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(Fax : 2877 5029)

Dear Miss CHENG,

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

Thank you for your letter of 26 May 2006 seeking our views on the application of Rule 57(4) of the Rules of Procedures of the Legislative Council to the Bills Committee's proposed Committee Stage Amendments (CSAs).

The principles

The rule on admissibility of CSAs is Rule 57(4)(a) of the Rules of Procedures, which provides –

“(a) An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.”

As can be seen from the President's rulings in various cases, what is not relevant to the object of the Bill as delineated by the long title, purpose clause, Legislative Council Brief (LegCo Brief) and Explanatory Memorandum are ruled out.

The present case

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 Bills Committee’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 practice. 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. As explained by the Administration at the Bills Committee on Chinese Medicine Bill, 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.
- 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 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 Hon Szeto Wah’s proposed CSAs to the Education (Amendment) Bill 1999. The object of the Education (Amendment) Bill 1999 is described broadly in its long title as “to amend the Education Ordinance”. The President ruled that the purpose, hence the scope, of the Bill is 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” are not relevant to the subject matter of the Bill. It was noted in the ruling that neither the Bill nor the relevant LegCo Brief include schools other than aided schools.

Yours sincerely,



(Ms Melody LUK)

for Permanent Secretary

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