

## **Medical Registration (Amendment) Bill 2017**

### **Government's Responses to the Observations by the Assistant Legal Adviser**

This note sets out the Government's responses to the observations by the Assistant Legal Adviser (ALA) on the legal and drafting aspects of the English text of the Bill.

#### **Schedule 1: Legal issues**

##### Paragraph 1 of ALA's letter

2. The mission of the Medical Council of Hong Kong (MCHK) is to safeguard public interest. There are calls for increasing the number of lay members of MCHK in order to enhance the credibility and accountability of MCHK. MCHK currently has a total of 28 members<sup>1</sup>, comprising 24 doctor members and four lay members. Lay members only account for about 14% of the total membership of MCHK. On the composition of MCHK, the Medical Registration (Amendment) Bill 2017 (MR(A)Bill 2017) seeks to –

- (a) increase the number of lay Council members from four to eight so as to increase the transparency, accountability and credibility of MCHK. After the addition of four lay members, the percentage of lay members will increase from about 14% to 25%. For the four additional lay members, three of them are to be elected to the MCHK by patient-related organizations and one of them is to be nominated by the Consumer Council. Appointment by the Chief Executive (CE) is not required. The election arrangement for the three patient representatives will be prescribed in a subsidiary legislation; and

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<sup>1</sup> MCHK currently has a total of 28 members, with 24 members who are doctors (seven are elected by doctors, seven are nominated by Hong Kong Medical Association (HKMA) and elected by the Council members of HKMA, and Director of Health (DoH), University of Hong Kong (HKU), Chinese University of Hong Kong (CUHK), Hospital Authority (HA) and HKAM each nominates two for appointment by CE) and four lay members appointed by CE.

(b) Hong Kong Academy of Medicine (HKAM), which currently nominates two doctors for appointment by CE, should elect two doctors to be Council members of MCHK in accordance with the rules and regulations governing its operation, and appointment by CE is not required.

3. Over the past few months, we have discussed with various stakeholders, including the medical sector, patient groups and LegCo Members. After weighing the concerns and considerations of various parties, we have reached a general consensus with the key stakeholders on the composition of doctor members in MCHK. We propose amending the MR(A)Bill 2017 as follows –

- (a) The two HKAM seats should remain nominated and appointed by CE; and
- (b) The two seats nominated by the Director of Health (DoH) and Hospital Authority (HA) should each be reduced by one, with these two seats converted to two members to be nominated and elected by fellows of HKAM in accordance with the regulations or procedures of HKAM. The remaining seat of Department of Health and HA will be represented by DoH or representative and the Chief Executive of HA or representative respectively.

The total number of HKAM seats in MCHK will thus become four, while DH and HA will have one seat each.

4. The Government considers that it is of paramount importance to continue to uphold the professional autonomy of the medical profession by maintaining a majority of doctors in MCHK. Under the MR(A)Bill 2017 and the revised proposal, among the 32 members, doctors (22)<sup>2</sup> will still constitute the majority in MCHK (about 70%). In addition, we are cognizant of the concern of some doctor associations that the number of elected doctor members and other members in MCHK should be maintained at 1:1. The Government's original proposal to convert two members nominated by HKAM to members elected by HKAM in accordance with its regulation or procedures (which was the same as the

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<sup>2</sup> Assuming DoH or representative and the Chief Executive of HA or representative are not doctors

government's Committee Stage Amendment introduced to the MR(A)Bill 2016) has already addressed such concern. We consider that the revised proposal to reduce the two seats nominated by DH and HA by one so as to increase elected seats by two will continue to uphold the principle of professional autonomy of the medical profession.

5. Furthermore, as mentioned in paragraph 2(a) above, CE's appointment for the additional four lay members is not necessary. It may remove the concern previously raised by the medical fraternity in respect of the MR(A)Bill 2016 that the proposed composition of the MCHK amounts to challenging their professional autonomy as guaranteed under the Basic Law by tilting the balance within MCHK in favour of members appointed by the Government.

6. On the basis of the above discussion, the Government is of the view that the revised proposal under the MR(A) Bill 2017 is in compliance with BL 142(3).

