

LEGISLATIVE COUNCIL BRIEF

Medical Registration Ordinance (Chapter 161)

Medical Registration (Amendment) Bill 2017

INTRODUCTION

At the meeting of the Executive Council on 16 May 2017, the Council ADVISED and the Chief Executive ORDERED that the Medical Registration (Amendment) Bill 2017 (“MR(A)Bill 2017”) at **Annex A** should be introduced into the Legislative Council (“LegCo”) to –

- (a) improve the complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong (“MCHK”);
- (b) increase lay membership in MCHK; and
- (c) enable MCHK to approve applications for limited registration for a period from not exceeding one year to not exceeding three years.

2. The summary of the MR(A)Bill 2017 is at **Annex B**.

JUSTIFICATIONS

Improving the complaint investigation and disciplinary inquiry mechanism of MCHK

3. The current complaint investigation and disciplinary inquiry mechanism of MCHK is prescribed by law with legal obstacles¹ that are

¹ Bottlenecks arising from the provisions of the Medical Registration Ordinance -

- (a) Capacity constraint of Preliminary Investigation Committee (PIC) – there can only be one PIC;
- (b) Inquiry meeting – there can only be one at a time;
- (c) Quorum requirement - mandatory presence of lay member for quorum purpose;
- (d) Limited roles for assessors - assessors cannot participate in PIC;

clogging up the system. As a result, there is a backlog of cases resulting in prolonged period for conclusion of the cases. As at the end of 2016, the total backlog of cases handled by MCHK was about 940, with 560, 280 and 100 cases at Pre-Preliminary Investigation Committee (“Pre-PIC”)², Preliminary Investigation Committee (“PIC”) and inquiry stages respectively. The latest estimate is that it would take about 72 months to conclude a case requiring disciplinary inquiry. Increase in resources and administrative support can only provide limited relief. The detailed information on the complaint handling and disciplinary inquiry mechanism of MCHK is at **Annex C**.

4. There is pressing urgency to address legal obstacles through legislative amendments to substantially improve the efficiency and enhance flexibility of the mechanism with a view to completing complaint investigation and disciplinary inquiry within a reasonable period of time. In light of the above, we propose that a new mechanism should be drawn up based on the following key principles -

- (a) a modern mechanism separate from but under the auspices of MCHK, i.e. Inquiry Panels (“IP”) to be set up under MCHK to conduct inquiry;
- (b) in order to set up more than one PIC and IP, there is a need to expand the pool of assessors and empower them to sit on both PIC and IP, to have more than one legal adviser of the Council and to enable the appointment of any solicitor or counsel to carry out the duties of the Secretary in respect of an inquiry. The pool of assessors should be sufficiently large for formation of enough PICs and IPs to handle complaints within a reasonable time and the composition of assessors should be balanced and diversified;
- (c) in recognition of professional autonomy, MCHK should be empowered to decide on the number of PIC and IP to be set up, to appoint members (who can be Council members and/or assessors) including chairman and deputy chairman of PIC and chairperson of IP, and set the qualification requirements for assessors;

(e) There can only be one Legal Adviser; and

(f) Department of Justice has no flexibility to engage outside lawyers to represent the Secretary of MCHK in inquiries.

² Initial consideration by 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.

- (d) in line with the principle of “peer review”, doctors should constitute the majority of PIC and IP as of now; and
- (e) lay participation should be increased throughout the process.

Composition of MCHK

5. On the composition of MCHK, we propose 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 Council by patient-related organizations recognized by the Permanent Secretary for Food and Health (Health) 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, with proposed details at **Annex D**; and
 - (b) Hong Kong Academy of Medicine (“HKAM”), which currently nominates two doctors for appointment by CE, should elect two doctors to be the Council members of MCHK in accordance with the rules and regulations governing its operation, and appointment by CE is not required.

6. The mission of MCHK is to safeguard public interest. MCHK currently has a total of 28 members³, comprising 24 doctor members and four lay members. Lay members only account for about 14% of the total membership of MCHK. Considering that the composition of the Council should reflect its mission, there are calls for increasing the number of lay members to enhance the credibility and accountability of the Council.

7. MCHK is responsible for setting professional standards and

³ 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.

ensuring professional competency of doctors. To ensure that MCHK can well discharge this function, we have reviewed the existing composition of the 24 doctor members of MCHK. Among the 24 doctor members, seven are directly elected by doctors, seven are elected by the Hong Kong Medical Association (HKMA) Council members. For the remaining ten doctor members, the Director of Health (DoH), University of Hong Kong (HKU), Chinese University of Hong Kong (CUHK), Hospital Authority (HA) and HKAM each nominates two members for appointment by CE⁴. HKAM, with 15 Colleges and around 7 500 Fellows, is a statutory body established under the Hong Kong Academy of Medicine Ordinance (Cap. 419). It has statutory power to organize, monitor, assess and accredit all medical specialist training and to oversee the provision of continuing medical education for specialists. Having regard to the principle of professional and academic autonomy and the structure of HKAM, we propose that HKAM, who currently nominates two doctors for appointment by CE, elect two doctors to be the Council members of MCHK in accordance with the rules and regulations governing its operation, and appointment by CE is not required.

8. Under the MR(A)Bill 2017, among the 32 members, doctors (24) will still constitute the majority in MCHK (75%). Elected doctors (16) will account for half of the membership, elected members (doctors and lay) and member nominated by Consumer Council) (19+1) will account for about two-thirds (62.5%) and those appointed by the Government (12) will only account for about one-third (37.5%).

	Existing Proportion to total no. of members (%) (Total: 28 members)	MR(A)Bill 2017 Proportion to total no. of members (%) (Total: 32 members)
Doctor members	86% (24 doctors)	75% (24 doctors)
Lay members	14% (4 lay members)	25% (8 lay members)
Elected doctor members	50% (14 doctors)	50% (16 doctors)
Elected members (doctors and lay) + nominated member by the Consumer Council	50% (14)	approximately $\frac{2}{3}$ (20)

⁴ The appointment authority has been delegated to the Secretary for Food and Health since 2007.

