

For information
on 27 March 2006

LegCo Panel on Administration of Justice and Legal Services

Recovery Agents

In a letter from the Administration of Justice and Legal Services Panel dated 13 March 2006, the Administration was requested to explain its policy on recovery agents in writing. This paper sets out the Administration's position regarding recovery agents and the recent progress of the matter.

2. As set out in the Administration's paper submitted to the Panel in November 2005, the Administration has adopted a three-pronged approach to this issue – involving public education, possible prosecution, and consideration of the need for legislation.

3. It was reported in the Administration's paper submitted to the Panel in February 2006 that a meeting was held between the Department of Justice and representatives of the legal professional bodies in January 2006. It was agreed between the legal professional bodies and the Department of Justice that there are certain follow-up actions to be done in order to prevent the illegal activities of recovery agents. While the Police would continue its investigation in relation to the activities of certain recovery agents, the Administration and the professional bodies would focus their efforts on increasing the public awareness of the inappropriate activities of the recovery agents. This included putting up of posters or notices in the relevant Government departments and hospitals to increase the public awareness of the matter.

4. Following the meeting, measures have been implemented by the Administration in accordance with what were agreed at the meeting.

(I) **Public education**

5. The Department of Justice has discussed the matter with the relevant departments and organizations. The measures they have taken or proposed to take to prevent the illegal activities of recovery agents are summarized as follows.

Labour Department

6. (i) The Labour Department has been distributing a new leaflet to injured employees through its Employees' Compensation Division (ECD) and the Occupational Medicine Division (OMD) offices, as well as public hospitals where the Employees' Compensation Assessment Boards meet to assess the permanent loss of earning capacity of injured employees. A copy of the leaflet is enclosed at **Annex A**.

(ii) The Labour Department has also uploaded cautionary messages in the digital display panel in the waiting area of its ECD offices for the information of injured employees. A poster on the same subject has also been produced and posted conspicuously in the waiting area of its offices.

(iii) The Labour Department is planning to enhance its public announcement system to broadcast cautionary messages in the waiting area of its offices.

(iv) In the course of handling disputed or unresolved employees' compensation claims, staff of the Labour Department will duly inform the injured employees of the availability of legal aid and other proper free legal advisory services. If the employees so wish, its staff will refer them to apply for legal aid or assist them in registering their claims direct at the District Court.

(v) The Labour Department has sought the help of the relevant property management to station security guards in the vicinity of the ECD/OMD offices to monitor and stop touting activities of recovery agents.

Department of Social Welfare (Traffic Accident Victims Assistance (TAVA) Section)

7. (i) It has been the practice of the Social Welfare Department since the inception of the TAVA Scheme in 1979 that its staff will explain to all TAVA applicants their rights to claim damages/compensation through a solicitor in private practice or with the assistance provided by Legal Aid Department (LAD) against any party at fault in respect of their traffic accidents. At the same time they will be given a notice entitled "Important notice to all applicants for financial assistance under the TAVA Scheme" (Copy of the notice is at **Annex B**), which provides, among other things, relevant information about their rights. The notice is also put up on the notice board at the reception area of the TAVA Section office.
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- (ii) In addition, copies of the LAD's pamphlet entitled "How to apply for legal aid in civil cases" are available for distribution to TAVA applicants and members of the public at the TAVA Section office.
- (iii) The Social Welfare Department has all along enlisted the assistance of the management of the building where the TAVA Section office is located in carrying out frequent patrols in order to stop any touting activities of recovery agents in the vicinity of the office of the TAVA Section.

Legal Aid Department

8. LAD has advised that it is not aware of any touting activities by recovery agents in the vicinity of its offices. Nevertheless, with the assistance of the Department of Justice, LAD will design poster for display in its offices with cautionary message against the use of recovery agent as a preventive measure.

Hospital Authority (HA)

9. (i) Posters about recovery agents issued by the Labour Department and notices have been posted up in some HA hospitals, including those HA hospitals where the Employees' Compensation Assessment Board assesses the injured employees.
- (ii) Leaflets issued by the Labour Department have been distributed to the public in some HA hospitals.
- (iii) Security guards have been instructed to evict recovery agents carrying on touting activities from hospital premises.
- (iv) In response to the request by the Department of Justice, the HA has reinforced the message to all HA hospitals that the touting activities of the recovery agents are contrary to the interest of the patients and are illegal and that security guards should be reminded to evict any recovery agents from hospital premises when they are conducting touting activities in hospital premises.
- (v) The HA also planned that all HA hospitals should post up posters issued by the Labour Department for the purpose of general public education.
- (vi) The HA has indicated support for all necessary measures for protecting the interest of the general public.

