

立法會
Legislative Council

LC Paper No. CB(2)2499/05-06

Ref : CB2/BC/14/04

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

Purpose

This paper reports on the deliberations of the Bills Committee on Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005.

The Bill

2. The Bill seeks to provide for recognition of certification in various forms given by, and medical examination and treatment conducted or given by, registered Chinese medicine practitioners (CMP) for the purposes of entitlement to certain employees' benefits under the Employment Ordinance (Cap. 57) (EO), the Employees' Compensation Ordinance (Cap. 282) (ECO) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (PCO) and other related matters.

The Bills Committee

3. At the House Committee meeting on 17 June 2005, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

4. Under the chairmanship of Hon LI Kwok-ying, the Bills Committee has held seven meetings with the Administration. The Bills Committee has also met with 13 organisations and received written submissions from 14 other organisations. The names of these organisations are listed in **Appendix II**.

Deliberations of the Bills Committee

Experience and practices in other jurisdictions

5. In studying the Bill, the Bills Committee has made reference to the experience and practices in recognition of various medical functions performed by CMPs in other jurisdictions, including Australia, Canada, Germany, Japan, the Mainland, Malaysia, Singapore, South Korea, Taiwan, the United Kingdom and the United States.

Giving of second opinion if the first opinion was given by a registered Chinese medicine practitioner or a medical practitioner

Employment Ordinance

6. Under the existing section 15AA of EO, a pregnant employee may, on producing a medical certificate with an opinion as to her unfitness to handle heavy materials, or to work in places where gas injurious to pregnancy is generated, or to do other work injurious to pregnancy, request her employer to refrain from giving her such work during her pregnancy period. Further, an employer may require an employee who has produced such medical certificate as to the employee's unfitness for certain work to attend a medical examination, at the employer's expense, for obtaining a second opinion. The existing section 31R of EO provides that where an employee has terminated his contract upon being certified as being permanently unfit for a particular type of work, the employer may require the employee to undergo a medical examination, at the employer's expense, to obtain a second opinion. Under the proposed new sections 15AA(3) and (3A) and 31R(3) and (3A) of EO, the employer may choose to arrange for such examination to be conducted by either a medical practitioner or a registered CMP regardless of whether the medical certificate was issued by a medical practitioner or a registered CMP.

7. Some members have suggested that an employer should only be allowed to seek a second opinion from a practitioner of the same medical discipline as that certifying the unfitness of his employee, i.e. a second opinion should be given by a registered CMP if the first opinion was given by a registered CMP, and a medical practitioner if the first opinion was given by a medical practitioner. These members are concerned about possible disputes between employers and employees if the second opinion is not given by the practitioner of the same medical discipline, given the difference in training.

8. The Administration has explained that the proposed new sections 15AA(3A) and 31R(3A) of EO seek to give an employer a choice between registered medical practitioners and registered CMPs to seek a second opinion on the fitness of his employee for certain work when he considers it necessary. The proposed provisions merely allows the employer to obtain a second opinion from the broadest pool of medical professionals. Where there is disagreement between the two medical opinions,

a mechanism is provided under EO under which the employer may turn to the Commissioner for Labour for a determination.

9. Hon LI Fung-ying is strongly of the view that an employer should only be allowed to seek a second opinion from a practitioner of the same medical discipline as that certifying the unfitness of his employee in order to minimise possible disputes.

10. Hon LEE Cheuk-yan has suggested providing that an employee who has terminated his employment contract upon being certified by a medical practitioner or a registered CMP as being permanently unfit for his work should be allowed to resume duty, if the certification was rebutted. The Administration has undertaken to study the suggestion in a separate exercise. The Administration has informed the Bills Committee that any proposal arising from the study will be referred to the Labour Advisory Board for consideration where necessary.

Employees' Compensation Ordinance

11. Section 16 of ECO currently provides for an employer requiring his injured employee to undergo medical examination free of charge. The proposed new section 16(1B) provides that the examination is to be conducted by a medical practitioner, registered CMP or registered dentist, depending on whether the employee is first attended by a medical practitioner, registered CMP or registered dentist. Some members have queried why the employer is not given a choice of seeking the second opinion of either a medical practitioner or a registered CMP.

