

**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 6 June 2016**

This note provides the Government's response to the follow-up action on the arrangement of the Medical Council of Hong Kong ("MCHK") on forming quorum for conducting inquiries.

2. At the last Bills Committee meeting held on 6 June 2016, Members sought clarification on (a) the definitions of "Council" and "the Council conducting the inquiry" arising from Clause 10 of the Medical Registration (Amendment) Bill 2016 ("the Bill"), and (b) the proposed quorum arrangement for conducting an inquiry under Clause 11 of the Bill. The Government has provided information on the relevant matters in previous Government papers and explained the policy intents of these two clauses during the clause-by-clause examination stage. We would like to recap our explanation in the ensuing paragraphs.

Clause 10 of the Bill

3. In response to a Member's question on Clause 10 of the Bill raised at the Bills Committee meeting held on 9 May 2016, the Government had provided information to the Bills Committee vide LegCo paper no. CB(2)1468/15-16(04) which was issued on 13 May 2016. Paragraphs 11 and 12 of the relevant paper have explained the purpose of Clause 10.

Definition of "Council" in MRO

4. To construe "Council", context and purpose need to be considered and different provisions of MRO need to be read together. The definition of "Council" is set out in section 2(1) of the Medical Registration Ordinance ("MRO") (Cap. 161) which reads - "In this Ordinance, unless the context otherwise requires - 'Council' means the Medical Council of Hong Kong established under section 3". Whilst there is one "Council", it may meet for different purposes where

provision is made for a different quorum and even a different composition. As confirmed by the court¹, section 4 of MRO² clearly points out that the Council may meet in different capacities and for different purposes. Sections 21 and 21B of MRO provide that the “Council” conducting the disciplinary inquiry under section 21 is the Council consisting of those Council members and assessors (if any) who participated in the inquiry.

Ruling of the Court of First Instance on a judicial review application

5. Clause 10 is a technical amendment to clarify beyond doubt the meaning of the “Council” under section 21 of MRO in response to the ruling of the Court of First Instance (“CFI”) on a judicial review application in June 2014³. The CFI interpreted the meaning of “Council” in section 21(4B) of MRO. It was held that the power to review a decision or order in a disciplinary inquiry would rest with the Council that had conducted the inquiry, but not the full Council.

¹ *The Hong Kong Medical Association v Medical Council of Hong Kong*, HCAL 70/2012 (Court of First Instance), para. 54.

² Section 4 - Meetings of the Council of MRO reads -

“(1) The Council shall meet at such times and such places as the Chairman may appoint.

(2) Except in an inquiry under section 21, in an appeal hearing under section 20F, 20O or 20W, or in an election petition under the Election Regulation as defined in section 3, at any meeting of the Council 13 members shall be a quorum.

(2A) In a meeting of the Council to hear an appeal under section 20F, 20O or 20W or an election petition under the Election Regulation as defined in section 3, 5 members shall be a quorum.

(3) The validity of any proceedings of the Council shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(4) All questions coming or arising before a meeting of the Council shall be decided by a majority of the members of the Council present and voting thereon.

(4A) Except for an inquiry under section 21, for an appeal hearing under section 20F, 20O or 20W and for an election petition under the Election Regulation as defined in section 3, the Council may transact any of its business by circulation of papers without meeting; and a resolution signed by all the members of the Council for the time being present in Hong Kong is as valid and effective as if it had been passed at a meeting by the votes of the members so signing.

(5) The Chairman at any meeting of the Council shall have an original vote and also, if upon any question the votes shall be equally divided, a casting vote except in an inquiry under section 21 at which he shall have only an original vote.

(6) The Council may make standing orders for regulating the procedure at, and in connection with, its meetings.”

³ *The Hong Kong Medical Association v Medical Council of Hong Kong*, HCAL 70/2012 (Court of First Instance). The judgment can be accessed through - http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=93424&QS=%2B&TP=JU

6. The CFI opined in its judgment that the legislation should be amended to eliminate any ambiguity or uncertainty in the powers and the functions of the Council in the conduct of disciplinary action against a registered medical practitioner. In response to CFI's view, clause 10 of the Bill is proposed to amend section 21 of MRO to clarify that only the Council that conducts an inquiry under that section can review a decision or order made in the inquiry. Clause 10 adds section 21(7) to clarify that in relation to an inquiry, a reference to Council in section 21 (except the references specified in the clause) is a reference to the members and assessors in section 21B(1) who participate in the inquiry. This is consistently mirrored in the proposed section 21B(1), which provides for the quorum at each "meeting of the Council (within the meaning of section 21(7)) held for an inquiry under section 21". **In other words, as far as the "Council" for hearing an inquiry is concerned, the Bill has aligned the meaning of the relevant provisions.** Meanwhile, in both sections 21 and 21B, some references to "Council" do mean the full Council. This has also been clarified in the proposed sections 21(7), 21B(1)(a) and (b)⁴.

Clause 11 of the Bill

7. In response to Members' questions concerning MCHK's arrangement on forming quorum for conducting inquiries raised at earlier meetings, the Government had provided information vide LegCo paper no. CB(2)1468/15-16(04) which was issued on 13 May 2016 and LegCo paper no. CB(2)1547/15-16(02) which was issued on 20 May 2016.

8. At present, the quorum for MCHK to conduct an inquiry is stipulated under section 21B of MRO. The quorum can either be a panel of at least five Council members, or not less than three Council members and two assessors. In both cases, there must be at least one lay Council member and a majority of registered medical practitioners. MRO only stipulates the quorum (i.e. the minimum number of persons for conducting an inquiry) and MCHK is empowered to make the necessary arrangements to enable the conduct of inquiries according to MRO. Section 4(6) of MRO stipulates that the Council may make standing

⁴ which reads "members of the Council mentioned in section 3(2))"

orders for regulating the procedure at, and in connection with, its meetings.

9. Before 2009, it was MCHK's policy that all Council members (except the chairman and deputy chairman of the Preliminary Investigation Committee ("PIC") and the lay Council member who had considered the case at PIC stage) would be invited to indicate their availability for inquiries. Members were free to join the inquiry or to decline participation. No inquiry could be held if no lay Council member signed up for the hearing. The panel of assessors would be approached when the quorum of five Council members could not be met for conducting an inquiry.

10. In 2008, the Independent Commission Against Corruption ("ICAC"), at the invitation of MCHK, made recommendations relating to the procedures of disciplinary inquiries of MCHK. One of its recommendations was that MCHK should consider implementing a "roster system" for members to serve on the inquiry panels. MCHK accepted ICAC's recommendations and set up a task force to formulate proposals for implementing ICAC's recommendations.

11. In view of ICAC's recommendations, the Task Force proposed that a rota of seven adjudicating members (comprising four Council members who are registered medical practitioners, one lay Council member and two assessors) should be drawn up for each inquiry hearing. Such arrangement helps reduce the chance of an aborted inquiry due to insufficient quorum. MCHK endorsed the proposal of the Task Force in 2009 and following MCHK's decision, its Secretariat has accordingly arranged the roster system for conducting inquiries since then.

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