

**President's ruling on
Committee Stage Amendments to
Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005
proposed by Hon LI Kwok-ying, MH**

Hon LI Kwok-ying has given notice to move Committee Stage Amendments ("CSAs") to the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill"), if the Bill gets its Second Reading at the Council meeting to be held on 28 June 2006. I am required to rule whether it complies with Rule 57 of the Council's Rules of Procedure. Before making this ruling, I have invited the Administration to offer its comments on the CSAs, and Hon LI Kwok-ying to offer his response. I have also sought the advice of Counsel to the Legislature.

The Administration's View

2. In a very detailed letter (which is reproduced at the **Appendix**), the Permanent Secretary for Economic Development and Labour (Labour) ("PS") offers the view that the CSAs proposed by Hon LI Kwok-ying do not comply with the requirements of Rule 57(4)(a) of the Rules of Procedure as they fall outside the scope of the Bill. Rule 57(4)(a) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

3. PS states that the first and also the main object of the Bill is to provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, registered Chinese medicine practitioners ("registered CMP") for the purposes of entitlement to certain employees' benefits under three labour ordinances. Hon LI Kwok-ying's proposed CSAs seek to extend that recognition to "listed Chinese medicine practitioners" ("listed CMP") under the Chinese Medicine Ordinance (Cap. 549) ("CMO"). Listed CMP are distinct from registered CMP under the CMO.

4. The PS states that the Legislative Council Brief on the Bill, the Long Title and the Explanatory Memorandum of the Bill specifically refer to registered CMP only. Nowhere in these is listed CMP mentioned. To seek to extend the recognition proposed in the Bill to listed CMP goes beyond the scope of the Bill.

Response from Hon LI Kwok-ying

5. In response, Hon LI Kwok-ying has advised that he has consulted members of the Bills Committee which authorized him to propose the CSAs on its behalf. They do not have comments on the Administration's views but some have expressed disappointment about the Administration's stance.

Advice of Counsel to the Legislature

6. Counsel to the Legislature advises that the object of the Bill concerns the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered CMP for the purposes of entitlement to certain employees' benefits under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360). Hon LI Kwok-ying's proposed CSAs, if passed, would accord listed CMP the same recognition proposed for registered CMP. Apart from adding "listed CMP" at various places of the Bill alongside "registered CMP", the proposed CSAs also seek to amend the long title of the Bill along the same line.

7. Counsel advises that it is abundantly clear that the Bill deals with registered CMP only. Hon LI Kwok-ying's proposed CSAs are not relevant to the subject matter of the Bill within the meaning of Rule 57(4)(a) of the Rules of Procedure.

My opinion

8. Although registered CMP and listed CMP are both regulated under the same ordinance, there is no doubt that they are two separate categories of CMP subject to different regulatory schemes. Given that the very clear objective of the Bill is to seek to give recognition to registered CMP only, I cannot persuade myself that the CSAs proposed to the Bill by Hon LI Kwok-ying, to extend the recognition to listed CMP, are in compliance with Rule 57(4)(a). I note that the Bills Committee has not made any attempt to counter the Administration's view, although some members of the Committee are said to have expressed disappointment with its stance.

9. I understand from discussions in the Bills Committee the reasons for its proposal to extend the recognition to listed CMP. However, in making rulings for the purpose of Rule 57(4)(a), I am not able to concern myself with the merit or otherwise of proposed amendments to bills. I can only deal with them in accordance with the prescribed rules and procedure. With regard to this Bill, even if the Administration accepted the arguments for extending the recognition to listed CMP and proposed the same CSAs as Hon LI Kwok-ying's

to the Bill, I would have ruled them out of order under Rule 57(4)(a). The proper procedure for seeking the extension of recognition is for a fresh bill to be introduced into this Council, so that Members can consider the merit of the proposal and take their decisions.

Ruling

10. I rule that Hon LI Kwok-ying may not move his proposed CSAs to the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 as it is not in compliance with Rule 57(4)(a) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

26 June 2006



Labour Department (Headquarters)

勞工處（總處）

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20 June 2006

Clerk to the Legislative Council
(Attn: Mr Arthur Leung)
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Leung,

Thank you for your letter of 17 June 2006 inviting the Administration's views on Hon LI Kwok-ying's proposed Committee Stage Amendments (CSAs) in the context of Rule 57(4) and (6) in the Rules of Procedure.

The Administration is of the view that the Hon LI Kwok-ying's proposed CSAs fall outside the scope of the Bill. Our view is founded on the following grounds -

- The objects of the Certification for Employee Benefits (Chinese Medicine)(Miscellaneous Amendments) Bill 2005 ("the Bill") are stated in the long title, LegCo Brief and Explanatory Memorandum, the first and also the main one being to provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered Chinese medicine practitioner ("registered CMP") for the purposes of entitlement to certain employee benefits under three labour ordinances.
- The Hon LI Kwok-ying's proposed CSAs seek to extend the recognition to "listed Chinese medicine practitioner" ("listed CMP").

- The Chinese Medicine Ordinance (Cap. 549) (CMO) was enacted in 1999 to regulate the practice of Chinese medicine. The Ordinance provides for two distinct categories of Chinese Medicine Practitioners - registered and listed. They are separately provided for under the interpretation section.