12. The Administration has explained that in the case of work injury, as the employee concerned is at the material time receiving the treatment of a medical practitioner or a registered CMP as the case may be, and given the approach of medical treatments given by a medical practitioner and a registered CMP is fundamentally different, there will be confusion to the employee as to the treatment if the second opinion is given by a practitioner of not the same medical discipline.

Differences between the functions of a registered Chinese medicine practitioner and a medical practitioner after the passage of the Bill

13. At the request of the Bills Committee, the Administration has provided a comparison of the functions of a registered CMP and a medical practitioner under EO, ECO and PCO after the passage of the Bill. The comparison is in **Appendix III**.

14. Some members have questioned why a registered CMP is not recognised for performing some of the functions that a medical practitioner is empowered to do, e.g. certification in relation to the date of confinement of a pregnant employee, and conducting pre-employment medical examination.

15. The Administration has responded that the proposed recognition of registered CMPs under EO, ECO and PCO for the purpose of entitlement to employee benefits is premised on the principle that where registered CMPs are capable of performing the medical functions stipulated under labour legislation, they should be recognised for performing those functions. According to the principle, a registered CMP will be recognised under EO, ECO and PCO for performing by and large the same functions as those of a medical practitioner. Since CMPs are not trained to attend a woman in childbirth, they will not be recognised for certifying the date of confinement of a pregnant employee.

16. Regarding pre-employment medical examination, the Administration has explained that before employing an employee in a trade, industry or process which is specified in the Second Schedule of ECO on occupational diseases, an employer may require the employee to undergo a medical examination by a medical practitioner at the employer's cost. Such medical examinations are conducted for collecting baseline health data of the employee against which subsequent changes after employment can be evaluated. As the medical data are often collected through laboratory and radiological investigations which are outside the scope of traditional Chinese medicine, registered CMPs will not be recognised for performing such examinations.

17. The Administration has also explained that a registered CMP will not be recognised for giving advice to the Pneumoconiosis Compensation Fund Board (PCFB) on the use of medical appliances, and measuring the forced vital capacity of a person suffering from pneumoconiosis, thereby assessing the loss of lung function and the degree of incapacity, as CMPs are not trained in these aspects. For the same reason, registered CMPs will not be appointed to the Pneumoconiosis Medical Board.

Guidelines on sick leave duration

18. Some members have expressed concern about the possible abuse of issuance of sick leave certificates by registered CMPs. They have asked whether there are any guidelines on sick leave duration.

19. The Administration has advised that with the assistance of the Department of Health, the Chinese Medicine Practitioners Board of the Chinese Medicine Council of Hong Kong had, in November 2002, set up a Liaison Group for the purpose of drafting a set of reference guidelines for the issuance of sick leave certificates. The guidelines also aim at enhancing the acceptance of the community, including insurers, employers' associations and the public at large, of sick leave certificates issued by registered CMPs. The Liaison Group which was convened by renowned Chinese medicine academics comprised representatives from 11 major local Chinese medicine associations. Experts from different Chinese medicine specialties worked in three subcommittees under the Liaison Group to formulate guidelines according to the diagnoses and patterns of different diseases under respective specialties. In finalising the guidelines, the Liaison Group had further consulted the views of more than 40 local Chinese medicine

associations. After being endorsed by the Chinese Medicine Practitioners Board and Chinese Medicine Council of Hong Kong, the “Reference guide on issuance of sick leave certificates by registered Chinese medicine practitioners” (Reference Guide) was published and distributed in February 2004 to all registered CMPs, major employers’ associations and insurers underwriting medical and employees’ compensation insurance.

20. The Administration has informed members that the Reference Guide stipulates, *inter alia*, that registered CMPs should be professionally and ethically responsible to their patients and that sick leave certificates should be issued in conformity with professional expertise of Chinese medicine, and should not be issued unscrupulously. Special reference has been made to the Code of Practice for registered CMPs which prohibits the receipt of undue benefits and issuance of untruthful or misleading certificates. Regarding the criteria for determining sick leave duration, the Reference Guide has reminded registered CMPs to consider the duration of sick leaves according to the conditions of patient’s sickness and whether the disease actually affects a patient’s working capacity. Through its regular newsletter, the Chinese Medicine Practitioners Board has also emphasised to CMPs the need to uphold a high professional standard in the issuance of medical certificates and the consequence of malpractice in this regard. Since its introduction, the Reference Guide has been widely accepted by the Chinese medicine profession.

21. At the request of the Bills Committee, the Administration has provided members with the Reference Guide for information.

