

A BILL

entitled

DEBT COLLECTION ACT 2018

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WHEREAS it is expedient to provide for the Debt Collection Licensing Authority for the regulation of debt collectors; and to establish a Tribunal to adjudicate complaints against the Debt Collection Licensing Authority and for connected purposes;

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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;

“debt collection business” means the business of pursuing and collecting payments that have become past due and that are owed by individuals or small businesses for goods or services that they have already received;

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

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

“debt collector” means a licensed debt collector under section 9;

“debtor” means an individual or small business that owes an obligation to pay a sum of money to another person for goods or services received and the payment is past due;

“Minister” means the Minister responsible for consumer affairs;

“unfair debt collection practice” means an unfair debt collection practice set out in Part 4.

Application

3 The provisions of this Act do 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 who carries on the business of collecting, requesting or demanding payment of debts owed to the Government of Bermuda.

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) generally do all such acts, matters and things as are necessary to be carried out under this Act.

Debt Collection Officer

6 (1) There shall be appointed a public officer as the Debt Collection Officer for the Authority.

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

(3) 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.

(4) 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.

(5) The Minister may designate the Officer and other persons to be inspectors for the purpose of 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 \$25,000 or to imprisonment for 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 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;
- (e) policies and procedures to be adopted by the applicant to meet the obligations under Part 4 of this Act;

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- (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 upstanding 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 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) contributions 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) 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.

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, 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,

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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) 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.

(5) 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.

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

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 25, 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 section 26, 27 or 28 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 licensed debt collectors, which shall contain—

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

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

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

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

Annual licence fee

14 (1) A debt collector shall pay such fee for the renewal of its licence as may be prescribed under the regulations on or before 31 March in every year after the year in which the licence was granted.

(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 \$5,000.

Trust accounts

15 (1) Every debt collector who practises for his own account 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—

(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.

(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.

PART 4
UNFAIR DEBT COLLECTION PRACTICES

Harassment

- 16 A debt collector, in connection with the collection of debt, shall not—
- (a) engage in any conduct which harasses or oppresses any person;
 - (b) use, or threaten the use of, violence or other criminal means to harm the physical person, or property of any person;
 - (c) threaten to use any means to spread false information concerning the creditworthiness of a debtor;
 - (d) use obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;
 - (e) publish a list of debtors who allegedly refuse to pay debt;
 - (f) advertise the sale of any debt to coerce payment of the debt;
 - (g) cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;
 - (h) place any telephone call without the disclosure of the caller's identity.

False or misleading representations

- 17 A debt collector, in connection with the collection of debt, shall not—
- (a) use any false, deceptive, or misleading representation;
 - (b) provide 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;
 - (c) provide 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;
 - (d) make threats to take any action that cannot legally be taken or that is not intended to be taken;
 - (e) provide 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 to any practice prohibited by this Part;

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- (f) provide the false representation or implication that the debtor committed any crime or other conduct to disgrace the debtor;
- (g) communicate or threaten 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;
- (h) use or distribute 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;
- (i) use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a debtor;
- (j) fail 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;
- (k) fail 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;
- (l) falsely represent or imply that documents are a legal process;
- (m) use any name other than the true name of the debt collector's company, limited liability company or limited partnership;
- (n) falsely represent or imply that documents are not legal process forms or do not require action by the debtor;
- (o) falsely represent or imply that a debt collector operates or is employed by a licensed debt collector.

Unfair practices

18 A debt collector, in connection with the collection of debt, shall not—

- (a) use unfair or unscrupulous means to collect or attempt to collect any debt;
- (b) collect 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;
- (c) accept 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;
- (d) solicit any postdated cheque or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

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- (e) deposit or threaten to deposit any postdated cheque or other postdated payment instrument prior to the date on such cheque or instrument;
- (f) cause charges to be made to any person for communications by concealment of the true purpose of the communication;
- (g) take or threaten 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;
- (h) communicate with a debtor regarding a debt by postcard;
 - (i) use 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.

Validation of debts

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

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(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 communication during the thirty-day period may not overshadow or 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

20 If any person owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may 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.

