

立法會 *Legislative Council*

LC Paper No. CB(2)1344/13-14(03)

Ref : CB2/BC/4/13

Bills Committee on Pharmacy and Poisons (Amendment) Bill 2014

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Pharmacy and Poison (Amendment) Bill 2014 ("the Bill") which is to amend the Pharmacy and Poison Ordinance (Cap. 138) ("the Ordinance") and its subsidiary legislation for implementation of certain recommendations put forth by the Review Committee on the Regulation of Pharmaceutical Products in Hong Kong ("the Review Committee"). It also gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the legislative proposal.

Background

Regulatory regime for pharmaceutical products

2. The local drug regulatory regime adopts a risk management, dual target and multi-pronged approach underpinned by the Ordinance and its regulations. The Pharmacy and Poisons Board ("PPB") has been established under the Ordinance to enforce the regulation of pharmaceutical products (including Part I Poisons, Part II Poisons and non-poisons¹) and traders (including manufacturers, importers, exporters, wholesalers and retailers). Under the Ordinance, any person wishing to sell, offer for sale, distribute or possess any pharmaceutical products or substance shall register the product or substance with PPB. Only those pharmaceutical products or substances that conform to the standards on safety, efficacy will be registered. Once the registration is approved, the

¹ The Ordinance provides for a Poisons List which is divided into two parts: Part I and Part II respectively. Part I Poisons in general are drugs with more serious side effects which warrant enhanced supervision in handling, while Part II Poisons have less serious side effects. Drugs which are not included in the Poisons List are commonly referred to as non-poisons by the traders. Some Part I Poisons are further classified into the First Schedule and the Third Schedule with additional restrictions on their sale by retailers.

certificate of registration will be issued for a validity of five years subject to renewal. New registration applications of pharmaceutical products are mainly classified into New Chemical Entity ("NCE") and non-NCE (or commonly known as generic). At present, there are around 19 000 registered pharmaceutical products in Hong Kong.

3. The Ordinance also stipulates that all pharmaceutical traders, except companies trading in pharmaceutical products of non-poisons within Hong Kong, are required to obtain the required licences from PPB. As of March 2014, there were 34 holders of a manufacturer's licence. Among these licensed pharmaceutical manufacturers, 24 of them were in compliance with the Hong Kong Good Manufacturing Practices² Guidelines for Pharmaceutical Products. There were 696 licensed wholesalers of poisons, 92 registered importers and exports of pharmaceutical products, and 4 486 licensed medicine retailers (including 586 authorized sellers of poisons ("ASP") (or commonly known as "dispensaries" or "pharmacies") and 3 900 listed sellers of poisons ("LSP") (or commonly known as "medicine companies"))).

The review on the regulation of pharmaceutical products in Hong Kong

4. In early 2009, a series of incidents involving unsafe and unregistered pharmaceutical products had caused wide public concern. The Government set up the Review Committee in March 2009 to conduct a comprehensive review on the existing regime for the regulation of pharmaceutical products. In its report issued in December 2009, the Review Committee made a total of 75 recommendations to enhance the coverage and depth of the regulatory measures, including 16 recommendations which required amendments to the primary and subsidiary legislation for implementation. A list of these recommendations is in **Appendix I**. To assess the impacts of the proposed legislative amendments on pharmaceutical dealers, the Administration commissioned a consultant to conduct a Regulatory Impact Assessment in January 2011. The Assessment was concluded in January 2013.

The Bill

5. The Administration introduced the Bill into the Legislative Council ("LegCo") on 26 March 2014 to amend the Ordinance, the Pharmacy and Poisons Regulations (Cap. 138A) and the Poison List Regulations (Cap. 138B)

² Good Manufacturing Practice is a quality assurance approach used by the drug manufacturing industry worldwide to ensure that products are consistently produced and controlled according to quality standards appropriate to the products' intended use. According to the Administration, most countries have adopted the set of Good Manufacturing Practice guidelines promulgated by the World Health Organization ("WHO").

to implement certain recommendations of the Review Committee³ which, in its view, are conducive to enhancing the regulatory regime without causing significant impact to the relevant parties, and bring those outdated provisions into line with the prevailing regulatory framework. The proposed legislative amendments cover, among others, regulations governing the manufacturing of pharmaceutical products; licensing requirements of manufacturers, importers, exporters and wholesalers; codes of conduct and codes of practice and other licensing, registration and disciplinary matters; registration of pharmaceutical products or substances; control of clinical trials and medicinal tests; labelling and storage of medicines and poisons; and keeping of transaction records. The key features of the proposed legislative amendments are set out in paragraphs 4 to 19 of the Legislative Council Brief (File Ref: FHB/H/23/1 Pt.9).