* <u>no</u> Government's appointment required		
Appointed members (doctors and lay)	50% (14)	approximately $\frac{1}{3}$ (12)

Extending the validity period and renewal period of limited registration from not exceeding one year to not exceeding three years

9. Specified institutions (including Department of Health (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 only 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 only around 105⁵. The detailed information on limited registration is at **Annex E**. We propose to extend the validity period and renewal period of limited registration from not exceeding one year to not exceeding three years.

THE BILL

10. The main provisions are –
- (a) Clause 4 provides for the increase of the number of lay members from four to eight (similar amendments are made by clauses 18 and 20 to increase the number of lay persons who may serve on PICs and Health Committee) and converts the existing members nominated by HKAM to elected members. For the four additional lay members, three of them are to be elected to the Council among patient-related organizations (*patient representatives*) and one of them is to be nominated by the Consumer Council;
 - (b) Clause 31 empowers the Permanent Secretary for Food and Health (Health) to make election arrangements for the three patient representatives by subsidiary legislation;
 - (c) Clause 5 provides that the Council may have more than one legal adviser and a deputy secretary may carry out the duties

⁵ The annual average number of doctors employed by DH, HA, HKU and CUHK under limited registration is 0, 12, 36 and 57 respectively.

of the Secretary of MCHK in respect of an inquiry held under section 21 (*disciplinary inquiry*);

- (d) Clause 9 extends the validity period of registration and renewal of medical practitioners with limited registration from not exceeding one year to not exceeding three years;
- (e) Clause 13 adds a new Part IIIAAB to the effect that assessors can be appointed to PIC and IP and that the Council may specify requirements relating to the qualifications and experience of an assessor. Clause 34 adds a new Schedule 5 setting out the nominating authorities that may nominate lay assessors and medical assessors. The period of office of assessors is extended to not exceeding three years;
- (f) Clause 12 provides that the Council may establish more than one PIC. Clause 18 changes the composition and quorum of PIC and align the term of appointment and re-appointment of all PIC members to not exceeding 12 months;
- (g) Clause 22 provides for the Council's power to appoint an IP to conduct an inquiry for cases referred by PIC and the composition of an IP. Clause 23 provides that the disciplinary powers that the Council may exercise are transferred to an IP;
- (h) Clause 63 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 duties of the Secretary of MCHK in respect of disciplinary inquiry; and;
- (i) Clause 34 adds a new Schedule 6 to provide for transitional matters.

There are other related amendments to fine-tune the existing complaint handling and disciplinary inquiry mechanism and minor technical amendments in the MR(A)Bill 2017.

LEGISLATIVE TIMETABLE

11. The MR(A)Bill 2017 will be published in the Gazette on 2 June 2017 and introduced into LegCo on 7 June 2017.

IMPLICATIONS OF THE PROPOSAL

12. 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 F**. The proposal does not have significant family, gender or environmental implications.

PUBLIC CONSULTATION

13. The Government has set up a tripartite platform i.e. the Tripartite Platform on the Amendments to the MRO, comprising doctors, representatives of patients' interests and consumers' interests, and LegCo Members to promote understanding and communication, as well as provide views and deliberate on amendment proposals to MRO. We have consulted MCHK of the amendment proposals and met with stakeholders including medical profession and patient groups to hear their views.

PUBLICITY

14. A spokesman from the Food and Health Bureau will be available to handle press enquiries.

ENQUIRIES

15. 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 May 2017

Medical Registration (Amendment) Bill 2017

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A BILL

To

Amend the Medical Registration Ordinance and its subsidiary legislation to change the composition of the Medical Council of Hong Kong; to change the arrangements for preliminary investigation, disciplinary inquiries and Health Committee meetings; to extend the period of limited registration of medical practitioners; and to provide for related or minor technical amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Medical Registration (Amendment) Ordinance 2017.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette—
 - (a) section 4(2), (7) and (11);
 - (b) sections 4(25) and 7 (in so far as they relate to section 3(2)(ga) of the Medical Registration Ordinance (Cap. 161) as added by section 4(2));

- (c) section 34 (in so far as it relates to item 1 of Table 1 in Schedule 5 to the Medical Registration Ordinance (Cap. 161) as added by that section);
- (d) sections 42(4) and 44(2) (in so far as they relate to section 3(2)(ga) of the Medical Registration Ordinance (Cap. 161) as added by section 4(2)).

2. Enactments amended

The enactments specified in Parts 2 to 5 are amended as set out in those Parts.

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

“*assessor* (審裁員) means—

- (a) a lay assessor; or
- (b) a medical assessor;

inquiry panel (研訊小組) means an inquiry panel appointed under section 20X(1);

lay assessor (業外審裁員) means an assessor appointed under section 20BB(4);

legal adviser (法律顧問) means a legal adviser appointed under section 3B(1);

medical assessor (醫生審裁員) means an assessor appointed under section 20BC(4);

Medical Practitioners Election Regulation (《醫生選舉規例》) means the Medical Practitioners (Electoral

Provisions) (Procedure) Regulation (Cap. 161 sub. leg. B);

mental hospital (精神病院) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136);

patient organization (病人組織) means an organization that satisfies the eligibility requirements prescribed by the Patient Organizations Election Regulation;

Patient Organizations Election Regulation (《病人組織選舉規例》) means the regulation made under section 33(3A);”.

4. Section 3 amended (establishment and composition of Council)

- (1) Section 3(2)—

Repeal

“shall consist of”

Substitute

“is to consist of the following members”.

- (2) After section 3(2)(g)—

Add

“(ga) 3 lay members elected under the Patient Organizations Election Regulation by patient organizations;”.

- (3) Before section 3(2)(h)—

Add

“(gb) 1 lay member nominated by the Consumer Council;”.

- (4) Section 3(2)(h)—

Repeal

everything after “practitioners”

Substitute

“elected by the Academy of Medicine in accordance with its regulations or procedures;”.

- (5) Section 3(2)(j), after “under the”—

Add

“Medical Practitioners”.

- (6) Section 3(3)—

Repeal

“, (g) or (h) shall hold office for a period of”

Substitute

“, (db) or (g) holds office for”.

- (7) After section 3(3)—

Add

“(3AA) Subject to subsections (4) and (6A), a member described in subsection (2)(ga)—

- (a) holds office for 3 years from the date of notification in the Gazette of the member’s election; and

- (b) is eligible for re-election.”.

