b) on or before 31 March in the year in which the licence is to be renewed.

(2) For each week or part of a week that a debt collector fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding \$1,000.

Trust accounts

15 (1) Every debt collector shall open and maintain a separate trust account and shall there deposit the money received or held by him on behalf of any person as soon as possible after receipt.

(2) The money deposited in terms of subsection (1) shall be paid within a reasonable time to the person on whose behalf the money is received or held.

(3) A settlement account, containing a complete exposition of all credits and debits reflected in the trust account, shall be delivered to the person referred to in subsection (2) at least once a month.

(4) A debt collector shall keep proper accounting records in respect of all money received, held or paid by such debt collector.

(5) The Authority may, at its own cost, examine the accounting records of a debt collector in order to satisfy itself that this section is complied with, and if, during such examination, it is found that the debt collector has not complied with this section, the Authority may cause the accounting records of such debt collector to be updated and may recover the costs of the examination and, where applicable, such updating from that debt collector.

(6) A debt collector must—

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- (a) cause his accounting records to be audited annually by a public accountant or auditor who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973;
- (b) provide to the Authority a copy of his audited annual financial statement.

(6A) Notwithstanding subsection (6)(b), a debt collector licensed under this Act in the year 2020 is exempt from providing the Authority with his audited annual financial statement for the year 2020.

(6B) The Minister may, where he determines it appropriate to do so, extend, by a period not exceeding six months, the time within which a debt collector shall provide the Authority with his audited annual financial statement.

(7) No amount standing to the credit of a trust account contemplated in subsection (1) shall form part of the assets of a debt collector or may be attached on behalf of any creditor of such debt collector.

[Section 15 subsections (6A) and (6B) inserted by 2021 : 31 s. 2 effective 27 July 2021]

PART 4

UNFAIR DEBT COLLECTION PRACTICES

Harassment

16 (1) A debt collector, in connection with the collection of debt, shall not engage in any conduct which harasses or oppresses any person.

(2) For the purposes of this Act, conduct that harasses and oppresses means—

- (a) the use, or threatening the use, of violence or other criminal means to harm the person, or property of any person;
- (b) threatening to use any means to spread false information concerning the creditworthiness of a debtor;
- (c) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;
- (d) subject to subsections (3) and (4), publishing a list of debtors who allegedly refuse to pay debt or sharing such a list with other persons;
- (e) advertising the sale of any debt to coerce payment of the debt;
- (f) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the number called;
- (g) placing any telephone call without the disclosure of the caller's identity;
- (h) subject to subsection (5), exceeding three unsolicited contacts on behalf of the same creditor with a debtor in any period of seven consecutive days.

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(3) Subject to subsection (4), a debt collector shall not without the express consent of a debtor—

- (a) include the name of the debtor in a list of debtors who allegedly refuse to pay their debts, which the debt collector intends to publish or share with other persons; or
- (b) communicate information about the debt or the existence of the debt with any person.

(4) Subsection (3) shall not apply in the case where the debt collector is communicating information about the debt for the purposes of informing a guarantor of the debt, the debtor's representative or the creditor of the debt.

(5) Subsection (2)(h) does not include contacts with a third party to locate a debt, mistaken contacts with a third party or contacts by post.

(6) In subsection (3), "express consent" means consent in a verifiable form, which may include a written statement and audio recordings.

False or misleading representations

17 (1) A debt collector, in connection with the collection of debt, shall not use any false, deceptive, or misleading representation.