#### Paragraph 2 of ALA's letter

7. The proposed new s.3(5AAB) of Cap. 161 concerning member described in ss.3(2)(ga), i.e. three Council members to be elected among patient organizations should also come into operation on a day to be appointed by the Secretary for Food and Health (SFH). We will amend by committee stage amendments (CSAs).

#### Paragraph 3 of ALA's letter

8. We will amend "sections 4(25)" to "sections 4(27)" by CSA.

#### Paragraph 4 of ALA's letter

9. The objects of HKAM include promoting the integrity of the medical profession, ethical conduct in the practice of medicine and its specialties and the improvement of health care for Hong Kong citizens (s.4 of Cap. 419) and that HKAM may do anything else which is conducive or incidental to the achievement of its objects (see s.7(q)). Electing members to take up the office of member of MCHK is within the objects

of HKAM and therefore HKAM may devise such procedures for electing members for that purpose.

Paragraph 5 of ALA's letter

10. As the procedures of returning members are different for appointed members and non-appointed members, there are different sets of rules on the time for commencement of office.

11. For appointed members, nominating authorities, at MCHK's invitation, will submit nominations before the expiry of the term of office for the appointed member. SFH, with the delegated authority from CE, will appoint members upon receiving the nominations from the nominating authorities. When SFH has approved the appointment, the Government will publish the appointment in Government's notice. The term of office of the succeeding appointed members commences immediately on the expiry of the term of office of the preceding members rather than on the gazettal date of the Government's notice so that there will be a seamless takeover.

12. For non-appointed members, the returning methods vary. Members coming from the Hong Kong Medical Association (HKMA) are nominated and then elected by its Council. HKAM and patient organizations will return their members to MCHK through election and Consumer Council through nomination, whereas MCHK will arrange elections of seven members to MCHK by all registered medical practitioners. What is in common in these different methods is that the term of office of the members all commence on the date of notification of their election or nomination in the Gazette.

Paragraph 6 of ALA's letter

13. As the procedures for returning members to MCHK are different for appointed members and non-appointed members, there are different policies for filling vacancies.

14. If an appointed member resigns or his/her office becomes vacant, the current practice is that the nominating authorities will be invited to

submit nomination for SFH's appointment under the delegated authority from CE.

15. For non-appointed members, the returning methods will follow the respective procedures set by HKMA and Consumer Council or under the Medical Practitioners (Electoral Provisions) (Procedures) Regulation (Cap. 161B) and the Patient Organizations Election Regulation to be made under s.33(3A) of Cap. 161 for filling a vacancy before the expiry of the term of office.

Paragraph 7 of ALA's letter

16. For filling a vacancy of an appointed member, his office commences on the date of his or her appointment by SFH (after receiving nominations from the nominating authorities). This is arranged administratively.

Paragraph 8 of ALA's letter

17. For an ordinary election/ nomination, there are standard election/nomination procedures which allow sufficient time for election/nomination arrangement before the expiry of the term of office for existing member. The term of office of the members commence on the date of notification of their election or nomination in the Gazette. The time gap between the outgoing member and his/her successor is minimal. For filling a vacancy which usually arises from an unforeseen circumstances, the relevant term is the rest of the term of the original member. To minimize the time gap of such vacancy, the term starts from the date of election, appointment or nomination.

Paragraph 9 of ALA's letter

18. S.3(9) was added because the proposed s.3(3AA)(a), (3AAB)(a) and (3AAC)(a) provides that the relevant MCHK members hold office from the date of notification in the Gazette of the member's election or nomination. For the proposed provisions to make sense, it is necessary to have a provision requiring the publication of the notification.

19. On the other hand, persons who are appointed, nominated or elected to fill a vacancy in MCHK office under s.3(5AA), (5AAC), (5AAE) are to serve the unexpired term. It is not necessary to explicitly pin down the starting date of the term of office. Using s.3(5AA)(a) as an example, s.3(5AAB) has already provided that the member who fills the vacancy holds office from the “date of election or appointment” until the end of the unexpired term. Similarly, s.3(5AAD), (5AAF) and (5B) have provided for the starting date of the office.

20. FHB considers that the appointment of a temporary member mostly arises from unforeseen circumstances. FHB thus considers that, by nature, it is not necessary to pin down the starting date of the office of the temporary member.