- (8) Before section 3(3A)—

Add

“(3AAB) Subject to subsections (4) and (6A), a member described in subsection (2)(gb)—

- (a) holds office for 3 years from the date of notification in the Gazette of the member’s nomination; and

- (b) is eligible for re-nomination.

(3AAC) Subject to subsections (4) and (6A), a member described in subsection (2)(h)—

- (a) holds office for 3 years from the date of notification in the Gazette of the member’s election; and

- (b) is eligible for re-election.”.

- (9) Section 3—

Repeal subsection (3A)

Substitute

“(3A) Subject to subsections (4) and (6A), a member described in subsection (2)(i) or (j), other than a member described in subsection (5C) or (5D) or elected to fill a vacancy caused by a person ceasing to be a member in accordance with subsection (4) or (6A)—

- (a) holds office for 3 years from the date of notification in the Gazette of the member’s election; and

- (b) is eligible for re-election.

(3AB) Subject to subsection (5AAE), the Academy of Medicine must, within 3 months before the term of office of a member described in subsection (2)(h) expires, conduct an election in accordance with its regulations or procedures to elect a person to succeed that member.”.

- (10) Section 3(3B)—

Repeal

“expiry of the period of office of a member of the Council holding office under subsection (2)(i)”

Substitute

“term of office of a member described in subsection (2)(i) expires”.

- (11) After section 3(5)—

Add

“(5AA) If, before the term of office of a member described in subsection (2)(ga) expires, the member resigns or the office otherwise becomes vacant, and—

- (a) the unexpired term of the office is not less than one year when the vacancy arises, an election under the Patient Organizations Election Regulation must be conducted to fill the vacancy; or
- (b) the unexpired term of the office is less than one year when the vacancy arises, the Council must, as soon as possible, on the nomination of any lay member of the Council, appoint a person who, in its opinion, represents the interests of patients to fill the vacancy.”.

(12) Before section 3(5A)—

Add

“(5AAB) A member elected or appointed to fill a vacancy under subsection (5AA) holds office from the date of election or appointment until the end of the unexpired term.

(5AAC) If, before the term of office of a member described in subsection (2)(gb) expires, the member resigns or the office otherwise becomes vacant, the Consumer Council must, as soon as possible, nominate a person to fill the vacancy.

(5AAD) A member nominated to fill a vacancy under subsection (5AAC) holds office from the date of nomination until the end of the unexpired term.

(5AAE) If, before the term of office of a member described in subsection (2)(h) expires, the member resigns or the office otherwise becomes vacant, the Academy of Medicine must, as soon as possible, conduct an election

in accordance with its regulations or procedures to fill the vacancy.

(5AAF) A member elected to fill a vacancy under subsection (5AAE) holds office from the date of election until the end of the unexpired term.”.

(13) Section 3(5A)—

Repeal

“expiry of the office of a member holding office under subsection (2)(i)”

Substitute

“term of office of a member described in subsection (2)(i) expires”.

(14) Section 3(5A)—

Repeal

“expiry of the original term of office of the person whom he succeeds”

Substitute

“end of the unexpired term”.

(15) Section 3(5B)—

Repeal

“expiry of the period of office of a member holding office under subsection (2)(j)”

Substitute

“term of office of a member described in subsection (2)(j) expires”.

(16) Section 3(5B)(a)—

Repeal

“Election Regulation shall be conducted for the purpose of filling that vacancy;”

Substitute

“Medical Practitioners Election Regulation must be conducted to fill the vacancy; or”.

- (17) Section 3(5B)(b), after “of the Council”—

Add

“who is a registered medical practitioner”.

- (18) Section 3(5B)—

Repeal

“expiry of the original term of office of the person whom he succeeds”

Substitute

“end of the unexpired term”.

- (19) Section 3(5D), after “with the”—

Add

“Medical Practitioners”.

- (20) Section 3(6)(b), Chinese text—

Repeal

“的標的”

Substitute

“所針對的人”.

- (21) Section 3(6)(c)—

Repeal

“or makes an arrangement with his creditors”

Substitute

“, or enters into a composition or arrangement with his or her creditors without paying them in full”.

- (22) Section 3(6A)—

Repeal

“an elected member or any member appointed by the Council”

Substitute

“a member of the Council, other than a member appointed by the Chief Executive”.

- (23) Section 3(6A)(b), Chinese text—

Repeal

“的標的”

Substitute

“所針對的人”.

- (24) Section 3(6A)(c)—

Repeal

“or makes an arrangement with his creditors”

Substitute

“, or enters into a composition or arrangement with his or her creditors without paying them in full”.

- (25) Section 3(7)—

Repeal

“shall not be eligible for”

Substitute

“is not eligible for nomination, re-nomination,”.

- (26) Section 3—

Repeal subsection (8).

- (27) At the end of section 3—

Add

“(9) After a person is elected or nominated to hold office under subsection (2)(ga), (gb), (h) or (i), the Secretary must publish a notification in the Gazette of the person’s election or nomination.”.

5. Section 3B amended (Secretary of, and legal adviser to the Council)

(1) Section 3B—

Renumber the section as section 3B(1).

(2) Section 3B(1)—

Repeal

“, one or more deputy secretaries and a Legal Adviser”

Substitute

“and one or more deputy secretaries and legal advisers”.

(3) After section 3B(1)—

Add

“(2) Without limiting any other duties of a deputy secretary under this Ordinance, a deputy secretary may carry out the duties of the Secretary in respect of an inquiry under section 21.”.

6. Section 3C amended (temporary members)

(1) Section 3C(1)—

Repeal

“his duties and exercise his powers as a member of the Council”

Substitute

“the member’s duties and exercise the member’s powers”.

(2) Section 3C(1A)—

Repeal

everything after “If any” and before “for any”

Substitute

“member of the Council who is not appointed by the Chief Executive is, because of illness, absence from Hong Kong or any other reason, unable to perform the member’s duties and exercise the member’s powers”.

7. Section 4 amended (meetings of the Council)

(1) Section 4—

Repeal subsections (2) and (2A)

Substitute

“(2) Except in an appeal hearing under section 20F, 20O or 20W (*appeal hearing*), or in an election petition under the Medical Practitioners Election Regulation or the Patient Organizations Election Regulation (*election petition*), at any meeting of the Council, the quorum is 13 members.