(2) For purposes of this Act, false, deceptive, or misleading representation means the following—

- (a) providing the false representation or implication that the debt collector is acting as agent for—
 - (i) consumer affairs or any Government department or quango;
 - (ii) any attorney;
- (b) providing the false representation or implication that non-payment of debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action;
- (c) making threats to take any action that cannot legally be taken or that is not intended to be taken;
- (d) providing the false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the debtor to—
 - (i) lose any claim or defence to payment of the debt; or
 - (ii) become the subject of any practice prohibited by this Part;
- (e) providing the false representation or implication that the debtor committed any crime or other conduct to disgrace the debtor;

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- (f) communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;
- (g) using or distributing any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official or agency of the government, or which creates a false impression as to its source, authorization or approval;
- (h) using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a debtor;
- (i) failing to disclose in initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral conversation, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;
- (j) failing to disclose in subsequent communication that the communication is from a debt collector, except in relation to formal pleadings made in connection with a legal action;
- (k) falsely representing or implying that documents are a legal process;
- (l) using any name other than the true name of the debt collector or the debt collector's company, limited liability company or limited partnership;
- (m) falsely representing or implying that documents are not legal process forms or do not require action by the debtor;
- (n) falsely representing or implying that an unlicensed debt collector operates under or is employed by a debt collector.

Unfair practices

18 (1) A debt collector shall not use unfair or unscrupulous practices or means to collect or attempt to collect any debt.

(2) For purposes of this Act, unfair or unscrupulous practices means the following—

- (a) collecting any amount (including interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
- (b) accepting from any person a cheque or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intention to deposit such cheque or instrument not more than ten nor less than three business days prior to such deposit;
- (c) soliciting any postdated cheque or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

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- (d) depositing or threatening to deposit any postdated cheque or other postdated payment instrument prior to the date on such cheque or instrument;
- (e) causing charges to be made to any person for communications by concealment of the true purpose of the communication;
- (f) taking or threatening to take any non-judicial action to effect dispossession or disablement of property if—
 - (i) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (ii) there is no present intention to take possession of the property;
 - (iii) the property is exempt by law from such dispossession or disablement;
- (g) communicating with a debtor by postcard regarding a debt;
- (h) using any language or symbol, other than the debt collector's address, on any envelope when communicating with a debtor by use of the mail, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Debt collection fees and charges

- 19 (1) A debt collector shall not charge a debtor a fee that exceeds—
- (a) in the case of a debt repayment agreement that includes a schedule of payments, the sum of—
 - (i) a commission fee to the maximum of 20% of the original amount of the debt payable only once; and
 - (ii) a monthly administrative fee to the maximum of 2% of the debt outstanding payable only in the case where administrative costs arise that relate to the necessity for the debt collector to communicate with the debtor in a particular month; or
 - (b) in the case of a one-time payment to a creditor or creditors, or an agreement to negotiate on the debtor's behalf with a creditor or creditors identified in the debt repayment agreement, an amount to the maximum of 10% of the debt owing.
- (2) A fee under subsection (1)(b) may be charged to the debtor by the debt collector only after a settlement acceptable to the debtor has been successfully negotiated with the creditor or creditors.
- (3) The Minister may by order, subject to the negative resolution procedure, amend the provisions of this section.

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Validation of debts

20 (1) Within five days after the initial communication with a debtor in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice containing—

- (a) the amount of the debt;
- (b) the name of the creditor to whom the debt is owed;
- (c) a statement that unless the debtor, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed by the debt collector to be valid;
- (d) a statement that if the debtor notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the debtor and a copy of such verification or judgment will be mailed to the debtor by the debt collector;
- (e) a statement that, upon the debtor's written request within the thirty-day period, the debt collector will provide the debtor with the name and address of the original creditor, if different from the current creditor.

(2) Subject to subsection (1), the debt collector shall cease collection of the debt, or any disputed portion thereof, until—

- (a) the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor; and
- (b) a copy of such verification or judgment, or name and address of the original creditor, is mailed to the debtor by the debt collector.

(3) Collection activities and communications that do not otherwise contravene this Part may continue during the thirty-day period referred to in subsection (1) unless the debtor has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the debtor requests the name and address of the original creditor.

(4) Any collection activities and communications during the thirty-day period may not be inconsistent with the disclosure of the debtor's right to dispute the debt or request the name and address of the original creditor.

(5) The failure of a debtor to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the debtor.

(6) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for the purposes of subsection (1).

