

**President's ruling on
the Medical Registration (Amendment) Bill 2010
proposed by Dr Hon LEUNG Ka-lau**

Dr Hon LEUNG Ka-lau submitted to me on 28 January 2010 the Medical Registration (Amendment) Bill 2010 ("the Bill") which he intends to introduce into the Legislative Council ("LegCo").

2. Rule 51(3) of the Rules of Procedure provides that Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government. Rule 51(4) provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive ("CE") is required for its introduction.

3. To assist me in considering whether Dr LEUNG's Bill is caught by Rule 51(3) and (4), I have invited the Administration to comment on the Bill and provide related information and Dr LEUNG to respond to the Administration's comments and information. The Administration's comments and information¹ as well as Dr LEUNG's responses² are summarized in the **Appendix**. I have also sought the advice of Counsel to the Legislature.

The Bill

4. The object of Dr LEUNG's Bill, as explained in the Explanatory Memorandum of his Bill and in his covering letter to me dated 28 January 2010, is to regulate companies carrying on the business of practice of medicine, surgery or midwifery by requiring a majority of the directors of those companies to be registered medical practitioners, so that the Medical Council of Hong Kong ("the Medical Council") will be in a position to introduce a code of conduct for registered medical practitioners acting as directors of such companies. Dr LEUNG also points out that his Bill is modelled on section 12 of the Dentists Registration Ordinance (Cap. 156) ("DRO") which regulates dental companies.

5. According to Counsel's advice, the Medical Registration Ordinance (Cap. 161) ("MRO") was enacted to consolidate and amend the law by making more comprehensive provisions regulating the registration of practitioners in medicine and surgery. Unlike DRO, MRO does not contain any provisions regulating companies or organizations carrying on the business of practice of

¹ The Administration's comments on the Bill and related information were received on 18 February, 25 March and 10 May 2010 respectively.

² Dr Hon LEUNG Ka-lau's responses were received on 23 April and 14 May 2010.

medicine, surgery or midwifery. Dr LEUNG's Bill seeks to amend MRO and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E). The main proposals in his Bill are as follows:

- (a) a company may carry on the business of practice of medicine, surgery or midwifery if it carries on no business other than such practice and a majority of the directors of such company are registered medical practitioners ("medical companies") (the proposed new section 34A(1));
- (b) it is unlawful for a company to carry on the business of practice of medicine, surgery or midwifery if it contravenes the proposed new section 34A(1). The company, every director and manager of such company commit an offence and are liable on summary conviction to a fine at level 6³ and imprisonment for three years, or on conviction upon indictment to imprisonment for five years (the proposed new section 34A(2)); and
- (c) a medical company, except for such company with only one member who is a registered medical practitioner and such member is also the sole director of the company, is required to transmit to the Registrar of Medical Practitioners ("the Registrar") within a specified time a statement in a prescribed form containing the specified particulars of its directors or managers. A medical company which fails to comply with the requirement is deemed to be carrying on the business of practice of medicine, surgery or midwifery in contravention of the proposed new section 34A(1) (the proposed new section 34A(4)).

6. The Administration is of the view that the Bill relates to public expenditure, the operation of the Government and Government policies. Dr LEUNG does not agree with the Administration's view. As under Rule 51(3) of the Rules of Procedure, a Member may not introduce a bill which relates to public expenditure or the operation of the Government, I shall deal with these two aspects first.

Public expenditure

The Administration's views

7. The Administration submits that there would be around 1 000 medical companies to be incorporated upon enactment of the Bill. This is calculated on the basis that about 480 clinics and 3 300 doctors obtained business registration in 2009, and among the 480 clinics, one-fourth of them are

³ Level 6 fine is a fine of \$100,000.

registered as limited companies. Hence, the Administration estimates that about one-fourth of the clinics and doctors, say around 1 000 medical companies, would need to be registered with the Registrar should the Bill be passed.

8. The Administration also submits that the Department of Health (“DH”), which is the executive arm in health legislation and policy of the Government, would be responsible for overseeing the Bill. DH would need to assist the Hong Kong Police Force (“the Police”) in collecting relevant evidence, in particular, in proving whether a suspected medical practice is carrying on the business of practice of medicine, surgery or midwifery. Whenever there is a suspicion of practice of illegal western medicine in a premises, the Police will request a Medical and Health Officer (“MO”) from DH to join the raid in the premises and assist them in collecting relevant evidence and providing professional opinion.