Listed Chinese medicine practitioners and registration of Chinese medicine practitioners

22. Some members and some deputations have expressed concern that while listed CMPs are allowed to practice Chinese medicine, they are not included in the Bill and accorded the same recognition as registered CMPs in giving certification and conducting medical examination and treatment for the purposes of entitlement to certain employees’ benefits under EO, ECO and PCO as provided under the Bill. They consider that listed CMPs should be recognised for performing the same functions as registered CMPs under the Bill.

23. The Administration disagrees that listed CMPs should be recognised like registered CMPs under the three labour laws. The Administration has explained that enacted in 1999, the Chinese Medicine Ordinance (Cap. 549) (CMO) stipulates the details of the registration system of CMPs, including the transitional and long-term registration arrangements for CMPs. At that time, the Administration understood that there were many CMPs practising in Hong Kong, and therefore suggested that those who were practising Chinese medicine in Hong Kong on 3 January 2000 could have their names put on a list and could continue practising Chinese medicine as listed CMPs

until a date as would be specified and promulgated by the Secretary for Health, Welfare and Food by notice in the Gazette.

24. The Administration has pointed out that it is Government's long-term objective that all practising CMPs in Hong Kong are registered CMPs. Besides, there are channels for listed CMPs to become registered CMPs. Since the commencement of the registration of CMPs in Hong Kong, the number of listed CMPs has reduced from around 7 700 to 2 950.

25. Having considered the Administration's explanation, some members are of the view that the crux of the issue is how to assist listed CMPs to become registered. As the issue is outside the scope of the Bill, members have suggested that the issue be referred to the Panel on Health Services for consideration. At the request of the Bills Committee, the Secretary for Economic Development and Labour has undertaken, as agreed by the Secretary for Health, Welfare and Food, to state in his speech during the resumption of the Second Reading debate on the Bill that the Health, Welfare and Food Bureau (HWFB) has agreed that the issue of providing appropriate assistance to listed CMPs seeking to become registered CMPs be discussed at the Panel on Health Services in six months' time after the resumption of the Second Reading debate on the Bill. The Administration has stressed that the fundamental principle behind putting in place a registration system for CMPs is to ensure the professional standard of Chinese medicine practice in Hong Kong, thereby facilitating the long-term development of the profession. It is essential to uphold this principle.

26. The Bills Committee has subsequently received a referral from Duty Roster Members under the Redress System of the Legislative Council concerning giving recognition to listed CMPs under the Bill. The Bills Committee has revisited the issue of giving listed CMPs the same recognition as registered CMPs under the Bill. Some members propose that listed CMPs should be accorded the same recognition as registered CMPs in giving certification and conducting medical examination and treatment for the purposes of entitlement to certain employees' benefits under EO, ECO and PCO as provided under the Bill, given that listed CMPs are allowed to practice Chinese medicine in Hong Kong. Some other members, however, oppose the proposal. These members are of the view that listed CMPs is only a transitional arrangement, that they have not been assessed professionally, and the recognition of Chinese medicine is a new policy and should be moved cautiously. Therefore, the business sector has grave reservations on giving listed CMPs the same status as registered CMPs.

27. As the views are divided, a vote was taken at the meeting on 12 May 2006 on whether the Bills Committee should move Committee Stage amendments (CSAs) to give effect to the proposal. Five members, namely, Hon Andrew CHENG Ka-foo, Hon LI Fung-ying, Hon Audrey EU, Dr Hon Joseph LEE Kok-lung and Hon KWONG Chi-kin voted for the Bills Committee moving the CSAs, while three members, namely, Hon James TIEN Pei-chun, Hon Vincent FANG Kang and Hon Andrew LEUNG

Kwan-yuen voted against. The Chairman of the Bills Committee will move the CSAs on behalf of the Bills Committee.

