

For information

Medical Registration (Amendment) Bill 2016

Information Note

PURPOSE

This paper aims to brief Members on the details of the Medical Registration (Amendment) Bill 2016 (“the Bill”).

PURPOSE OF THE BILL

2. The Bill aims to amend the Medical Registration Ordinance (“MRO”) (Cap. 161) to –
 - (a) increase lay participation in the Medical Council of Hong Kong (“MCHK”);
 - (b) improve its complaint investigation and disciplinary inquiry mechanism; and
 - (c) facilitate the admission of non-locally trained doctors, in particular specialists, to practise in Hong Kong.

DETAILS OF THE BILL

Increase lay participation in MCHK and its Committees (Clauses 4, 8 and 9 of the Bill)

MCHK

3. Operated under the principle of professional autonomy, MCHK is an independent statutory body established under MRO for handling matters relating to the registration and regulation of medical practitioners in Hong Kong, including the conduct of inquiries and disciplinary

proceedings concerning the professional conduct of registered medical practitioners.

4. Currently, MCHK comprises 28 members in total, with 24 registered medical practitioners and four lay members. Lay membership accounts for about 14% of the total membership. Under the Bill, Clause 4 provides that the number of lay Council members appointed by the Chief Executive (“CE”) will increase from four to eight, with total Council membership increased from 28 to 32, of which lay membership will increase from 14% to 25%. The current and proposed composition of MCHK is summarised below.

	Existing	Under the Bill
Number of Registered Medical Practitioners (proportion to the total membership)	24 (86%)	24 (75%)
<i>elected by all registered medical practitioners with full and limited registration</i>	7	7
<i>nominated by the Hong Kong Medical Association (“HKMA”) and elected by the Council members of HKMA</i>	7	7
<i>nominated by the Director of Health (“DH”) and appointed by CE</i>	2	2
<i>nominated by the University of Hong Kong (“HKU”) and appointed by CE</i>	2	2
<i>nominated by The Chinese University of Hong Kong (“CUHK”) and appointed by CE</i>	2	2
<i>nominated by the Hospital Authority (“HA”) and appointed by CE</i>	2	2
<i>nominated by the Hong Kong Academy of Medicine (“HKAM”) and appointed by CE</i>	2	2
Number of Lay Persons appointed by CE (proportion to the total membership)	4 (14%)	8 (25%)
Total number of Council members	28	32

Statutory Committees under MCHK

5. There are five statutory committees under MCHK, namely Licentiate Committee¹, Education and Accreditation Committee², Ethics Committee³, Preliminary Investigation Committee (“PIC”) and Health Committee (“HC”). The composition of each statutory committee is stipulated under MRO. The statutory committees consist of Council members and persons who are nominated by different institutions, including HA, DH, HKU, CUHK, HKMA and HKAM. Among the five statutory committees, only PIC and HC have lay Council members.

PIC

6. Currently, PIC comprises seven members, including three Council members (i.e. a chairman and a deputy chairman elected from among its Council members and a lay Council member) as well as four non-Council members who are registered medical practitioners whom HKMA, DH, HA and a MCHK Council member can each nominate one before they are appointed by MCHK. Under the Bill, Clause 8 provides that the number of lay Council members appointed to PIC will increase

¹ Under section 20C of MRO, the Council shall appoint to the Licentiate Committee -

- (a) a chairman who shall be elected by the Council from among MCHK members;
- (b) not more than three registered medical practitioners nominated by DH, one of whom shall be a public officer;
- (c) two registered medical practitioners nominated by HKU;
- (d) two registered medical practitioners nominated by CUHK;
- (e) one registered medical practitioner nominated by HKMA; and
- (f) one registered medical practitioner nominated by HA.

² Under section 20H of MRO, the Council shall appoint to the Education and Accreditation Committee-

- (a) a chairman who shall be elected by the Council from among its members;
- (b) four other members of the Council who shall be elected by the Council from among MCHK members;
- (c) one registered medical practitioner nominated by DH;
- (d) one registered medical practitioner nominated by HA;
- (e) one registered medical practitioner, not being a member of the Council, nominated by HKMA;
- (f) two registered medical practitioners, not being members of the Council, nominated by HKU;
- (g) two registered medical practitioners, not being members of the Council, nominated by CUHK;
- (h) two registered medical practitioners, not being members of the Council, nominated by HKAM.