9. The Administration estimates that roughly 25% of the working time of an Assistant Clerical Officer and an Executive Officer I would be required to process 1 000 applications, verify relevant documents, answer enquiries and receive complaints. The cost for 25% of these two staff members is about \$180,000⁴ per annum. As regards assisting the Police in collecting evidence for enforcing the Bill upon its enactment, each operation to inspect a suspected medical practice for the purpose of enforcing the Bill would require an MO writing report and attending court. In addition, the Police and the Judiciary would incur cost to cope with the work arising from implementing the Bill. The Administration estimates that it would require 20% of the working time of an MO, a Government Counsel and an Inspector of Police to assist in enforcing the Bill. The cost for 20% of these three staff members is about \$401,000⁵ per annum. The total additional resource requirement for enforcing the Bill, if it is enacted, is therefore around \$600,000 per year.

The Member’s response

10. Dr LEUNG considers that the Administration may have grossly overestimated the number of medical companies to be incorporated upon enactment of the Bill. He points out that the Administration has included the

⁴ The breakdown of the figure provided by the Administration is as follows:

Assistant Clerical Officer	\$189,420 x 25% = \$ 47,355
Executive Officer I	\$529,860 x 25% = \$132,465
Total	\$179,820

⁵ The breakdown of the figure provided by the Administration is as follows:

MO	\$750,120 x 20% = \$150,024
Government Counsel	\$719,160 x 20% = \$143,832
Inspector of Police	\$535,980 x 20% = \$107,196
Total	\$401,052

3 300 doctors who obtained business registration in reaching its estimate of 1 000 medical companies. However, under the proposed new section 34A(4), a medical company with only one member being a registered medical practitioner and the sole director is not required to transmit to the Registrar a statement containing particulars of the director. He submits that only the 480 clinics which obtained business registration should be taken into account in estimating the number of medical companies which would be incorporated under the Bill, if it is enacted. In other words, there would only be 120 medical companies which need to transmit statements to the Registrar containing particulars of the directors or managers of the companies.

11. Further, Dr LEUNG considers that an MO would only need to assist in collecting relevant evidence and providing professional opinion in cases where a company engaging registered medical practitioners to provide medical services denies that its business is carrying on the business of practice of medicine. He considers such cases to be uncommon. He also points out that, in comparing to section 12 of DRO which the proposed new section 34A is modelled upon, there was no request from the Police or other Government departments to assist in enforcement actions and handling complaints regarding infringement of section 12 of DRO in the past three years.

My opinion

12. It has been established through the rulings of my predecessor that a bill relates to public expenditure if the increase in public expenditure for performing the functions with the implementation of the bill is substantial and is such that the President must not ignore. I also understand from previous rulings⁶ that an increase which only represents a minimal demand on public expenditure can be ignored.

13. The Administration assumes that one-fourth of the 3 300 doctors (i.e. 825) currently practising as individual practitioners would also incorporate as medical companies upon enactment of the Bill. Hence, together with one-fourth of the 480 clinics (i.e. 120), there would be a total of around 1 000 medical companies which need to be registered with the Registrar should the Bill be passed.

14. I find it difficult to accept this assumption. Since the Bill does not require a medical company with only one member being a registered medical practitioner and the sole director to transmit annual statements to the Registrar, the actual number of statements transmitted to the Registrar should be far below 1 000 and hence the cost for incurring additional staff to process the

⁶ Rulings on the Employment (Amendment) (No. 2) Bill 2001 proposed jointly by Hon LI Fung-ying, Mr CHAN Kwok-keung and Mr LEUNG Fu-wah and the Fair Competition Bill proposed jointly by Hon Fred LI and Mr SIN Chung-kai.

annual statements will be way below \$180,000. If Dr LEUNG's assumption of 120 medical companies is to be adopted, the additional recurrent cost will be in the region of \$21,600 per annum, which cannot be regarded as significant when compared with DH's estimated expenditure of \$4,560,090,000 for the 2010-2011 financial year.

15. Considering that there was not even one case which required enforcement actions under section 12 of DRO, there does not appear to be any ground for me to accept that there is a need to incur 20% of the time of an MO, a Government Counsel and an Inspector of Police to assist in enforcing the Bill, if it is enacted.

16. As such, I consider that the additional resource requirement would only represent a minimal continuing demand on public expenditure which can be ignored.