(7) The sending or delivery of any form or notice which does not relate to the collection of a debt shall not be treated as an initial communication in connection with debt collection for the purposes of this Part.

Multiple debts

21 If any person owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector shall not apply such payment to any debt which is disputed by the debtor and, where applicable, shall apply such payment in accordance with the debtor's directions.

Credit reporting agencies

22 (1) No person shall give or obtain any information from the files of a credit reporting agency about another person except for the purposes referred to in subsection (2).

(2) A credit reporting agency, officer or employee shall not furnish any information from the files of the credit reporting agency except in a report given—

- (a) under the written instructions of the person to whom the information relates;
- (b) in response to the order of the court; or
- (c) to such persons and under such conditions and restrictions as the Minister may in the regulations prescribe.

[Section 22 Not In Force. All other sections in force 31 January 2020.]

PART 5

COMPLAINTS, INSPECTIONS AND INVESTIGATIONS

Lodging of complaint

23 (1) Any debtor may lodge a complaint against an alleged unfair debt collection practice with the Authority.

(2) The Authority shall cause a preliminary analysis of a complaint received to be made and a report to be drawn up containing recommendations as to whether there are sufficient grounds to warrant the alleged unfair debt collection practice to be investigated.

General power to inspect records, etc.

24 (1) The Debt Collection Officer, or other inspector, may by written order require a copy or extract of a document from—

- (a) any debt collector; or
- (b) any other person,

who has custody or control of any books, papers, records of accounts, contracts, agreements or other written records relating to any trust account of the debt collector, or in connection with any transaction in connection with its business as a debt collector and is relevant to the discharge of the functions of the Officer under this Act.

(2) A person is not required under subsection (1) to provide or produce any information or document which the person would be entitled to refuse to provide or produce on the grounds of legal professional privilege.

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(3) The Debt Collection Officer is entitled without payment to keep any copy or extract provided to him under subsection (1).

Investigations of suspected contraventions

25 (1) The Debt Collection Officer or one or more inspectors may, upon giving written notice to the person concerned, conduct an investigation if it appears to the Authority that—

- (a) it is desirable to investigate a complaint lodged against a debt collector under section 23;
- (b) a debt collector may have contravened the provisions of this Act or a condition of its licence;
- (c) a person referred to in section 3(2) may have contravened any provision of this Act that is applicable to such person;
- (d) a credit reporting agency may have contravened a requirement imposed by or under this Act;
- (e) a person may have contravened the provisions of this Act.

(2) It shall be the duty of a debt collector and every person employed or acting on behalf of the debt collector which is under investigation—

- (a) to produce to the Officer or inspector, within such time and at such place as may be required, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the Officer or the inspector at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the Officer or the inspector all assistance in connection with the investigation which he is reasonably able to give,

and the Officer or inspector may take copies of or extracts from any documents produced to them under paragraph (a).

(3) For the purpose of exercising the powers under this section, the Officer or inspector may enter any premises occupied by a debt collector which is being investigated under this section; but the Officer or inspector shall not do so without prior notice in writing.

(4) Reference under this section to a contravention of this Act includes a contravention of the regulations, rules or orders made thereunder.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

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Power to enter premises and to seize documents, etc.

26 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 25 and has served a notice to that effect on the concerned person, and—

- (a) that the person has failed to comply with a notice served on him;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 25 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorize any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any contravention under the Act.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a), proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 25.

PART 6

POWERS OF AUTHORITY AND OFFICER

Order to revoke licence

27 (1) Where the Authority proposes to revoke a licence under section 11, it shall serve notice of its proposal on the debt collector together with written reasons.

(2) A notice under subsection (1) shall inform the debt collector that it is entitled to a hearing by the Authority if, after the notice under subsection (1) is served on it, the debt collector delivers within thirty days a notice in writing requiring a hearing with the Authority.

(3) Where a person upon whom a notice is served under subsection (1) does not require a hearing by the Authority in accordance with subsection (2), or fails to deliver a notice requiring a hearing within thirty days, the Authority may issue an order revoking the licence, and such licence shall stand revoked as of the date of the order of revocation.