Deliberations of the Panel

6. The Panel was briefed on the recommendations of the Review Committee and the Administration's proposed legislative amendments on 11 January 2010 and 18 November 2013 respectively. The Panel held a special meeting on 10 December 2013 to receive views from deputations and another special meeting on 10 February 2014 to further discuss the legislative proposal with the Administration. The deliberations and concerns of members are summarized below.

Control of pharmaceutical products

7. On the proposal to extend the validity of clinical trial certificate for new pharmaceutical products from two years to not more than five years, there was a worry that those pharmaceutical products which failed to demonstrate safety and efficacy during the relatively shorter clinical trial period of other jurisdictions could continue to be administered or dispensed in Hong Kong for a prolonged period of time.

³ The Administration has decided not to pursue Recommendations 29 and 30 which respectively requires all retailers of non-poisons to be subject to licensing and inspection control, and presence of registered pharmacist in the registered premises of an authorized seller of poisons ("APS") whenever that ASP is open for business in this legislative exercise. It also makes slight modifications to Recommendations 19 and 74. For Recommendation 19, the Administration considers that if traders can provide samples within specified period upon request, it is not necessary to require all wholesalers to keep samples of each batch of drugs handled for investigation as additional space is required for sample retention and keeping samples of expensive drugs is costly. As regards Recommendation 74, the Administration proposes that apart from the costs for the analyses of samples of drugs, the Court should be empowered to recover from the defendant all expenses incidental to the taking and examination of any sample of drugs in respect of which the conviction is based in order to increase the deterrent effect.

8. According to the Administration, the proposal was put forward in response to the concern of the trade that the two-year validity period was often too short for the completion of a clinical trial. With the proposed extension, the sponsor of a new pharmaceutical product would not need to apply for a certificate again if a clinical trial lasted more than two years.

Regulation of importers, exporters and wholesalers

9. In the absence of a record and tracking system to trace if pharmaceutical products imported into Hong Kong for re-export purpose were indeed exported, some members urged the Administration to expeditiously formulate measures to prevent the illegal sale of imported unregistered pharmaceutical products in local market.

10. The Administration advised that it proposed to merge the registration of importers/exports of pharmaceutical products with the licensing of wholesalers of poisons and subject the licensees to the same set of control. In addition, wholesalers would be required to keep transaction records for both poisons and non-poisons. The records should include additional details such as registered pack size and batch number of products. DH would also set up a record and tracking system so that export licence applicants would be required to produce the relevant import licences of the imported drugs to be re-exported. In the long run, an electronic record system which was inter-operable with the Customs and Excise Department and the Trade and Industry Department should be a more efficient alternative. In addition, the Customs and Excise Department would, after having taken into account the workload of its staff, increase the weekly quota of post-shipment consignment checks of licence.

11. Some members considered that vitamin preparations should be regarded as food rather than pharmaceutical products, and wholesalers of which should not be subject to the licensing and keeping of transaction records requirements.

12. The Administration explained that vitamin preparations had all along been regarded as non-poison pharmaceutical products under the Ordinance and were subject to, among others, registration requirements before they could be sold in Hong Kong. As such, wholesalers of vitamin preparations would be subject to licensing and inspection controls, and the requirement on keeping of transaction records under the current legislative proposals.