(2A) At a meeting of the Council for an appeal hearing or an election petition, the quorum is 5 members.”.

(2) Section 4(4A)—

Repeal

everything after “Except for” and before “, the Council”

Substitute

“an appeal hearing and an election petition”.

(3) Section 4(5)—

Repeal

“except in an inquiry under section 21 at which he shall have only an original vote”.

8. Section 14 amended (registration)

Section 14—

Repeal subsection (5)

Substitute

“(5) Section 21 and Parts III, IV and X of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) that are capable of application to an inquiry held for the purposes of this section apply to the inquiry, as if the references to an inquiry panel in those provisions were references to the Council.”.

9. Section 14A amended (limited registration)

Section 14A(3)(a) and (7)(a)—

Repeal

“1 year”

Substitute

“3 years”.

10. Section 19B amended (power of Council to order removal of names from Specialist Register)

(1) Section 19B, heading—

Repeal

“of Council to order removal of”

Substitute

“to remove”.

(2) Section 19B(1)—

Repeal paragraph (a)

Substitute

“(a) the name of a person is ordered to be removed from the General Register under section 19, 21 or 21A; and”.

(3) Section 19B(2)—

Repeal

“and without conducting an inquiry under section 21”.

11. Section 20 amended (alterations to registers)

Section 20(2), after “Council”—

Add

“or an inquiry panel”.

12. Section 20BA amended (establishment of committees and sub-committees)

(1) Section 20BA(2)—

Repeal

“, and having such functions as are assigned to them by this Ordinance or delegated to them by the Council”

Substitute

“this Ordinance”.

(2) Section 20BA(2)(d)—

Repeal

“the Preliminary Investigation Committee”

Substitute

“one or more Preliminary Investigation Committees”.

(3) After Section 20BA(2)—

Add

“(2A) The functions of the committees established under subsection (2) are specified by this Ordinance or delegated by the Council.”.

(4) Section 20BA—

Repeal subsection (4)

Substitute

“(4) The Council must not appoint to a committee a person in respect of whom an order has been made under section 21 or 21A at any time.”.

(5) Section 20BA(5), after “committee”—

Add

“mentioned in subsection (2)(a), (b), (c) or (e)”.

(6) Section 20BA—

Repeal subsection (11)

Substitute

“(11) A committee must not appoint to a sub-committee a person in respect of whom an order has been made under section 21 or 21A at any time.”.

13. Part IIIAAB added

After Part IIIAA—

Add

“Part IIIAAB

Assessors

20BB. Lay assessors

- (1) Subject to subsection (6), the Council may request a nominating authority to nominate a number of persons specified by the Council for appointment as lay assessors.
- (2) A person is eligible for nomination as a lay assessor only if the person—
 - (a) is not a registered medical practitioner; and
 - (b) has the qualifications and experience required of a lay assessor.
- (3) The Council may, for the purposes of subsection (2)(b), specify requirements relating to the qualifications and experience of a lay assessor.
- (4) Subject to subsections (5) and (6), the Council must appoint a person nominated by a nominating authority under subsection (1) as a lay assessor.
- (5) The Council may not appoint a person as a lay assessor if—
 - (a) in its opinion, the person does not have the qualifications or experience of a lay assessor required under subsection (2)(b); or
 - (b) the person is—
 - (i) a member of the Council;
 - (ii) undergoing a sentence of imprisonment;
 - (iii) detained in a mental hospital; or
 - (iv) an undischarged bankrupt.

- (6) The number of lay assessors nominated by a nominating authority and holding office at any time must be—
- (a) not less than the number specified in column 3 of Table 1 in Schedule 5 opposite the authority; and
 - (b) not more than the number specified in column 4 of that Table opposite the authority.
- (7) In this section—
- nominating authority** (提名當局) means a body specified in column 2 of Table 1 in Schedule 5.

20BC. Medical assessors

- (1) Subject to subsection (6), the Council may request a nominating authority to nominate a number of persons specified by the Council for appointment as medical assessors.
- (2) A person is eligible for nomination as a medical assessor only if the person—
- (a) is a registered medical practitioner; and
 - (b) has the qualifications and experience required of a medical assessor.
- (3) The Council may, for the purposes of subsection (2)(b), specify requirements relating to the qualifications and experience of a medical assessor.
- (4) Subject to subsections (5) and (6), the Council must appoint a person nominated by a nominating authority under subsection (1) as a medical assessor.
- (5) The Council may not appoint a person as a medical assessor if—

- (a) in its opinion, the person does not have the qualifications or experience of a medical assessor required under subsection (2)(b);
 - (b) an order has been made under section 21 or 21A in respect of the person at any time; or
 - (c) the person is—
 - (i) a member of the Council;
 - (ii) undergoing a sentence of imprisonment;
 - (iii) detained in a mental hospital; or
 - (iv) an undischarged bankrupt.
- (6) The number of medical assessors nominated by a nominating authority and holding office at any time must be—
- (a) not less than the number specified in column 3 of Table 2 in Schedule 5 opposite the authority; and
 - (b) not more than the number specified in column 4 of that Table opposite the authority.
- (7) In this section—
- nominating authority** (提名當局) means a body specified in column 2 of Table 2 in Schedule 5.

20BD. General provisions applicable to assessors

- (1) An assessor—
- (a) holds office for a period not exceeding 3 years as specified by the Council in the assessor's letter of appointment; and
 - (b) if re-nominated, is eligible for reappointment for a further period or periods not exceeding 3 years each on the expiry of the assessor's period of appointment or reappointment.

- (2) However, an assessor may, at any time, resign by giving notice in writing to the Chairman.
- (3) In addition, the Council may declare an assessor's office to be vacant if the assessor—
 - (a) is sentenced to a term of imprisonment for any offence;
 - (b) is the subject of an order made under section 21 or 21A;
 - (c) becomes bankrupt or enters into a composition or arrangement with the assessor's creditors without paying them in full;
 - (d) is found by the Health Committee after due hearing to be incapacitated from carrying out the duties of the assessor's office because of physical or mental illness;
 - (e) is no longer ordinarily resident in Hong Kong; or
 - (f) is, in the opinion of the Council, unable or unfit to perform the assessor's duties and exercise the assessor's powers.

20BE. Amendment of Schedule 5

The Council may, by notice published in the Gazette, amend Schedule 5.”.