28. The Administration considers that the proposed amendments would have substantial impact not only on the Bill, but also on CMO. The Administration explains that a registration system of CMPs is provided in CMO. The registration system has the wide support and endorsement of the CMP profession as it affirms the professional standard of CMPs and provides an essential foundation for the development of Chinese medicine in Hong Kong. Unlike registered CMPs, listed CMPs is only a transitional arrangement. The professional qualifications of listed CMPs have not been assessed and listed CMPs are therefore not on a par in terms of status with registered CMPs. As registered CMPs are medical professionals who have gone through a certain level of professional assessment under CMO, the requirements and regulatory measures relating to them are not the same as those relating to listed CMPs. For instance, 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, a registered CMP is also required to meet certain conditions. This requirement of regularly renewing a practising certificate is similar to that for other medical professionals, such as medical practitioners and dentists. There is, however, no such requirement for listed CMPs. Further, a listed CMP is not allowed to possess or dispense Chinese herbal medicines specified under Schedule 1 to CMO, i.e. those with higher toxic levels. Given the differences between listed CMPs and registered CMPs, the Administration considers that to further accord additional medical functions to listed CMPs other than that permitted under CMO will upset the registration system and jeopardise the long-term professional development of Chinese medicine in Hong Kong.

29. The Administration has pointed out that the prerequisite for other practitioners of medical professions being recognised under EO, ECO and PCO is that they must be registered under the respective registration ordinances. The purpose is to ensure that only persons who are assessed to have attained a certain professional standard are conferred the statutory responsibilities under the three labour ordinances. This will ensure that the interest of employees and other parties who are liable to pay compensation, i.e. employers, insurers underwriting employees' compensation insurance policies, and Pneumoconiosis Compensation Fund Board, are equally safeguarded. The Administration has adopted the same prerequisite and principle in the Bill. Besides, as the mechanism to regulate the practice of registered CMPs is well in place, and listed CMPs also have channels to become registered, the Administration finds it difficult to convince employers associations, different medical professionals and the insurance industry which underwrites employees' compensation insurance policies to allow listed CMPs who have not undergone any professional assessment to perform the same medical function as that of registered CMPs under EO, ECO and PCO.

30. The Administration takes the view that the CSAs proposed by the Bills Committee are outside the scope of the Bill. The Administration has explained that the

Long Title of the Bill has spelt out that the Bill amends the three labour ordinances to provide for 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 employee benefits under those ordinances. As registered CMPs and listed CMPs are distinct categories of persons with different qualifications, experience, and power in prescribing and dispensing Chinese herbal medicine, there are differences in the statutory rights of and regulatory regimes governing the two categories of persons, and nowhere in the Bill is “listed CMPs” mentioned, the Administration considers that the proposal to extend the scope of the Bill to recognising listed CMPs is outside the subject matter of the Bill.

31. The Administration considers that a more positive approach is to explore ways to assist those listed CMPs who aspire to be registered to achieve their goal. HWFB has agreed to provide as soon as possible a paper to the Panel on Health Service on ways to assist listed CMPs to become registered, subject to discussion of the Chinese Medicine Council.

Training and experience required of a registered Chinese medicine practitioner for appointment to an Employees’ Compensation Assessment Board

32. Under the proposed new section 16D(2)(a) of ECO, a registered CMP could be appointed by the Commissioner for Labour as a member of an Employees’ Compensation Assessment Board. Members have enquired about the training and experience required of a registered CMP for appointment to the Assessment Board.

33. The Administration has responded that in appointing a registered CMP to sit on an Assessment Board, the Commissioner for Labour will consider the following aspects relating to the concerned registered CMP –

- (a) training and qualifications;
- (b) clinical experience in the specialty; and
- (c) recognition of the registered CMP concerned by the local Chinese medicine profession, taking into account any teaching, writings, or repute he has in the profession.

The Commissioner for Labour will exercise due care in ensuring that the suitable person is selected for appointment according to the circumstances of each case.

Training provided to medical practitioners and registered Chinese medicine practitioners to facilitate their assessment of permanent loss of earning capacity

34. The Employees’ Compensation Assessment Board, set up under ECO with members appointed by the Commissioner for Labour, is responsible for assessing the

percentage of loss of earning capacity permanently caused to a worker by the work injury and the period of absence from duty necessary as a result of the injury. Members have asked whether training would be provided to medical practitioners and registered CMPs to facilitate their assessment of permanent loss of earning capacity.

35. The Administration has responded that in making the assessments under ECO, the Assessment Boards adopt the criteria laid down in section 9 and the First Schedule of ECO. The First Schedule contains a set of clear and objective standards making references to injuries to different parts of the body, such as loss of an arm, or loss of a thumb and so on. Where there is an injury not specified in the First Schedule, ECO specifies that the percentage of the compensation shall be assessed as a percentage having regard to the scale of percentages specified in the First Schedule.