Operation of the Government

The Administration's views

17. The Administration argues that based on the experience of DH's Office for Registration of Healthcare Institutions in dealing with the registration of exempted and registered clinics, whenever there is a suspicion of practice of illegal western medicine in a premises, the Police will request an MO from DH to join the raid in the premises and assist them in collecting relevant evidence and providing professional opinion. Should the Bill be passed, DH's MO would need to provide similar support to the Police. In this regard, DH would need to revise the working procedures of the Office for Registration of Healthcare Institutions to assist in enforcing the Bill.

The Member's response

18. Dr LEUNG is of the view that the implications on the structure or procedure of DH are not obvious. In relation to the enforcement of the proposed new section 34A, Dr LEUNG points out that since this proposed new section is modelled on section 12 of DRO, the experience of enforcement of that section can throw light on the possible implications that the Bill will have if it is enacted. Based on the experience of enforcement of section 12 of DRO in the past three years, Dr LEUNG suggests that there would be minimal implications on the law enforcement departments because they would seldom be required to take enforcement actions under the Bill upon its enactment.

My opinion

19. I have stated in one of my past rulings⁷ that a bill would relate to the operation of the Government if the implementation of the bill would have an obvious effect on the structure or procedure of the executive authorities, and the effect would not be of a temporary nature.

20. In its submission, the Administration states that DH will need to revise the working procedures of the Office for Registration of Healthcare Institutions to assist in enforcing the Bill, if it is enacted. It has referred to its current arrangement in assisting the Police by providing an MO in collecting evidence against suspected illegal practice of western medicine on premises and indicated that “similar support” would be provided for the enforcement of the Bill, if it is enacted. However, it has not provided any information on how this “similar support” would have an obvious effect on either the structure or procedure of the executive authorities.

21. As Dr LEUNG points out that the experience of enforcement of section 12 of DRO could throw light on the possible implications of the Bill, I have instructed the Clerk to LegCo to seek further information from the Administration on the enforcement of the current regulatory regime for dental companies as provided in section 12 of DRO. I was then advised that in 2007, 2008 and 2009, the Dental Council did not receive any complaints regarding infringement of section 12 of DRO or make any referrals to the Police for investigation and prosecution. As the working procedures which the Administration refers to are related to the investigation and prosecution of infringement of section 12 of DRO which is similar to the proposed new section 34A, I do not see any need for changes in DH’s working procedures which would have an obvious effect on either the structure or procedure of the executive authorities.

Government policies

22. I shall now deal with whether the Bill relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure. The rule provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of CE is required for its introduction.

⁷ Ruling on the Smoking (Public Health) (Amendment) Bill 2009 proposed by Hon Albert CHAN Wai-yip.

The Administration's views

23. The Administration argues that the Bill relates to the Government's policy on the regulation of Managed Care Organizations ("MCOs"), i.e. groups related to the provision of primary healthcare services. The current regulatory regime on MCOs relies heavily on the professional obligation of private doctors themselves to ensure that their medical services are up to the professional standards stipulated by the Medical Council, which issues the Code of Professional Conduct for the Guidance of Registered Medical Practitioners ("the Code"). Dereliction of professional responsibilities may be taken as professional misconduct, which is subject to disciplinary actions by the Medical Council.

24. The Administration submits that as set out in paragraphs 6 to 9 of the paper⁸ entitled regulation of Health Maintenance Organizations⁹ for the meetings of the LegCo Panel on Health Services ("HS Panel") on 12 March 2007 and 11 June 2007, the Government's policy is that, while there is scope for strengthening the present regime which is anchored in the regulation of individual healthcare professionals, the objective of any enhanced regulation should be to provide better quality assurance of medical services to safeguard patients' welfare while facilitating the further development of the primary healthcare services market. Against this background, consideration is being given to strengthening the present regime by requiring MCOs to appoint a medically-qualified person as medical director of the group.

25. The Administration further submits that from the public health perspective, the Government's foremost objective is to safeguard patients' health and interests through ensuring that the service provided is of standard. The Government safeguards the standard of service but does not regulate the business mode under which such service is provided, as it does not see that imposing additional requirements on the business setup of MCOs is an appropriate vehicle.

The Member's response

26. Dr LEUNG, on the other hand, argues that there is no existing legislation regulating medical companies and MRO does not reflect the Government's policy on such companies. When MRO was enacted in 1957, MCOs were not common in Hong Kong, and hence the Government could not have consciously seen the need to regulate or not to regulate MCOs under MRO.

⁸ LC Paper No. CB(2) 1238/06-07(04).

⁹ MCOs were referred to as Health Maintenance Organizations at that time.