Paragraph 10 of ALA’s letter

21. The policy intent for (a) to (c) is that MCHK/committee of the Medical Council must not appoint to a committee/sub-committee a registered medical practitioner in respect of whom an order has been made under s.21 or 21A at any time. The same applies to MCHK’s appointment of a medical assessor. This is the established rule for appointment by MCHK and its committee.

22. For (d), the policy intent is that if a registered medical practitioner was a subject of an order under s.21A, i.e. he/she has been considered physically or mentally unfit by MCHK, he/she may still run for election/ be nominated/ be appointed as he/she may by then have recovered from the physical/ mental illness. If however a registered medical practitioner has been elected/ nominated/ appointed and becomes a member of the Council but is then made subject of an order under s.21A, the office of membership of that member may be declared vacant under ss.3(6) and (6A). A registered medical practitioner against whom an order under s.21 has at any time been made is not eligible for nomination, re-nomination, appointment, reappointment, election or re-election.

23. For (e), if an order under s.21 or 21A has been made against a registered medical practitioner during the nomination in an election or holding office, he/she will be disqualified from being nominated in an

election or holding office as he/she will not be able to function as a member.

Paragraph 11 of ALA's letter

24. Given the broad enabling provisions for making the subsidiary legislation in s.33(4)(a)(i) and s.33(4)(b) of Cap. 161, the subsidiary legislation may provide details of the quorum requirement under s.4(2A) of Cap. 161, which provides that at a meeting of MCHK for an election petition under Cap. 161B or relevant appeal hearing, the quorum is five members. The relevant sections in the subsidiary legislation made by virtue of s.33(4)(a)(i) and s.33(4)(b) of Cap. 161, namely s.37(1) of Cap. 161B, ss.43(4), 47(1) and 49(1) of Cap. 161E, provide that the quorum for the hearing of an election petition or appeal hearing is five members, including the MCHK Chairman. The requirement of including the MCHK Chairman in the five-member quorum is not inconsistent with s.4(2A) of Cap. 161. The quorum required remains five.

Paragraph 12 of ALA's letter

25. "The Council may not.....if" in s.20BB(5) and s.20BC(5) can also reflect the policy intent that no discretion is involved. S.20BB(4) and s.20BC(4) impose a duty on the Council to appoint the nominees provided by a nominating authority, unless the conditions in s.20BB(5) and s.20BC(5) apply. Thus, s.20BB(5) and s.20BC(5) are like limitations on the Council's duty under s.20BB(4) and s.20BC(4). "must" is usually used for a direct prohibition. S.20BA(4) and (11) are free-standing provisions. Hence, there is a difference between s.20BA(4) and (11) on one hand, and s.20BB(5) and s.20BC(5) on the other.

Paragraph 13 of ALA's letter

26. The work of Licentiate Committee (LC) and Ethics Committee (EC) does not directly involve disciplinary matters. Our policy intention is that MCHK can decide on the procedures and work of LC and EC administratively.

#### Paragraph 14 of ALA's letter

27. Paragraph 2(1) of Schedule 2 to Cap. 161 provides that a member of a committee established under Cap. 161 is eligible for re-election or reappointment, depending on the nature of his membership of the committee. There are different returning methods for members of a committee. For example, under s.20C of Cap. 161, LC consists of a chairman returned by election for appointment by MCHK (a chairman who shall be elected by the Council from among its members) and members returned by nominations (from the University of Hong Kong, The Chinese University of Hong Kong, HKMA, HA) for appointment by MCHK. The returning method for members of the Education and Accreditation Committee (EAC), EC and Health Committee (HC) are similar. Therefore, "the nature of his membership of the committee" refers to how the member is returned to the committee.

28. Our policy intent is that a member of a committee is eligible for further period of reappointment after the first reappointment. Hence, based on the power under paragraph 2(1) of Schedule 2 to Cap. 161, a member who is not a public officer of LC or EAC is eligible for further period of reappointment after the first reappointment, and a member of EC or HC is eligible for reappointment on the expiry of the member's period of appointment. Paragraph 2(1) of Schedule 2 to Cap. 161 provides that a member of a committee established under Cap. 161 is eligible for reappointment, and does not limit reappointment after the first reappointment.