36. Regarding the provision of training, the Administration has advised that in the past five years, the Labour Department (LD) conducted 11 seminars for doctors, physiotherapists and nurses of different clusters and hospitals of the Hospital Authority. These seminars featured major provisions of ECO, procedures in handling employees' compensation claims, work of the Assessment Boards and assessment principles. Prior to the commencement of the Assessment Board meetings, a Labour Officer of LD brief members who have not participated in assessments on the relevant provisions of ECO. About 450 such briefings were held in the past five years. For assessment of new diseases, such as the severe acute respiratory syndrome, LD have held special briefing sessions for doctors taking part in such assessments. In addition, officers of LD speak from time to time in conferences organised by associations of medical practitioners in specialised disciplines. In such conferences, LD officers would explain the provisions of ECO and how the assessment system is implemented.

37. The Administration has also advised that LD plans to organise seminars with Chinese medicine training institutes to provide training to registered CMPs on the assessment criteria of ECO. The Administration has informed members that there are registered CMPs in Hong Kong who have experience in conducting injury assessments in their capacity as Chinese medicine professionals in other places.

Cost of proprietary Chinese medicines in respect of an employee's personal injury

38. Under the proposed new section 10AB(5)(c) of ECO, an employer is not liable to pay any cost of medicines relating to any proprietary Chinese medicine in respect of an employee's personal injury unless the proprietary Chinese medicine is exempted from registration by virtue of section 158(6) of CMO. Members have queried the purpose of the proposed provision. They have also expressed concern about the regulation of proprietary Chinese machines that are exempted from registration.

39. The Administration has explained that section 10A of ECO specifies the situations where medical expenses shall be payable by an employer for the medical treatment in respect of the injury sustained by his employee at work. It is the intent of

ECO that the cost of medicines incurred in respect of such medical treatment should also be reimbursed to an injured employee. Medical expenses is currently defined in section 3 of ECO to include the cost of medicines. In proposing to recognise the medical treatment given by registered CMPs under ECO, the same principle is adopted so that where an employee is prescribed Chinese medicines permissible by the law, the cost of such medicines would also be reimbursed.

40. The Administration has pointed out that people who seek Chinese medicine treatment will normally be prescribed Chinese herbal medicines or proprietary Chinese medicines. The proposed section 10AB(5) of ECO seeks to cover all those proprietary Chinese medicines the administration or supply of which is permissible under CMO. The purpose of the proposed provision is to accord employees who are injured at work the right to claim reimbursement of the cost of medicines where the proprietary Chinese medicines administered or supplied to him is permissible under the law, just as he would have the right to do so if he is administered or supplied with Chinese herbal medicines or western proprietary medicines permitted by the law.

41. The Administration has informed members that according to a survey of injured workers conducted by LD in 2003, some 68% of respondents who sought Chinese medicine treatment were treated by bone-setters. As it is the trade practice of bone-setter to supply patients with proprietary Chinese medicines compounded either by themselves or by manufacturers entrusted with their prescriptions, and that proprietary Chinese medicines compounded by CMPs for the purpose of administering or supplying to a patient under his direct care are exempted from registration by virtue of section 158(6) of CMO, reimbursement of the cost of such medicines is highly appropriate to injured workers.

42. The Administration has proposed to add in the Bill an additional type of proprietary Chinese medicines compounded by manufacturers in situations which are broadly similar to that of the aforesaid proprietary Chinese medicines exempted from registration under section 158(6) of CMO. This type of proprietary Chinese medicines, as referred to in section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F), is compounded by manufacturers entrusted with the prescriptions of a registered CMP and administered and supplied to patients under the direct care of the attending registered CMP. To ensure that employees injured at work are able to reimburse the cost of all medicines legally administered and supplied to them, the Administration has also proposed to render this type of proprietary Chinese medicines reimbursable for the benefit of injured workers. The same will be applied to PCO. The relevant CSAs will be made by the Administration.

43. The Administration has explained the scheme under CMO for registration of proprietary Chinese medicines. Section 119 of CMO stipulates that all proprietary Chinese medicines have to be registered with the Chinese Medicines Board of the Chinese Medicine Council of Hong Kong before they may be sold, imported or possessed. Under CMO and Chinese Medicines Regulation, Chinese medicines

compounded by a registered CMP or in accordance with a prescription given by a registered CMP, and Chinese medicines manufactured by Chinese medicine manufacturers in accordance with a prescription given by a registered CMP for the patient under the CMP's direct care only, but not for general sales, are not subject to section 119 of CMO and not required to be registered.