PART 5

COMPLAINTS, INSPECTIONS AND INVESTIGATIONS

Lodging of complaint

21 (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.

22 (1) The Debt Collection Officer, or other person authorized to act on behalf of the Officer, 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.

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(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.

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

Investigations by order of Minister

23 The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of this investigation, the person making it has the powers of a commissioner under the Commissions of Inquiry Act 1935, which Act applies to such investigation as if it were an inquiry under that Act.

Power to enter premises and to seize documents, etc.

24 (1) If an inspector acting on behalf of the Debt Collection Officer, has reasonable cause to believe that an offence under this Act or the regulations has been committed, he may at all reasonable times and on production, if required, of his credentials enter any premises other than premises or parts of premises used exclusively as a dwelling house and while there may require any person—

- (a) to produce to the inspector, within such time and at such place as the Authority may require, such documents, or documents of such description, which are in the custody or under the control of such person;
- (b) to attend before the Authority at such time and place as the inspector may require and answer questions relevant to the investigation as the inspector may require;
- (c) to otherwise give such assistance in connection with the investigation which he is reasonably able to give.

(2) The inspector referred to in subsection (1) may take copies of, or extracts from any documents produced to him under subsection (1)(a).

(3) An inspector who seizes documents in exercise of his powers under subsection (1) shall, in a written statement, specify the documents seized, and inform the person from whom they are seized.

(4) For the purposes of proceedings taken or transactions made under this Act, the written statement of an inspector given under subsection (3) has effect as a receipt for the documents seized.

(5) A person is not required under subsection (1)(a) 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.

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

PART 6

POWERS OF MINISTER AND AUTHORITY

Order to revoke licence

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

(2) A notice under subsection (1) shall inform the licensed 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 mails or 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

26 (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 mails or 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 to carry out his proposal or to refrain from carrying out his proposal and to take such action as the Authority considers the Officer ought to take in accordance with this Act.

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(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

27 (1) Notwithstanding section 26, 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 26.

(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 26 takes effect immediately but the Authority may grant a stay if notice of an appeal to the Tribunal under section 31 is served on it.

Assurance of voluntary compliance

28 (1) Any debt collector against whom the Debt Collection Officer proposes to make an order to comply with section 27 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 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

29 (1) The Consumer Affairs Board, established under section 3 of the Consumer Protection Act 1999, is for the purposes of this Act, constituted as the Debt Collection Tribunal.

(2) The Minister shall appoint a panel from the membership of the Consumer Affairs Board and such other persons as may be co-opted into the Tribunal to serve as members of the Tribunal.

(3) 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.

(4) 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 licensing Authority or of any debt collector.

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

Determination of appeals

30 (1) On an appeal made under section 31, 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 collectors

31 (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 29.

(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

32 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 21.

Costs, procedure and evidence

33 (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 to be 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 six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

Further appeals on point of law

34 (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; and 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.

(2) 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

35 (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.

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(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 one year or to both such fine and imprisonment.

(4) Where a person is found guilty of engaging in an unfair business 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 business 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 business practice as provided in section 26 or 27; or
- (b) complies with a written assurance of voluntary compliance under section 28.

Offence of furnishing incorrect information in applications etc.

36 (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 six months or to both such fine and imprisonment.

(2) Where the fees, charges, commission reward or other remuneration that a licensee is entitled to receive for or in respect of any service done by him are agreed upon between the licensee and the person on whose behalf the service is done, any licensee 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 six months or to both such fine and imprisonment.

(3) Upon conviction for an offence against subsection (2), the court convicting the licensee 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

37 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;

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- (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;
- (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 six months or to both such fine or imprisonment.

Offence of improper conduct by debt collectors

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

- (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 person;
 - (iv) the making of unjustified 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 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

39 (1) Where the Authority proposes to impose a civil penalty on a licensed debt collector under section 14 or 38, it shall serve a notice of its proposal to the debt collector.

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(2) A notice under subsection (1) shall inform the licensed debt collector that he is entitled to a hearing by the Authority if after the notice under subsection (1) is served on him, he mails or delivers a notice in writing requiring a hearing with the Authority.

