

LEGISLATIVE COUNCIL BRIEF

Medical Registration Ordinance (Chapter 161)

Medical Registration (Amendment) Bill 2016

INTRODUCTION

At the meeting of the Executive Council on 16 February 2016, the Council ADVISED and the Chief Executive ORDERED that the Medical Registration (Amendment) Bill 2016 (“the Amendment Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”) 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.

JUSTIFICATIONS

Strategic review on healthcare manpower planning and professional development

2. In 2012, the Government set up a steering committee to conduct a strategic review on healthcare manpower planning and professional development in Hong Kong (“the Review”). The Review, covering all of the 13 healthcare professions¹ subject to statutory regulation, aims to

¹ These 13 professions are doctors, dentists, nurses, midwives, Chinese medicine practitioners, chiropractors, dental hygienists, medical laboratory technologists, occupational therapists, optometrists, pharmacists, physiotherapists and radiographers.

make recommendations that would better enable our society to meet the projected demand for healthcare professionals as well as to foster professional development with a view to ensuring healthy and sustainable development of our healthcare system and the continued provision of quality healthcare services to the public. To assist the Steering Committee in making informed recommendations, we have commissioned the University of Hong Kong (“HKU”) to generate a manpower forecast for each profession and The Chinese University of Hong Kong (“CUHK”) to conduct a root-and-branch regulatory review both locally and abroad². We also set up six consultative sub-groups under the Steering Committee to hear and consolidate views from the healthcare professions and other stakeholders. CUHK had also conducted a symposium where the healthcare professions under study as well as other stakeholders from the community were invited to share their views.

3. Without prejudice to the deliberations of the Steering Committee and its six sub-groups, we expect that the Steering Committee will make a range of recommendations to increase the supply of healthcare professionals and address regulatory issues of concern to the public, including –

- (a) functions of the statutory regulatory bodies;
- (b) membership of the statutory regulatory bodies, in particular the number and proportion of lay membership;
- (c) admission of non-locally trained healthcare professionals;
- (d) complaint investigation and disciplinary inquiries; and
- (e) training and development, in particular, mandatory continuous professional education and development.

4. While recognising the principle of self-regulation, the Review observes that there is an international trend towards more public participation, greater transparency and accountability in the discharge of the self-regulatory functions by the healthcare professional bodies.

5. We expect that the Review will be completed in mid-2016. The public is most concerned about issues related to doctors to which we will accord first priority. In response to the mounting public concerns over

² The study covers eleven other jurisdictions, namely, the United Kingdom, Australia, Singapore, Malaysia, the United States, Canada, Mainland China, Taiwan, New Zealand, Germany and Finland.

the efficiency of MCHK in complaint investigation and disciplinary inquiries as well as its lack of flexibility for the admission of non-locally trained doctors, pending the completion of the Review report and in advance of the implementation of the full recommendations of the Review, the Government decided to introduce a bill into LegCo in the first quarter of 2016 to amend the Medical Registration Ordinance (“MRO”) to tackle the most urgent issues.

Considerations for tackling the most urgent issues

Lay involvement in regulatory bodies

6. CUHK’s study reveals that there is a global trend, particularly in advanced economies, for more openness and accountability, including greater involvement of lay persons in regulatory bodies and relevant panels for review and inquiry. In Canada, Australia and New Zealand, for instance, lay persons comprise one-third of the membership in medical regulatory bodies, whereas in the United Kingdom, half of the membership is made up of lay persons. MCHK currently consists of a total of 28 members, with 24 members being registered medical practitioners³ and four lay members⁴. Lay membership accounts for about 14% of the total membership. In addition, there is one lay person out of the seven members⁵ of the Preliminary Investigation Committee (“PIC”) which is responsible for conducting preliminary investigation into complaints. Increasing lay involvement in MCHK and its PIC could enhance the public accountability, transparency and credibility of MCHK and help improve its complaint investigation and disciplinary inquiry mechanism. Moreover, an appropriate proportion of lay participation could help bring in fresh views and offer wider perspectives to MCHK.

³ Among the medical practitioner members,
(a) seven are elected by registered medical practitioners with full and limited registration;
(b) seven are nominated by the Hong Kong Medical Association (“HKMA”) and elected by the Council members of HKMA; and
(c) two each are nominated by Department of Health, HKU, CUHK, Hospital Authority and Hong Kong Academy of Medicine, and appointed by the Chief Executive (“CE”).

⁴ The four lay members are appointed by CE.