#### Paragraph 15 of ALA's letter

29. Under s.7(3)(a) of Cap. 161E, on a declaration of an interest, the chairman of Preliminary Investigation Committee (PIC), deputy chairman or a member must not participate in any deliberation or decision regarding the case. Given such restriction, the member who has declared interest should also refrain from participating in any deliberation or decision regarding the case, including taking part in the election of a member to preside at the meeting or presiding at the meeting even he/she has been elected to.

Paragraph 16 of ALA's letter

30. Under s.21(1), the inquiry panel may make an award of costs of the complainant or the medical practitioner concerned. We consider that costs awarded may cover costs wasted.

Paragraph 17 of ALA's letter

31. Paragraphs 45-46 of ALA's letter refers also. Decision should include order. S.21(1)(i), (ii), (iii), (iiia), (iiib), (iv), (iva) and (v) are orders and s.21(1)(ivb) is a decision. We will amend s.34 of Cap. 161E by CSA to (a) include both "decision" and "order" as now provided in the existing Cap. 161 and (b) to cover the scenario where other persons who have appeared before the inquiry panel are invited to be present in the review to align it with s.21(4C) of Cap. 161).

Paragraph 18 of ALA's letter

32. S.21(4) of Cap. 161 is no longer in use and considered obsolete.

Paragraph 19 of ALA's letter

33. As there might be in existence a time gap between the making and the announcement of a decision, we will amend by CSA to include a "not-applicable provision" similar to the proposed new s.20X(5) of Cap. 161 for s.21(4CA).

Paragraph 20 of ALA's letter

34. S.21(5) in its present form leaves the Council with a discretion whether to publish the order, as may be varied on appeal, to issue a warning letter to the defendant in the Gazette. This is also the reason why s.21(5)(a) makes no reference to s.21(1)(v). We consider that no amendment is needed.

Paragraph 21 of ALA's letter

35.

- (a) It is possible that an inquiry panel may both make an order under s.21(1)(iv) and (iva) in the same inquiry if more than one order is made under (i) to (iiib). The exclusion of the order made under (iv) in (iva) means that an inquiry panel will not make an order under both (iv) and (iva) in respect of the same order made under (i) to (iiib).
- (b) s.21A(1)(c) and s.21A(1)(d) are mutually exclusive. Reference to ss. (1)(c) in s.21A(3) can be deleted. We will amend by CSA.
- (c) As explained under (a) above, order under s.21(1)(iva) and s.21(1)(iv) may be made in the same inquiry if more than one order is made under (i) to (iiib). "another order" in s.25(2) will include an order made under s.21(1)(iv).
- (d) In respect of the phrase "an order under s.21A(1)(d) is made at the same time as another order is made under s.21(A)(1)" in the proposed s.25(2) of Cap. 161, "another order" in the phrase does not include an order made under the proposed s.21A(1)(c).

Paragraph 22 of ALA's letter

36. We are of the view that the scope of assistance for HC's hearing should be the same as that of an inquiry under the proposed s.21. The use of "at the hearing" in s.24(2) does not prevent solicitor or counsel from representing a doctor throughout the hearing. "at [an occasion]" expresses an event. It equally has a sense of continuation of time.

Paragraph 23 of ALA's letter

37. S.25(3) only refers to restoration of a name to the General Register. If a medical practitioner wishes to re-include his or her name to the Specialist Register, he/she may have to apply under s.20K.

Paragraph 24 of ALA's letter

38. S.25(1A) does not require service of an order made under s.21(1)(v) but only service of the warning letter. The requirement of giving notice of appeal within 1 month of service of order under s.25(1)

therefore does not apply to the scenario where an order under s.21(1)(v) is made. An order under s.21(1)(v) is appealable. It is our policy intent that an order made under s.21(1)(v) should also be served. We will amend by CSA.