14. Section 20I amended (functions of Education and Accreditation Committee)

- (1) Section 20I—
Re-number the section as section 20I(1).
- (2) Section 20I(1)(e)—
Repeal the full stop

Substitute a semicolon.

- (3) After section 20I(1)(e)—

Add

“(f) to make recommendations to an inquiry panel on a referral under section 20Y(a).”.

- (4) After section 20I(1)—

Add

“(2) The Education and Accreditation Committee must act in accordance with the regulations made under section 33.”.

15. Section 20N amended (complaints against specialists)

Section 20N(1)(c) and (d)(i), English text—

Repeal

“the Preliminary”

Substitute

“a Preliminary”.

16. Section 20Q amended (functions of Ethics Committee)

- (1) Section 20Q(b)—

Repeal the full stop

Substitute a semicolon.

- (2) After section 20Q(b)—

Add

“(c) to make recommendations to an inquiry panel on a referral under section 20Y(a).”.

17. Section 20R amended (pronouncement of recommendations by Ethics Committee)

- (1) Section 20R(1)—

Repeal

“The”

Substitute

“Except for a case referred under section 20Y(a), the”.

- (2) Section 20R(4)—

Repeal paragraph (a).

18. Section 20S amended (Preliminary Investigation Committee)

- (1) Section 20S—

Repeal subsection (1)

Substitute

“(1) If the Council decides to establish a Preliminary Investigation Committee, it must appoint to the Committee—

- (a) 4 registered medical practitioners each of whom is—
 - (i) a member of the Council; or
 - (ii) a medical assessor; and
- (b) 3 lay persons each of whom is—
 - (i) a lay member of the Council; or
 - (ii) a lay assessor.”.

- (2) After section 20S(1)—

Add

“(1A) The Council must appoint—

- (a) a member of a Preliminary Investigation Committee to be the chairman of the Committee; and

- (b) another member of the Committee to be the deputy chairman of the Committee.”.

- (3) Section 20S—

Repeal subsection (2)

Substitute

“(2) At a meeting of a Preliminary Investigation Committee, the quorum is 3 persons, at least one of whom is a member appointed under subsection (1)(b).

- (2A) In addition—

- (a) the majority of the persons present at the meeting must be registered medical practitioners; and
- (b) the chairman and the deputy chairman are counted towards the majority mentioned in paragraph (a).”.

- (4) Section 20S(3), English text—

Repeal

“the Preliminary”

Substitute

“a Preliminary”.

- (5) Section 20S(4)—

Repeal

everything after “meeting and the” and before “to preside”

Substitute

“other members present and who form a quorum must elect a person from among themselves”.

- (6) Section 20S—

Repeal subsection (5)

Substitute

- “(5) A member of a Preliminary Investigation Committee—
- (a) holds office for a period not exceeding 12 months as specified by the Council in the member’s letter of appointment; and
 - (b) is eligible for reappointment for a further period or periods not exceeding 12 months each on the expiry of the member’s period of appointment or reappointment.”.

19. Section 20T amended (functions of Preliminary Investigation Committee and its chairman)

- (1) Section 20T(1), English text—

Repeal

“The”

Substitute

“A”.

- (2) Section 20T(1)(a)—

Repeal

“the Council”

Substitute

“an inquiry panel”.

- (3) Section 20T(1)—

Repeal paragraph (b)

Substitute

“(b) to refer a case to an inquiry panel for holding an inquiry under section 21;”.

- (4) Section 20T(2)—

Repeal

everything after “attention of” and before “first”

Substitute

“a Preliminary Investigation Committee for determining whether a referral should be made to an inquiry panel, or whether the Health Committee should be recommended to conduct a hearing, must”.

- (5) After section 20T(2)—

Add

“(2A) If a Preliminary Investigation Committee decides to exercise its function described in subsection (1)(b), it must send a written notification of the decision to the Council.”.

- (6) Section 20T(3), English text—

Repeal

“The”

Substitute

“A”.

20. Section 20U amended (Health Committee)

- (1) Section 20U(1)—

Repeal paragraph (g)

Substitute

“(g) 2 lay persons each of whom is—

- (i) a lay member of the Council; or
- (ii) a lay assessor.”.

- (2) Section 20U(3)—

Repeal

“shall be a lay member”

Substitute

“is a member appointed under subsection (1)(g)”.

21. Section 20V amended (functions of Health Committee)

(1) Section 20V(1)(a)—

Repeal

everything after “whether”

Substitute

“or not the case or matter has been investigated by a Preliminary Investigation Committee or inquired into by an inquiry panel;”.

(2) Section 20V(1)(b)—

Repeal

“matters referred to it by the Council under section 21(1)”

Substitute

“cases referred to it by an inquiry panel under section 20Y(a) or 21(1)(ivb)”.

22. Sections 20X and 20Y added

Part IV, before section 21—

Add

“20X. Appointment of inquiry panel

- (1) On receipt of a notification under section 20T(2A) that a Preliminary Investigation Committee has decided to refer a case to an inquiry panel for an inquiry under section 21, the Council must appoint an inquiry panel for the inquiry.

- (2) An inquiry panel appointed under subsection (1) must consist of—
- (a) 3 registered medical practitioners each of whom is—
 - (i) a member of the Council; or
 - (ii) a medical assessor; and
 - (b) 2 lay persons each of whom is—
 - (i) a lay member of the Council; or
 - (ii) a lay assessor.
- (3) The Council must appoint a member of an inquiry panel to be the chairperson of the panel.
- (4) If, before the proceedings of an inquiry panel are concluded, a vacancy occurs in the membership of the panel because of the death, resignation or otherwise of a member, the Council must, as soon as possible, appoint another inquiry panel to hold a new inquiry.
- (5) Subsection (4) does not apply if, when the vacancy occurs because of the circumstances mentioned in that subsection—
- (a) the inquiry panel has determined its judgment; but
 - (b) an order has not yet been issued under section 21(1).

20Y. Referral by inquiry panel

In the course of its inquiry into a case, an inquiry panel may, if it thinks appropriate—

- (a) refer the case to the Education and Accreditation Committee, the Ethics Committee or the Health Committee for consideration; or

- (b) refer the case back to the Preliminary Investigation Committee concerned.”.