⁵ PIC comprises seven members, including a chairman and a deputy chairman elected from among the Council members of MCHK and a lay Council member. 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.

Complaint investigation and disciplinary inquiry mechanism

7. The current complaint investigation and disciplinary inquiry mechanism of MCHK, at **Annex B**, is prescribed by law with bottlenecks that are clogging up the system. The number of complaint cases in recent years⁶ has exceeded the current capacity of MCHK at both PIC and inquiry stages. As a result, there is a backlog of cases resulting in prolonged period for conclusion of the cases. In view of the long time taken by MCHK for complaint investigation and conduct of disciplinary inquiries as well as the need to minimise potential conflicts of interest in the process, we consider it necessary to increase the number of lay Council and non-Council members and provide more flexibility for MCHK to conduct investigation and inquiries more frequently and in parallel.

Admission of non-locally trained doctors

8. An adequate supply of experienced medical practitioners, notably those with specialist qualifications, is important to the sustainable development of our healthcare system. As specialist training takes time⁷, more efforts should be made to attract non-locally trained specialists to practise in Hong Kong. Having a greater number of non-locally trained doctors would also add to the international perspectives of our healthcare professions. For the medical profession, specified institutions (including the Department of Health (“DH”), the Hospital Authority (“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. In the past five years, the annual average number of doctors employed by DH, HA and the two medical schools under limited registration is around 110.

⁶ The number of complaints to MCHK from 2010 to 2014 is tabulated below –

2010	2011	2012	2013	2014
476	461	480	452	624

⁷ It takes at least 13 years to train a specialist.

THE BILL

9. The main provisions are –
- (a) Clauses 4, 8 and 9 respectively provide for the increase of –
 - (i) the number of lay members appointed by the Chief Executive (“CE”) to MCHK from four to eight;
 - (ii) the number of lay Council members appointed to PIC from one to two;
 - (iii) the number of lay Council members appointed to the Health Committee from one to two;
 - (b) Clause 7 provides for the setting up of more than one PIC to speed up complaint investigation. Clause 8 allows a lay assessor to be appointed to PIC; stipulates that a lay assessor, but not only a lay Council member, may also form part of the quorum of a PIC meeting; and extends the term of appointment of a lay person appointed to PIC from not exceeding three months to not exceeding 12 months;
 - (c) Clause 11(1) provides for the change in the composition of the quorum of a meeting held for an inquiry. While registered medical practitioners would still be the majority at the inquiry meeting, the five persons forming the quorum must have at least one Council member who is a registered medical practitioner, one assessor who is a registered medical practitioner, and one lay Council member or one lay assessor. Clauses 11(2) and 11(3) respectively increase the number of assessors who are registered medical practitioners nominated by DH, HA, HKU, CUHK and the Hong Kong Academy of Medicine to the panel of assessors for conducting an inquiry from two to four each, and the number of lay assessors from four to 14. The total number of assessors will increase from 14 to 34;
 - (d) Clause 6 extends the maximum term of registration and renewal of medical practitioners with limited registration from not exceeding one year to not exceeding three years;
 - (e) Clause 14 empowers the Secretary for Justice to 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; and

- (f) Clause 5 provides for the appointment of more than one legal adviser by MCHK.

LEGISLATIVE TIMETABLE

10. The Bill will be published in the Gazette on 26 February 2016 and introduced into LegCo on 2 March 2016.

IMPLICATIONS OF THE PROPOSAL

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has economic, financial, civil service and sustainability implications as set out in **Annex C**. The proposal does not have family, gender or environmental implications.

PUBLIC CONSULTATION

12. We have informed MCHK of the Amendment Bill and met with the Hong Kong Medical Association, which comprises the majority of registered medical practitioners in Hong Kong, to hear their views on the Amendment Bill. We have also met with other stakeholders including patient groups and the Consumer Council to collect their views.

13. The LegCo Panel on Health Services was consulted in November 2015 on the Member's Bill proposed by the Hon Tommy CHEUNG. At the Panel meeting, the majority of LegCo members present indicated support for the proposal by the Hon Tommy CHEUNG to increase the number of lay members in MCHK and called for immediate action to improve the complaint investigation and disciplinary inquiry mechanism of MCHK and to introduce more flexibility to the admission arrangement of non-locally trained doctors to meet the demand in the public sector. We plan to consult the LegCo Panel on Health Services in late February 2016 before we introduce the Amendment Bill into LegCo on 2 March 2016.

PUBLICITY

14. A press release will be issued on 24 February 2016. A spokesman from the Food and Health Bureau will be available to handle press enquiries.