27. Dr LEUNG further argues that the medical director proposal has so far not been implemented. He points out that policies which are in the process of being made or formulated are not regarded as Government policies. According to Dr LEUNG, the “policies” referred to by the Administration in its paper to the HS Panel are no more than views.

28. Dr LEUNG also submits that imposing restrictions on the composition of the board of directors of a medical company is an effective measure and not a harsh one. If his Bill is enacted, the Medical Council will require the registered medical practitioners who are the directors of medical companies to ensure that the operation of the medical companies complies with the Code, while other business decisions of the companies will not fall within the ambit of the Code; and hence the further development of the primary healthcare services market will not be hindered.

My opinion

29. I have also stated in my past rulings¹⁰ that for a bill to relate to Government policies, it must have substantive effect on Government policies. In this connection, I note that my predecessor ruled, on various occasions, that Government policies include policies promulgated in LegCo or its committees by public officers designated by CE¹¹. I agree to such a view.

30. I have read the Administration’s paper on regulation of Health Maintenance Organizations for the HS Panel meetings on 12 March 2007 and 11 June 2007 very carefully. I am satisfied that the Administration has made it very clear that it is Government policy to rely on the professional obligation of private doctors themselves to ensure that their medical services are up to the professional standards stipulated by the Medical Council, and not to regulate the business mode under which such services are provided. The proposal for group practices to appoint a registered medical practitioner as the medical director of a group is a measure in pursuance of this policy.

31. Dr LEUNG’s Bill, on the other hand, seeks to regulate the operation or business mode of MCOs by requiring that a majority of the directors of those organizations to be registered medical practitioners. I am of the opinion that Dr LEUNG’s Bill has a substantive effect on the Government’s policy on MCOs, and therefore his Bill relates to Government policies. As to Dr LEUNG’s arguments that his proposal is effective in ensuring the professional standards of MCOs and that the Government is slow in

¹⁰ Rulings on the Smoking (Public Health) (Amendment) Bill 2009 proposed by Hon Albert CHAN Wai-yip and The Hong Kong Polytechnic University (Amendment) Bill 2009 proposed by Dr Hon LAM Tai-fai.

¹¹ Rulings on the Forests and Countryside (Amendment) Bill 2006 proposed by Miss CHOY So-yuk and the Mandatory Provident Fund Schemes (Amendment) Bill 2001 proposed by Hon Andrew CHENG Kar-foo.

implementing the medical director proposal, these are points of merit which I should not consider when making a ruling on the admissibility of a Member's bill under the Rules of Procedure.

My ruling

32. Having taken into account the views of the Administration and Dr Hon LEUNG Ka-lau, as well as the advice of Counsel to the Legislature, I rule that the proposed Medical Registration (Amendment) Bill 2010 does not relate to public expenditure or the operation of the Government. The Bill, however, relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure. The Bill may not be introduced without the written consent of CE.

(Jasper TSANG Yok-sing)
President
Legislative Council

25 June 2010

The Medical Registration (Amendment) Bill 2010

Summary of the Administration's comments on the Bill proposed by Dr Hon LEUNG Ka-lau and Dr Hon LEUNG Ka-lau's response to such comments

Purpose of Dr Hon LEUNG Ka-lau's Bill	The Administration's comments	Dr Hon LEUNG Ka-lau's response
<p>The Bill seeks to regulate companies carrying on the business of practice of medicine, surgery or midwifery by requiring a majority of the directors of those companies to be registered medical practitioners, so that the Medical Council will be in a position to introduce a code of conduct for registered medical practitioners acting as directors of such companies.</p> <p>The Bill amends MRO and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E). The main proposals in the Bill are as follows:</p> <p>(a) a company may carry on the business of practice of medicine, surgery or midwifery if it carries on no business other than such practice and a majority of the directors of such company are registered medical practitioners ("medical companies") (the proposed new section 34A(1));</p> <p>(b) it is unlawful for a company to carry</p>	<p>Public expenditure and operation of the Government</p> <p>"Public expenditure" covers expenditure of the HKSAR Government, including expenditure payable under different Heads of Expenditure in the General Revenue Account. The Bill requires companies carrying on the business of practice of medicine, surgery or midwifery transmit to the Registrar a statement in the prescribed form containing the names and addresses of all persons who are directors or managers of the company. The Medical Council Secretariat is staffed by DH and the remuneration of the staff is payable under the Head of expenditure of DH and the expenditure concerned is, as a matter of fact, public expenditure.</p> <p>The Administration does not have the exact number of those companies carrying on the business of practice of medicine, surgery or midwifery in Hong Kong. According to the information provided by C&SD, there were about 480 clinics and 3 300 doctors which obtained business registration in 2009. Among those 480 clinics, about one-fourth of them are registered as</p>	<p>Public expenditure and operation of the Government</p> <p><u>Handling of statements</u></p> <p>The Administration may have grossly overestimated the number of medical companies to be incorporated upon enactment of the Bill. According to the 2007 Health Manpower Survey of DH, there were around 1 000 doctors in joint practice. Even if there are only two doctors practising jointly in each medical company, the number should at the most be 500; if there are five doctors practising jointly in each company, there should only be 200 of them. The Administration's assessment is not in line with the aforesaid data.</p> <p>Moreover, according to the 2007 Health Manpower Survey of DH, there were about 1 350 dentists in private practice, and the ratio of dental companies was below 4%. In the same year, there were about 5 000 doctors in private practice. Deducing from this ratio, Dr Hon LEUNG Ka-lau considers that there are around 200 medical companies. As the Bill proposes that a medical company with only one member who is a</p>