23. Section 21 amended (disciplinary powers of Council)

- (1) Section 21, heading—

Repeal

“Council”

Substitute

“inquiry panel”.

- (2) Section 21(1)—

Repeal

everything after “referred to it by” and before “is satisfied that any”

Substitute

“a Preliminary Investigation Committee in accordance with regulations made under section 33, an inquiry panel”.

- (3) Section 21(1)(c)—

Repeal

“; or”

Substitute a semicolon.

- (4) Section 21(1)(d)—

Repeal the comma

Substitute a semicolon.

- (5) Section 21(1)(e)—

Repeal the semicolon

Substitute

“; or”.

- (6) Section 21(1)—

Repeal paragraph (f).

- (7) Section 21(1)—

Repeal

“Council may, in its discretion”

Substitute

“panel may, in its discretion, exercise one or more of the following powers”.

- (8) Section 21(1)(i)—

Repeal

“; or”

Substitute a semicolon.

- (9) Section 21(1)(ii), Chinese text—

Repeal

“醫務委員會”

Substitute

“該小組”.

- (10) Section 21(1)(ii)—

Repeal

“; or”

Substitute a semicolon.

- (11) Section 21(1)(iii) and (iiia)—

Repeal

“; or”

Substitute a semicolon.

- (12) Section 21(1)(iiib), Chinese text—

Repeal

“醫務委員會”

Substitute

“該小組”。

- (13) Section 21(1)(iib)—

Repeal

“; or”

Substitute a semicolon.

- (14) Section 21(1)(iv)—

Repeal

“Council”

Substitute

“panel”。

- (15) Section 21(1)(iv)—

Repeal

“; or”

Substitute a semicolon.

- (16) Section 21(1)(iva)—

Repeal

“Council”

Substitute

“panel”。

- (17) Section 21(1)(iva)—

Repeal

“; or”

Substitute a semicolon.

- (18) Section 21(1)(ivb)—

Repeal

“; or”

Substitute a semicolon.

- (19) Section 21(1)—

Repeal

“Council thinks”

Substitute

“panel thinks”。

- (20) Section 21(1)—

Repeal

“Council or”

Substitute

“panel or”。

- (21) After section 21(1)—

Add

“(1A) An order made by an inquiry panel under subsection (1) must be signed by the chairperson of the panel.”

- (22) Section 21(2), definition of *due inquiry*—

Repeal

“the Council”

Substitute

“an inquiry panel”。

- (23) Section 21—

Repeal subsection (2A).

- (24) Section 21(3)—

Repeal

“require the Council”

Substitute

“require an inquiry panel”.

(25) Section 21(3)—

Repeal

“Council may”

Substitute

“panel may”.

(26) Section 21—

Repeal subsection (4).

(27) Section 21—

Repeal subsection (4A)

Substitute

“(4A) A member of a Preliminary Investigation Committee who took part in the preliminary investigation of a complaint or information must not attend a meeting of an inquiry panel while it is inquiring into the complaint or information under this section.”.

(28) Section 21(4B)—

Repeal

“Within 14 days after the conclusion of an inquiry under this section, the Council may”

Substitute

“An inquiry panel may, within 14 days after the conclusion of an inquiry”.

(29) Section 21(4C)—

Repeal

everything after “subsection (4B),” and before “, by”

Substitute

“an inquiry panel may invite the parties to the inquiry and other persons who have appeared before it in the inquiry to appear again before it”.

(30) After section 21(4C)—

Add

“(4CA) If, before a review under subsection (4B) is concluded, a vacancy occurs in the membership of an inquiry panel because of the death, resignation or otherwise of a member, the Council must, as soon as possible, appoint another inquiry panel to conduct the review.”.

(31) Section 21(4D)—

Repeal

“the Council under this section, the Council”

Substitute

“an inquiry panel under subsection (4B), the panel”.

24. Section 21A amended (powers of Council in relation to fitness to practise of medical practitioners)

(1) Section 21A(1)—

Repeal

“without a due inquiry under section 21”

Substitute

“exercise one or more of the following powers”.

(2) Section 21A(1)(a), (b) and (c)—

Repeal

“; or”

Substitute a semicolon.

25. **Section 21B repealed (meetings of Council for purpose of an inquiry)**

Section 21B—

Repeal the section.

26. **Section 22 amended (powers of Council and Health Committee in regard to obtaining of evidence and conduct at proceedings)**

(1) Section 22, heading—

Repeal

“Council”

Substitute

“inquiry panel”.

(2) Section 22(1)—

Repeal

“section 21 the Council shall have the following powers”

Substitute

“section 21, an inquiry panel has power to do one or more of the following things”.

(3) Section 22(1)(e)—

Repeal

“Council”

Substitute

“panel”.

(4) Section 22(1A)—

Repeal

“shall have the following powers”

Substitute

“has power to do one or more of the following things”.

(5) Section 22(2)—

Repeal

everything after “may be in”

Substitute

“the form that a specified body decides and must be signed by the authorized person for the specified body.”.

(6) Section 22(4)—

Repeal

everything after “If it appears to” and before “or the Health Committee may”

Substitute

“an inquiry panel or the Health Committee that it is necessary to do so in the interests of the complainant, the registered medical practitioner concerned in the inquiry or the hearing, or any witness concerned, the panel”.

(7) After section 22(5)—

Add

“(6) In subsection (2)—

authorized person (授權人士)—

(a) in relation to an inquiry panel, means the chairperson of the panel; or

(b) in relation to the Health Committee, means the chairman of the Committee;

specified body (指明團體) means an inquiry panel or the Health Committee.”.

27. Section 23 amended (penalty for failure to give evidence)

(1) Section 23—

Repeal

“Council” (wherever appearing)

Substitute

“inquiry panel”.

(2) Section 23, Chinese text, proviso—

Repeal

“在醫務委員會”

Substitute

“在研訊小組或健康事務委員會(視屬何情況而定)”.

28. Section 24 amended (appearance of counsel, etc.)

Section 24(2)—

Repeal

“shall not be”

Substitute

“is”.

29. Section 25 amended (orders of the Council)

(1) Section 25, heading—

Repeal

“the Council”

Substitute

“Council and inquiry panel”.

(2) Section 25(1A)—

Repeal

“Where the Council”

Substitute

“If an inquiry panel”.

