

**FAIR DEBT COLLECTION PRACTICE
CODE**

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1 Applicability:

The Fair Debt Collection Practice shall govern, conduct and regulate the functions of Debt Collector(s). The Code would be binding on all Debt Collector(s) and all Debt Collector(s) shall honour it in letter and in spirit. Debt Collector(s) shall to the extent possible in the process of collecting Debt, have due regard for the person, the property and the civil rights of a Debtor, and ensure that any action taken against a Debtor does not humiliate, threaten or cause distress to such a Debtor.

2 Definitions:

- 2.1 **"Assigned Debt"** for the purposes of this code, means any Debt which has been sold, assigned, or factored by a Creditor, or for which a Creditor has in any other way subrogated their rights as a Creditor;
- 2.2 **"Assignee"** for the purposes of this code, a Person who has acquired/purchased/obtained the Debt from the Originator by way of sale, assignment or factoring of a Debt, or the subrogation of rights by a Creditor to such Person;
- 2.3 **"Authorised Representative"** means and includes a financial counselor, solicitor, financial advisor, advocate, trustee, guardian or any other Person who has been authorised by the Debtor to act on behalf of the Debtor;
- 2.4 **"Bank"** has the same meaning as assigned to it under section 2(c) of the Securitisation and reconstruction of Financial Assets and Enforcement of Security interest Act, 2002;
- 2.5 **"Communicate"**, unless otherwise specified, includes communication by telephone, mobile telephone, fax, email, and letter and in person. The term "communication" means the conveying of information regarding a Debt directly or indirectly to any person through any medium;

2.6 **“Creditor”** means a person to whom a Debt is incurred and includes an Assignee, as the case may be;

2.7 **“Debt”** means any obligation or alleged obligation of a Debtor to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment;

2.8 **“Debtor”** a natural person obligated or allegedly obligated to pay a Debt and includes a guarantor to the Debt;

2.9 **“Debt Collector”** means a person collecting a Debt in the course of a business. It includes creditors, independent collection agencies, recovery councilors, collections departments within businesses, Debt buy-out companies, assignees, agents, lawyers, government bodies engaged in trade or commerce, and other persons collecting on behalf of others;

2.10 **“Default”** means non-payment of any principal Debt or interest thereon or any other amount payable by a borrower to any secured/ unsecured Creditor irrespective of whether the account of such borrower is classified as non-performing asset or not in the books of account of the secured/ unsecured Creditor in accordance with the directions or guidelines issued by the Reserve Bank;

2.11 **“Dispute”** for the purposes of this code, this term is generally used in relation to issues of Debtor liability but does not include issues of Debt Collector or Creditor conduct/ Complaint;

2.12 **“Financial asset”** means Debt or receivables and includes—

- (i) a claim to any Debt or receivables or part thereof, whether secured or unsecured; or
- (ii) any Debt or receivables secured by, mortgage of, or charge on, immovable property; or
- (iii) a mortgage, charge, hypothecation or pledge of movable property; or

- (iv) any right or interest in the security, whether full or part underlying such Debt or receivables; or
- (v) any beneficial interest in property, whether movable or immovable, or in such Debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- (vi) any financial assistance;

2.13 **"Financial Assistance"** means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any Person;

2.14 **"Financial Institution"** means

- (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);
- (ii) any institution specified by the Central Government under sub clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);
- (iii) The International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);
- (iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act;

2.15 **"Financial Record"** means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

2.16 **"Judgment Debt"** means a Debt confirmed by an order or judgment of a court;

2.17 **"Non-Performing Asset"** means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank;

2.18 **“Originator”** means the Bank/ Financial Institution/ Asset Reconstruction Company/ Housing Finance Company or any other Person who has transferred/assigned the Debt to the Assignee;

2.19 **“Person”** means any individual, partnership, joint venture, firm, corporation, company, association, trust or other enterprise (whether incorporated or not) or Government (central, state or otherwise), sovereign, or any agency, department, authority or political sub-division thereof, international organisation, agency or authority (in each case, whether or not having separate legal personality) and includes Bank, Financial Institutions, Asset Reconstruction Company, Housing Finance Company and Non Banking Finance Company;