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<p>on the business of practice of medicine, surgery or midwifery if it contravenes the proposed new section 34A(1). The company, every director and manager of such company commit an offence and are liable on summary conviction to a fine at level 6 and imprisonment for three years, or on conviction upon indictment to imprisonment for five years (the proposed new section 34A(2)); and</p> <p>(c) a medical company, except for such company with only one member who is a registered medical practitioner and such member is also the sole director of the company, is required to transmit to the Registrar within a specified time a statement in a prescribed form containing the specified particulars of its directors or managers. A medical company which fails to comply with the requirement is deemed to be carrying on the business of practice of medicine, surgery or midwifery in contravention of the proposed new section 34A(1) (the proposed new section 34A(4)).</p>	<p>“limited companies”. Hence, the Administration estimates that about one-fourth of the clinics and doctors, say around 1 000 medical companies, would need to be registered with the Medical Council should the Bill be passed.</p> <p>Based on the experience of DH's office for Registration of Healthcare institutions in dealing with the registration of exempted and registered clinics, it would require roughly 25% of the working time of an ACO and an EOI to process 1 000 applications, verify relevant documents, answer enquiries and receive complaints. Moreover, it would also require 20% of the working time of an MO, a Government Counsel and an Inspector of Police to assist in enforcing the Bill. In addition, by making reference to the current practice of raiding illegal clinics, each operation to inspect a suspect medical practice for the purpose of enforcing the Bill will require an MO, which would involve writing report and attending the court. Apart from DH, it would also incur additional cost by the Police and the Judiciary to cope with the work arising from implementing the Bill.</p> <p>A rough estimate of the resource requirement for enforcing the Bill is around \$600,000 per year additionally, and the breakdown is as follows:</p>	<p>registered medical practitioner and the sole director is not required to transmit a statement, the number of statements which DH has to handle annually should be less than 200.</p> <p>As regards the Administration's estimation that around 1 000 medical companies would need to register with the Medical Council, it has included one-fourth of the 3 300 doctors. Dr Hon LEUNG Ka-lau points out that these 3 300 doctors should only apply for business registration by way of “business carried on by an individual” under section 3 of BRR. Hence, it does not fall within the definition of “company” under clause 2 of the Bill. If a doctor applies for business registration for “business carried on by a body corporate”, it should be included in the aforesaid 480 clinics. Moreover, the Bill proposes that a medical company with only one member who is a registered medical practitioner and the sole director is not required to transmit a statement to the Registrar; hence there will at the most be 120 medical companies which need to transmit statements.</p> <p><u>Estimation of extra manpower required</u></p> <p>According to the information provided by DH, all registration matters are collectively handled by the 12 officers of CRO under DH at present. CRO is responsible for the registration matters of the 11 healthcare professions, including the handling of applications and renewal of practising certificates.</p>