(3) Section 25(2)—

Repeal

“or an order under section 21A(1)(d) is made at the same time as another order is made under section 21A(1)”

Substitute

“(inquiry panel’s order) or an order under section 21A(1)(d) is made at the same time as another order is made under section 21A(1) (Council’s order)”.

(4) Section 25(2)—

Repeal

everything after “Specialist Register”

Substitute

“—

(a) before the expiry of 1 month after the date of service of the inquiry panel’s order or the Council’s order on the person concerned; or

(b) in the case of an appeal made to the Court of Appeal against the inquiry panel’s order or the Council’s order under section 26, before the appeal is finally determined.”.

(5) After section 25(3)—

Add

“(3A) Section 21 and Parts III, IV and X of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) that are capable of application to an inquiry held for the purposes of this

section apply to the inquiry, as if the references to an inquiry panel in those provisions were references to the Council.”.

30. Section 26 amended (appeals against orders of the Council)

- (1) Section 26, heading—

Repeal

“the Council”

Substitute

“Council and inquiry panel”.

- (2) Section 26(1)—

Repeal

“19B, 21”

Substitute

“19B(2)”.

- (3) Section 26(1)—

Repeal

“an, or another, inquiry”

Substitute

“reconsideration”.

- (4) After section 26(1)—

Add

“(1A) A registered medical practitioner who is aggrieved by an order made by an inquiry panel in respect of the practitioner under section 21 may appeal to the Court of Appeal, and the Court may—

- (a) affirm, reverse or vary the order; or
- (b) remit the case to—

(i) the inquiry panel to hold a new inquiry; or

(ii) the Council for appointing another inquiry panel to hold a new inquiry.”.

- (5) Section 26(3)—

Repeal

“any such appeal shall be”

Substitute

“an appeal under this section is”.

- (6) Section 26—

Repeal subsection (5)

Substitute

“(5) At a meeting held as a result of a case remitted by the Court of Appeal under subsection (1), the validity of the proceedings before the Council is not to be called into question only because—

(a) a member of the Council who was present at the former meeting is not present at the current meeting; or

(b) a member of the Council who is present at the current meeting was not present at the former meeting.

(6) At an inquiry held as a result of a case remitted by the Court of Appeal under subsection (1A)(b), the validity of the proceedings before the inquiry panel is not to be called into question only because—

(a) a member of the inquiry panel who was present at the former inquiry is not present at the current inquiry; or

- (b) a member of the inquiry panel who is present at the current inquiry was not present at the former inquiry.”.

31. Section 33 amended (regulations)

- (1) Section 33—

Repeal the heading

Substitute

“**33. Power to make regulations**”.

- (2) Section 33(3)(b)—

Repeal

“the Legal Adviser to the Council”

Substitute

“a legal adviser”.

- (3) After section 33(3)—

Add

“(3A) The Permanent Secretary for Food and Health (Health) may, by regulation, provide for the procedure and other matters in relation to an election or appointment to an office of the Council under section 3(2)(ga), including the qualifications of candidates, the eligibility requirements for electors and subscribers for a nomination paper, the particulars of any system of voting and counting, the determination of election results and questioning of the results.”.

- (4) Section 33(4)(a)(iii)—

Repeal

“the Council”

Substitute

“an inquiry panel”.

- (5) Section 33(4)(a)(iv) and (v), English text—

Repeal

“the Preliminary”

Substitute

“a Preliminary”.

- (6) Section 33(4)(a)(vii)—

Repeal

“the Council by the Preliminary”

Substitute

“an inquiry panel by a Preliminary”.

- (7) Section 33(4)(a)(viii), after “Council”—

Add

“or an inquiry panel”.

- (8) After section 33(4)(a)(viii)—

Add

“(viiiia) the reference of cases to and by the Education and Accreditation Committee;”.

- (9) Section 33(4)(a)(ix), Chinese text—

Repeal

everything after “聆訊”

Substitute

“，以及向健康事務委員會作出及由該委員會作出的個案轉呈；”.

- (10) Section 33(6), after “(3)”—

Add
“, (3A)”.

32. Section 36 added
After section 35—

Add

“36. Transitional and savings provisions for Medical Registration (Amendment) Ordinance 2017 (of 2017)

- (1) The transitional and savings provisions as set out in Schedule 6 have effect.
- (2) The Secretary for Food and Health may, by notice published in the Gazette, amend Schedule 6.”.

33. Schedule 2 amended (provisions with respect to committees and sub-committees established under section 20BA of this Ordinance)

- (1) Schedule 2, section 2(1)—

Repeal
“, 20S(1)(g)”.

- (2) Schedule 2, English text, section 5(2)—

Repeal
“the Preliminary”

Substitute
“a Preliminary”.

34. Schedules 5 and 6 added

After Schedule 4—

Add

“Schedule 5

[ss. 20BB, 20BC &
20BE]

Assessors

Table 1

Column 1	Column 2	Column 3	Column 4
Item	Nominating authority	Minimum number of lay assessors	Maximum number of lay assessors
1.	Patient organizations	2	10
2.	Hong Kong Bar Association	2	10
3.	Hong Kong Council of Social Service	2	10
4.	Hong Kong Institute of Certified Public Accountants	2	10
5.	The Law Society of Hong Kong	2	10
6.	Secretary for Food and Health	2	10

Table 2

Column 1	Column 2	Column 3	Column 4
Item	Nominating authority	Minimum number of medical assessors	Maximum number of medical assessors
1.	Director	2	10
2.	The University of Hong Kong	2	10
3.	The Chinese University of Hong Kong	2	10
4.	Hospital Authority	2	10
5.	Academy of Medicine	2	10
6.	Hong Kong Medical Association	2	10
7.	Hong Kong Doctors Union	2	10
8.	Hong Kong Public Doctors' Association	2	10

Schedule 6

[s. 36]

Transitional and Savings Provisions for Medical Registration (Amendment) Ordinance 2017

Part 1

Preliminary

1. Interpretation

In this Schedule—

amended Ordinance (《經修訂條例》) means this Ordinance as amended by the Amendment Ordinance;

amended Regulation (《經修訂規例》) means the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) as amended by the Amendment Ordinance;

Amendment Ordinance (《修訂條例》) means the Medical Registration (Amendment) Ordinance 2017 (of 2017);

commencement (生效日期) means the commencement of the Amendment Ordinance under section 1(2) of that Ordinance;

former PIC (前偵委會) means the Preliminary Investigation Committee established under section 20BA(2)(d) of the pre-amended Ordinance;

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement;

pre-amended Regulation (《原有規例》) means the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) as in force immediately before the commencement.

