

Debt Collection Proceedings

Introduction

1. A customer who takes a loan from a banking corporation must repay it under the terms set forth in the agreement between the customer and the banking corporation. At times, customers encounter economic hardships that impair their payback ability, prompting the banking corporation to take various measures to collect the debt. Even though the banking corporation may launch legal proceedings against the customer, it is expected to try to exhaust, insofar as is possible, other ways of collecting the debt, in all its components, before it turns to the courts. Statutory provisions regulate various aspects of debt collection proceedings and banking corporations must heed them. The purpose of this Directive is to enhance fairness and transparency in debt collection proceedings by regulating additional aspects that fall into the domain of bank–customer relations and are not fully addressed in existing legislation.
2. To enhance the fairness and transparency of debt collection proceedings vis-à-vis households and small businesses, this Directive regulates various matters such as the establishment of a debt collection function at the banking corporation; disclosure of the penalty interest formula and the indexation mechanism in the banking corporation’s loan agreement with the customer, setting a maximum rate for said penalty interest; sending detailed notices to customers so that they will receive all necessary information about their debt, compulsory supervision and control of agents (law offices) whom the banking corporation appoints to pursue collection proceedings; and disclosure to customers with whom settlements are executed about the possible implications of the settlement for them.

Incidence

3. This Directive shall apply to all banking corporations as are defined in the Directive. For the purposes of Sections 7–9 and 30–31, the Supervisor of Banks may determine certain provisions that diverge from those specified below and apply them to certain banks that engage in retail activity to a small extent.

Definitions

4. **“Loan”**—including an approved credit facility in an account or a credit facility in a payment card as defined in the Debit Cards Law, 5746-1986.
“Customer”—as set forth in Section 9i(f) of the Banking (Service to Customer) Law, 5741-1981.
“Debt collection function”—a dedicated function tasked with handling debt collection proceedings vis-à-vis customers who fail to repay their debts in an orderly manner.

“Banking corporation”—as defined in the Banking (Licensing) Law, 5741-1981, including an auxiliary corporation that is a credit card company.

Board of Directors

5. As part of its overarching responsibility for the banking corporation’s business and financial resilience, the Board of Directors shall:
 - (a) approve a policy on debt collection proceedings vis-à-vis customers who fail to repay their loans in an orderly manner;
 - (b) ensure that the debt collection function has the resources and powers that it needs to do its job;
 - (c) discuss the periodic reports from the director of the debt collection function, at least once a year and as close as possible to the date on which the reports are received.

Senior management

6. Senior management is directly responsible for the work of the debt collection function. Within this framework, it shall:
 - (a) formulate the policy on handling of debt collection on the basis of this Directive;
 - (b) ensure the availability of adequate resources for the handling of debt collection, including suitability of staff, technological resources, and training and instruction in relevant fields;
 - (c) entrench in procedures the working processes of the debt collection function and supervise their application, on the basis of the provisions of this Directive *inter alia*;
 - (d) determine the format and frequency of regular reportage by the director of the debt collection function to management and the Board of Directors, including, at the very least, reference to the matters specified in this Directive;
 - (e) discuss the periodic reports from the director of the debt collection function, at least once a year and as close as possible to the date on which the reports are received.

The debt collection function

7. To apply the provisions of this Directive, a banking corporation shall establish a debt collection function and appoint an executive to head it in order to assure adequate handling of debt collection by the banking corporation.
8. The debt collection function shall concentrate the handling of debt collection at the banking corporation, carrying out the requisite actions for this purpose in accordance with the law and maintaining fairness in customer–banking corporation relations.

9. The debt collection function shall be given various powers, including the power to make decisions on debt collection proceedings, forward instructions to the banking corporation's agents for debt collection purposes, negotiate with customers for compromise purposes, approve compromise settlements; and so on.