(4) Where a person requires a hearing by the Authority in accordance with subsection (2), the Authority shall appoint a time for and hold the hearing and subsequent to the hearing, may—

- (a) revoke the licence;
- (b) permit the licence to continue; or
- (c) impose conditions on the licence.

Order to cease unfair debt collection practice

28 (1) Where the Debt Collection Officer believes on reasonable and probable grounds that any debt collector is engaging or has engaged in an unfair debt collection practice, the Officer may order such person to cease the unfair debt collection practice specified in the order.

(2) Where the Officer proposes to make an order under subsection (1), he shall serve notice of his proposal on each person to be named in the order together with written reasons.

(3) A notice under subsection (2) shall inform each person to be named in the order that he is entitled to a hearing by the Authority if, after the notice under subsection (2) is served on him, he delivers to the Officer a notice in writing requiring a hearing with the Authority.

(4) Where a person upon whom a notice is served under subsection (2) does not require a hearing by the Authority in accordance with subsection (3), the Debt Collection Officer may carry out the proposal stated in the notice.

(5) Where a person requires a hearing by the Authority in accordance with subsection (3), the Authority shall appoint a time for and hold the hearing and may by order direct the Officer—

- (a) to carry out his proposal or to refrain from carrying out his proposal; and

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(b) to take such action as the Authority considers the Officer ought to take in accordance with this Act.

(6) The Authority may attach such terms and conditions to its order as it considers appropriate to give effect to the purposes of this Act.

Order for immediate compliance

29 (1) Notwithstanding section 28, the Debt Collection Officer may make an order under that section to take effect immediately where, in his opinion, to do so is necessary for the protection of a debtor from an unfair debt collection practice and, subject to subsections (3) and (4), the order takes effect immediately.

(2) Where the Officer makes an order under subsection (1), he shall serve each person named in the order with a copy of the order together with written reasons therefor and a notice containing the information required to be in a notice referred to in section 28.

(3) Where a person named in the order requires a hearing by the Authority in accordance with the notice under subsection (2), the Authority shall appoint a time for and hold the hearing and may confirm or set aside the order or exercise such other powers as may be exercised.

(4) Where a hearing by the Authority is required, the order expires fifteen days after the giving of the notice requiring the hearing but, where the hearing is commenced before the expiration of the order, the Minister may extend the time of expiration until the hearing is concluded.

(5) An order of the Authority under this section or section 28 takes effect immediately but the Authority may grant a stay if notice of an appeal to the Tribunal under section 33 is served on it.

Assurance of voluntary compliance

30 (1) Any debt collector against whom the Debt Collection Officer proposes to make an order to comply with section 29 may enter into a written assurance of voluntary compliance, in such form as may be approved by the Minister, undertaking to not engage in the specified unfair debt collection practices on or after the date thereof.

(2) Where an assurance of voluntary compliance is accepted by the Debt Collection Officer, the assurance has and shall be given for all purposes of this Act the force and effect of an order made by the Debt Collection Officer.

(3) An assurance of voluntary compliance may include such undertakings as are acceptable to the Debt Collection Officer and the Debt Collection Officer may receive a bond and collateral therefor as security for the reimbursement of debtors and for investigation and other costs in such amount as is satisfactory to the Debt Collection Officer.

PART 7

ESTABLISHMENT OF DEBT COLLECTION TRIBUNAL

Constitution of the Debt Collection Tribunal

31 (1) The Debt Collection Tribunal shall consist of the Consumer Affairs Board, established under section 3 of the Consumer Protection Act 1999 and such persons as the Minister may appoint.

(2) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall have been qualified and have been in practice as barristers and attorneys for at least seven years.

(3) A person shall not be eligible for appointment as chairman, deputy chairman or member of the Tribunal if he is or has at any time during the period of three years ending with the date of his appointment been an officer, servant or agent of the Authority or of any debt collector.