BACKGROUND

15. Operating under the principle of professional self-regulation, MCHK is an independent statutory body established under and empowered by MRO to assure and promote the professional competence of doctors in Hong Kong in order to protect patients and the public. MCHK is responsible for the registration of doctors and specialists, the conduct of Licensing Examination, and the maintenance of ethics, professional standards and discipline in the medical profession. As at the end of 2015, there were 13 726 doctors with full registration and 150 doctors with limited registration in Hong Kong. Among them, 6 520 doctors were registered as specialists.

ENQUIRIES

16. Any enquiries on this brief can be addressed to Mr FONG Ngai, Principal Assistant Secretary for Food and Health Bureau (Health) 3 (Tel: 3509 8917).

Food and Health Bureau
24 February 2016

Medical Registration (Amendment) Bill 2016

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A BILL

To

Amend the Medical Registration Ordinance to increase the number of lay persons on the Medical Council of Hong Kong and its committees; to enable the Council to establish more than one Preliminary Investigation Committee; to extend the term of registration of medical practitioners with limited registration; to change the quorum for disciplinary inquiries and increase the number of assessors; to enable solicitor or counsel to be appointed to carry out the Secretary's duties in respect of inquiries; to increase the number of legal advisers to the Council; and to provide for incidental matters and make related technical amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Medical Registration (Amendment) Ordinance 2016.

2. Enactments amended

- (1) The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.
- (2) For each item in column 1 of a Part of a Schedule, the provision set out in column 2 is amended by—

- (a) repealing the words and characters set out in column 3 (wherever appearing in the provision); and
- (b) substituting the words and characters set out in column 4.

Part 2

Amendments to Medical Registration Ordinance (Cap. 161)

3. **Section 2 amended (interpretation)**
- (1) Section 2(1), English text, definition of *Preliminary Investigation Committee*—
- Repeal**
“the”
- Substitute**
“a”.
- (2) Section 2(1)—
- Add in alphabetical order**
- “*lay assessor* (業外審裁顧問) means a lay person appointed under section 21B(2)(f);
- “*legal adviser* (法律顧問) means a legal adviser to the Council appointed under section 3B;”.
4. **Section 3 amended (establishment and composition of Council)**
- Section 3(2)(g)—
- Repeal**
“4”
- Substitute**
“8”.

5. **Section 3B amended (secretary of, and legal adviser to the Council)**
- Section 3B—
- Repeal**
“, one or more deputy secretaries and a Legal Adviser”
- Substitute**
“and one or more deputy secretaries and legal advisers”.
6. **Section 14A amended (limited registration)**
- Section 14A(3)(a) and (7)(a)—
- Repeal**
“1 year”
- Substitute**
“3 years”.
7. **Section 20BA amended (establishment of committees and sub-committees)**
- Section 20BA(2)(d)—
- Repeal**
“the Preliminary Investigation Committee”
- Substitute**
“one or more Preliminary Investigation Committees”.
8. **Section 20S amended (Preliminary Investigation Committee)**
- (1) Section 20S(1)(f), after “Council;”—
- Add**
“and”.
- (2) Section 20S(1)(g)—

Repeal

“1 of the 4 lay members of the Council”

Substitute

“2 relevant lay persons”.

- (3) Section 20S(2)—

Repeal

“lay member”

Substitute

“relevant lay person”.

- (4) Section 20S(5)—

Repeal

“3”

Substitute

“12”.

- (5) After section 20S(5)—

Add

“(6) In this section—

relevant lay person (相關業外人士) means a lay member of the Council or a lay assessor.”.

9. Section 20U amended (Health Committee)

Section 20U(1)(g)—

Repeal

“1 of the 4”

Substitute

“2 of the 8”.

10. Section 21 amended (disciplinary powers of Council)

After section 21(6)—

Add

“(7) In relation to an inquiry, a reference in this section to Council (other than the first reference in subsection (4A), and in subsections (5), (5A) and (6)) is a reference to the members and assessors mentioned in section 21B(1) who participate in the inquiry.”.

11. Section 21B amended (meetings of Council for purpose of an inquiry)

(1) Section 21B—

Repeal subsection (1)

Substitute

“(1) At each meeting of the Council (within the meaning of section 21(7)) held for an inquiry under section 21, 5 persons form a quorum if—

- (a) at least one of them is a member of the Council mentioned in section 3(2) who is a registered medical practitioner;
- (b) at least one of them is a lay member of the Council mentioned in section 3(2), or a lay assessor; and
- (c) at least one of them is a registered medical practitioner mentioned in subsection (2).