Purpose of Dr Hon LEUNG Ka-lau's Bill	The Administration's comments	Dr Hon LEUNG Ka-lau's response												
	<table border="1" data-bbox="712 201 1391 432"> <tr> <td>ACO</td> <td>\$189,420 x 25% = \$ 47,355</td> </tr> <tr> <td>EOI</td> <td>\$529,860 x 25% = \$132,465</td> </tr> <tr> <td>MO</td> <td>\$750,120 x 20% = \$150,024</td> </tr> <tr> <td>Government Counsel</td> <td>\$719,160 x 20% = \$143,832</td> </tr> <tr> <td>Inspector of Police</td> <td>\$535,980 x 20% = \$107,196</td> </tr> <tr> <td>Total</td> <td>\$580,872</td> </tr> </table> <p data-bbox="703 480 1415 552">Therefore, the Administration considers that the Bill relates to public expenditure.</p> <p data-bbox="703 600 1415 1070">Moreover, the Administration considers that the Bill relates to the operation of the Government. DH estimates that around 1 000 medical companies would need to be registered with the Registrar should the Bill be passed. Further, DH, as the executive arm in health legislation and policy of the HKSAR Government, will be responsible for overseeing the Bill. DH would need to assist the Police in collecting relevant evidence, in particular, in proving whether a suspect medical practice is carrying on the business of medicine, surgery or midwifery.</p> <p data-bbox="703 1118 1415 1469">Based on the experience of DH's Office for Registration of Healthcare Institutions in dealing with the registration of exempted and registered clinics, whenever there is a suspicion of practice of illegal western medicine in a premises, the Police will request a MO from DH to join the raid in the premises and assist them in collecting relevant evidence and providing professional opinion. If the Bill is enacted, the DH's MO</p>	ACO	\$189,420 x 25% = \$ 47,355	EOI	\$529,860 x 25% = \$132,465	MO	\$750,120 x 20% = \$150,024	Government Counsel	\$719,160 x 20% = \$143,832	Inspector of Police	\$535,980 x 20% = \$107,196	Total	\$580,872	<p data-bbox="1449 169 2157 280">In 2007, 2008 and 2009, there were 67 053, 68 179 and 69 738 healthcare professionals registered with CRO respectively.</p> <p data-bbox="1449 328 2157 520">In 2007, 2008 and 2009, there were 50, 66 and 72 statements transmitted to the Registrar under section 12 of DRO respectively, while enquiries and complaints received related to section 12 of DRO were 50, 70 and 100 respectively.</p> <p data-bbox="1449 568 2157 1078">The Administration indicates that matters related to section 12 of DRO are dealt with by the four officers who also handle the registration of dentists and the conduct of the Licensing Examination of the Dental Council. Dr Hon LEUNG Ka-lau points out that over 1 800 dentists are required to register or renew their practising certificates every year, and the handling of matters related to section 12 of DRO is relatively simple, which only requires the four officers to keep 72 statements on file and answer enquiries. This should take up less than 5% of the working time of the four officers.</p> <p data-bbox="1449 1126 2157 1366">The Bill has made reference to the approach of section 12 of DRO in the regulation of dental companies in amending DRO for regulation of medical companies. Therefore, the enforcement of DRO should have reasonably reflected the impact brought by the Bill.</p> <p data-bbox="1449 1414 2157 1477">The Administration estimates that if the Bill is enacted, DH requires 25% of the working time</p>
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	<p>would need to provide similar support to the Police. In this regard, DH would need to revise the working procedures of the Office for Registration of Healthcare Institutions to assist in enforcing the Bill.</p> <p>With regard to the establishments of the 12 posts of CRO of DH, CRO mainly handles the registrations of individuals and related issues of the 11 healthcare professions. CRO does not have the capacity to process the applications of medical companies if the Bill is passed as it involves additional workload and they are at present already fully occupied with their present duties. The 12 officers in CRO are all already deployed on a share-use basis to serve different healthcare professions at the same time. The Administration is not able to provide a factual account or truthful guesstimate on the percentage of time spent by the 12 officers in their various duties in relation to each of the 11 healthcare professions. Moreover, the registration of dental companies is handled not by CRO but by the secretariat staff in DH.</p>	<p>each of a CO and an EOI to process 1 000 applications, verify relevant documents, answer enquiries and receive complaints. According to Dr Hon LEUNG Ka-lau's understanding, this amounts to roughly 1 144 working hours of an officer, i.e. each statement requires on average of about 1.15 hours to process. According to the information provided by DH, the 12 officers of CRO can process about 70 000 registrations of medical healthcare professionals annually, i.e. each registration requires on average only 0.4 hour to process. Handling 120 statements will only take up 48 working hours of an officer. Compared with the registration of medical healthcare professionals, the handling of statements under the Bill is relatively simple, and there should not be an obvious difference in efficiency.</p> <p><u>Law enforcement actions such as inspection and prosecution, etc.</u></p> <p>The Administration's view that DH is required to assist the Police in collecting relevant evidence (to prove whether the organizations concerned are carrying on the business of practice of medicine) so as to enforce the requirements of the Bill is an analysis conducted mechanically.</p> <p>If the law enforcement authority considers that the organizations concerned are carrying on the business of practice of medicine, there will be three scenarios:</p>