(4) There shall be paid to members of the Tribunal such remuneration and such allowances as the Minister may determine.

Determination of appeals

32 (1) On an appeal made under section 33, the question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal, the Tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

- (a) where the decision was to impose or vary any restriction, the Tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence, the Tribunal may direct the Authority to restrict it instead.

(3) Notice of the Tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the Tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

Rights of appeal of debt collector

33 (1) A debt collector that is aggrieved by the decision of the Authority—

- (a) to revoke its licence;
- (b) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
- (c) to impose a civil penalty,

may appeal against the decision to the Tribunal constituted in accordance with section 31.

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(2) The Tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.

(3) The Tribunal may revoke a debt collector's licence pursuant to a decision of the Authority against which there is a right of appeal, but this action may be suspended by the Tribunal—

- (a) until the end of the period within which an appeal can be brought;
- (b) if such an appeal is brought, until it is determined or withdrawn;
- (c) in such other circumstance as the Tribunal shall determine.

Rights of appeal of debtor

34 A debtor shall have a right to appeal to the Tribunal only in connection with decisions of the Authority made with respect to a complaint lodged by the debtor under section 23.

Direction as to costs and regulations on procedure and evidence

35 (1) The Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals, and those regulations may, in particular, make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by a debtor and by a person who is a controller or officer of a debt collection business, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorizing the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the Tribunal directs to be paid and for the enforcement of any such direction;

(h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the Tribunal; and

(i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to the negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, is guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations made under this section, or which he is liable to be so required to produce, is guilty of an offence and liable—

(a) on summary conviction, to a fine of \$25,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment;

(b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Further appeals on point of law

36 (1) A debt collector or debtor who has appealed to the Tribunal may appeal to the Supreme Court on any question of law arising from the decision on the appeal by the Tribunal and an appeal on any such question shall also lie at the instance of the Authority.

(2) If the Supreme Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the Tribunal for rehearing and determination by it.

(3) No appeal to the Court of Appeal shall be brought from a decision under subsection (1), except with leave of that court.

PART 8

OFFENCES

Offence of unfair debt collection practices

37 (1) No person shall engage in an unfair debt collection practice.

(2) A person who performs any prohibited act under Part 4 of this Act shall be deemed to be engaging in an unfair debt collection practice.

(3) Every person who engages in an unfair debt collection practice is guilty of an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

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(4) Where a person is found guilty of engaging in an unfair debt collection practice, the court may, in addition to imposing a penalty under subsection (3), make an order for the payment of compensation for the loss suffered by the debtor.

(5) Notwithstanding subsection (3), a person shall not be charged with an offence of unfair debt collection practice under this section where such person—

- (a) complies with an order issued by the Debt Collection Officer for the person to cease engaging in an unfair debt collection practice as provided in section 28 or 29; or
- (b) complies with a written assurance of voluntary compliance under section 30.

Offence of furnishing incorrect information in applications and charging in excess of agreement

38 (1) A person who in any application or other document or statement made under or for the purposes of this Act, knowingly makes any statement that is not truthful or furnishes any particulars that are not correct or knowingly omits to furnish any particulars that are required by this Act to be furnished, is guilty of an offence and is liable, on summary conviction, to a fine of \$10,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Where the fees, charges, commission, reward or other remuneration that a debt collector is entitled to receive for or in respect of any service done by him is agreed upon between the debt collector and the person on whose behalf the service is done, any debt collector who for or in respect of that service, demands, receives or retains from any moneys received by him for and on behalf of any person, an amount by way of fees, charges, commission, reward or other remuneration that is in excess of or not included in the fees, charges, commission, reward or other remuneration as the case may be, so agreed upon, is guilty of an offence and is liable, on summary conviction to a fine of \$10,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) Upon conviction for an offence against subsection (2), the court convicting the debt collector shall order him to refund any fees, charges, commission, reward, or other remuneration received or retained by him, that is in excess of or not included in the fees, charges, commission, reward or other remuneration so agreed upon.