Regulation of retailers

Duration of presence of pharmacists in ASPs

13. Members noted that the Ordinance, which currently required a registered pharmacist to be present in an ASP for not less than two-thirds of its opening hours, would be amended to the effect that the registered pharmacist concerned should be present whenever that ASP was opened for business. Given the current manpower supply of registered pharmacists, the Administration intended to have this amendment to take effect at a later stage. While there were views supporting the requirement for the sake of consumer protection and urging for its early implementation, there was concern that this would increase the operating cost of ASPs, in particular those in small and medium size. The requirement might also result in ASPs being monopolized by large consortia. These members considered it not an opportune time for introducing this amendment as there was inadequate supply of registered pharmacists to fill the positions and a lack of consensus support in the industry. Some other members pointed out that many ASPs engaged not only in the retail sale of pharmaceutical products, but also a range of other daily goods, such as bottled water and infant milk formula. They held a strong view that at times when a registered pharmacist was not present at the part of the premises where poisons were kept for the purpose of retail sale, the rest of the premises should be allowed to remain open for sale of goods not classified as poisons.

14. The Administration subsequently advised vide LC Paper No. CB(2)541/13-14(01) that having regard to the insufficient manpower supply of registered pharmacists currently and in the near future, the Administration decided to leave out the proposal for requiring the presence of registered pharmacists in the registered premises of an ASP whenever that ASP was opened for business in the present exercise. On the view that the part of premises of an ASP where other daily goods were kept for the purpose of retail sale should be allowed to remain open at times when a registered pharmacist was not present in the premises of that ASP, the Administration explained that under the Ordinance, ASP was a business authorized to conduct the retail sale of poisons at a premises duly registered with PPB for such purpose. When applying for PPB's approval to conduct the retail sale of poisons, the applicants had to specify the address of such premises. PPB would consider, among others, whether the premises were suitable for conducting the retail sale of poisons in assessing the applications. It was a statutory requirement that the registered premises had to be under the personal control of a registered pharmacist. At present, it would be a sufficient compliance with this requirement if for not less than two-thirds of the hours of each day the premises were open for business a registered pharmacist was present at the premises and exercised control and supervision over the persons employed therein.

15. Concern was raised about the timetable to reintroduce the proposal. The Administration advised that it would give due regard to the manpower supply of pharmacists in considering the appropriate timing for the introduction of the proposal. At present, there were about 2 100 registered pharmacists in the territory. A Steering Committee on Strategic Review on Healthcare Manpower Planning and Professional Development had been set up to conduct a strategic review on healthcare manpower planning and professional development in Hong Kong. The Steering Committee would, among others, formulate recommendations on how to cope with the anticipated manpower demand for the various healthcare professions, including pharmacists. The strategic review was aimed to conclude in 2014.

Storage of Part I Poisons at ASP premises

16. On the proposal to require all Part I Poisons be stored in locked receptacle in the premises of an ASP and that only the pharmacist should hold the key to the locked receptacle, members expressed concern about the feasibility of requiring pharmacists to be the sole holder of the key. Question was raised as to whether the Administration would consider requiring the owner or one of the owners of an ASP to be a registered pharmacist.

17. The Administration explained that at present, First Schedule Part I Poisons were already required to be stored in a locked receptacle away from customers' access within the ASP premises. The extension of the requirement to Part I Poisons, which were required to be sold under the supervision of pharmacists at ASPs according to the Ordinance, was aimed at ensuring that the pharmacist had complete control over these Poisons in the premises of an ASP.

18. Members were concerned about the liability of a registered pharmacist in the event of non-compliance by the owner or other staff members of an ASP of the proposed requirement. The Administration advised that who would be liable to prosecution in case of non-compliance with the relevant requirement would depend on the evidence available and the circumstances of each case.

Disqualification of ASPs

19. Concern was raised about the failure of the existing regulatory regime to prevent those ASPs who closed business to escape punishment after committing serious offences from restarting business at the same premises as new ASPs. There were also cases that ASPs and LSPs with drug-related convictions could successfully restart and operate new ASPs and LSPs because the directors of the convicted ASPs and LSPs might not be personally convicted of the offence. Members also expressed concern that PPB could only revoke the ASP licence

for a period of time or not renew the licence upon expiry in extreme situation. They called on the Administration to improve the existing regulatory regime for drugs retailers. There was a view that a mechanism should be put in place to disqualify those ASPs with repeated drug-related offences.

20. The Administration advised that to heighten control, it proposed to tighten up the regulation of ASP by empowering PPB's Disciplinary Committee to, at the conclusion of a disciplinary inquiry of an ASP convicted of drug related offence, give direction to disqualify the ASP concerned and remove its premises from the register of premises, if it was in the public interest to do so, and for such direction to take effect immediately. To step up the regulation of drug retailers, DH would also conduct more frequent unannounced inspections, in particular to those with a poor record of law compliance.

