

**Bills Committee on
Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005**

**Administration's Response to Issues Raised
by the Legal Committee
of the Hong Kong General Chamber of Commerce**

Introduction

The Legal Committee of the Hong Kong General Chamber of Commerce ("HKGCC") submitted a letter dated 7 September 2005 to the Bills Committee, giving its views on the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill"). The Administration's response is provided below.

Confidence of employers in Chinese medicine practitioners

2. The HKGCC considers that due to the relatively new Chinese medicine registration and licensing system, employers may not be as confident with the qualifications of Chinese medicine practitioners (CMPs). The Administration wishes to point out that Hong Kong has a long history of Chinese medicine practice and the efficacy of Chinese medicine is widely accepted. Against this backdrop, the enactment of the Chinese Medicine Ordinance (CMO) in 1999 which, among others, puts in place mechanisms to regulate the practice of registered CMPs has assured a professional standard for Chinese medicine practice in Hong Kong. The Chinese Medicine Council of Hong Kong ("CMC"), which was set up in the same year, is tasked to ensure adequate standards of professional practice and professional conduct in the Chinese medicine profession.

3. Among measures adopted by the CMC for assuring the professional standard of CMPs are the issue of a "Code of Practice for registered CMPs" in 2002 and the production of a "Reference guide on issuance of sick leave certificates by registered CMPs" ("the Reference Guide"). The Reference Guide, which lists different diagnoses and

patterns of sickness as well as the corresponding recommended duration of sick leave, serves as a guideline for CMPs. The Reference Guide was published and distributed in February 2004 to all registered CMPs, major employers' associations and insurers underwriting medical and employees' compensation insurance.

4. The Reference Guide also stipulates that registered CMPs should be professionally and ethically responsible to their patients and that sick leave certificates should be issued in conformity with the professional expertise of Chinese medicine, and should not be issued unscrupulously. Special reference is made to the "Code of Practice for registered CMPs" which prohibits the receipt of undue benefits and issuance of untruthful or misleading certificates.

5. The Reference Guide also reminds registered CMPs to consider the duration of sick leaves according to a patient's sickness and whether the sickness affects the patient's working capacity. It is believed that with this Reference Guide, the acceptance of the community (including insurers, employers' associations and the public at large) of sick leave certificates issued by registered CMPs will be enhanced.

To consider a phased implementation of the legislative amendments

6. The HKGCC proposes that until employers become more educated about Chinese medicine practitioner certification and registration procedures and professionalism, it may be useful to consider a phased implementation of the legislative amendments. Regarding employers' awareness of CMP certification and registration procedures and professionalism, the Administration wishes to inform Members that the CMC has been working since its establishment with transparency and has been publicising its regulatory work through various measures.

7. Relevant efforts made by the CMC include publishing the full list of registered CMPs, publicising the registration system of CMPs and its related regulatory regime, explaining the work of the CMC through its annual reports etc. Such information is available on the website¹ of the

¹ The website of CMC is <http://www.cmchk.org.hk>

CMC for public consumption. Therefore, the Administration considers that there are adequate channels for employers to acquire information on the certification and registration procedures and professionalism of registered CMPs.

8. Regarding the implementation date of the Bill, Members may wish to note that as pointed out in paragraph 29 of the Legislative Council Brief on the Bill, the Labour Advisory Board will be further consulted on the commencement date of the legislative amendments after enactment.

A proposal to amend the Employment Ordinance to the effect that if a second opinion is inconsistent with the first medical opinion obtained by the employee, the employer may seek a third opinion

9. There is already in place a mechanism under the existing provisions of the Employment Ordinance (EO) to address the situation where the second medical opinion conflicts with the first one. Under sections 15AA(5) and 31R(6) of the EO, an employer may refer the case to the Commissioner for Labour who shall rule after consultation with medical experts as he considers necessary.

10. Upon commencement of the legislative amendments, if there are divergent opinions between practitioners of Chinese and western medicine regarding the fitness of an employee for certain work, the case could also be referred to the Commissioner for Labour for determination under sections 15AA(5) and 31R(6). Against this background, we do not intend to amend the relevant provision of the EO to provide for the seeking of a third medical opinion by an employer or employee.

Economic Development and Labour Bureau
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