Penalty interest rate and indexation mechanism

10. Deleted
11. A banking corporation shall have control neither over setting the base interest rate that is used to calculate the penalty interest formula nor over the indexation base; instead, both shall be based on a benchmark that is made known to the public under law or by custom.

Proper disclosure

12. In addition to the details required by law, a banking corporation shall specify in the loan agreement or in a complementary document (hereinafter: loan agreement) the formula used to calculate the penalty interest rate on the loan and the indexation mechanism.
13. (a) To the extent possible, a banking corporation shall advise the customer of the possible implications of delinquency for him or her, in ample time for the customer to be able to avoid said implications.
(b) If a banking corporation executes a settlement with a customer concerning the receipt of amounts on account of a debt, it shall note in the settlement the possible implications of the settlement for the customer. A copy of the settlement that shall include, *inter alia*, the payback schedule shall be presented to the customer after he or she has signed it.

Notices and warning letters

14. If a customer falls behind in repaying a loan, the banking corporation shall send him or her notice to this effect. Said notice shall include the following details *inter alia*:
 - (a) the amount in arrears and the penalty interest rate;
 - (b) ways of contacting the relevant function at the banking corporation in any matter related to the debt in arrears.
15. Before assigning the treatment of a debt to the banking corporation's agent or debt collection function, on whichever date falls first, the customer shall be served with notice to this effect, including the following details:
 - (a) the balance of the loan;
 - (b) the interest rate on the loan;
 - (c) the amount of the loan that is in arrears, how it was calculated, and the penalty interest rate;

(d) details on how to contact the debt collection function.

16. Under circumstances where the banking corporation is required to report information on a customer, under the provisions of Section 16(a)(5) of the Credit Data Services Law, 5662-2002, every notice to a customer about an intention to begin debt collection proceedings must include the contents of this section.
17. The frequency of sending notices and warning letters to a customer due to delinquency in repaying a loan shall be proportional and commensurate with the circumstances of the case at hand.

Serving customers with information

18. A banking corporation shall not deny customers access to information and notices that they were sent concerning their account via the electronic means through which the customers generally received notices before the customer became indebted to the banking corporation, and/or before the banking corporation transfers the handling of the debt to its agent, and/or before it begins legal proceedings against a customer on account of his or her debt.
19. If a banking corporation is involved in a legal proceeding with a customer, it shall allow the customer to approach it directly in any matter related to the debt and shall allow customers to receive information about their account that is associated with activity in the account, to which she or he would be entitled were it not for the legal proceedings. The banking corporation shall present a customer, at every stage of the debt collection proceedings, with such information as he or she requests, including account statements and any other banking document, immediately upon receiving his or her request or with maximum celerity. The transfer of the case to the banking corporation's agent shall not derogate from this requirement.

Payments made in order to retire or reduce customer's debt

20. The date of a payment actually made by or for a customer in order to retire or reduce his or her debt shall be the determining date in debt collection proceedings.
21. Without derogating from the contents of Section 20, before a settlement between a banking corporation and a customer is drawn up, and before the customer repays his or her debt in full, the banking corporation shall allow the customer, to the greatest possible extent, to receive information about the balance of his or her debt in accordance with the most recent data from the Execution Office. At the customer's request, the banking corporation shall also present, on said dates, details on the method used to calculate the debt.

Execution Office proceedings

22. The penalty interest rate that the banking corporation reports to the Execution Office shall accord with the penalty interest rate that appears in the loan agreement or in a court order.
23. When a banking corporation applies to the Execution Office to open a file, it shall attach to its application a copy of the loan agreement, the court order, or the document, as the case may be, with reference to the sections that specify the relevant penalty interest formula and indexation mechanism. If support documentation for the penalty interest formula or the indexation mechanism is lacking, the banking corporation may present an institutional record concerning these details in accordance with the terms established by law.
24. A banking corporation shall exercise control over the opening of its customers' files with the Execution Office and shall ensure that said files specify the correct debt amounts, the appropriate penalty interest rates, etc.