Penalty system

21. Members were advised that the Ordinance would be amended to include provisions empowering the court to order recovery of all expenses incidental to the taking, examination and analyses of any sample of drugs in respect of which the conviction was based from the defendant. There were views that this apart, the existing maximum fines for non-compliance of the Ordinance, i.e. a fine of \$100,000, should be increased to the range of \$500,000 to \$1 million to deter the pharmaceutical traders from malpractices. There was also a view that a demerit point system for licensed medicine retailers should be introduced.

Other issues of concern

Upgrade of Hong Kong's GMP licensing standards

22. Members noted that the Review Committee had recommended that the current Hong Kong GMP standard should be upgraded to a higher international standard. Members were concerned that while WHO had upgraded its GMP in 2007, Hong Kong was still adopting the GMP standard promulgated by WHO in 1995, and the compliance of which was not a mandatory legal requirement.

23. The Administration advised that its plan was to require all licensees to comply with the Guide to Good Manufacturing Practice for Medicinal Products and its annexes (where applicable) published by the Pharmaceutical Inspection Cooperation Scheme ("PIC/S") by 2015, so as to be on par with international best practice. PIC/S was an international agreement between pharmaceutical regulatory authorities of different countries or territories which provided an active and constructive cooperation in the field of GMP. There were currently 43 participating authorities in PIC/S, which included that of Australia, the United Kingdom, the United States, the majority European Union countries, and

the Asian countries such as Singapore and Taiwan, etc. The PIC/S standard included a stricter control over the use of active pharmaceutical ingredients for drug manufacturing, more stringent qualification requirements for the position of the authorized person who oversaw the entire drug manufacturing process, a more enhanced inspection and licensing arrangement, and a more comprehensive training framework for all levels of personnel involved in the GMP system.

Written orders of drugs by ASPs, LSPs and private doctors

24. On the Review Committee's recommendation that all ASPs, LSPs and private doctors should place orders of drugs in written form, some members agreed that the requirement would help enhancing the monitoring of the drug supply chain. They suggested that orders in electronic format, such as e-mails, should be accepted as written orders. Consideration should also be given to providing technical support to the industry for the use of electronic drug order management systems to further enhance efficiency and accuracy of ordering. Some other members urged the Administration to address the concerns of the industry that the requirement would lead to an increase in administrative costs and the possibility of delay in the ordering for pharmaceutical products at retail level.

25. According to the Administration, the aim of the requirement was to build up a complete set of drug movement records, so as to facilitate the tracing of source of drugs, minimize errors in the delivery and receipt of drugs and combat illegal sale of drugs. All these serve to provide the best protection for the public. Having considered the regulation of the drug supply system and the concerns of the pharmaceutical industry, it proposed to implement the requirement by administrative means whereby PPB would incorporate the requirement in the codes of practice for the relevant licensed drug traders, instead of regulating by legislation. To help the industry adapt to the requirement, PPB preliminarily considered that placing drug orders by electronic means (e.g. e-mails), fax and mail, etc. could be accepted as written orders. The requirement would also be implemented by phases according to the risk level of drugs. As regards the impact of the requirement on practicing doctors, the Administration pointed out that the written order practice had already been recommended in the Good Dispensing Practice Manual issued by the Hong Kong Medical Association since 2007. All practicing doctors were recommended to comply with the provisions in the Manual.

26. There was a view that the Administration was trying to circumvent the scrutiny of LegCo on the proposed requirement by implementing it through administrative means. A concern was also expressed that not implementing the proposed requirement through statutory means might create loopholes. The

Administration advised that PPB would be empowered under the legislative proposal to, among others, impose licensing or registration conditions and vary such conditions, issue directions to revoke or suspend a licence or registration, suspend such directions, or issue warning letters to the relevant licence or registration holders on non-compliance with the codes of practice or licensing or registration conditions or on conviction of the relevant offences.