(3) Where a licensed 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 licensed 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

40 (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

41 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 six months or to both such fine and imprisonment.

Offences by corporations

42 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, secretary 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.

43 (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

Regulations

44 (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) penalties not exceeding \$25,000 for any breach of the regulations;
- (d) a new code of conduct for debt collectors;
- (e) 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 fees payable under this Act.

Immunity from suit

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

Transitional

46 *[to be completed]*

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Commencement

47 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette, and different days may be appointed for different provisions of this Act.

DEBT COLLECTION BILL 2018

EXPLANATORY MEMORANDUM

This Bill provides for the regulation of debt collectors under the newly established Debt Collection Licensing Authority (“the Authority”). The Bill provides under Part 2 for the appointment of a Debt Collection Officer (“the Officer”), who is to have ultimate responsibility for the Authority. Part 3 of the Bill outlines the requirements for licensing a debt collector and for renewal of a licence. Part 4 of the Bill sets out actions considered under the Bill as unfair debt collection practices. Part 5 of the Bill provides the right to debtors to lodge complaints with the Authority against debt collectors. Under that Part the Authority is given the power to inspect records and premises of licensed debt collectors and conduct investigations in that respect. Part 6 of the Bill provides both the Minister and the Officer the power to order a debt collector to cease unfair debt collection practices and require compliance with such an order. The Minister can also request investigations on his own accord. Both debt collectors and debtors will have the right to appeal against decisions of the Authority to the newly established Debt Collection Tribunal (“the Tribunal”) under Part 7 of the Bill. Part 8 outlines offences relating to unfair debt collection practices, furnishing incorrect information in applications, improper conduct by debt collectors, and obstructing investigations of the Authority or Officer. Part 9 provides miscellaneous provisions.

Clause 1 is the citation for the Bill.

Clause 2 provides for the interpretation section for the Bill.

Clause 3 provides the application provision for the Bill. The Bill shall not apply to the Provost Marshall General or any bailiff appointed under the Provost Marshal General Act 1965, any liquidator, receiver or trustee acting under the Companies Act, or any public officer collecting, requesting or demanding payment of debts owed to the Government of Bermuda.

Clause 4 establishes the Debt Collection Licensing Authority, which will be responsible for regulating debt collectors.

Clause 5 provides for the functions of the Authority, which include registration of debt collectors, maintaining a register of debt collectors, prescribing the requirements to qualify as a licensed debt collector, setting out codes of professional conduct, and other standards, methods and procedures to be applied by debt collectors.

Clause 6 appoints a public officer as a Debt Collection Officer, who shall be responsible for the administration and management of the Authority. The Minister is empowered to appoint the Officer as an inspector, to be responsible for the enforcement of this Bill.

Clause 7 prohibits any person to carry on debt collection services unless such person is licensed under the Bill. A person guilty of this offence on summary conviction is liable to a fine of \$25,000 or imprisonment for one year or to both; on conviction on indictment, a person is liable to a fine of \$100,000 or imprisoned for five years or both.

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Clause 8 outlines the application for a debt collection licence. An application for a licence, the form of which will be outlined in regulations, is to be accompanied by supporting documentation that includes, but is not limited to: copies of means of identification for individuals, certificates of incorporation for a company, certificates of formation for a limited liability company or certificates of registration for a limited partnership. Additional information to be provided includes a debt collection business plan, character references, financial accounts, evidence of a trust account and a statement indicating that Government fees and charges are up to date.

Clause 9 provides for the grant and refusal of an application for a licence. The Authority, upon receipt of the application, supporting documents and payment of the fee, may grant a licence if satisfied that the applicant is a 'fit and proper' person. The debt collection licence may be subject to conditions determined by the Authority.

Clause 10 provides that debt collection licences are to be issued or renewed for not more than twenty-four months.

Clause 11 provides the power for the Authority to revoke any debt collection licence, subject to the Authority complying with the requirements for the debt collectors' right to be heard under clause 25.

Clause 12 provides for a register of debt collectors to be kept. The register will be available for inspection on payment of a fee of \$5.00.