44. The Administration has pointed out that due to technical reasons, a CMP may sometimes need to entrust a manufacturer of proprietary Chinese medicines to prepare a proprietary Chinese medicine in accordance with his prescription for him to administer to patients under his direct care. The Chinese Medicines Regulation also provides for exemption of registration for proprietary Chinese medicines prepared under such circumstances. To ensure the safety and quality of the proprietary Chinese medicines and to prohibit its use for general sales, the Chinese Medicine Regulation requires that the proprietary Chinese medicines shall be manufactured in the premises in respect of which a manufacturer licence is in force and by or under the supervision of a responsible person in accordance with a prescription given by a CMP for patients under his direct care. The manufacturer is required to submit an undertaking by the CMP that the medicine will only be administered or supplied to patients under his direct care or where the medicine is for internal application, one patient only. In addition, under the Code of Practice for CMPs, CMPs are required to maintain proper patient records in the treatment of patients, and their prescriptions should meet professional standards. The Code also requires CMPs to issue prescriptions to patients listing the names and dosages of all medicines prescribed.

Payment of medical expenses in respect of medical treatment outside Hong Kong under the Pneumoconiosis (Compensation) Ordinance

45. The proposed new section 12(2)(d) of PCO provides that medical expenses shall not be payable in respect of medical treatment received outside Hong Kong. Members have pointed out that at present, expenses for medical treatment given by registered medical practitioners outside Hong Kong are not disallowed. Members have pointed out that the proposed provision, if implemented, will have the effect of disallowing expenses for such medical treatment to be recoverable under PCO, which is a change of the existing policy. Members have queried the need for the proposed provision. Members consider that expenses for medical treatment given by registered medical practitioners or registered CMPs outside Hong Kong should be recoverable under PCO, given that a number of pneumoconiotic person may have moved to the Mainland.

46. The Administration has explained that the proposed provisions have the effect of ensuring that the medical treatment given is subject to regulation by the relevant regulatory body in Hong Kong. Such would help safeguard the interests of pneumoconiotic persons and those of PCFB. The Administration has further informed members that according to PCFB, it has thus far not received any application for reimbursement of expenses for medical treatment given by registered medical practitioners outside Hong Kong.

47. Having considered members' views and taking into account the chronic nature of pneumoconiosis, the likely older age of compensation recipients under PCO and the higher possibilities for these recipients to move to the Mainland, the Administration has agreed to amend the proposed provision. Under the CSAs, if the medical treatment given by the registered medical practitioner or registered CMP is medical treatment that may have been lawfully given in the course of his practice in Hong Kong, and that the treatment is also given lawfully under the law of the place where the treatment is given, expenses for such medical treatment will be recoverable under PCO. The Administration has stressed that reimbursement of such expenses is still subject to other provisions of section 12 of PCO. Consequential to the CSAs to section 12 of PCO, the requirement that the registered medical practitioner or registered CMP who gives an opinion on medical examination under section 23A(3)(a) of PCO has to be attending that person in Hong Kong will be removed by CSAs.

48. The Administration has advised that in allowing medical claims originating from places beyond Hong Kong's jurisdiction, there is a need to give additional power to PCFB for ascertaining the validity of such claims so as to ensure the proper use of the PCFB's resources. The Administration proposes to empower PCFB to seek advice from the attending registered medical practitioner or registered CMP, and advice from any person competent for the purpose, as to whether the medical treatment given in any place outside Hong Kong in respect of which medical expenses are claimed, satisfies the conditions referred to in paragraph 47 above. The relevant CSAs will be introduced by the Administration.

Reference to "medical practitioner"

49. At the suggestion of members, the Administration will introduce CSAs to replace the reference to "medical practitioner" with "registered medical practitioner" in ECO and PCO for the purpose of consistency.

Publicity on the Bill

50. The Bills Committee and some deputations consider that publicity efforts should be stepped up to help those in the Chinese medicine profession to better understand the functions, rights and responsibilities that will be conferred on registered CMPs under the Bill.