The criteria for applying to become registered CMPs and listed CMPs, as two distinct categories of persons, are different. To be eligible for applying to be a registered CMP, an applicant in general should have satisfactorily completed a recognized undergraduate degree course in Chinese medicine practice *and* has passed the Licensing Examination. On the other hand, a person was eligible to apply before 30 December 2000 for listing as a listed CMP if he was practising Chinese medicine in Hong Kong on 3 January 2000.

The provisions in the CMO envisage that listing of CMPs is a transitional arrangement. Firstly, section 90(3)(iv) of the CMO provides that the Secretary for Health, Welfare and Food may specify a date beyond which listed CMPs may not continue to practise. Hence it is envisaged that listed CMPs do not have a perpetual existence. Secondly, provisions are in place to allow listed CMPs to become registered CMPs through compliance with the requirements set out under sections 92 to 95. The listing of CMPs is a transitional arrangement and it is the policy intent of the CMO that this category of CMPs should eventually obtain registration status through the channels stipulated under the CMO.

That registered and listed CMPs are two separate and distinct categories is further evidenced by the differences in the statutory rights of and regulatory regime governing registered and listed CMPs.

- Titles: Registered CMPs are entitled to use the title of “registered Chinese medicine practitioner”. Listed CMPs can only use the title of “Chinese medicine practitioner”.
- Dispensation of Chinese herbal medicines: Registered CMPs are permitted to possess or dispense Chinese herbal medicines specified under Schedule 1 (Chinese herbal medicines with higher toxic levels) to a patient under his direct care. However, listed CMPs do not have such power and cannot prescribe such Chinese herbal medicine. Also, licensed herbal medicine retailers are not permitted to dispense Schedule 1 Chinese herbal medicines prescribed by a listed CMP.

- Disciplinary measures: According to the CMO, registered CMPs and listed CMPs are subject to different sets of disciplinary measures. For a registered CMP, a range of disciplinary measures can be imposed on him by the Chinese Medicine Practitioners Board if he is found guilty of professional misconduct. Such may range from removal of his name from the Register for serious cases or ordering a reprimand or warning for less serious ones. However, disciplinary actions in respect of listed CMP is confined to removing his name from the list of listed CMPs.
- Impact of conviction and professional misconduct: The CMO stipulates that a person who applies for registration as a registered CMP must provide a declaration as to whether he has been convicted of an offence punishable with imprisonment and whether he has been found guilty of professional misconduct. If that person has such record, his application for registration may be refused after inquiry. However, there is no corresponding requirement regarding applications for inclusion of a person's name into the list of listed CMPs.
- Continuing education: Registered CMPs must fulfil the requirements of continuing education in Chinese medicine as prescribed by the Chinese Medicine Practitioners Board of the Chinese Medicine Council before they can renew their practising certificates every three years. However, there is no corresponding requirement for listed CMPs. This further illustrates that unlike registered CMPs, listed CMPs are not envisaged to have a perpetual existence under the CMO.
- Practising certificate: Registered CMPs are prohibited from practising without a valid practising certificate which has to be renewed every three years. For the practising certificate to be granted or renewed, he is also required to meet certain conditions (including fulfilling the requirements of continuing education and payment of a fee). This requirement of regularly renewing a practising certificate is similar to that for other medical professionals like registered medical practitioners and dentists. There is, however, no such requirement in respect of listed CMPs.

The long title of the Bill specifically refers to “registered CMP”. Nowhere in the Bill is “listed CMP” mentioned. As can be seen above, “registered CMPs” and “listed CMPs” are distinct categories of persons, with different admission criteria, enjoying different rights and being subject to different regulatory measures. It is

submitted that extending the scope of recognition to “listed CMPs” is outside the subject matter of the Bill.

Our view that the CSAs extending the Bill to “listed CMPs” is outside the scope of the Bill is fortified by the President’s Ruling dated 10.3.2000 on the Hon Szeto Wah’s proposed CSAs to the Education (Amendment) Bill 1999. The object of the Education (Amendment) Bill 1999 was described broadly in its long title as “to amend the Education Ordinance”. The President ruled that the purpose, hence the scope, of the Bill was specifically to amend the Education Ordinance (Cap. 279) for implementing its policy regarding retirement age for principals and teachers of “aided schools” only. CSAs to extend the policy to cover “schools under the Government’s direct subsidy scheme” were not relevant to the subject matter of the Bill. It was noted in the ruling that neither the Bill nor the relevant LegCo Brief included schools other than aided schools.

In summary, for the reasons detailed above, the Administration submits that the Hon LI Kwok-ying’s proposed CSAs are beyond the scope of the Bill within the meaning of Rule 57(4)(a) of the Rules of Procedure.

Yours sincerely,

(Mrs Jenny Chan)
for Permanent Secretary for Economic
Development and Labour (Labour)
and Commissioner for Labour

c.c.
D of Admin
Legal Advisor, Legislative Affairs
Law Draftsman
SHWF

(Attn: Miss Shirley Lau)
(Mr Jonathan Daw)
(Attn: Ms Betty Cheung)
(Attn: Mr Jeff Leung)