

# Sale of unsecured debt: New industry guideline



## A new industry guideline on the sale of unsecured debt commenced on 1 March 2020

On 1 March 2020, the Australian Banking Association (**ABA**) introduced a voluntary industry guideline concerning the sale of unsecured debt (**the Guideline**). The Guideline complements certain provisions of the Banking Code of Practice and it outlines additional safeguards for customers when a bank sells unsecured debt to another party.

### Internal policies and contractual arrangements

- The ABA recommends that banks should develop internal policies which address matters contained in the Guideline.
- When making contractual arrangements with debt buyers, the ABA recommends banks should also include the matters contained in the Guideline.

### Prior to selling unsecured debt

- In circumstances where a customer is willing to disclose to the bank all of their liabilities, banks should consider whether they can internally restructure the customer's debt to make repayments more affordable.
- Banks have committed to not selling unsecured debts of a customer while considering their financial circumstances and working with the customer to find a suitable resolution.
- Banks will not sell a debt if the customer is in the process of disputing the amount owed.

Who is a debt buyer?  
A debt buyer is any third party to whom a bank sells debt.

### Criteria for selecting debt buyers

Banks' policies should set out a selection criteria for debt buyers which at a minimum includes:

- conditions requiring debt buyers to comply with ASIC and ACCC's debt collection guidelines;
- alignment between the bank's corporate values and those of the debt buyer. A strong emphasis should be placed on being customer focused;
- a requirement that debt buyers comply with external dispute resolution schemes including the Australian Financial Complaints Authority (AFCA).

ABA recommends that banks should monitor how debt buyers are undertaking their collection activities including mandatory reporting on the number and types of litigation and enforcement, including bankruptcy applications and sequestration orders.

### Bankruptcy proceedings:

- Where a debt buyer believes commencing bankruptcy proceedings is necessary to recover an unsecured debt, banks should require the debt buyer consult with the bank prior to commencing these proceedings. The debt buyer will need to explain to the bank why bankruptcy is the most appropriate option in the circumstances.
- In circumstances where the bank identifies a vulnerability it has the option to buy the debt back.
- If a bank considers that a minimum debt level higher than \$5,000 (prescribed by the *Bankruptcy Act 1966* (Cth)) is appropriate before initiating a creditor's petition, the minimum debt level should be documented in the bank's internal procedures and contractual arrangements with debt buyers.

**NB:** In response to COVID-19, from 25 March 2020 until 25 September 2020, the minimum amount for which creditors can have a bankruptcy notice issued, or a creditor's petition filed against a debtor has increased to \$20,000.

### Customers experiencing vulnerability

- Under the Guideline, a debt will not be sold to a debt buyer if a bank becomes aware that a customer's debt involved family and domestic violence.
- A bank should not sell debt where a customer is experiencing ongoing vulnerability and there is no prospect of the debt being recovered.

#### What happens when the debt has already been sold?

- The bank must work with the debt buyer to provide the best outcome for the customer. An option is for the bank to buy back the debt.
- Banks should ensure their internal policies and procedures set out the circumstances in which they may apply extra protections to the customer but continue to assess each customer on a case-by-case basis.



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