Paragraph 25 of ALA's letter

39. If a vacancy occurs in the membership of the panel, the Council must appoint another inquiry panel to hold a new inquiry. This is reflected in s.20X(4). Where the CA has to remit a case for a new inquiry, it is our policy intent that it will remit the case to a new inquiry panel where the original panel is not available and that the members of such new panel may be all new or partly new. Hence, for an inquiry panel with new members, the scenarios described in s.26(6) will exist, i.e. a member of the inquiry panel who was present in the former inquiry is not present in the current inquiry panel or a member of the inquiry panel present in the current inquiry was not present in the former inquiry.

Paragraph 26 of ALA's letter

40. Under s.6(1)(c) of Cap. 161E, a committee of the Council may refer a matter concerning a registered medical practitioner to PIC for its consideration or investigation. "a committee" in the provision will include HC. We consider that no amendment to s.33(4)(a)(ix) of Cap. 161 is necessary.

Paragraph 27 of ALA's letter

41. The proposed s.36(2) seeks to give SFH flexibility to make any necessary adjustments to ensure a smooth transition to the new regime. A precedent may be found in s.913 of (as read with Schedule 11 to) Companies Ordinance (Cap. 622).

Paragraph 28 of ALA's letter

42. During the scrutiny of the Medical Registration (Amendment) Bill 2016, there were views that the number of assessors should be sufficient and the composition of the assessors should be more diversified and

representative. Hence, the additional categories of assessors are proposed after considering the deliberations of the MR(A)Bill 2016 and the Tripartite Platform on Amendments to the Medical Registration Ordinance.

Paragraph 29 of ALA's letter

43. We consider that the PIC chairman and deputy chairman of the former PIC can direct the case be proceeded under both s.9(1) and 10. Amendments will be introduced to expand the scope of the proposed new s.5(2)(a) of the proposed new Schedule 6. We will amend by CSA.

Paragraph 30 of ALA's letter

44. (a) S.20S(2A) should be excluded.  
(b) We agree to exclude s.20BA(5).

We will amend by CSA.

Paragraph 31(a) of ALA's letter

45. In practice, there is no referral of cases from HC or EAC to PIC. There is thus no need to provide for any transitional and savings (T&S) arrangement in this regard.

Paragraph 31(b)(i) and (ii) of ALA's letter

46. Our policy intent is to let inquiry panels established under the new regime hear the case. Hence, for cases where Former PIC has referred to MCHK for inquiries but no inquiry meetings have been held, MCHK will establish an inquiry panel to handle such cases. The same applies to cases directed by MCHK Chairman under s.16(1) of Cap. 161E. Hence, it is not necessary to save the old "Council" for this purpose.

Paragraph 31(c) of ALA's letter

47. S.6(1)(b) also applies if more than one meeting has been held. "a meeting" does not refer to the numerical sense. "a" is only an article. In reality, the presiding officer is the same throughout the meetings held for an inquiry. The presiding officer is the Chairman of the Council or

temporary chairman elected under s.3A of Cap. 161. The situation of different persons having performed the function of the president of the meetings of the Council will not arise.

Paragraph 31(d) of ALA's letter

48. We agree that s.20BD(1)(a) should be excluded. We will amend by CSA.

Paragraph 32(a) of ALA's letter

49. We will add T&S provisions to provide for review of decision or order by the inquiry Council. We will amend by CSA.

Paragraph 32(b) of ALA's letter

50. The publication of a s.21 order in the Gazette is done by the full Council under both the current and the new regime. The proposed amendment to s.21(1) relevant to the issue raised is replacement of "Council" by "inquiry panel". The question is whether the Council still has an obligation or a right under ss. 21(5), (5A) and (6) after the Commencement of the Amendment Bill to publish an order made by the Council before the Commencement. According to s.23(c), Interpretation and General Clauses Ordinance, Cap. 1, a right or an obligation acquired, accrued or incurred under an ordinance that has been repealed in whole or in part is not affected by the repeal. "repeal" is defined in s.3 of Cap. 1 as to include "replace". Therefore by virtue of s.23(c) Cap. 1, the obligation and right to publish after Commencement an order made by the Council before the Commencement will not be affected. Thus, no T&S provisions are needed.

Paragraph 32(c) of ALA's letter

51. For referral made under s.6(4) of Cap. 161E, administrative measures can be made to shorten the lead time on logistics arrangements. The scenario raised by ALA may be avoided. We consider that amendment is not necessary.

