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Paper for the House Committee

**Report of the Bills Committee on
Human Organ Transplant (Amendment) Bill 2018**

Purpose

This paper reports on the deliberations of the Bills Committee on Human Organ Transplant (Amendment) Bill 2018 ("the Bill").

The Bill

2. The Human Organ Transplant Ordinance (Cap. 465), among other things, prohibits commercial dealings in human organs intended for transplanting, and restricts the transplanting of human organs between living persons and the transplanting of imported human organs. Under section 5 of Cap. 465, except as provided in section 5A(1), 5B(1) or 5C(1) of Cap. 465, it is an offence¹ for a person to carry out a restricted organ removal or a restricted organ transplant.²

3. Under section 5C of Cap. 465, a registered medical practitioner may carry out a restricted organ removal or a restricted organ transplant or both if the Human Organ Transplant Board ("HOTB") has given its approval in writing. Sections 5C, 5D and 5E of Cap. 465 set out the requirements to be satisfied in order for HOTB to give its approval. One of the requirements as provided in section 5D(1)(c) is that the donor concerned has given his consent to the proposed organ removal without coercion or the offer of inducement and has not subsequently withdrawn his consent.

¹ A person who commits an offence under section 5 of the Human Organ Transplant Ordinance (Cap. 465) is punishable with, as maximum penalties, a fine at level 5 (currently \$50,000) and an imprisonment for three months on a first conviction, and a fine at level 6 (currently \$100,000) and an imprisonment for one year on a subsequent conviction.

² Under section 2 of Cap. 465, "restricted organ removal" means the act of removing from a living person an organ for the purpose of transplanting it into another person, and "restricted organ transplant" means the act of transplanting into a person an organ removed from another person who was living at the time of the removal.

4. According to the Administration, under a paired or pooled donation arrangement, a donor donates an organ to a stranger in exchange for the donation of an organ to the donor's intended recipient. As the term "inducement" is not specifically defined in Cap. 465, the Administration has proposed to amend Cap. 465 so that the fact that consent has been given in consideration of a proposed organ transplant into a person chosen by the donor under the paired or pooled donation arrangement will not in itself constitute an offer of inducement.

5. The Bill seeks to amend Cap. 465 to implement the Administration's aforesaid proposal.

The Bills Committee

6. At the House Committee meeting on 11 May 2018, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Dr Hon Pierre CHAN, the Bills Committee held two meetings with the Administration. The membership of the Bills Committee is in the **Appendix**.

Deliberations of the Bills Committee

7. The Bills Committee generally supports the Bill. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Paired and pooled donation arrangement

8. Noting that the Bill seeks to expressly provide for paired and pooled donation arrangements under Cap. 465, some members including Dr Pierre CHAN, Mr CHAN Chi-chuen and Dr Helena WONG ask about the details of such arrangements. Specifically, the Administration is requested to explain the following:

- (a) whether paired and pooled donation arrangements made in accordance with the existing established mechanism will breach any law if no amendment is made to Cap. 465;
- (b) the types of organs intended for such arrangements;
- (c) whether there are restrictions on the nationalities of organ donors and recipients;

- (d) whether private hospitals or private organizations such as patient organizations can make such arrangements and whether HOTB's prior approval is required for such arrangements;
- (e) whether two parties who are acquainted with each other can make a paired donation arrangement on their own and whether HOTB's approval of the aforesaid arrangement is required;
- (f) given that organ donation will not be accepted from a person who has high risk sexual behaviour (including male-to-male sexual activities) 12 months before the donation, whether such restriction can be removed if that person and the recipient have mutually agreed to make a paired or pooled donation arrangement; and
- (g) whether the donation arrangement will be affected if the donor or the recipient passes away before the organ transplant takes place.

9. The Administration/Hospital Authority ("HA") has advised the following:

- (a) to remove the legal ambiguities surrounding paired and pooled donation arrangements, it is necessary to amend Cap. 465 as explained in paragraph 4 above;
- (b) the Bill does not specify the types of organs intended for the paired and pooled donation arrangements. At present, such arrangements only cover donations and transplants of livers and kidneys. More types of organs may be included in such arrangements in future when the relevant surgical techniques become more mature;
- (c) Cap. 465 does not impose restrictions on the nationalities of organ donors or recipients. That said, recipients of the living organ transplants carried out in Hong Kong between 2013 and 2017 are predominately Hong Kong residents;
- (d) the Bill does not stipulate the types of hospitals in which organ transplants are to be carried out. HOTB's prior written approval is required for a paired or pooled donation arrangement before the carrying out of a restricted organ removal and/or transplant, irrespective of whether the arrangement is made by HA, a private hospital or a private organization. HOTB will adopt the same principles in examining the applications concerned;

- (e) applications for organ transplants between living non-related persons must be submitted to HOTB by medical practitioners and HOTB has not rejected any such applications in the past;³
- (f) the restriction does not pinpoint high risk sexual activities between persons of the same sex. HOTB will consider a host of factors in examining applications. As such, organ donations from persons who have high risk sexual behaviour 12 months before the donation may be considered having regard to individual circumstances; and
- (g) the donation arrangement made between a donor and an organ recipient will be called off if one of them passes away before the transplant takes place. The reason is that if a donor or a recipient passes way, it will be unable to ascertain whether he/she still wishes to continue with the arrangement. In addition, either party can withdraw from the arrangement at any time.

