

立法會
Legislative Council

LC Paper No. CB(2)731/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

**Minutes of the tenth meeting
held on Monday, 14 May 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon CHAN Han-pan, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN

Members absent : Hon Steven HO Chun-yin, BBS
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming

Public Officers attending : Mr FONG Ngai
Deputy Secretary for Food and Health (Health) 3
Food and Health Bureau

Mr Bill LI Chi-pang
Principal Assistant Secretary for Food and Health
(Health) 4
Food and Health Bureau

Mr Michael LI Chi-lung
Assistant Secretary for Food and Health (Health) 4B
Food and Health Bureau

Dr Amy CHIU Pui-yin, JP
Head, Office for Regulation of Private Healthcare
Facilities
Department of Health

Dr FUNG Ying
Principal Medical and Health Officer (Private Healthcare
Facilities) 2
Department of Health

Ms Rayne CHAI Chih-hui
Senior Assistant Law Draftsman
Department of Justice

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)454/17-18(03), CB(2)629/17-18(03), CB(2)1252/17-18(01), CB(2)1356/16-17(01) to (02), CB(2)1363/17-18(01), CB(2)1823/17-18(02) and CB(3)687/16-17]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Continuation of clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Private Healthcare Facilities Bill from clause 78 and examined up to clause 121.

Follow-up actions required of the Administration

Admin

3. The Bills Committee requested the Administration to:

- (a) consider a member's suggestion of improving the drafting of clause 80(1) to reflect clearly the legislative intent that the prohibition of disclosing or giving to "another person" by a member, or the secretary, of the Committee on Complaints against Private Healthcare Facilities of any information or document obtained for the purpose of considering a facility complaint was referring to the disclosure or the giving of such information or document to any person outside the Committee;
- (b) consider the suggestion that the word "及" should be added at the end of the Chinese text of clause 92(1)(a) to align with the English text; and
- (c) in respect of clause 120 which provided for immunity from civil liability for a public officer, advise whether there was any precedent case in which a public officer was held civilly liable for an act done or omitted to be done by the public officer in performing or purportedly performing a function under the laws of Hong Kong.

II. Any other business

4. Members agreed that the next two meetings of the Bills Committee would be held on 11 June 2018 at 10:45 am and 26 June 2018 at 8:30 am respectively.