Paragraph 32(d) of ALA's letter

52. Our policy intent is that the referral back to the PIC under s.15(1)(a) of the amended Regulation (s.6(4)(d) of Schedule 6 provides that s.15 applies) should be to the former PIC. We will amend by CSA.

Paragraph 32(e) of ALA's letter

53. We will amend by CSA to include under s.6 of Schedule 6 cases remitted by the Court of Appeal (CA) to the Council for inquiries before the Commencement.

Paragraph 33 of ALA's letter

54. The effect of s.7 is that if the situation referred to in that section (i.e. the appeal period straddles the commencement date) occurs, the old Council will migrate to the regime of inquiry panel because s.7 provides that the appeal can be made as if the order was made by an inquiry panel.

55. If CA remits the case under s.26(1A)(b)(i), it will be the deemed panel which will conduct the new inquiry. We will consider introducing CSAs in this respect.

Paragraph 34 of ALA's letter

56. We will amend by CSA to amend "may" in the existing section 24(4)(a) of Cap. 161B to "must" for consistency with the proposed s.3(9) of Cap. 161.

Paragraph 35 of ALA's letter

57. For s.8(1) of Cap. 161B, we will amend by CSA to add "who are registered medical practitioners" after "members of the Council".

58. The existing practice is that the Government will publish a notice in the Gazette for nomination or election to fill the vacancy. We will follow the existing practice and consider that no amendment is necessary.

### Paragraph 36 of ALA's letter

59. The meetings of the Medical Council or inquiry panel referred to in the proposed s.6(1)(a) to (c) and not covered in the proposed s.8(1)(a) to (c) of Cap. 161D are meetings of the Council held for considering whether to make an order under s.19B(2) or 21A(1) and meetings of an inquiry panel for reviewing its decision under s.21(4B). The medical practitioner concerned will not present at such meetings. Hence, the proposed s.8(1A) to (1C) do not apply to such meetings.

### Paragraph 37 of ALA's letter

60. Section 9 should apply even if the case has been referred to HC under s.6 provided that the chairman/ deputy chairman of the PIC has directed under s.6(5) that the case be investigated further. We will amend by CSA to refine the wording of the existing s.9 for the sake of clarity. We consider that T&S is not necessary. Cases are referred to HC by the chairman/ deputy chairman of the PIC rather than by PIC. The report back by HC is similarly to the chairman/ deputy chairman of the PIC but not the PIC. After such report back, the chairman/ deputy chairman will decide whether the case should be investigated further and whether such a decision has or has not yet made, s.5 of Schedule 6 applies (see s.5(1) and (2)).

61. On the other hand, s.10(1) should not apply where the case has already been referred to HC under s.6.

### Paragraph 38 of ALA's letter

62. Under s.13(1) (whether the existing law or the amended provision), the Secretary is not a party who receives the notification under subsection (1) (whether (1)(a) or (1)(b)). Thus, we will amend by CSA to refine s.13(4) by requiring the Secretary to fix the date of inquiry at least within 2 months after the chairperson of the inquiry panel so directs under the proposed s.13(2).

Paragraphs 39 and 40 of ALA's letter

63. Our policy intent is that declaration of interest is required for all inquiries, including an inquiry held by an inquiry panel under the proposed section 21(1) of Cap. 161. S.13A of Cap. 161E will be amended accordingly.

Paragraph 41 of ALA's letter

64. The present s.20Q of Cap. 161 provides that EC can study and review any case relating to medical ethics and professional conduct on its own motion. Any party, including an inquiry panel and its chairperson, can refer a matter to EC and EC can on its own motion decide whether to study the matter or not.

Paragraph 42 of ALA's letter

65. Not all legal officers are admitted before the Court of First Instance. Our policy intent is not to require a legal officer under s.21(2) of Cap. 161E to be a solicitor or counsel. We will amend by CSA to refine s.21(2) to follow the wording of s.50.

Paragraph 43 of ALA's letter

66. S.32 of Cap. 161E refers to calling upon members to "signify their votes by raising their right hands" and "declare his vote". Given that each member has to vote and there is an odd number of members in an inquiry panel, the scenario of equal vote will not appear and s.32(3) will not be necessary. We will amend by CSA.