2.20 **“Property”** means—

- a. Immovable property;
- b. Movable property;
- c. Any Debt or any right to receive payment of money, whether secured or unsecured;
- d. Receivables, whether existing or future;
- e. shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- f. Government securities;
- g. such other instruments as may be declared by the Central Government to be securities; rights or interests in securities;
- h. Intangible assets, being know-how, patent, copyright, trade mark, license, franchise or any other business or commercial right of similar nature;

2.21 **“Security”** means right, title and interest of any kind whatsoever upon Property created in favour of any secured creditor and includes any mortgage, charge, hypothecation and pledge;

2.22 **“Secured Creditor”** means any Bank or Financial Institution or any consortium or groups of Banks or Financial institutions or any other Person in whose favour security is created for due repayment by any borrower of any financial assistance;

2.23 **“SRFAESI”** means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, including any rules, regulations, directions or guidelines issued there under from time to time, as the same may be amended, substituted or re-enacted from time to time;

2.24 **“Third party”** means any person other than the Debtor, but does not include a Debtor’s legal representative, trustee, or other Authorised Representative. Nor does it include a related entity of the Debt Collector.

3 Communication and Contact

The Debt Collector should communicate with the Debtor in a clear, accurate and precise manner. The conversation should not be misleading in any manner. The ideal rules with regard to communication with the customer are as under:

3.1 Purpose of Contract

3.1.1. Communications with the Debtor must be for a specific purpose, and may occur to the extent necessary. The Debt Collector may also contact a Debtor at the Debtor’s request.

3.1.2. It is not advisable to contact a Debtor to:

3.4.1. frighten or intimidate the Debtor;

3.4.2. demoralize, tire out or exhaust the Debtor; or

3.4.3. embarrass the Debtor in front of other people or for other similar purposes.

3.2 Making contact with the Debtor

- 3.2.1 When making direct contact, the Debt Collector must always ensure that the person he is dealing with is the Debtor or its Authorised Representative and may divulge any information about the Debt, the process for its recovery or other confidential information to the Debtor or its Authorised Representative.
- 3.2.2 Having established the Debtor's identity, Debt Collector should disclose his identity, the identity of the Person for whom he works for, and explain the purpose of the contact.
- 3.2.3 When the Debt Collector makes initial contact with the Debtor or his Authorised Representative, he should also give information about the Debt, including the name of the Creditor and details of the account and the amount claimed.
- 3.2.4 The Debt Collector should not misrepresent his identity in any way, i.e. the Debt Collector should not falsely state or imply that he is working for a solicitor, or is a court or government official.
- 3.2.5 The Debt Collector may conduct meetings under surveillance and disclose the same to the Debtor or his Authorised Representative with reason for conducting the meeting under surveillance, including security of the Debt Collector;
- 3.2.6 The Debt Collector shall record the minutes of the meeting and endeavour to get it signed by the Debtor or its Authorised Representative with his/ her free consent.
- 3.2.7 The Debt Collector may record all the proceedings of the meeting with the Debtor and/ or its Authorized Representative including by way of voice recording and/ or video recording upon prior intimation to the Debtor and/or its Authorised Representative.

3.3 Hours of contact

The Debt Collector should contact the Debtor, his/her Authorised Representative and/ or a third party at reasonable hours, taking into account their circumstances. The appropriate contact time may be limited to 0930 hours and 1900 hours unless the Debtor is trying to avoid reasonable contact by the Debt Collector and/or the Creditor.

3.4 Contact through telephone

- 3.4.1. As far as possible, telephonic contact may be limited between 0930 hours and 1900 hours.
- 3.4.2. The Debt Collector may alter the time of contact, if
 - 3.4.2. 1. after reasonable efforts to contact the Debtor during above hours or at the times requested by the Debtor, the Debt Collector has not been able to do so on account of non cooperation by the Debtor and/or its Authorised Representative; or
 - 3.4.2. 2. where the Debtor is trying to avoid reasonable contact by the Debt Collector.
- 3.4.3. The Debt Collector may leave message on voice mail of the Debtor or his Authorised Representative to communicate back with the number of the Debt Collector;
- 3.4.4. As far as possible the Debt Collector should call the Debtors or its Authorised Representative(s) only from the telephone numbers notified to the Debtors for this purpose, except where the Debtors could not be notified with such number or where the Debtor is avoiding such call.
- 3.4.5. In case the Debtor or its Authorised Representative does not receive the call of the Debt Collector for 3 or more calls to the last communication number, the Debt Collector may, without causing any humiliation or disrespect towards the Debtor, attempt to collect information from neighbors as per the last address provided or from the neighbor of the house property for which the Debt was incurred;

3.5 Location of contact

In most cases, the Debtor's home will be the appropriate place to contact a Debtor, with contact by letter or telephone generally being the appropriate mode of contact. However, if a Debtor provides a telephone (including mobile phone) contact number as the means of contact; contact using that number will also be appropriate irrespective of the Debtor's location.