(1A) In addition, the majority of the persons present at the meeting must be registered medical practitioners.”.

(2) Section 21B(2)(a), (b), (c), (d) and (e)—

Repeal

“2”

Substitute

“4”.

- (3) Section 21B(2)(f)—

Repeal

“4”

Substitute

“14”.

- (4) Section 21B—

Repeal subsection (3).

12. Section 33 amended (regulations)

Section 33(3)(b)—

Repeal

“the Legal Adviser to the Council”

Substitute

“a legal adviser”.

Part 3

Amendments to Medical Registration (Miscellaneous Provisions) Regulation (Cap. 161 sub. leg. D)

13. Section 6 amended (duties of Legal Adviser in inquiry by Council)

- (1) Section 6, English text, heading—

Repeal

“Legal Adviser”

Substitute

“legal adviser”.

- (2) Section 6(1)—

Repeal

“The Legal Adviser to the Council”

Substitute

“A legal adviser”.

- (3) Section 6(1)—

Repeal

“the Legal Adviser”

Substitute

“the legal adviser”.

- (4) Section 6(2)—

Repeal

“The Legal Adviser to the Council”

Substitute

“A legal adviser”.

Part 4

**Amendment to Medical Practitioners (Registration and
Disciplinary Procedure) Regulation (Cap. 161
sub. leg. E)**

14. Section 21 amended (representation)

Section 21(2), after “appoint”—

Repeal

“a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87)”

Substitute

“any solicitor or counsel, including a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87),”.

Schedule 1

[s. 2]

Amendments Relating to Establishment of More than One Preliminary Investigation Committee

Part 1

Amendments to Medical Registration Ordinance (Cap. 161)

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
1.	Section 20N(1), English text	the Preliminary Investigation Committee	a Preliminary Investigation Committee
2.	Section 20S(1) and (5), English text	the Preliminary Investigation Committee	a Preliminary Investigation Committee
3.	Section 20T(1), English text	The	A
4.	Section 20V(1)(a), English text	the Preliminary Investigation Committee	a Preliminary Investigation Committee
5.	Section 21(1) and	the Preliminary	a Preliminary

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
	(4A), English text	Investigation Committee	Investigation Committee
6.	Section 33(4)(a), English text	the Preliminary Investigation Committee	a Preliminary Investigation Committee
7.	Schedule 2, English text, section 5(2)	the Preliminary Investigation Committee	a Preliminary Investigation Committee

Part 2

Amendments to Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E)

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal	Substitution
1.	Section 2, English text, definition of <i>Committee</i>	the	a
2.	Section 2, English text, definition of <i>defendant</i>	the Preliminary Investigation Committee	a Preliminary Investigation Committee

Schedule 2

[s. 2]

**Amendments Relating to Appointment of More than
 One Legal Adviser to Medical Council**

Part 1

**Amendments to Medical Registration (Miscellaneous
 Provisions) Regulation (Cap. 161 sub. leg. D)**

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal	Substitution
1.	Section 7, English text, heading	Legal Adviser	legal adviser
2.	Section 7	the Legal Adviser to the Council	a legal adviser
3.	Section 7	, the Legal Adviser	, the legal adviser
4.	Section 8, English text, heading	Legal Adviser	legal adviser
5.	Section 8(1), English text	the Legal Adviser to the Council	a legal adviser

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal	Substitution
6.	Section 8(1)	that the Legal Adviser	that the legal adviser
7.	Section 8(2)	the Legal Adviser to the Council	the legal adviser

Part 2

**Amendment to Medical Practitioners (Registration and
 Disciplinary Procedure) Regulation (Cap. 161
 sub. leg. E)**

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal	Substitution
1.	Section 32(4)	the Legal Adviser to the Council	legal advisers

Explanatory Memorandum

This Bill mainly amends the Medical Registration Ordinance (Cap. 161) (*principal Ordinance*) in relation to the operation of the Medical Council of Hong Kong (*Council*).

