

For discussion
on 22 January 2007

LegCo Panel on Administration of Justice and Legal Services

Recovery Agents

This object of this paper is to set out recent developments in respect of recovery agents.

Recent Developments

2. The Administration has been actively monitoring events to see whether any enforcement action can be taken in respect of activities related to recovery agents.

3. Since the end of 2005, the Commissioner of Insurance has been investigating the possible illegal activities of an insurance company that was closely related to some law firms which were the subject of complaints for alleged malpractice in handling complainants' personal injury claims. The activities of these companies were related to possible illegal conduct of recovery agents. In this connection, the Department of Justice has been liaising with the Commissioner of Insurance concerning its investigation.

4. In addition, the Police are currently investigating the activities of a number of recovery agents, an insurance company and law firm(s). These companies have been referred to the Police by the Law Society, Commissioner of Insurance, practising solicitors and the Department of Justice. The Department of Justice is regularly updated by the Police on the investigation work regarding the complaints referred to it. The Police are currently seeking the legal advice of the Prosecutions Division of the Department of Justice regarding the matter.

5. The Administration has stepped up measures to warn the public of the risk of recovery agents. Since 1 December 2006, the Labour Department took further measures to guard against touting activities of recovery agents at its offices. No-staying zones (for the purpose of prohibiting recovery agents from staying there to wait for their

target clients) have been designated at the corridors and lobbies of the Labour Department's offices at 10/F of Cheung Sha Wan Government Offices. Security guards have been deployed to patrol the no-staying zones and assist the officers-in-charge in stopping touting activities as necessary. Posters are also being put up at its office premises to alert public of the risk of recovery agents. The Department of Legal Aid has also put up a new poster at its premises since December last year to warn the public against the activities of recovery agents.

6. As well as dealing with this issue under the current law, the Department of Justice will consider whether there is a case for permitting lawyers to work on a 'no win, no fee' basis. Such a reform would have major implications for those who wish to assist persons to bring claims, but who do not have the resources to do so. The Law Reform Commission ("LRC") has made recommendations for allowing conditional fee arrangements in a Consultation Paper. The LRC completed the public consultation on the recommendations in early 2006 and a final proposal on the way forward will be published in due course.

7. In the interest of consumers, the Administration is closely monitoring the situation regarding consumer complaints against recovery agents. We understand from the Consumer Council in January 2007 that, since June 2005, no further complaints have been lodged with the Consumer Council regarding recovery agents.

Recent developments in the U.K.

8. The Department of Justice is also monitoring developments on this subject in the UK, where serious and widescale problems emerged from the practices of some recovery agents.

9. Following the publication of the Final Report by Sir David Clementi, the Compensation Bill was announced in May 2005, was enacted by Parliament, and received the royal assent in 25 July 2006. Pursuant to the Compensation Act, the U. K. Secretary of State for Constitutional Affairs will be the Regulator to authorise persons to provide regulated claims management services, to regulate the conduct of authorised persons and to exercise any other relevant functions.

10. The Head of Claims Management Regulation was appointed to take up the lead responsibility for the operation of the regulations made

under the Compensation Act. All the secondary legislation relating to the regulating of claims management has now been laid before Parliament. Those regulations will enable the Regulator to issue codes of practice about the professional conduct of authorised persons, to investigate complaints about the professional conduct of an authorised person, impose conditions on a person's authorisation, and suspend or cancel a person's authorisation. The Director of Constitutional Affairs ("DCA") issued the "Code of Practice for the provision of Regulated Claims Management Services by Trade Unions" on 28 November 2006.

11. According to the timetable proposed by DCA, the Claims Management Services Tribunal will be established in February 2007 and the offence of providing regulated claims management services without authorisation will come into force in April 2007.

The Administration's Position

12. The Administration considers that maintenance and champerty are still offences in Hong Kong. Lawyers cannot work on a "no win, no fee arrangement".

13. Our policy is that, if evidence of criminal acts by recovery agents is uncovered, the Department of Justice would consider prosecution proceedings against anyone who has committed such offences. The Administration will continue to monitor the situation in consultation with the legal profession and relevant authorities to ensure that access to justice and the public interest are adequately protected.

14. The Administration has also taken action to inform members of the public to beware of the touting activities of recovery agents and to warn them of the risk of recovery agents by putting up posters and notices at premises of government departments and public body such as the Legal Aid Department, Social Welfare Department (TAVA section) and the Labour Department and hospitals under the Hospital Authority. Enhanced measures such as those stated in paragraph 5 have been taken to prevent the touting activities of recovery agents.

Department of Justice

January 2007

#331339 v3