51. The Administration has responded that since the gazettal of the Bill, LD has visited various Chinese medicine associations to explain the provisions of the Bill. With the approval of the Chinese Medicine Council of Hong Kong, LD has, since September 2005, been organising a number of seminars on the Bill under the mechanism of continuing education in Chinese medicine with a view to helping the Chinese medicine profession gain an in-depth understanding of the Bill.

Committee Stage amendments

52. Apart from the CSAs mentioned in the above paragraphs, the Administration has agreed to move minor amendments to clauses 7(6) and 23(2) for the purpose of drafting refinement.

53. The Chairman of the Bills Committee will, on behalf of the Bills Committee, move CSAs to the Bill.

Follow-up actions by the Administration

54. The Administration has agreed to provide a paper to the Panel on Health Services on ways to assist to list CMPs seeking to become registered CMPs as soon as possible, subject to discussion of the Chinese Medicine Council (paragraph 31 above refers).

Consultation with the House Committee

55. The Bills Committee consulted the House Committee on 16 June 2006 and sought the latter's agreement that the resumption of the Second Reading debate on the Bill be resumed at the Council meeting on 28 June 2006.

Council Business Division 2
Legislative Council Secretariat
20 June 2006

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

Membership list

Chairman Hon LI Kwok-ying, MH

Members Hon James TIEN Pei-chun, GBS, JP
Hon LEE Cheuk-yan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Dr Hon Joseph LEE Kok-long
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon KWOK Ka-ki
Hon KWONG Chi-kin

Total: 12 Members

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Miss Kitty CHENG

Date 13 July 2005

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

A. Organisations which have given oral representation to the Bills Committee

1. Hong Kong Acupuncturists Association
2. Hong Kong Fujian Association of Chinese Medicine
3. Hong Kong Members Federation of Chinese Medical Association
4. The World Institute of Chinese Medicine
5. Hong Kong Registered Chinese Medicine Practitioners Association
6. The Hong Kong Traditional Chinese Medicine Orthopedic and Traumatic Association Ltd.
7. Chinese Medicine Practitioners Board of Chinese Medicine Council of Hong Kong
8. The Society of Hong Kong Professional Registered Chinese Medicine Practitioners Limited
9. Hong Kong Sun Chung Medical Centre University
10. The Hong Kong Federation of China of Traditional Chinese Medicine
11. School of Chinese Medicine, Hong Kong Baptist University
12. Past Students' Association of Traditional Chinese Medicine Practitioners, School of Professional and Continuing Education, University of Hong Kong
13. Hong Kong Chinese Medicine Practitioners' Rights General Union

B. Organisations which have provided written submissions only

1. Hong Kong Chinese Medicine Employees Association
2. Legal Committee, Hong Kong General Chamber of Commerce

3. The Chinese General Chamber of Commerce
4. Chinese Ancient Healings Medicines Conservation Association
5. Hong Kong Wah Ha Medicine Association
6. Pneumoconiosis Mutual Aid Association
7. 香港中醫學會
8. 新華中醫中藥促進會
9. 香港中醫師公會
10. 港九中醫師公會
11. 國際中醫中藥總會
12. 中國醫藥學會
13. 僑港中醫師公會
14. 九龍中醫師公會

Comparison between the functions of a registered Chinese medicine practitioner and a medical practitioner under the Employment Ordinance, Employees' Compensation Ordinance and Pneumoconiosis Compensation Ordinance after the passage of the Bill

Medical functions of medical practitioners under respective Ordinances (Respective current sections in brackets)	Whether registered Chinese medicine practitioners are recognised for performing the same function (Respective clauses of the Bill in brackets)
<i>Employment Ordinance</i>	
Certification of sickness day for the purpose of a claim for sickness allowance (Section 33(5)(a), 33(5A) & 33(6)(b))	Yes (Clause 7)
Certification in relation to - pregnancy (Section 13(1)) - expected date of confinement (Section 13(1)) - date of confinement (Section 13(1)) - illness or disability arising out of pregnancy or confinement (Section 13(2)) - a pregnant employee's unfitness to handle heavy, hazardous or harmful work (Section 13(2))	Yes (Clause 4) Yes (Clause 4) No Yes (Clause 4) Yes (Clause 4)
To conduct medical examination arranged by an employer for his pregnant employee for the purpose of obtaining a second opinion as to her fitness to undertake the work at issue (Section 15AA(3))	Yes (Clause 5)
Certification of an employee's permanent unfitness for his current work (Section 10(aa))	Yes (Clause 3)

