

## Summary – Report from Special Committee on Recovery Agent

### What are claims recovery agents ("RA")?

1. RA are companies which purport to assist victims of personal injuries arising from, primarily, work related accidents, traffic accidents and medical procedures to pursue their claims for compensation in return for a fee as a percentage of the recovered damages (usually ranging from 20% to 25%). The payment of this percentage is usually made directly to the RA by the victim's solicitor who is specifically authorised for this purpose. It is common for RA to hold themselves out as professionals having expertise in making personal injury claims.
2. RA operate for profits and under the pledge of "no win, no pay", i.e., the 'clients' will only be liable to pay a fee if their claims are successful. Where their claims fail, the liability over the costs of the unsuccessful litigation will be on the RA. However, the customer contracts of the RA are neither well-drafted nor customer-oriented, and some of them are opaque as to the scope of responsibility of the RA.

### Maintenance and Champerty

3. In Hong Kong, maintenance and champerty are both tortious as well as common law offences. Maintenance is where there has been improper interference with litigation without legitimate interest or cause. Champerty is a form of maintenance where the person who maintains takes a reward or a share in the property recovered. The maintenance which underpins champerty can take various forms such as assisting the litigation by procuring evidence and instructing lawyers (which are activities normally undertaken by RA).
4. From the material available in relation to RA and their operations, it is concluded that the contract between a RA and a potential litigant is clearly champertous. Such a champertous contract cannot be justified as the RA has no legitimate interest in respect of the contract in question.
5. Lawyers who knowingly take part in furthering a client's claim made pursuant to a champertous agreement are liable to be prosecuted for the offence of aiding and abetting the crime of champerty.

### Professional Conduct

6. Lawyers who knowingly participate in the conduct of an action 'funded' by RA are likely to be working on a contingent fee basis. As such, this would amount to maintenance and champerty (if there is sharing of the proceeds of litigation). Further, there would be an obvious conflict with professional ethics by lawyers who operate in this fashion.