2. Clause 3 adds the definitions of *lay assessor* and *legal adviser* to the principal Ordinance. With the amended section 3B, the Council may have more than one legal adviser. Meanwhile, section 20BA of the principal Ordinance as amended by clause 7 enables the Council to establish more than one Preliminary Investigation Committee (*Committee*). 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.
3. Clause 4 amends section 3 of the principal Ordinance to increase the number of lay members on the Council. A similar amendment is made by clause 9 to increase the number of lay members on the Health Committee of the Council.
4. Clause 6 amends section 14A of the principal Ordinance to extend the term of registration and renewal of medical practitioners with limited registration.
5. Clause 8 amends section 20S of the principal Ordinance so that—
 - (a) assessors may form part of the quorum of a meeting of the Committee;
 - (b) the number of lay persons on the Committee is increased; and
 - (c) the term of appointment of a lay person on the Committee is extended to not more than 12 months.
6. Clause 10 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.

7. Clause 11 amends the quorum of a meeting of the Council held for a disciplinary inquiry. It also increases the number of persons who may be appointed to the panel of assessors for conducting inquiries.
8. Clause 14 amends section 21 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) so that the Secretary for Justice may appoint any solicitor or counsel to assist in an inquiry.

**Complaint Investigation and Disciplinary Inquiry Mechanism
of the Medical Council of Hong Kong**

The Medical Council of Hong Kong (“MCHK”) handles complaints against registered medical practitioners in accordance with the procedures laid down in the Medical Registration Ordinance (Cap. 161) and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E). If, after due inquiry, MCHK is satisfied that any registered medical practitioner has been guilty of a disciplinary offence, MCHK may order that the name of the registered medical practitioner be removed from the General Register, or impose other disciplinary sanctions.

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

- (a) Initial consideration by the Preliminary Investigation Committee (“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;
- (b) Examination at PIC meetings of the complaint as well as explanation of the medical practitioner concerned, and the forming of a decision on whether or not there is a prima facie case to refer the complaint to MCHK for holding of 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 assessors, 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

complainant and the defending registered medical practitioner(s).

Implications of the Proposal

Financial and Civil Service Implications

Boards and Councils Office of the Department of Health

The proposal will have financial and civil service implications for the Boards and Councils Office of the Department of Health (“DH”), which provides secretariat and funding support to the Medical Council of Hong Kong (“MCHK”). The secretariat staff are civil servants under the establishment of DH. Costs for the day-to-day administration of MCHK, including the engagement of an outside lawyer to serve as the Legal Adviser to MCHK, are also met from funds provided by DH.

2. Under the current arrangement, all four lay Council members are required to serve on the Preliminary Investigation Committee (“PIC”) on a rotational basis for up to three months each turn. Any lay member who has taken part in PIC will be debarred from attending the subsequent disciplinary inquiry in respect of the same case. If the number of lay persons in MCHK and PIC is increased by four and one respectively and the number of assessors is increased substantially (from 14 to 34), it will enable MCHK and PIC to speed up complaint investigation and disciplinary inquiries by conducting meetings more frequently and in parallel, which would help reduce the backlog of cases.

The Department of Justice’s provision of legal service

3. The proposal will have financial and civil service implications for the Department of Justice (“DoJ”). Under the current regime, upon the request made by the Chairman of MCHK, a legal officer will be appointed to represent the Secretary of MCHK in a disciplinary inquiry.¹ The appointed legal officer will advise PIC on the sufficiency or

¹ Section 21(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, (Cap. 161E) provides -

“(2) On the application of the Chairman, the Secretary for Justice may appoint a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) to carry out the duties of the Secretary in respect of an inquiry.”

otherwise of evidence and vet the notice of inquiry, undertake the preparatory work relating to the inquiry as well as appearing before the inquiry to present the case on behalf of the Secretary of MCHK. The current practice is that DoJ also provides legal representation to MCHK in respect of litigation arising from appeals against its decisions made in inquiries and applications for judicial review of the decisions made by MCHK and its various committees.

4. On implementation of the proposal, the increase in caseload will require more financial resources and manpower on both the Medical Council Secretariat and DoJ. The workload of legal adviser(s) to MCHK will also increase accordingly. Additional resources, if considered necessary, will be sought with justifications in accordance with the established mechanism as appropriate.

Economic Implications

5. The proposal to facilitate the admission of non-locally trained doctors would help increase the supply of experienced medical practitioners. In the longer term, this would help meet the expected rising healthcare needs of the ageing population and broaden the pool of relevant experienced talents, thereby contributing to the sustainability of the healthcare system as a whole.

Sustainability Implications

6. The proposed changes to MCHK would enhance not only public accountability but also the capacity and capability of MCHK to speed up complaint investigation and disciplinary inquiry, while the proposal to facilitate admission of non-locally trained doctors would provide additional healthcare manpower which could in turn improve the provision of healthcare services, and bring about positive sustainability impact.