Action

5. There being no other business, the meeting ended at 6:46 pm.

Council Business Division 2
Legislative Council Secretariat
29 January 2019

**Proceedings of the tenth meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Monday, 14 May 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000831 - 000916	Chairman	Opening remarks	
000917 - 002025	Chairman Admin Dr Pierre CHAN Dr KWOK Ka-ki	<p>Briefing by the Administration on its response to the follow-up actions arising from the discussion at the meeting on 23 April 2018 [LC Paper No. CB(2)1356/17-18(02)], and its reply letter to Dr Pierre CHAN's letter dated 20 April 2018 [LC Paper No. CB(2)1363/17-18(01)].</p> <p>On Dr Pierre CHAN's enquiry about the regulatory requirements that needed to be complied with by a registered medical practitioner in order to open a clinic as a sole proprietor after the passage of the Private Healthcare Facilities Bill ("the Bill") but before the commencement of registration of clinics which, according to the Administration, was scheduled for 2021 if the Bill was passed in 2018, the Administration advised that there were currently no specific regulatory requirements governing the opening of such clinics as long as the Medical Clinics Ordinance (Cap. 343) was complied with.</p> <p>In reply to Dr KWOK Ka-ki's enquiry about the transitional arrangements for day procedure centres already in operation, the Administration elaborated on the issuance of a provisional day procedure centre licence by the Director of Health ("the Director") under clause 134.</p>	
002026-002125	Chairman Admin	<p>Continuation of clause-by-clause examination of the Bill</p> <p><u>Examination of clauses 78 and 79</u></p>	
002126-002518	Chairman ALA9 Admin	<p><u>Examination of clauses 80 and 81</u></p> <p>Referring to clause 80(1), the Legal Adviser to the Bills Committee enquired whether the expression "another person" was intended to include other members of the Committee on Complaints against Private Healthcare Facilities ("the Complaints Committee") and whether the prohibition of disclosure would cover all information or document obtained for the purpose of considering a facility complaint.</p> <p>The Administration's advice that:</p> <p>(a) under clause 80(2)(a), a member or the secretary of the Complaints Committee would not be prohibited from disclosing or giving the information or document if the disclosure or giving was necessary for performing the member's functions (including the functions as a member of</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>a preliminary processing panel or case panel appointed under clauses 77 and 78 respectively) or secretary's functions under the Bill, or for carrying into effect or doing anything authorized by the Bill; and</p> <p>(b) clause 80(4)(b) provided for a defence to a charge of contravening clause 80(1) if the person did not know and had no reasonable cause to believe that the information or document disclosed or given was confidential.</p> <p>The Administration's undertaking to consider the suggestion of the Chairman to improve the drafting of clause 80(1) to reflect clearly the legislative intent that the prohibition of disclosing or giving to "another person" by a member, or the secretary, of the Complaints Committee of any information or document obtained for the purpose of considering a facility complaint was referring to the disclosure or the giving of such information or document to any person outside the Committee.</p>	Admin
002519 - 003156	Chairman ALA9 Admin	<p><u>Examination of clauses 82 to 87</u></p> <p>On the Legal Adviser to the Bills Committee's query about how the public would be aware of the form and way to be specified by the Director for making a facility complaint to the Complaints Committee, the Administration advised that a dedicated website would be set up for the purpose of, among others, publication of the information on how a facility complaint might be made.</p> <p>In response to the Chairman's enquiry, the Administration advised that complaints that the Complaints Committee would receive and consider should be those against a private healthcare facility ("PHF") for which a licence was in force. Complaints about non-compliance with the proposed Ordinance against those small practice clinics operated with a valid letter of exemption could be lodged with the Director.</p> <p>In response to the Legal Adviser to the Bills Committee's enquiry, the Administration advised that an example of complaints related to a commercial matter referred to under clause 84(2)(e) would be complaints involving billing disputes.</p>	
003157 - 003502	Chairman Admin	<p><u>Examination of clauses 88 to 91</u></p> <p>On the Chairman's concern about the consequences if a person refused to provide any information or produce a document or its copy on the request of the Complaints Committee under clause 88(1), the Administration advised that the Complaints Committee, preliminary processing panel or case panel would take into account such refusal in considering the complaint concerned.</p> <p>In response to the Chairman's enquiry about whether the interviews under clause 89 had to be conducted under caution, the Administration replied in the negative.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
003503 - 004623	Chairman Admin ALA9	<p><u>Examination of clauses 92 and 93</u></p> <p>The enquiry of the Legal Adviser to the Bills Committee on the circumstances under which the Director would approve a facility to bear the titles or descriptions prohibited to be used under clause 92; and the Chairman's concern that the scope of similar expressions referred to under the clause could be so wide that there might be inadvertent contravention.</p> <p>The Administration's advice that under the premise of avoiding consumers being misled, the granting of the power to the Director in this regard was aimed at providing flexibility on a case-by-case basis.</p> <p>The Administration's undertaking to consider the suggestion of the Legal Adviser to the Bills Committee that the word "及" should be added at the end of the Chinese text of clause 92(1)(a) to align with the English text.</p>	Admin
004624 - 005943	Chairman Admin ALA9 Dr Helena WONG	<p><u>Examination of clauses 94 to 97</u></p> <p>In response to Dr Helena WONG's enquiry about the nature of those offences that would constitute a compoundable offence in clause 96, the Administration advised that such offences would be those of relatively minor nature.</p> <p>In response to the enquiries of the Legal Adviser to the Bills Committee and the Chairman, the Administration advised that the regulations referred to in clause 96(4)(b) would be subsidiary legislation made under clause 122 subject to the negative vetting procedure.</p> <p>On Dr Helena WONG's query on the time limit for prosecution under clause 97, the Administration advised that as a reference, section 26 of the Magistrates Ordinance (Cap. 227) provided that in any case of an offence (other than an indictable offence), such complaint had to be made or such information laid within six months from the time when the matter of such complaint or information respectively arose.</p>	