<p>Medical functions of medical practitioners under respective Ordinances (Respective current sections in brackets)</p>	<p>Whether registered Chinese medicine practitioners are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>To conduct a medical examination arranged by an employer for his employee for the purpose of obtaining a second opinion as to whether the employee is permanently unfit for his current work (Section 31R(3))</p>	<p>Yes (Clause 6)</p>
<p>A recognised scheme of medical treatment operated by an employer may include the medical treatment provided by a medical practitioner (Section 34(1))</p>	<p>Yes (Clause 8)</p>
<p>Certification of an employee being incapable of work in consequence of sickness or injury for the purposes of the concept of “continuous contract” (Paragraph 3(2)(a), First Schedule)</p>	<p>Yes (Clause 10)</p>
<p>Certification of the fitness of a child for employment (Regulation 8(c), Employment of Children Regulations)</p>	<p>Yes (Clause 11)</p>
<p><i>Employees’ Compensation Ordinance</i></p>	
<p>Certification of a period of temporary incapacity resulting from an accident (Section 10(2))</p>	<p>Yes (Clause 13)</p>
<p>An employee injured at work is entitled to medical expenses for the medical treatment given by a medical practitioner (Sections 3(1) & 10A(1))</p>	<p>Yes (Clause 12)</p>
<p>Certification of a period during which the employee receives medical treatment for the purposes of a claim for medical expenses (Section 10A(3))</p>	<p>Yes (Clause 14)</p>

<p>Medical functions of medical practitioners under respective Ordinances (Respective current sections in brackets)</p>	<p>Whether registered Chinese medicine practitioners are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>An employer shall not be liable to pay medical expenses if he/ she has provided to the employee free medical treatment given by a medical practitioner (Section 10A(4))</p>	<p>Yes (Clauses 12 & 14)</p>
<p>Upon an employer's request, to conduct medical examination for an employee who has given notice of an accident at work or is in receipt of a periodical payment (Section 16(1))</p>	<p>Yes (Clause 16)</p>
<p>To be appointed by the Commissioner for Labour to the Employees' Compensation (Ordinary Assessment) Board for assessment of permanent incapacity and duration of sick leaves (Section 16D(2)(a))</p>	<p>Yes (Clause 17)</p>
<p>To be appointed by Director of Health to the Prostheses and Surgical Appliances Board to determine whether a prosthesis or surgical appliance required by an injured employee is necessary and to assess the cost of such an appliance (Section 36M(1)(a))</p>	<p>Yes (Clause 20)</p>
<p>To carry out pre-employment medical examination for workers who would be employed in trades, industries or processes specified in the Second Schedule on Occupational Diseases (Section 33(1))</p>	<p>No</p>
<p><i>Pneumoconiosis (Compensation) Ordinance</i></p>	
<p>Pneumoconiotics are entitled to medical expenses in respect of the medical treatment given by a medical practitioner (Sections 2(1) & 12(1))</p>	<p>Yes (Clause 22)</p>

<p>Medical functions of medical practitioners under respective Ordinances (Respective current sections in brackets)</p>	<p>Whether registered Chinese medicine practitioners are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>A pneumoconiotic shall not be entitled to medical expenses if his/ her employer provides to him/ her free medical treatment given by a medical practitioner (Sections 2(1) & 12(2)(c))</p>	<p>Yes (Clauses 22 & 23)</p>
<p>A medical practitioner's advice may be sought by the Pneumoconiosis Compensation Fund Board in determining a claim for medical expenses (Section 12B(3))</p>	<p>Yes (Clause 25)</p>
<p>A medical practitioner's advice may be sought by the Pneumoconiosis Compensation Fund Board in determining a claim for medical appliances (Section 12B(3))</p>	<p>No</p>
<p>To be appointed by the Director of Health to the Pneumoconiosis Medical Board to conduct medical assessment in connection with pneumoconiosis (Section 22)</p>	<p>No</p>
<p>A medical practitioner may give an opinion on a pneumoconiotic's likelihood of imminent total incapacity for the purpose of advancing the further medical examination (Section 23A(3)(a))</p>	<p>No</p>
<p>A medical practitioner may give an opinion on the imminence of the death of a pneumoconiotic for the purpose of advancing the further medical examination (Section 23A(3)(a))</p>	<p>Yes (Clause 26)</p>