Commercial dealings in human organs

10. Dr CHENG Chung-tai is concerned whether a pecuniary advantage provided by an organ recipient to a donor many years after the organ transplant will be regarded as an inducement and, if not, the prohibition against inducement will be evaded. He is also concerned that the Bill may induce some people to collect information about organ donors and sell such information to patients. He considers that there may be a loophole in the Bill if the sale of an organ donor's information takes place outside Hong Kong. He calls on the Administration to plug such loophole by stepping up prosecution actions and law enforcement effort. The Administration is also requested to consider allowing patients and their families to access HA's database to facilitate them to make paired or pooled donation arrangements.

11. The Administration reiterates the prohibition of commercial dealings in human organs under Cap. 465 as stated in paragraph 2 above. The Administration has explained that in deciding the fulfillment of the "absence of inducement" requirement which is mentioned in paragraph 3 above, HOTB must be satisfied that there is no such inducement at the time the consent is given by the donor. The objective of introducing the Bill, as explained in paragraph 4 above, is to provide that the donor's consent given under the paired or pooled donation arrangement will not in itself constitute an offer of inducement. As regards the sale of information about organ donors to patients,

³ According to the Administration, living non-related persons refer to the donor and recipient of an organ transplant who are not genetically related nor spouses whose marriage has subsisted for more than three years.

any arrangement or advertisement involving payment for the supply of a human organ intended for transplant is prohibited under section 4(1)(c) and 4(3) of Cap. 465 respectively.⁴

Coverage of spouses of same-sex marriage by the Human Organ Transplant Ordinance (Cap. 465)

12. Members note that HOTB's prior written approval must be obtained for an organ transplant involving a living donor unless the organ transplant is between, for example, spouses under section 5A of Cap. 465. Section 5A requires, among other things, that the marriage concerned has subsisted for not less than three years. Mr CHAN Chi-chuen enquires about the definition of marriage under Cap. 465 and whether a marriage of same-sex persons and a marriage celebrated or contracted outside Hong Kong are covered by Cap.465.

13. According to the Administration, section 2A of the Human Organ Transplant Regulation (Cap. 465A) provides, for the purposes of section 5A of Cap. 465, for the establishment of the fact of marriage. Section 2A(i)(A) of Cap. 465A provides that the fact of a marriage is to be established by means of any document or documents issued under the Marriage Ordinance (Cap. 181) or the Marriage Reform Ordinance (Cap. 178) which shows or show that the two persons are the parties to (i) a marriage celebrated or contracted in accordance with the provisions of Cap. 181; (ii) a modern marriage validated by Cap. 178; or (iii) a customary marriage declared to be valid by Cap. 178. Section 2A(i)(B) of Cap. 465A provides that the fact of a marriage is to be established by means of any document or documents equivalent to any document or documents issued under Cap. 181 or Cap. 178 which shows or show that the two persons are the parties to a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed. As explained by the Administration, section 2A(i)(B) of Cap. 465A does not distinguish same-sex or different-sex marriages.

Hospital Authority's manpower for organ transplant

14. Some members including Dr KWOK Ka-ki and Dr Helena WONG are concerned about the increase in the number of organ donations after the passage of the Bill and whether there will be sufficient medical practitioners and hospitals to cope with the increase. These members urge HA to proactively

⁴ Under section 2 of Cap. 465, "payment" means payment in money or money's worth but does not include any payment for defraying or reimbursing (a) the cost of removing, transporting or preserving the organ to be supplied; (b) the administrative cost incidental to the removal, transportation or preservation of the organ to be supplied; or (c) any expenses or loss of earnings incurred by a person and attributable to his supplying an organ from his body.

approach doctors who are interested in becoming organ transplant surgeons and ensure that doctors who have received relevant training (even if they have received such training overseas) have an opportunity to participate in organ transplant surgery in Hong Kong. In this connection, HA is requested to provide information on: (a) the number of doctors who are interested in becoming organ transplant surgeons and have been approached by HA; (b) the manpower provision target as well as manpower training and development plans for organ transplants; and (c) the distribution of organ transplant surgeons in organ transplant centres of HA. Specifically, HA is requested to include, in its manpower plan for liver transplants, the re-opening of the liver transplant centre in the Prince of Wales Hospital.