Purpose of Dr Hon LEUNG Ka-lau's Bill	The Administration's comments	Dr Hon LEUNG Ka-lau's response
		<p>(a) the organizations concerned have not employed registered medical practitioners, and provide medical services illegally. It is the duty of the law enforcement authority under section 28 of MRO to combat illegal practice of medicine, and it is not related to the Bill;</p> <p>(b) the organizations concerned have employed registered medical practitioners to provide medical services, and have confirmed that their business of practice is of a medical nature. These are the target for regulation under the Bill. Yet, if the organizations concerned have confirmed that their business of practice is of a medical nature, DH's assistance to collect evidence will not be necessary; and</p> <p>(c) the organizations concerned have employed registered medical practitioners to provide medical services, but denied that their business of practice is of a medical nature. Only under such a scenario will DH be required to assist in collecting evidence, but such cases will be uncommon because the organizations concerned have employed registered medical practitioners to provide medical services, it is difficult for them to deny that their business of practice is not of a medical nature.</p> <p>The enforcement of DRO in respect of "dental</p>

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		<p>companies” supports the aforesaid analysis. In the past three years, the Dental Council had not received requests from the Police or other government departments to assist in the enforcement of DRO, and had not received any complaint regarding infringement of DRO or did not make any referral to the Police for investigation and prosecution.</p> <p>For companies which have employed registered dentists to provide dental service, the operators are in most cases registered dentists and hence, it is not difficult to comply with section 12 of DRO. To provide legitimate professional services, the companies are also required to be legitimate to run a stable operation. Therefore, infringement of DRO is uncommon. Since the situation of medical companies and that of dental companies are broadly the same, law enforcement actions will be uncommon.</p> <p>At present, many directors of medical companies are already registered medical practitioners. The purpose of the Bill is to provide the legal basis for the Medical Council to introduce a code of conduct for registered medical practitioners who are directors of medical companies. It is not appropriate for the Administration to draw on DH's experience in assisting the inspection and prosecution of unlicensed practice to assess the enforcement situation of the Bill.</p> <p>If the Bill is enacted, the need for law enforcement</p>

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		<p>actions should be extremely small, and should not bring substantial impact on the expenditure or work of DH, the Police and the Judiciary.</p> <p>Regarding the manpower for enforcing DRO and the registration of dentists, the information provided by the Administration is contradictory:</p> <p>(a) according to the information provided by the Administration on 25 March, four officers including a Senior Executive Officer, an EOI, a CO and an ACO are involved in matters related to section 12 of DRO. They also handle other matters such as the registration of dentists and conducting the Licensing Examination of the Dental Council, etc.;</p> <p>(b) according to the information provided by DH on 13 April, CRO of DH is responsible for all registration matters related to 11 medical and healthcare professions with secretariat support provided by its Boards and Councils Office. These 11 professions include doctors, dentists and nurses. The daily routine of CRO is headed by an EOI, underpinned by a Senior Clerical Officer and 10 clerical staff; and</p> <p>(c) in its reply on 10 May 2010, the Administration indicated that "the registration of dental companies is handled not by CRO but by the secretariat staff in DH".</p>

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		It is confusing as to which department the four officers belong and what their duties are.
	<p>Government policies</p> <p>The Bill relates to the Government policy on regulation of MCOs, i.e. groups related to the provision of primary healthcare services.</p> <p>The current regulatory regime on MCOs relies heavily on the professional obligation of private doctors themselves to ensure that their medical services are up to the professional standards stipulated by the Medical Council. The Medical Council issues the Code to ensure doctors' compliance with appropriate procedures and standards of medical treatment in the provision of medical services for the interests of patients. Dereliction of professional responsibilities may be taken as professional misconduct, which is subject to disciplinary actions by the Medical Council.</p> <p>The Administration submits that as set out in paragraphs 6 to 9 of a paper for the meetings of the LegCo HS Panel on 12 March 2007 and 11 June 2007 (LC Paper No. CB(2) 1238/06-07(04)), the Government's policy is that, while there is scope for strengthening the present regime which is anchored in the regulation of individual healthcare professionals, the objective of any enhanced regulation should be to provide better quality assurance of medical services to safeguard patient's welfare while facilitating the further</p>	<p>Government policies</p> <p>Dr Hon LEUNG Ka-lau does not agree to the Administration's view. He points out that at present, there is no legislation or administrative measure which solely targets MCOs. It is inappropriate to regard the regulatory regime for individual medical practitioners as a regime to regulate MCOs, and it has no legal basis. There is also no legislation or administrative measure to authorize registered medical practitioners being an employee to regulate MCOs.</p> <p>When MRO was enacted in 1957, MCOs were not common in Hong Kong. At that time, there was no special intention on the part of the Government to regulate MCOs by MRO, neither was there any intention not to regulate MCOs. In terms of time sequence, MRO does not reflect the Government's policy on MCOs.</p> <p>The existing MRO does not embody the concept of medical companies. The Bill does not seek to delete or amend any original section of MRO. The so-called "amendment" is to add the definition of "company" and provide regulation for those companies. Technically speaking, a separate "Medical Companies" Bill could be drafted to achieve the same effect as the Bill. Thus, amending an existing legislation does not</p>