Provided however if the Debtor is trying to avoid reasonable contact by the Debt Collector, the Debt Collector may contact the Debtor at other places, without causing any humiliation or disrespect to the Debtor.

3.6 Face-to-face contact

3.6 1. The Debt Collector may make personal or 'field' visits, if reasonable efforts to contact a Debtor by other means such as by way of letter, telephonic call and notice in any form have been unsuccessful and face-to-face contact is necessary for collection of Debt or other related issues.

3.6 2. Face-to-face contact may also be justified to verify the identity or location of a Debtor or when this is reasonably in doubt.

3.6 3. Notwithstanding anything contained herein above, the above principle is not intended to limit otherwise legally permissible visits including but not limited to:

3.6.3.1 to view, inspect or recover security;

3.6.3.2 for serving legal notice for recovery of the Debt;

3.6.3.3 for the serving of legal process;

3.6.3.4 for the enforcement of court orders by officers appropriately authorized by the relevant court.

3.7 Visiting the Debtor's home

Debt Collector should consider the following when visiting a Debtor's home:

- 3.7. 1. Generally, do not visit the Debtor's home uninvited, when it is possible to ask permission to visit the Debtor.
- 3.7. 2. State clearly to the Debtor the purpose of any visit before making the visit.
- 3.7. 3. Negotiate a mutually convenient time for the visit. Before the visit takes place, allow the Debtor time to seek advice, support and/or the presence of a third party if they choose.
- 3.7. 4. Resist visiting the Debtor's home, if he knows of any special circumstances, such as death in the Debtor's family, the Debtor is critically unwell or mentally incapacitated). The Debt Collector should leave the Debtor's premises immediately if he becomes aware of such circumstances during the visit.
- 3.7. 5. The Debt Collector must leave the Debtor's premises immediately if, at any time, he is asked to do so. In such event the Debt Collector should physically deliver a note to the Debtor or the Authorised Representative or major family member of the Debtor describing the date, time, reason and purpose of the visit. If the Debtor or the Authorised Representative or the major family member of the Debtor refuses to accept the note, the Debt Collector should endeavour to send the note to the Debtor by way of Registered Post through the nearest post office. Refusing to leave someone's property on request may constitute a breach of laws.

3.8 Visiting the Debtor's workplace

- 3.8.1 The Debt Collector should avoid visiting the Debtor's workplace at the first instance as visiting a Debtor at their workplace uninvited may be seen as an attempt to put pressure on the Debtor by embarrassing or threatening to embarrass them in front of work colleagues.
- 3.8.2 The Debt Collector may visit Debtor Work Place, if: -

3.8.2.1 The Debtor is the proprietor or a director of a business to which the Debt relates.

3.8.2.2 The Debtor has specifically requested or agreed to the visit.

3.8.2.3 The debtor is refusing and/or avoiding all means of communications.

3.8.2.4 All other methods to communicate with the Debtor have been futile.

3.8.3 If the Debtor is trying to avoid reasonable contact by the Debt Collector, the Debt Collector may without causing any humiliation or disrespect to the Debtor, contact the supervisor or other relevant person at the work place of the Debtor in order to enquire the contact details of the Debtor. Provided that in such case the Debt Collector must carry evidence of such futile contacts.

3.9 Other methods of Contact: -

The Debt Collector may in order to establish contact with the Debtor: -

- (a) collect information from public information brochure;
- (b) invite contact through media, by way of public notice, including by way of news paper, television, internet etc without causing any humiliation of the Debtor or making him publicly identifiable as a defaulter, provided that such right is available in the Contract with the Creditor;

4 Unfair and Deceptive method for Collection of Debt

4.1 Harassment or abuse

4.1.1 A Debtor is entitled to respect and courtesy, and must not be subject to misleading, humiliating or intimidating conduct.

4.1.2 The Debt Collector should not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a Debt.

Where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralize, tire out or exhaust a Debtor, rather than merely convey the demand for recovery, the conduct will constitute undue harassment.

Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- 4.1.2. 1. the use of intimidation or harassment of any kind, either verbal or physical, against any person in their debt collection efforts, including acts intended to humiliate publicly or intrude the privacy of the Debtors family members, referees and friends, making threatening and anonymous calls or making false and misleading representations;
- 4.1.2. 2. the use of abusive, offensive, obscene, discriminatory or profane language or language the natural consequence of which is to abuse the hearer or reader;
- 4.1.2. 3. misleading a Debtor about the nature or extent of a Debt, or the consequences of non-payment;
- 4.1.2. 4. taking advantage of the disability, weakness or vulnerability of a specially disadvantaged or vulnerable person;

'Special disadvantage' means that the Debtor has a condition or is in a circumstance that he/she is unable to understand the nature and consequence of his/her act.

Factors that may give rise to a special disadvantage include:

- a. ignorance of important facts known to the staff or agent of the business;
- b. illiteracy or lack of education;
- c. poverty or need of any kind;
- d. the Debtor's age;

- e. infirmity of body or mind;
- f. drunkenness;
- g. lack of explanation and assistance when necessary.

4.1.2. 5. Inappropriate behaviour by a Debtor does not justify unprofessional conduct by the Debt Collector.

4.1.2. 6. Attempting to create pressure on Debtor by instigating unauthorized communication with the Debtor's child or by making threats about the Debtor's child is likely to constitute undue harassment or coercion and/or unconscionable conduct and is entirely unacceptable behaviour.

4.1.2. 7. A Debt Collector should never communicate with a Debtor's child (under the age of 18) about a Debt, unless:

- a. Communication with that child is specifically authorised and initiated by the Debtor; or
- b. the Debtor, on their own initiative, asks the child to act as a translator; or
- c. the Debt Collector reasonably believes the child is willing and able to act as a translator or other intermediary; or
- d. the Debt Collector reasonably believes that the child has not been coerced in any way by the Debtor or another party.

4.1.2. 8. The Debt Collector must take particular care to ensure their conduct and demeanor do not distress or embarrass the child. The Debt Collector should immediately cease communication involving the child if the child appears to become upset, or the child or a member of the child's family requests that the communication cease.

4.2 Unfair practices

A Debt Collector should not use unfair or unconscionable means to collect or attempt to collect any Debt. Without limiting the general application of the foregoing, the following conduct tantamount to unfair practices:

- 4.2.1. The collection of any amount (including any 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.
- 4.2.2. Taking or threatening to take any action to effect dispossession or disablement of property if --
 - 4.2.2. 1. There is no present right to possession of the property claimed as collateral through an enforceable security; or
 - 4.2.2. 2. The property is exempt by law from such dispossession or disablement.
- 4.2.3. Communicating with a Debtor regarding a Debt by post card.
- 4.2.4. Using any language or symbol, other than the Debtors/ Debt Collector's/ Creditors address, on any envelope when communicating with a Debtor by use of the mails or by telegram.

5 False or misleading representations

A Debt Collector shall generally not use any false, deceptive, or misleading representation or means in connection with the collection of any Debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

5.1 Representations about the consequences of non-payment

- 5.1.1. Debt Collectors are entitled to accurately explain the consequences of non-payment of a Debt, but must not misrepresent those consequences. Misrepresentation may increase the risk of breaching laws against unconscionable conduct when the Debtor is in a position of special disadvantage or vulnerability.
- 5.1.2. Debt Collectors must not threaten legal action if the start of proceedings is not possible.

5.1.3. Debt Collectors should refrain to state or imply that:

- 5.1.3. 1. Immediate possession will be taken of a Debtor's home or other property when the Debt is not secured by that property, or the Creditor has not obtained judgment for the Debt.
- 5.1.3. 2. Unsecured goods may be seized and sold without further legal action.
- 5.1.3. 3. Unsecured basic household items can be seized if the Debtor is made bankrupt.

5.1.4. Unless otherwise instructed by the Creditor in writing, the Debt Collectors should refrain to state or imply that:

- 5.1.4. 1. Failure to pay a Debt is a criminal matter when no fraud or other offence is involved.
- 5.1.4. 2. A matter will be referred to the police when there is no intention to make such a referral.
- 5.1.4. 3. Criminal proceedings may be commenced by the Creditor or Debt Collector or other private person themselves.