³ Under section 20P of MRO, the Council shall appoint to the Ethics Committee -

- (a) a chairman who shall be elected by the Council from among MCHK members;
- (b) four other members of the Council who shall be elected by the Council from among MCHK members;
- (c) four registered medical practitioners who are not members of the Council; and
- (d) one to three lay persons as the Council considers suitable.

from one to two, with total membership increased from seven to eight, of which lay membership will increase from 14% to 25%.

HC

7. Currently, HC comprises nine to 11 members, including at least four Council members (i.e. a chairman who shall be elected by the Council from among its members, two other members of the Council who shall be elected by the Council from among its members; one lay Council member) and five to seven non-Council members⁴. Under the Bill, Clause 9 provides that the number of lay Council members appointed to HC will increase from one to two, with maximum number of members increased from 11 to 12, of which lay membership increased from 9% to 17%.

Improving the complaint investigation and disciplinary inquiry mechanism of MCHK and related matters (Clauses 5, 7, 8, 11 and 14 of the Bill)

8. MCHK handles complaints against registered medical practitioners in accordance with the procedures laid down in MRO and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E).

9. In accordance with the established procedures of MCHK, complaints are now processed through part or all of the following three stages –

- (a) Initial consideration by the PIC chairman and deputy chairman in consultation with a lay Council member of PIC to decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full consideration. Under the existing MRO,

⁴ The non-Council members include -

- (a) two registered medical practitioners nominated by HKMA and appointed by MCHK;
- (b) one registered medical practitioner nominated by DH and appointed by MCHK;
- (c) one registered medical practitioner nominated by HA and appointed by MCHK; and
- (d) one to three persons whom the Council considers appropriate.

MCHK can only set up one PIC to handle complaints. The quorum of a PIC meeting is three, at least one of whom shall be a lay Council member, subject to the majority being registered medical practitioners, including the chairman or deputy chairman, or both. At present, the lay Council member of PIC may hold office for not exceeding three months;

- (b) Examination at PIC meetings of the complaint as well as explanation of the medical practitioner concerned (if applicable), and then forming of a decision on whether or not there is a prima facie case to refer the complaint to MCHK for holding an inquiry; and
- (c) Inquiry by MCHK comprising a panel of at least five Council members, or not less than three Council members and two assessors⁵, at least one of whom shall be a lay Council member but subject to the majority being registered medical practitioners, to hear the evidence from both the Secretary of the Council and the defending registered medical practitioner(s).

10. The number of complaint cases received⁶ each year has exceeded the current capacity of MCHK, in particular at the PIC stage. As detailed in paragraph 9, the current complaint investigation and disciplinary inquiry mechanism of MCHK is prescribed by law with bottlenecks that are clogging up the system. As a result, there is a backlog of cases resulting in prolonged period for conclusion of complaint cases.

⁵ Under the existing MRO, the Council shall appoint a panel of assessors which are non-Council members for the purpose of conducting an inquiry, including

- (a) two registered medical practitioners nominated by DH;
- (b) two registered medical practitioners nominated by HA;
- (c) two registered medical practitioners nominated by HKAM;
- (d) two registered medical practitioners nominated by HKU;
- (e) two registered medical practitioners nominated by CUHK; and
- (f) four lay persons nominated by the Secretary for Food and Health.

⁶ The number of complaints received by MCHK from 2011 to 2015 is as follows –

2011	2012	2013	2014	2015 [#]
461	480	452	624	493

[#] provisional figure

11. In view of the long time taken by MCHK for complaint investigation and conduct of disciplinary inquiries, we consider it necessary to increase the number of lay Council members and non-Council members (lay and medical practitioners) and to enable MCHK to conduct investigation and inquiries more frequently and in parallel. The proposed amendments to improve the complaint handling and disciplinary inquiry mechanism are summarised at **Annex**.

Facilitate the admission of non-locally trained doctors to practise in Hong Kong (Clause 6 of the Bill)

12. Specified institutions (including DH, HA and the two medical schools) may apply to MCHK on behalf of non-locally trained doctors with proven experience and knowledge for limited registration in Hong Kong for the purpose of teaching, conducting research or performing clinical work for the institutions. The registration is valid for up to one year subject to annual renewal by MCHK. Clause 6 of the Bill extends the maximum term of registration and renewal of medical practitioners with limited registration from not exceeding one year to not exceeding three years.