Paragraph 44 of ALA's letter

67. "as the case may be" has qualified or limited the types of actions that the inquiry panel can take in the circumstances in s.33(4) even if the subsection adopts "may". Depending on whether the case is referred to HC before the opening or conclusion of an inquiry under s.33(1), the panel must either commence or resume the inquiry. It cannot sit on the matter. The amendment to s.33(4) is only a language refinement and it has not

changed the legal effect or substance of the existing provision.

Paragraphs 45 and 46 of ALA's letter

68. As stated in paragraph 31, we will introduce CSA to amend s.34 of Cap. 161E to (a) include both “decision” and “order” as now provided in the existing Cap. 161 and (b) to cover the scenario where other persons who have appeared before the inquiry panel are invited to be present in the review to align it with s.21(4C) of Cap. 161).

Paragraph 47 of ALA's letter

69. We will amend by CSA to delete deputy chairman in s.37(6) of Cap. 161E.

Paragraph 48 of ALA's letter

70. S.38(4) provides that if HC finds that the registered medical practitioner is physically or mentally unfit to practise medicine, surgery or midwifery, the Committee must proceed to make such recommendation to the Council under section 20V of Cap. 161 as it thinks fit. The Council will then decide whether to accept the recommendation (removal of name from the General Register) under s.20W of Cap. 161.

71. On the other hand, s.38(6) of Cap. 161E provides that if, following a referral, the HC finds that the registered medical practitioner is physically or mentally fit to practise medicine, surgery or midwifery, HC must certify its opinion in writing and report back to the chairman of PIC concerned or the chairperson of the inquiry panel concerned, as the case may be.

72. Therefore if the finding is that the medical practitioner is physically or mentally unfit to practise medicine, the decision to remove the name of the medical practitioner from the General Register will have to be made by the Council under s.20W rather than by the inquiry panel under s.21. We will amend by CSAs to reflect this position.

## **Schedule 2: Drafting Issues**

### Paragraph 1 of ALA’s letter – Clause 3 of the Bill

We will amend the section reference in the definition of *Secretary* to “section 3B(1)”.

### Paragraph 2 of ALA’s letter

2. We note similar usage of “The University of Hong Kong” and “The Chinese University of Hong Kong” in other chapters of the Laws of Hong Kong, for example, in the definition of *Postgraduate Certificate in Laws* in s.2(1) of the Legal Practitioners Ordinance (Cap. 159), s.2 of the Education Ordinance (Cap. 279), the definition of *clinic* in s.2(a) of the Medical Clinics Ordinance (Cap. 343), etc. Such usage may be derived from the respective ordinances of the two universities (see s.2(1) of the University of Hong Kong Ordinance (Cap. 1053) defining “University” as “the University of Hong Kong” and s.4(1) of The Chinese University of Hong Kong Ordinance (Cap. 1109)). We consider it **not** necessary to amend s.3(2)(d).

### Paragraph 3 of ALA’s letter

3. We have decided to use the word “nominated” after taking into account the deliberation of the Tripartite Platform on Amendments to the Medical Registration Ordinance. Our policy intent is that appointment by the Government is not necessary for this additional lay member returned by Consumer Council.

### Paragraph 4 of ALA’s letter

4. The policy intent has been clearly reflected by the proposed s.3(3AA) and s.3(5AB). For tidiness’ sake, we will consider deleting “or elected to fill a vacancy caused by an elected member ceasing to be a member in accordance with subsection (4) or (6A)” in the amended s.3(3A).

Paragraph 5 of ALA's letter

5. The term of office of a member nominated or elected to fill a relevant vacancy is the **rest** of the term of office i.e. from the date of nomination or election until the end of the unexpired term. The **full** term of a nominated or elected member is three years from the date of notification in the Gazette of the member's nomination/election. Please refer to paragraphs 10-17 of our response to Schedule 1 of ALA's letter.

Paragraph 6 of ALA's letter

6. In view of our response to paragraph 4 above, the proposed amendment is not necessary.

Paragraph 7 of ALA's letter

7. S.3C(1) is about members appointed by CE. The person "who is disqualified from holding office under s.3 or who has been removed from office under that section" refers to the situations described in s.3(6) and (7) of Cap. 161.