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	<p>development of primary healthcare services market.</p> <p>Against this background, consideration is being given to strengthening the present regime by requiring MCOs to appoint a medically-qualified person as medical director of the group. The appointment of a medical director could help uphold decisions made by the management. This arrangement will help safeguard patient's health and interests, and at the same time, will achieve the objective of facilitating the further development of primary healthcare services market, as opposed to the Bill which would put stringent requirements on the formation of the Board of Directors of MCOs and hence hinder the further development of primary healthcare services market.</p> <p>The appointment of medical director is modelled on the regulations of MCOs in the United States, where MCOs have a long history of development there since the late 1970s. From the public health perspective, the Government's foremost objective is to safeguard patients' health and interests through ensuring that the service provided is of standard. The Government safeguards the standard of service but does not regulate the business mode under which such service is provided. The Government does not see that imposing additional requirements on the business setup of MCOs is an appropriate vehicle.</p>	<p>necessarily have a substantial effect on the existing legislation.</p> <p>The "policy" as stated by the Administration in the quoted paper (in paragraph 6 of LC Paper No. CB(2) 1238/06-07(04)) can only be regarded as "the Administration's views". Government "policy" certainly reflects government "view", and while there is a possibility for a government "view" to ultimately become a government "policy", but the two are absolutely different. "Views" normally refer to some initial opinions and viewpoints, whereas a "policy" should be an administrative strategy formed after careful consideration.</p> <p>As the President of LegCo stated in a previous ruling: ".....'government policies' should not be used interchangeably with 'policy aims or objectives', as by the Secretary.....Policy aims or objectives are but ideals and remain as such until concrete policy decisions have been made to achieve them; these policy decisions should be unequivocal and should not be capable of being interpreted differently at different times". The so-called "policy" of the Administration is at the most a policy aim or ideal, and not a specific policy.</p> <p>The appointment of a medical director, which is being considered by the Administration, had not been implemented in the past three years. According to rulings made previously by the</p>

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		<p>President of LegCo, policies in the process of being made are not regarded as Government policies.</p> <p>At present, under the regulatory regime for the professions such as dentists, accountants and lawyers, etc., persons who are appointed as directors or partners are required to possess the relevant practicing qualifications. The Bill imposes restrictions on the composition of the Board of Directors to ensure a professional standard, and this is an effective measure and not a harsh one.</p> <p>If the Bill is enacted, the Medical Council will require the registered medical practitioners who are the directors of medical companies to ensure that the operation of the medical companies complies with the Code, while other business decisions of the companies will not fall within the ambit of the Code; and hence the further development of the primary healthcare services market will not be hindered.</p>

Abbreviations

ACO	Assistant Clerical Officer
the Bill	Medical Registration (Amendment) Bill 2010
BRR	Business Registration Regulations (Cap. 310 sub. leg. A)
the Code	Code of Professional Conduct for the Guidance of Registered Medical Practitioners
CRO	Central Registration Office
C&SD	Census & Statistics Department
CO	Clerical Officer
DH	Department of Health
DRO	Dentists Registration Ordinance (Cap. 156)
EOI	Executive Officer I
HKSAR Government	Hong Kong Special Administrative Region Government
HS Panel	Panel on Health Services
LegCo	Legislative Council
Medical Council	The Medical Council of Hong Kong
MCOs	Managed Care Organizations
MO	Medical and Health Officer
MRO	Medical Registration Ordinance (Cap.161)
the Police	Hong Kong Police Force
Registrar	Registrar of Medical Practitioners