15. HA has advised that, in recent years, HA has commissioned overseas and local experts/academia to provide training courses for its medical and nursing staff from Acute Medical, Neurosurgical and Intensive Care Departments to enhance the quality and effectiveness of organ and tissue donation for transplantation and the care of potentially brain dead patients and their family members. Each year, there are around 100 participants joining these training courses. In the specialist training of Surgery, surgical trainees can apply for higher surgical training in one of the six surgical specialties of the College of Surgeons of Hong Kong ("CSHK") after their completion of basic surgical training, namely General Surgery, Urology, Neurosurgery, Paediatric Surgery, Cardiothoracic Surgery and Plastic Surgery.

16. According to HA, it has been supporting CSHK in the bi-annual "Conjoint Selection Exercise of Higher Surgical Trainees", which aims to match basic surgical trainees with the appropriate potential and aptitude to the respective specialties for higher training. Basic surgical trainees who are interested in organ transplant service can indicate their preference to join the relevant specialties in those training centres providing transplant service. In addition, rotation of higher surgical trainees between hospitals will be arranged to fulfil their training requirement and to facilitate their clinical exposure to various services including organ transplant service in designated centres.

17. HA has further advised that organ transplant service in HA is provided through a team approach, which involves organ donation coordinators and multi-disciplinary professionals from medicine, intensive care, anesthesia, surgery and laboratory. This service covers the management of organ recipients, identification of organ donors, management and support of brain death, donor family support and counselling, and organ transplant surgery and post-transplant care. Organ transplant surgery is covered by the relevant surgical specialties of designated centres as an integrated element of their service provision. HA does not have the specific manpower information requested by members regarding the provision of organ transplant service.

That said, regarding kidney transplant, there is a shortage of urologists in HA hospitals due to high turnover. HA has been providing training for doctors to replenish the supply of doctors and has considered recruiting doctors from overseas. HA will also review manpower resources of HA hospitals every year and strengthen its communication with doctors with a view to retaining more doctors in HA hospitals. The pilot Paired Kidney Donation Programme, which will be launched by HA, will provide useful information for HA's manpower planning and deployment. As for liver transplant, while there is adequate manpower for liver transplant, there is an overall manpower shortage in surgery which has implication on the manpower provision for liver transplant. HA will keep in view the development of pooled or paired donation arrangements and provide training for doctors as well as allocate additional resources to hospitals if necessary.

Promotion of organ donation

18. Some members including Dr Helena WONG and Dr Elizabeth QUAT call on the Administration to be more proactive in promoting organ donation and allocate more resources for such promotion. Specifically, the Administration is requested to invite Legislative Council Members and civil servants to sign up for organ donation after death. It is also requested to promote organ donation during the territory-wide Hong Kong Identity Card replacement exercise to be conducted later. In this connection, members note that the Administration has conducted a survey on the "opt-out" system for organ donation in Hong Kong whereby the deceased is presumed to have agreed to organ donation unless he/she has indicated any preference of not donating his/her organs before his/her death. Members ask about the findings of the survey.

19. According to the Administration, the topic of organ donation has been included in a round of Thematic Household Survey ("THS") conducted by the Census and Statistics Department ("C&SD") during October 2016 to January 2017 to gather views of Hong Kong residents on organ donation and related issues. Some 10 100 households were successfully enumerated in THS and the overall response rate was 76%. Among those persons aged 18-64 who provided their views on organ donation, the THS results revealed that about one-third (33.8%) supported the implementation of an "opt-out" system in Hong Kong, while 35.9% were against and the remaining 30.3% were either neutral or did not specify their views. Analysed by age, persons aged 25-34 saw a slightly higher rate of support (35.0%) towards the implementation of an "opt-out" system, whereas a relatively larger rate of persons aged 55-64 (37.8%) were against. The level of support shown by males (34.2%) and females (33.5%) was broadly similar. The Administration will examine how to encourage more people to register their wish to donate organs after death and

make reference to the findings of the survey in considering the way forward.

Amendments to the Bill

20. Neither the Bills Committee nor the Administration will propose any amendments to the Bill.

Resumption of Second Reading debate

21. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 11 July 2018.

Advice sought

22. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
29 June 2018

**Bills Committee on
Human Organ Transplant (Amendment) Bill 2018**

Membership list

Chairman	Dr Hon Pierre CHAN
Members	Hon Tommy CHEUNG Yu-yan, GBS, JP Hon CHAN Chi-chuen Hon CHAN Han-pan, JP Dr Hon KWOK Ka-ki Dr Hon Helena WONG Pik-wan Dr Hon Elizabeth QUAT, BBS, JP Dr Hon CHENG Chung-tai (Total : 8 members)
Clerk	Mr Colin CHUI
Legal Adviser	Ms Wendy KAN
Date	29 June 2018