005944 - 010558	Chairman Admin Dr Helena WONG Mr SHIU Ka-fai	<p><u>Examination of clauses 98 to 110</u></p> <p>On Dr Helena WONG's enquiry about the setting up and the composition of the advisory committees to be appointed by the Director under clause 99, the Administration advised that these advisory committees could be ad-hoc or standing committees and their composition would be determined by the Director. Mr SHIU Ka-fai's view that the composition of the committees should, where appropriate, include representatives from the beauty sector.</p> <p>In response to Dr Helena WONG's enquiry, the Administration advised that the payment of fees and allowances by the Director to a member of a committee appointed under the Bill was provided for in clause 100.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
010559 - 010749	Chairman Dr Helena WONG Mr SHIU Ka-fai Admin	In reply to the Chairman and Dr Helena WONG's questions, the Administration advised that the notice to be published in the Gazette by the Secretary for Food and Health under clause 101 for specifying a category of health services establishment in Schedule 8 to the Bill would be subsidiary legislation subject to the negative vetting procedure.	
010750-013941	Chairman Admin Dr Helena WONG Mr SHIU Ka-fai	<p>Dr Helena WONG and Mr SHIU Ka-fai's concerns over the consequences arising from a PHF's non-compliance with the relevant codes of practice ("CoPs") to be issued by the Director under clause 102, in particular as to how the licensee and the chief medical executive (who was required to be a registered medical practitioner or a registered dentist, as the case might be, with respect to private hospitals, day procedure centres and clinics) concerned would be held liable.</p> <p>The Administration's advice that under clause 38(1), a ground for the Director to (a) refuse (i) to renew the licence, (ii) the application for variation of scale or scope of services specified in the licence of a PHF, and (iii) the application for variation of class of specialized service specified in the licence of a day procedure centre; (b) by order (i) suspend a licence for a specified period, (ii) cancel a licence, and (iii) suspend a facility service for a specified period; and (c) amend the conditions of a licence was that the licensee or chief medical executive of a PHF contravened or had contravened a CoP. Clauses 32 to 34 made it an offence for a licensee of a PHF not to comply with a suspension order. Separately, the disciplinary mechanism of the regulatory bodies of the medical and dental professions would continue to handle cases involving professional misconduct of registered medical practitioners and registered dentists.</p> <p>On Dr Helena WONG and Mr SHIU Ka-fai's questions on the regulatory standards of PHFs to be stipulated in CoPs, the Chairman advised that the Core Standards for Day Procedure Centres, the Procedure-specific Standards for Day Procedure Centres – Surgery and Anaesthesia & Sedation and the draft Standards for Medical Clinics provided by the Administration at an earlier time had been issued to members via LC Paper No. CB(2)894/17-18(01). These sets of standards would be adapted to become CoP for the relevant PHFs when the new regulatory regime for PHFs came into force.</p> <p>Dr Helena WONG's view that PHFs should be required, in the relevant CoPs or as a condition of a licence to be imposed by the Director, to register as a healthcare provider for the Electronic Health Record Sharing System so as to foster public-private collaboration in healthcare delivery for the benefits of patients. The Administration explained that participation of healthcare providers in the System was voluntary.</p> <p>In response to the Chairman's enquiry, the Administration advised that the Director might, in accordance with clause 105, grant exemptions from any of the provisions of a CoP to holders of a provisional licence for day procedure centres or clinics.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
013942 - 014326	Chairman Admin	In response to the Chairman's enquiries, the Administration advised that the application fee for issue of a duplicate of a certificate of licence or a letter of exemption under clause 108 was specified under item 17 in Schedule 3 to the Bill (i.e. \$180); and that the Director might refuse an application if the person concerned failed to pay, within the specified time, the appropriate fee (or any part of it) for an application under the Bill and/or the surcharge for late payment of fees.	
014327 - 020718	Chairman Admin Dr CHIANG Lai-wan Dr Helena WONG Mr WONG Ting-kwong Dr Pierre CHAN	<u>Examination of clauses 111 to 121</u> Dr CHIANG Lai-wan and Dr Helena WONG's enquiries and the Administration's elaboration on the circumstances under which the Director or an authorized officer might enter a PHF for which a licence was in force under clause 113, and enter a premises with a warrant or in emergencies pursuant to clauses 114 and 115 respectively. On Dr Helena WONG and Mr WONG Ting-kwong's concern about how the Director or an authorized officer would exercise the power after entry as conferred under clause 116 if a patient was undergoing a high-risk medical procedure in the premises, the Administration assured members that patient safety would be the prime concern when the Director or an authorized officer exercised the power. In response to Dr Pierre CHAN's remarks in this regard, the Administration advised that illegal practice of medicine was currently regulated under the Medical Registration Ordinance (Cap. 161). At 6:29 pm, the Chairman extended the meeting time for fifteen minutes beyond the appointed ending time at 6:30 pm.	
020719 - 021807	Chairman Admin Dr CHIANG Lai-wan Dr Pierre CHAN Dr Helena WONG Mr WONG Ting-kwong	Dr CHIANG Lai-wan and Mr WONG Ting-kwong's views and the Administration's response on the use of the word "某" in the Chinese text of clause 120. In response to Dr Helena WONG's enquiry about the liability of a public officer who was alleged of sexual harassment during his or her carrying out of duties, such as the entering of a premises, under the Bill, the Administration advised that under clause 120, a public officer was not civilly liable for an act done or omitted to be done by the public officer in good faith in performing or purportedly performing a function under the Bill. At Dr Pierre CHAN's request, the Administration undertook to advise in writing whether there was any precedent case in which a public officer was held civilly liable for an act done or omitted to be done by the public officer in performing or purportedly performing a function under the laws of Hong Kong.	Admin
<i>Agenda item II: Any other business</i>			
021808 - 021958	Chairman Mr WONG Ting-kwong Admin Dr CHIANG Lai-wan	Closing remarks Arrangements for the next two meetings	

Council Business Division 2
Legislative Council Secretariat
29 January 2019