

The Debt Collection Act 2022: Its Genesis, Scope and Implications

First introduced in Parliament on 13 August 2022, the Debt Collection Act 2022 (**DCA**) came into force on 1 December 2023. Following the end of a three-month transition period, from 1 March 2024, all persons or entities which carry on a debt collection business, or carry out any debt collection activities in the course of their business, must be licensed under the DCA. This is a keenly watched development. For the first time, the debt collection industry in Singapore will be regulated. However, as only the collection of monetary debts is being regulated, activities to collect non-monetary assets, such as cryptocurrency, remain unregulated in Singapore. In this article, we consider the policy objectives of the DCA, highlight its key features, and set out some observations on its scope as well as its implications for debtors and creditors.

Objectives of the DCA

Credit is often said to be the lifeblood of commerce. Debt financing is a fundamental part of any financial ecosystem. From this perspective, activities undertaken to recover outstanding debts are a necessary counterpart to the provision of financing. As stated by Ms Sun Xueling, the Minister of State for Home Affairs (**Minister of State**), during the second reading of the Debt Collection Bill, debt collection is a legitimate economic activity that facilitates the fulfilment of financial obligations.

However, in recent years, debt collection activities have adversely affected the public's sense of safety and security. While there appear to be no reliable estimates of the size of the debt collection industry in Singapore, the advent of social media has magnified the visibility of debt collection activities. In 2019, a debt collector sought to collect a debt by repeatedly visiting the debtor's home and workplace wearing a traditional Chinese funeral outfit and carrying a banner with the debtor's face printed on it. More recently, the media carried reports of debt collectors dressed as the God of Fortune visiting debtors' homes. Creative costumes aside, such theatrics are often accompanied by aggressive behaviour (including violence or threats of violence) intended to inflict misery, inconvenience and embarrassment on the victims. The institution of a legislative regime to regulate the debt collection industry and address problematic debt collection conduct is thus timely and should be welcomed.

Key Features of the DCA

The DCA seeks to regulate debt collection in Singapore by setting standards of entry into the industry, delineating the boundaries of acceptable debt collection conduct, and enabling enforcement measures to be taken against errant debt collection businesses and individual debt collectors.

Under the DCA, a "**debt collection activity**" means "*any activity undertaken in Singapore that involves finding the debtor of a debt or requesting, demanding or collecting from the debtor money due under the debt*", while "**debt collection business**" means "*the business carried on by a person of collecting any debt from a debtor – (a) on behalf of another person; or (b) where the firstmentioned person has acquired the debt*".

A person that carries on a debt collection business or carries out any debt collection activity in Singapore in the course of its business without a valid licence on or after 1 March 2024 will be guilty of an offence which will attract a fine of up to \$20,000 or imprisonment for a term not exceeding two years, or both. For repeat offenders, the penalty is a fine of not less than \$20,000 and not more than \$100,000 or imprisonment for a term not exceeding five years, or both.

To be granted a licence, all debt collection businesses, including their key appointment holders, will be screened by the Singapore police and must be assessed to be fit and proper. Further, individuals who act as debt collectors for a licensed debt collection business must obtain approval from the police and will likewise have to be assessed to be fit and proper.

Beyond imposing licensing requirements and statutory penalties, the DCA empowers the Minister for Home Affairs to make regulations to give effect to the DCA. We summarise some key regulations regulating debt collection activities below:

- (a) **Verification of debtor's identity:** As a safeguard, debt collectors are required to take all reasonable and necessary measures to ascertain that the debtor from whom they are attempting to collect a debt is indeed the debtor. The debt collector must obtain a copy of the loan agreement that evidences the debt between the debtor and creditor.
- (b) **Prohibition of debt collection in certain circumstances:** Debt collectors are generally prohibited from collecting or attempting to collect a debt where the debtor has given written notice that the debt is the subject of ongoing court proceedings, another person had impersonated the debtor in incurring the debt, or the loan agreement that evinces the debt was forged.
- (c) **Employment of hostile debt collection methods:** Debt collectors are proscribed from using any threatening words or behaviour, or displaying any sign, writing or visible representation that contains any threat of unlawful violence towards debtors or third parties when carrying out debt collection activities. This includes the sending of text or social media messages to the debtor threatening physical harm to the debtor or his family as well as outward displays of physical violence.

Contravention of the above prohibitions and requirements will attract a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months, or both or, in the case of a repeat offence, a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both.

Scope of Debt Collection Businesses and Activities under the DCA

Collection of acquired debts or third-party debts

Although the DCA appears to be targeted primarily at debt collection businesses that mainly serve small-scale enterprises or individuals because such entities are perceived to pose a higher public safety risk, the present definitions of debt collection businesses and activities under the DCA are broad, and may potentially encompass commercial entities which have hitherto never considered themselves to be a part of the debt collection industry in Singapore, but may, as part of their usual commercial dealings, be engaged in collecting acquired debts or third-party debts. It bears emphasis that debt collection activities include any requests or demands for payment of a debt.

Commercial intermediaries which receive payments on behalf of another entity should carefully consider the terms of the DCA to ensure that they do not inadvertently run afoul of the requirement to be licensed in the event that it becomes necessary to enforce a monetary obligation. Take, for example, the hypothetical scenario of a distributor in the business of selling consignment inventory to customers and collecting payment in instalments from customers on behalf of the manufacturer for the goods. If a customer fails to pay an instalment and the distributor sends a written notice requesting payment of the overdue instalment on behalf of the manufacturer of the goods, the distributor may potentially be classified under the DCA as a debt collection business undertaking a debt collection activity.

Foreign entities collecting debts in Singapore

The DCA does not expressly define “person”. However, “person” is defined in the Interpretation Act 1965 as including “*any company or association or body of persons, corporate or unincorporate*”. In the circumstances, it appears that a foreign entity which carries out debt collection activities in Singapore may fall within the scope of the DCA.

Collection of debts denominated in cryptocurrency excluded

The DCA defines “debt” as “*a monetary obligation owed by a debtor*”. The Minister of State explained during the second reading that the DCA is intended to govern the collection of both secured and unsecured debts, but does not extend to the collection of non-monetary assets, including non-monetary assets used to secure a debt. On the premise that cryptocurrency is not money and therefore cannot be the subject matter of a monetary obligation, this means that businesses which collect debts denominated in cryptocurrency or other non-monetary assets do not need to be licensed under the DCA.

Banks, financial institutions and moneylenders regulated as class licensees

Already-regulated businesses whose core business includes lending and collecting money owed to them do not need to apply for an individual licence; they will be permitted to carry out debt collection activities if they comply with class licensing conditions. Such businesses include banks, merchant banks, issuers of credit cards, finance companies and moneylenders (whether licensed or exempt).

Insolvency practitioners, law firms and accounting firms are exempt

The Official Assignee, Official Receiver, licensed insolvency practitioners, law firms and accounting corporations are exempt from the licensing requirements under the DCA. The rationale for their exclusion is that such persons have been assessed to pose minimal law and order risk.

Concluding Remarks

The enactment of the DCA is a welcome legislative move to govern the means of debt collection in Singapore. The DCA upholds the public interest in seeking to counter the adverse impact which unscrupulous or unethical debt collection practices may have on the public’s sense of safety and security.

While debt collection is a legitimate economic activity and it is a universal precept that debtors should honour their financial obligations, debtors should be protected from improper debt collection methods. As for creditors that outsource their debt collection, it may be prudent to ensure that the debt collection business engaged is duly licensed under the DCA. As the DCA comes into operation, it may be useful to consider appropriate refinements to the ambit of persons exempt from or subject to the licensing requirements under the DCA in the future.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:



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