8. S.3C(1A) is about members who are not appointed by CE. The person "who is disqualified from holding office under s.3 or who has been removed from office under that section" refers to the situations described in s.3(6A) and (7) of Cap. 161.

9. "disqualified from" mentioned in that statement should refer to "not eligible for appointment, reappointment, election or re-election" under s.3(7) and "removed from office" to vacating the office of membership under s.3(6) and (6A). No amendment is necessary.

Paragraph 8 of ALA's letter – Clauses 6 and 7 of the Bill

10. Under the existing s.3(2) of Cap. 161, some members are appointed and some not (see ss.3(2)(i) and (j)).

11. As far as s.3C(1A) is concerned, we will keep "appointment" as it is our policy intent for the Council to only appoint persons qualified for

appointment as a temporary member as the time taken for returning a temporary member in such manner will be much shorter.

12. As to s.4(3), it is our policy intent that any defect in nomination or election of a member should not affect validity of the proceedings of the Council. Amendment will be made to the provision accordingly.

Paragraph 9 of ALA's letter

13. We are fine with the proposed addition of a comma. We will amend by CSA.

Paragraphs 10 and 11 of ALA's letter

14. "order that such order take effect" in ss.21(1)(iva) and 21A(1)(d) is in order. The verb "take effect" appears in the subjunctive mood, which is a traditional English form for expressing a command, wish or hypothesis. In these two sections, the mandative subjunctive is used to mandate an action, and this construction typically follows verbs such as "order", "recommend", "demand", "request", etc.

Paragraph 12 of ALA's letter – Clause 31(7) of the Bill

15. We will remove "the procedure to be followed in relation to".

Paragraph 13 of ALA's letter – Clause 34 of the Bill

16. We will amend to "The Hong Kong Medical Association".

Paragraph 14 of ALA's letter – Clause 34 of the Bill

17. Hong Kong Doctors Union (Registration No. 1011) and Hong Kong Public Doctors' Association (Registration No. 757) are registered trade unions in Hong Kong under Trade Unions Ordinance (Cap. 332). We consider that it is not necessary to add further information to describe them in Schedule 5.

Paragraph 15 of ALA's letter

18. This part will be deleted under government CSA. It is not relevant anymore.

Paragraphs 16 and 17 of ALA's letter – Clause 34 of the Bill

19. The assessors with unexpired term will continue to hold office after the enactment of the Amendment Bill. The members with unexpired term will be counted as assessors nominated by the relevant nominating authorities. S.3 of the proposed new Schedule 6 is only a transitional provision dealing with any assessor whose term of office may not have expired when the amendment Ordinance commences. We consider that no amendment is necessary.

Paragraph 18 of ALA's letter – Clause 34 of the Bill

20. In inquiry Council meetings, the Chairman of the Medical Council presides over the meeting. We consider that the phrase in s.6(2)(b) is appropriate and no amendment is necessary.

Paragraph 19 of ALA's letter – Clause 35(4) of the Bill

21. We are fine with the proposed addition of “a”. We will amend by CSA.

Paragraph 20 of ALA's letter – Clause 41 of the Bill

22. There is no substantive difference between “as a candidate and for election” and “as a candidate in an election”. However, since paragraph 2 of Part II of Form 2 in Schedule 1 to Cap. 161B refers to s.4(1) in which “as a candidate in an election” is adopted, we are fine with the proposed change from “as a candidate and for election” to “as a candidate in an election”. We will amend by CSA.

Paragraph 21 of ALA's letter

23. Section headings should be descriptive but not attempt to be a comprehensive summary of the contents of the section. It suffices to indicate the broad scope of the provision. We consider that no amendment is necessary.

Paragraph 22 of ALA's letter

24. We will consider making suitable amendments to s.13A by CSA.

Paragraph 23 of ALA's letter

25. The provisions in a piece of subsidiary legislation complement those in a primary Ordinance. The proposed s.13A of Cap. 161E has made it clear that the requirements of, and the procedures for, declaration of interest apply to an inquiry panel that reviews its decision or order under s.21(4B) of Cap. 161. We consider that no amendment is necessary.