Other Amendments (Clauses 2, 3, 10, 12 and 13 of the Bill)

13. Clauses 2, 12 and 13 and Schedules 1 and 2 to the Bill amend certain references to the Committee and the Legal Adviser in the principal Ordinance and the related subsidiary legislation accordingly. Clause 3 of the Bill adds the definition of “lay assessors” and “legal adviser” to the principal Ordinance.

14. In response to the judgment of a judicial review case⁷, Clause 10 of the Bill amends section 21 of the principal Ordinance to clarify that only the Council that conducts an inquiry under that section can review a decision or order made in the inquiry.

Food and Health Bureau
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⁷ HCAL 70/2012

A. Preliminary Investigation Stage - Preliminary Investigation Committee (PIC)

Existing Arrangement

- only one PIC

Composition of PIC (7 members)

- (a) **three Council members** - a chairman and a deputy chairman elected from among its Council members and a lay Council member; and
- (b) **four non-Council members** - HKMA, DH, HA and MCHK Council member each nominates one registered medical practitioner who are then appointed by MCHK.

Quorum of a PIC meeting
(3 members)

- at least one of whom shall be a lay Council member, subject to the majority being registered medical practitioners, including the chairman or deputy chairman, or both.

Term of office - lay Council member

- not exceeding three months

Under the Bill

- more than one PIC (*Clause 7*)

Composition of PIC (8 members)
(Clause 8)

- (a) **two Council members** - a chairman and a deputy chairman elected from among its Council members
- (b) **two lay persons** (lay Council member(s) or lay assessor(s)); and
- (c) **four non-Council members** - HKMA, DH, HA and MCHK Council member each nominates one registered medical practitioner who are then appointed by MCHK.

Quorum of a PIC meeting
(3 members)
(Clause 8)

- at least one of whom shall be a lay person (who is a lay Council member or lay assessor), subject to the majority being registered medical practitioners, including the chairman or deputy chairman, or both.

Term of office - lay person
(Clause 8)

- not exceeding 12 months

B. Disciplinary Inquiry Stage

Existing Arrangement

Pool of members for conducting inquiry (total: 42 persons)

- (a) **28 Council members** (24 Council members who are registered medical practitioners and four lay Council members); and
- (b) **14 assessors**
 - 10 assessors who are registered medical practitioners i.e. DH, HA, HKU, CUHK and HKAM each nominates two; and
 - four lay assessors nominated by the Secretary for Food and Health,all assessors are appointed by MCHK.

Under the Bill

Pool of members for conducting inquiry (total: 66 persons)
(Clauses 4 and 11)

- (a) **32 Council members** (24 Council members who are registered medical practitioners and eight lay Council members); and
- (b) **34 assessors**
 - 20 assessors who are registered medical practitioners i.e. DH, HA, HKU, CUHK and HKAM each nominates four; and
 - 14 lay assessors nominated by the Secretary for Food and Health,all assessors are appointed by MCHK.

Quorum of an inquiry meeting
(5 members)

- (a) at least five Council members; or
 - (b) not less than three Council members and two assessors,
- at least one of whom shall be a lay Council member but subject to the majority being registered medical practitioners.

Quorum of an inquiry meeting
(5 members)
(Clause 11)

- at least five persons, with at least
 - (i) one Council member who is a registered medical practitioner;
 - (ii) one assessor who is a registered medical practitioner; and
 - (iii) one lay person (who is a lay Council member or lay assessor),but subject to the majority being registered medical practitioners.

C. Legal Support

Existing Arrangement

Legal adviser to MCHK

- MCHK may appoint one legal adviser

Under the Bill

Legal adviser to MCHK *(Clause 5)*

- MCHK may appoint more than one legal advisers

Provision of legal support for disciplinary inquiries

- The Secretary for Justice may appoint legal officers of the Department of Justice to carry out the statutory duties of the Secretary of MCHK in inquiries

Provision of legal support for disciplinary inquiries *(Clause 14)*

- The Secretary for Justice may appoint any counsel or solicitor in private practice (besides legal officers of the Department of Justice) to carry out the statutory duties of the Secretary of MCHK in inquiries