(II) Possible prosecution

10. The Law Society has supplied the Department of Justice with information concerning advertisements on the internet and the local media relating to a number of recovery agents. The Police are now conducting investigations of certain suspected cases involving illegal activities of the recovery agents. If evidence of criminal acts is uncovered, the Department of Justice will consider bringing prosecution proceedings.

(III) Possible legislation

11. There was a general understanding during the meeting with the professional bodies in January 2006 that before considering any legislative amendments, it would be more appropriate to see whether the practice of illegal recovery agents could be stopped by prosecution.

12. The Department of Justice takes the view that for the time being, a case for legislation is not made out.

(IV) The Administration's position

13. Maintenance and champerty are still offences in Hong Kong. Lawyers cannot work on a "no win, no fee arrangement". 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 the access to justice and interest of the public are adequately protected.

14. As regards the recent High Court case (HCMP 2878/2004), it is noted from the facts stated in the judgment that the case may involve acts of champerty and maintenance. The Administration is aware that the case has already been reported to the Police for investigation. If evidence of criminal acts is uncovered, the Department of Justice would consider any appropriate prosecution proceedings.

(V) Our Proposal

15. In view of on-going investigation by the Police of certain suspected cases, the current developments in the U.K. and the on-going consultation regarding conditional fees, we propose to continue to monitor the situation in Hong Kong and in the U.K. before deciding the way forward.

Department of Justice

March 2006

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Beware of Touting Activities of **Claims Recovery Agents**

Recently there are outsiders approaching injured employees near our offices and in the waiting area for work injury assessment in hospitals, peddling claims recovery business.

In your own interest, you are strongly advised of the following:

- (1) Don't respond to their approach and don't chat with them on your employees' compensation case. You should keep your personal particulars confidential to avoid being abused by others.
- (2) Don't sign any paper/document without careful thought. You may face unanticipated legal consequences and financial liabilities later on.
- (3) Don't take advertisement and lobbying at face value. Please be skeptical about propaganda such as "no win, no fee", "no charge", "risk-free guarantee" and "huge sum of compensation". Don't attempt to make a try. You may be held liable for huge damages and handling fees if you withdraw from their service half-way through.



Touting activities are prohibited by this department and hospitals. Such activities are totally unrelated to this department.

Please exercise vigilance when being tempted. If you feel harassed, notify our staff, security personnel or report to the police.



Labour Department

**Important Notice to All Applicants for Financial Assistance
under the Traffic Accident Victims Assistance Scheme**

The purpose of the Traffic Accident Victims Assistance Scheme is to provide financial assistance for traffic accident victims, and their dependants as quickly as possible after a traffic accident, though subsequently they would have to repay the amount of Traffic Accident Victims Assistance out of any common law damages or other forms of compensation that they may recover in respect of the same accident.

It is important, however, that applicants should understand that any sum of money that they may receive under the Traffic Accident Victims Assistance Scheme is not a substitute for any right that an accident victims or their dependants may have to claim:

- (a) damages against whoever may be to blame for the traffic accident (normally liability for payment of any damages awarded will be met by the motorist's insurance company or if he is not insured, by the Motor Insurers' Bureau.
- (b) Employees' Compensation against an employer where the traffic accident arose out of or in the course of the employment of the traffic accident victim (e.g. where the victim is a delivery worker and is injured/killed in a traffic accident when making a delivery or is a domestic servant who is injured/killed in a traffic accident when out on an errand for her employer).

Applicants should also understand that the amount of damages or Employees' Compensation that may be recovered will usually (but not always be) greater than the amount of the payment that they may receive under the Traffic Accident Victims Assistance Scheme. Even if the motorist cannot be located (e.g. in a 'hit and run' case) it may be possible to obtain an ex-gratia payment on their behalf from the Motor Insurers' Bureau. Therefore, if they have not already done so they should consult a solicitor or, if they cannot afford to do so, go to the Legal Aid Department at 66 Queensway, Queensway Government Offices, 24/F, H.K. (Tel. No. 2537 7661) or 3/F, Mong Kok Government Bldg., No. 30 Luen Wan Street, Kln at Mong Kok KCR Station (Tel. No. 2380 0117) to seek legal aid to claim damages or Employees' Compensation. The staff of the Legal Aid Department will be pleased to answer enquiries and to render assistance as far as they can.