Offences connected to exercise of powers under Part 5

39 A person who—

- (a) wilfully obstructs an inspector acting in the exercise of any power conferred on him by or under Part 5;
- (b) wilfully fails to comply with any requirement properly made to him by an inspector under Part 5;
- (c) without reasonable cause fails to give an inspector acting under Part 5, such assistance or information as he may reasonably require of the person for the performance of the inspector's functions under that Part;

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- (d) in giving information as mentioned in paragraph (c), makes a statement which he knows to be false;
- (e) not being an inspector, purports to act as an inspector under this Act;
- (f) discloses to another person, where the disclosure is not made in the performance of his duty, information otherwise obtained by him under this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term not exceeding six months or to both such fine or imprisonment.

Offence of improper conduct by debt collectors

40 (1) A debt collector may be found liable by the Authority of improper conduct if he—

- (a) uses force or threatens to use force against a debtor or any other person with whom the debtor has family ties or a familial or personal relationship;
- (b) acts in an excessive or intimidating manner towards a debtor or any other person with whom the debtor has family ties or a familial or personal relationship;
- (c) makes use of fraudulent representations, including—
 - (i) the simulation of legal procedures;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer, bailiff or any similar official;
 - (iv) the making of any threats to enforce rights;
- (d) spreads or threatens to spread false information concerning the creditworthiness of a debtor;
- (e) contravenes or fails to comply with any provision of this Act.

(2) A debt collector who is guilty of each contravention of improper conduct under subsection (1) is liable to a civil penalty not exceeding \$5,000.

(3) Any debt collector who fails to pay the civil penalty imposed under subsection (2) shall be liable to a further penalty of an amount not exceeding \$200 for each day during which the first penalty remains unpaid.

Civil penalty procedure

41 (1) Where the Authority proposes to impose a civil penalty on a debt collector under section 14 or 40, it shall serve a notice of its proposal to the debt collector.

(2) A notice under subsection (1) shall inform the debt collector that he is entitled to a hearing by the Authority if, after the notice under subsection (1) is served on him, he delivers a notice in writing, within a period of thirty days from the date of receipt of the notice from the Authority, requiring a hearing with the Authority.

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(3) Where a debt collector does not require a hearing by the Authority in accordance with subsection (2), the Authority may proceed to impose the penalty.

(4) Where a debt collector requires a hearing by the Authority in accordance with subsection (2), the Authority shall appoint a time for and hold the hearing and, subsequent to the hearing, may—

- (a) impose the penalty; or
- (b) refrain from imposing the penalty.

(5) The Authority may attach such terms and conditions to the order as it considers appropriate to give effect to the purposes of this Act.

Debt collector liable to civil penalty not to be charged

42 (1) A debt collector liable to a civil penalty imposed under this Act shall not also be charged with an offence under this Act in relation to the same matter.

(2) Where a debt collector is convicted of an offence under this Act, the debt collector shall not also be liable to a civil penalty imposed under this Act in relation to the same matter.

General offences

43 Every person who—

- (a) furnishes false information in an investigation under Part 5;
- (b) obstructs a person making an investigation under Part 5;
- (c) fails to comply with an order made under Part 6 or an assurance of voluntary compliance,

is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Offences by corporations

44 Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or other similar officer of the body corporate, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Defence of mistake, accident, etc.

45 (1) In any proceedings for an offence under this Act, it shall, subject to subsection (2), be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person or to an accident or to some other cause beyond his control; and

- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to reliance on information supplied to the person referred to in subsection (1) or to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

PART 9
MISCELLANEOUS

Confidentiality

46 (1) Subject to subsection (2), a member of the Authority or the Tribunal, or any person employed by the Authority or the Tribunal, shall, during the performance of his functions under this Act, maintain the confidentiality of all information which such member or person knows to be or can reasonably assume to be of a confidential nature.

(2) Confidential information obtained by such member or person during the performance of his functions under this Act shall be disclosed by such member or person only in pursuance of the provisions of this Act or of any other law.