Separation of prescribing from dispensing of drugs

27. There was a concern that the issue of whether separation of prescribing from dispensing of drugs should be implemented in Hong Kong had been discussed for many years but the formulation of a policy in this regard was still hanging in the balance. The Administration advised that patients currently had the choice of asking doctors at private clinics for a prescription to be filled by a pharmacist. The matter would require a thorough discussion by the concerned stakeholders and the community as a whole. A consensus should be reached by members of the community before any major change should be made.

Relevant papers

28. A list of the relevant papers on the LegCo website is in **Appendix II**.

**Recommendations of the Review Committee
on Regulation of Pharmaceutical Products in Hong Kong
which require legislative amendments**

| No. ¹ | Details of recommendation |
|------------------|--|
| 6 | To empower the Pharmacy and Poisons Board ("PPB") to maintain an Authorized Person ("AP") register and remove any AP from the register should the AP be found incompetent to perform the role of an AP. |
| 11 | To introduce a code of practice to govern the conducts of the manufacturers and APs. |
| 14 | To replace the term "Poison 毒藥", as required to be labelled on pharmaceutical products classified as poisons, with other terms to alleviate the unnecessary concern of consumers that the products might be harmful and unsuitable for use or consumption. |
| 15 | To delete the phrase "to be marketed for use within Hong Kong" on the certificate of registration of pharmaceutical products. |
| 16 | To extend the validity of clinical trial certificate from "not more than two years" to "not more than five years". |
| 18 | To require all wholesalers of non-poisons to be subject to inspection and licensing control. |
| 19 | To require all wholesalers to keep transactions records of all pharmaceutical products, including Part II poisons and non-poisons in the same manner as for Part I poisons, and to require wholesalers to keep samples of each batch of drugs handled to facilitate investigation when needed. |
| 20 | To require both primary and secondary packaging be carried out by a licensed manufacturer. |

¹ Denotes the number of the recommendations put forward by the Review Committee on Regulation of Pharmaceutical Products in Hong Kong as appeared in its report issued in December 2009.

| No. ¹ | Details of recommendation |
|------------------|---|
| 21 | To introduce a code of practice for importers/exporters and wholesalers detailing their roles and responsibilities, including the requirement of batch release certificate, the reporting of adverse drug reactions, proper storage and transportation of drugs, etc. |
| 29 | To require all retailers of non-poisons to be subject to licensing and inspection control. |
| 30 | In the longer term after taking into account the market operating conditions and the availability of sufficient pharmacists, to require the presence of a registered pharmacist whenever an authorized seller of poisons ("ASP") is open for business. Heightened enforcement actions should be taken against those non-pharmacists who violate and interrupt the pharmacists' performance of their duties at ASPs. |
| 31 | To require all Part I Poisons be stored in locked receptacle in the premises of an ASP and that only the pharmacist should hold the key to the locked receptacle. |
| 32 | To add a provision in the Pharmacy and Poisons Ordinance (Cap. 138) ("the Ordinance") for the issuance and revision of the code of practice for ASPs in order to give a legal status to the code to enhance monitoring on the operation of ASPs; and to introduce a code of practice for listed sellers of poisons ("LSPs") which should enjoy the same legal status as the code for ASPs. |
| 33 | To give PPB the authority to revoke the licence of an ASP at any time after the ASP has been convicted of serious drug offence. |
| 34 | To tighten the licensing conditions for the refusal or renewal of ASP or LSP applications. The Department of Health should evaluate what type of drug offences should be included based on their public health impact. |
| 74 | To amend the Ordinance to include provision for the Court to order the convicted person to pay the analytical costs incurred by the Government to increase the deterrent effect. |

Source: Report of the Review Committee on Regulation of Pharmaceutical Products in Hong Kong

Relevant papers on the Pharmacy and Poisons (Amendment) Bill 2014

| Committee | Date of meeting | Paper |
|--------------------------|--------------------------|--|
| Panel on Health Services | 11.1.2010 (Item V) | Agenda Minutes |
| Panel on Health Services | 18.11.2013 (Item III) | Agenda Minutes |
| Panel on Health Services | 10.12.2013 (Item I) | Agenda CB(2)541/13-14(01) CB(2)694/13-14(01) CB(2)722/13-14(01) |
| Panel on Health Services | 10.2.2014 (Item I) | Agenda |

Council Business Division 2
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 23 April 2014