5.2 The Debt Collector may communicate to the defaulter that submission of any misleading fact, any deliberate attempt by the Debtor to delay the process, any misconduct with any trace of fraud etc may lead to loss of opportunity for the Debtor to settle the debt outside the court.

5.3 The Debt Collector may also communicate to the Debtor or its Authorised Representative the standard steps that are taken by the Debt Collector, in case the Debtor admits the default but doesn't want to resolve because:

- (i) the outstanding amount is disputed; or
- (ii) any other reason.

6 Repayment negotiations

- 6.1 The Debt Collectors, subject to necessary mandate of the Creditor in writing, should work with the Debtor or its Authorised Representative and adopt a flexible and realistic approach to repayment arrangements. This includes:
 - 6.1.1 making reasonable allowance for a Debtor's ongoing living expenses.
 - 6.1.2 recognizing that Debtors in difficulties will often have a number of Debts owing to different creditors.
- 6.2 Debt Collectors should not mislead the Debtor or its Authorised Representative in the context of repayment negotiations.
- 6.3 The Debt Collector must ensure that repayment arrangements are fully documented.
- 6.4 The Debt Collector or Creditor (as relevant) should provide a written copy of an agreed payment arrangement to the Debtor on request.

7 Communication with Debtor upon settlement

- 7.1 Generally, while an arrangement is in place, the Debt Collector should not contact the Debtor unless:
 - 7.1.1 The Debtor asks the Debt Collector to contact, or
 - 7.1.2 The Debt Collector wishes to propose a genuine alternative or variant arrangement to benefit the Debtor, or
 - 7.1.3 The Debtor or its Authorised Representative does not comply with the terms of the agreement/ arrangement.
- 7.2 Debt Collectors are entitled to contact a Debtor to review an informal/ formal arrangement that was made subject to review.

8 Providing information and documents

- 8.1 Requests by Debtors or its Authorised Representative for information and/or documentation about an account should not be ignored unless prohibited by law.
- 8.2 If Debtor or its Authorised Representative requests information about an amount claimed as owing, or how that amount has been calculated, the Debt Collector/ Creditor should normally provide the Debtor with an itemized statement of the account clearly specifying:
 - 8.2.1 The amount of the Debt and how it is calculated, and
 - 8.2.2 Details of all payments made and all amounts (including principal, interest, fees and charges) owing.
- 8.3 Information and documents should be provided in a timely fashion.

9 Consistent and appropriate correspondence

The written correspondence—including automatically generated letters—should be consistent with both the Creditors records and verbal communications by the Debt Collector with the Debtor or its Authorised Representative, and vice versa.

10 Liability disputed by the Debtor

- 10.1 If a Debtor verbally denies a Debt, the Debt Collector may not pursue a person for a Debt unless he has reasonable grounds for believing the Debtor is liable for the Debt.
- 10.2 If a Debtor claims that:
 - 10.2.1 He/she is not the alleged Debtor, or
 - 10.2.2 the Debt has been paid or otherwise settled:

the Debt Collector shall have right to ask for a written denial before stopping contact.

Debt Collector may suspend further collection activity until the Debtor's identity and ongoing liability have been confirmed.

11 Privacy of information

The Debtor's personal information should always be treated with respect.

Personal information means information or an opinion, about an individual that can reasonably allow the individual to be identified.

12 Collecting and disclosing the Debtor's personal information

12.1 There Debt Collector should:

12.1.1. collect information directly from the Debtor whenever possible

12.1.2. When making inquiries about a Debtor from a neighbor or an employer, do not disclose information about the Debtor, such as indicating that you are collecting a Debt.

12.2 Generally the Debt Collector should use personal information only for the purpose for which it was collected.

13 Legal action and procedures

Creditors and their Debt Collectors have a right to pursue Debts through the courts or such other forum or under such other statutes as may be permissible under the law of land.

14 Record keeping

Debt Collectors should:

14.1 maintain accurate, complete and up-to-date records of all communications with Debtors, including the time, date and nature of calls about the Debt,

records of any visits in person, and records of all correspondence sent;
and

- 14.2 ensure that all payments made are accurately recorded (including details of date, amount and payment method).

15 Multiple Debts

If any Debtor owes multiple Debts and makes any single payment to any Debt Collector with respect to such Debts, such Debt Collector may apply such payment to any Debt as per the provisions of the Agreement between the Debtor and the Creditor.