(3) A member of the Authority or the Tribunal, or any person employed by the Authority or the Tribunal, who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Application of Public Access to Information Act 2010

47 Notwithstanding the provisions of the Public Access to Information Act 2010, no person in the Authority or the Tribunal who receives a request under that Act for information relating to any records held by the Authority or Tribunal shall disclose such information.

Immunity from suit

48 No action, suit, prosecution or other proceeding shall lie against the members of the Tribunal, the Authority or any public officer acting on behalf of the Tribunal or Authority in respect of any act done in good faith in execution or intended execution of any function under this Act.

Regulations

49 (1) The Minister, acting on the advice of the Authority, may make regulations prescribing anything which may be made under regulations and generally for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made in particular for—

- (a) forms and charges;
 - (b) the application for and issuing of licences;
 - (c) fees, interest charges and other charges imposed on debtors by debt collectors or creditors;
 - (d) conditions and restrictions to apply to credit reporting agencies;
 - (e) a code of conduct for debt collectors;
 - (f) all matters and things required or permitted by this Act.
- (3) Regulations made under subsection (2) are subject to the negative resolution procedure.
- (4) The Minister may make regulations subject to the affirmative resolution procedure for the government fees payable under this Act.
- (5) Regulations made under this Act may create offences and provide that a person who commits an offence against the regulations is liable on summary conviction to a fine of \$25,000.

Transitional

- 50 (1) The provisions of this Act, except sections 7 to 14, shall apply during the transitional period with respect to any person who, on the commencement of this Act, is carrying on debt collection business.
- (2) Where the person referred to in subsection (1) makes an application for a licence under this Act and is granted a licence during the transitional period, the licence granted shall become operational immediately after the transitional period.
- (3) Notwithstanding that a person referred to in subsection (1) has not obtained a licence under this Act during the transitional period, such person shall, as from the day of commencement of this Act, with respect to the outstanding amount of a debt being collected from a debtor, cause to be applicable to the outstanding debt—
- (a) in the case of a debt repayment agreement that includes a schedule of payments, the sum of—
 - (i) a commission—
 - (A) of up to the maximum of 20% of the original debt, where a commission has not yet been paid by the debtor; or
 - (B) equal to an amount owing so as to cause the total commission paid not to exceed 20% of the original debt, where the commission has been partly paid by the debtor; and
 - (ii) a monthly administrative fee of up to the maximum of 2% of the debt outstanding payable as provided under section 19(1)(a)(ii); or
 - (b) in the case of one-time payment to a creditor or creditors as provided under section 19(1)(b)—

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- (i) a fee of up to the maximum of 10% of the debt owing, where no fee has yet been paid by the debtor; or
- (ii) an amount of the fee owing so as to cause the total fee paid not to exceed 10% of the original debt, where the fee has been partly paid by the debtor.

(4) Without prejudice to any other provision under this Act, a person referred to under subsection (1) who fails to comply with the requirements in subsection (3) shall be deemed to contravene section 19 and to be engaging in an unfair debt collection practice under section 37.

(5) In addition to requirements under section 8, an application for a licence by a person referred to in subsection (1) shall be accompanied by such details demonstrating compliance with the provisions of this Act as the Minister may by order published in the Gazette determine.

(6) The Minister may, by order published in the Gazette, extend the transitional period for such additional period as he may deem appropriate.

(7) The orders made by the Minister under subsections (5) and (6) are subject to the negative resolution procedure.

(8) In this section “transitional period” means the period of ninety days beginning from the date of commencement of this Act.

Consequential amendment to Government Fees Regulations 1976

51 The Government Fees Regulations 1976 are amended in the Schedule by inserting after Head 19 the following new Head—

Head 19A Debt Collection Act 2018		
(1)	Debt collection licence application fee under sections 8(2)(o) and 14	\$2,000
(2)	Debt collection licence renewal fee under section 14	\$1,000

Commencement

52 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

[Assent Date: 17 December 2018]

[Operative Date: 31 January 2020]

[Amended by:

BR 95 / 2020

2021 : 31]