Compulsory reporting to Execution Office

25. A banking corporation shall report to the Execution Office any sum that it receives on account of a debt by means other than the Office, within seven days of the day on which said the sum is received. Said report shall be presented both pursuant to a receipt obtained as part of an arrangement between the banking corporation and the customer and pursuant to a receipt obtained outside this framework.
26. A banking corporation shall advise the Execution Office of any arrangement that it concludes with a customer concerning the receipt of payments on account of the debt by means other than the Office. Said notice shall be presented to the Execution Office within a reasonable time and the proceedings in the file at issue in the arrangement shall be suspended in regard to the debtor who has concluded the arrangement as long as the banking corporation has not advised the Execution Office that the customer has violated the terms of the arrangement. The banking corporation shall install procedures in this matter.

Supervision and control of operations of banking corporation's agent

27. A banking corporation shall maintain supervision and control over agents that it has appointed to launch collection proceedings against a customer and shall ensure that that proceedings invoked are appropriate. Within this generality, a banking corporation shall document the forwarding of instructions to its agents and shall keep abreast of actions taken against customers, including details of documents that its agents present to judicial instances.
28. A banking corporation shall take appropriate measures to ensure that all material information forwarded by a customer to the banking corporation's agent, including the customer's request to settle the debt in arrears, is brought to its knowledge.

29. A banking corporation shall produce an annual report about customer debts that it has handed over to its agents for handling, in order to allow said debts to be monitored and to ensure that their collection has been handled appropriately.
30. At least once every three years, a banking corporation shall audit each agent that it has appointed to deal with debt collection by means of an external CPA or an internal auditor. Said auditor will review, *inter alia*, the application of the provisions of this Directive, the soundness of the data and calculations on the basis of which collection proceedings were brought against customers, the date on which sums were received from the debtor to reduce his or her debt, and the date on which said sums were recorded in the banking corporation's accounts.
31. The audit report shall be presented to the debt collection function, which will discuss its contents shortly after it is received. A condensed presentation of the findings of the annual reports, audit reports, and actions taken shall be inserted into the function's periodic report to the management of the banking corporation.

Fees and legal expenses

32. A banking corporation shall neither charge nor demand a fee or other legal expenses in relation to a legal proceeding except after said fee or expenses are established in a judgment by a court or other judicial authority as the fee and legal expenses of the banking corporation's agent.
33. Notwithstanding the provisions of Section 32 *supra*, in Execution Office proceedings, if no fee is established by law, regulation, or registrar's decision, the banking corporation may charge the customer the minimum fee set by force of Section 81 of the Bar Association Law, 5721-1961.
34. The fee of a banking corporation's agent and/or receiver that a customer must pay under a compromise settlement between the banking corporation and a customer shall be noted in the compromise settlement, which shall be presented to the customer for his or her review before he or she signs it.

Periodic notice

35. Once per year, the banking corporation shall send a customer who is in the midst of legal proceedings and against whom a file with the Execution Office has been opened, notice that shall include, at the very least, the following data in respect of said file:
 - a. the amount of the original debt at the time the Execution Office file was opened;
 - b. the effective interest rate charged;
 - c. itemization of receipts paid on account of the debt and received by the banking corporation;

- d. the up-to-date balance of the debt to the banking corporation, with the customer's attention called to the difference, if any, that exists between this balance and the balance in the records of the Execution Office and to possible reasons for said difference. If the customer has another outstanding debt to the banking corporation in relation to the same loan, the balance of said debt shall also be noted. If a settlement has been concluded with the debtor, it shall be made clear in the notice that as long as the debtor honors the terms of the settlement, the outstanding debt due shall be that set forth in the settlement;
- e. ways of contacting the relevant persons at the banking corporation's debt-settlement function.

Updates

Circular no.	Version	Details	Date
2527	1	Original Directive	February 1, 2017
2549	2	Update	January 8, 2018