

Bills Committee on the Medical Registration (Amendment) Bill 2016

**Government's response to the follow-up actions arising from the
discussion at the meeting on 16 May 2016**

Formation of more than one Preliminary Investigation Committee

This note provides supplementary information to address Members' question over the formation of more than one Preliminary Investigation Committee ("PIC") under the Medical Council of Hong Kong ("MCHK").

2. At the last Bills Committee meeting held on 16 May 2016, a member queried whether there would be sufficient number of medical Council members to form more than one PIC upon the passage of the Bill.

3. MCHK currently has a total of 28 members, with 24 members being doctors and four lay members. There are five statutory committees under MCHK, namely Licentiate Committee, Education and Accreditation Committee, Ethics Committee, PIC and Health Committee. The composition of each statutory committee is stipulated under the Medical Registration Ordinance (Cap. 161) and a total of 18 seats¹ in these five statutory committees are to be filled by Council members. Currently, there are 16 medical Council members and four lay Council members serving on these statutory committees². In other words, there are eight medical Council members who are available to serve on additional PIC(s) to be formed. Moreover, there is no prohibition under the MRO for the 16 doctor Council members serving on other statutory committees to serve concurrently on PIC³.

¹ Among the 18 seats, 16 seats can either be taken up by medical or lay Council members and two seats are required to be taken up by lay Council members only

² The four lay Council members are serving on the PIC each for 3 months on a rotational basis. In addition to their PIC membership, two of the lay Council members also serve on other statutory committees.

³ It is MCHK's current arrangement that multi-membership on various statutory committees should be avoided as far as possible. As stated under footnote 2 above, there are currently two lay Council members sitting on more than one statutory committee at the same time.

4. Member also expressed concern over the possible impact of the tainted-member rule⁴ on forming a quorum for conducting inquiry. Upon the passage of the Bill, MCHK may appoint more than one legal adviser which enables MCHK to conduct more than one inquiry at the same time and more frequently. We consider that with the increase of the number of lay Council members (from four to eight) and the number of assessors from 14 (i.e. ten medical assessors and four lay assessors) to 34 (i.e. 20 medical assessors and 14 lay assessors) as well as the new, more flexible rules for forming quorum upon the passage of the Bill, many more headcounts would be available in forming quorum for conducting inquiries.

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⁴ Under section 21(4A) of MRO, a PIC member should not attend an inquiry meeting involving the case which he/she has taken part in the preliminary investigation. In November 2012, the Court of Appeal held in a case that Members who had taken part in the disciplinary proceedings (either during preliminary investigation or in the disciplinary inquiry) involving matters which subsequently formed the factual basis of the recommendation of the Education and Accreditation Committee should not take part in the Council's decision on the recommendation (including the appeal under section 200 of MRO), for the reason that such Members would have already formed a view on the underlying facts and therefore have been tainted with apparent bias. As advised by the Legal Adviser to MCHK, according to the above ruling and by way of analogy, overlapping membership in different proceedings of MCHK and its Committees relating to the same set of underlying facts is prohibited.