Clause 13 provides for the form, display and registration of licences. Debt collection licences are to be kept on display at the registered office or principal place of business at all times.

Clause 14 provides a requirement for the payment of an annual licence fee by licensed debt collectors.

Clause 15 requires debt collectors to open and maintain a client trust account for holding monies received for the payment of debt.

Clause 16 outlines the unfair debt collection practices relating to harassment or abuse.

Clause 17 outlines the unfair debt collection practices relating to false or misleading representations.

Clause 18 outlines the unfair debt collection practices relating to unfair practices.

Clause 19 requires debt collectors to provide validation of the details of a debt.

Clause 20 requires debt collectors to apply payment, when multiple debts are due, to a particular debt in accordance with the debtor's instructions.

Clause 21 provides for the ability to a debtor to lodge a complaint with the Authority against an unfair debt collection practice.

Clause 22 provides for the Officer to inspect records of debt collectors that are relevant to the business of the debt collectors.

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Clause 23 provides for the Minister by order to appoint persons to conduct investigations. Investigators will have the powers of a Commissioner under the Commissions of Inquiry Act 1935.

Clause 24 provides the power for an inspector to enter premises and seize documents if there is reasonable cause to believe that an offence under the Bill has been committed.

Clause 25 provides the procedure to be followed by the Authority when revoking a licence under clause 11 in order to give the debt collector the right to be heard.

Clause 26 provides the power for the Officer to issue an order to a debt collector to cease unfair debt collection practices.

Clause 27 provides the power for the Officer to issue an order to immediately comply with actions meant to protect a debtor and outlines the procedure that will be followed in issuing that order.

Clause 28 provides for the debt collector to enter into written assurance of voluntary compliance with an order for immediate compliance to prevent unfair debt collection practices under clause 27.

Clause 29 constitutes the Tribunal and sets out matters relating to the appointment of a panel of members and includes the appointment and qualifications of the chairman and deputy chairman .

Clause 30 provides for the determination of appeals and sets out the powers of the Tribunal in relation to adjudicating decisions made by the Authority.

Clause 31 provides for the right of appeal of a debt collector against a decision of the Authority in relation to its licence and sets out the powers of the Tribunal to suspend or cancel the decision or to impose a civil penalty.

Clause 32 provides for the right of debtors to appeal against decisions of the Authority in relation to complaints lodged under clause 21.

Clause 33 outlines the Tribunal's powers in relation to costs, procedure of hearings and the taking of evidence.

Clause 34 grants a debt collector or debtor the power to appeal a Tribunal decision to the Supreme Court.

Clause 35 creates offences and provides for penalties for debt collectors engaging in unfair debt collection practices.

Clause 36 creates offences and provides for penalties for furnishing incorrect information in an application for a debt collection licence.

Clause 37 creates offences and provides for penalties for debt collectors who obstruct, fail to comply with requirements, or give information to an inspector or other requirement under Part 5 of the Act on Complaints, Inspections and Investigations.

Clause 38 creates offences and provides penalties for improper conduct by debt collectors.

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Clause 39 provides a civil penalty procedure for non-compliance with the provisions of clauses 14 and 38.

Clause 40 provides that a debt collector liable to a civil penalty shall not also be charged with an offence under clause 41.

Clause 41 creates general offences and penalties for furnishing false information, obstructing investigations by the Officer or failing to comply with an order issued under Part 6 of the Act.

Clause 42 provides for offences by bodies corporate.

Clause 43 provides for the defence of mistake or accident against any offence under this Act.

Clause 44 requires the Minister, on the advice of the Authority, to make regulations subject to the negative resolution procedure, for matters including forms, fees and charges, codes of conduct and all other matters prescribed under the Bill. Provision is made for the imposition of penalties for contravening regulations for an amount not exceeding \$25,000.

Clause 45 grants immunity to Tribunal members and the Officer for anything done in the purported exercise of their duties, provided the thing was done in good faith.

Clause 46 provides for transitional matters. *(to be completed)*

Clause 47 provides for the Minister to bring the Act into operation by notice published in the Gazette, and for different provisions to come into operation on different days.