Part 2

Certain Council Members and Assessors

2. Council member described in section 3(2)(h) of pre-amended Ordinance

If, immediately before the commencement, the term of office of a member of the Council described in section 3(2)(h) of the pre-amended Ordinance has not yet expired, then, on and after the commencement, the member—

- (a) is taken to be a member of the Council described in section 3(2)(h) of the amended Ordinance for the remainder of the term; and
- (b) may, for the remainder of the term, continue to be a member of any committee or sub-committee established under section 20BA(1) of the pre-amended Ordinance of which he or she was a member immediately before the commencement.

3. Assessors appointed under section 21B(2)(a) to (e) of pre-amended Ordinance

If, immediately before the commencement, the term of office of an assessor appointed under section 21B(2)(a), (b), (c), (d) or (e) of the pre-amended Ordinance has not yet expired, then, on and after the commencement, the assessor is taken to be holding office under section 20BC(4) of the amended Ordinance for the remainder of the term.

4. Assessors appointed under section 21B(2)(f) of pre-amended Ordinance

If, immediately before the commencement, the term of office of an assessor appointed under section 21B(2)(f) of the pre-

amended Ordinance has not yet expired, then, on and after the commencement, the assessor is taken to be holding office under section 20BB(4) of the amended Ordinance for the remainder of the term.

Part 3

Former PIC

5. Former PIC deemed as PIC under amended Ordinance for existing cases

(1) This section applies if—

- (a) the Secretary has submitted any complaint, information or matter to the chairman or the deputy chairman of the former PIC under section 6 of the pre-amended Regulation (*existing case*); and
- (b) immediately before the commencement, a decision has not yet been made to dismiss the existing case, or to refer it to the Health Committee or to direct that it be further investigated under section 6(3), (4) or (5) of the pre-amended Regulation.

(2) This section also applies if—

- (a) the chairman or the deputy chairman of the former PIC has directed that an existing case be referred to the former PIC under section 9(1) of the pre-amended Regulation for its consideration (*existing direction*); and
- (b) immediately before the commencement, a decision has not yet been made under section 11(8) of the pre-amended Regulation in respect of the existing case as regards—

- (i) whether or not an inquiry by the Council is to be held under section 21 of the pre-amended Ordinance;
 - (ii) the issuing of a letter of advice to the defendant; or
 - (iii) the referral of the existing case to the Council or the Health Committee.
- (3) The members of the former PIC (*existing members*) may continue to consider the existing case on and after the commencement as if—
- (a) they were appointed to a Preliminary Investigation Committee established under the amended Ordinance (*deemed PIC*);
 - (b) each existing member were appointed as a member of the deemed PIC for the remainder of his or her term of office with the former PIC (*unexpired term*); and
 - (c) the chairman and the deputy chairman of the former PIC were appointed as the chairman and the deputy chairman respectively of the deemed PIC.
- (4) Despite subsection (3)(a), an existing member may not continue to consider any existing case beyond the expiry of—
- (a) his or her unexpired term; or
 - (b) if the member is reappointed as a member of the deemed PIC, the term of office for which the member is reappointed.
- (5) On and after the commencement, the provisions of this Ordinance, other than section 20S(1), (1A), (2), (3) and (5), apply to and in relation to the deemed PIC, the

- existing members and the consideration of the existing cases—
- (a) for all purposes; and
 - (b) in the same way as they apply to and in relation to a Preliminary Investigation Committee established under section 20S(1) of the amended Ordinance, its members and a case considered by that Committee.
- (6) Anything validly done before the commencement by or in relation to the former PIC, its chairman or deputy chairman or the existing members in respect of any existing case is, on and after the commencement, taken to have been done by or in relation to the deemed PIC or its chairman, deputy chairman or members in respect of the case.
- (7) Without limiting subsection (6)—
- (a) the existing cases are taken to have been submitted to the chairman or the deputy chairman of the deemed PIC; and
 - (b) an existing direction is taken to be a direction to refer an existing case to the deemed PIC.
- (8) Section 20S(1), (2), (3) and (5) of the pre-amended Ordinance applies to and in relation to the deemed PIC as if that section had not been amended by the Amendment Ordinance, and accordingly, if the office of any member of the deemed PIC becomes vacant, the person appointed by the Council to fill the vacancy must be of the category described in section 20S(1) of the pre-amended Ordinance to which the member belongs.

Part 4

Inquiry by Council

6. Ongoing Council inquiry commenced under section 21 of pre-amended Ordinance

- (1) This section applies if—
 - (a) a case has been referred by the former PIC to the Council for an inquiry under section 21 of the pre-amended Ordinance; and
 - (b) immediately before the commencement, a meeting has been held in accordance with section 21B of the pre-amended Ordinance for the purpose of conducting the inquiry and no order or referral has been made under section 21(1) of the pre-amended Ordinance.
- (2) The members of the Council and (if applicable) assessors who, immediately before the commencement, have been conducting the inquiry (*inquirers*) may continue to conduct it on and after the commencement as an inquiry panel as if—
 - (a) they were appointed to an inquiry panel under section 20X of the amended Ordinance (*deemed panel*); and
 - (b) the inquirer who performed the function of the president of the meeting mentioned in subsection (1)(b) were appointed as the chairperson of the deemed panel under section 20X(3) of the amended Ordinance.

- (3) On and after the commencement, the provisions of this Ordinance apply to and in relation to the deemed panel, the inquirers and the inquiry of the case—
 - (a) for all purposes; and
 - (b) in the same way as they apply to and in relation to an inquiry panel, its members and an inquiry under section 21 of the amended Ordinance.
- (4) Without limiting subsection (3)—
 - (a) section 20X(4) of the amended Ordinance applies if a vacancy occurs amongst the members of the deemed panel;
 - (b) the deemed panel may exercise any of the powers under section 21(1) of the amended Ordinance and may review its decision or order under section 21(4B) of the amended Ordinance;
 - (c) an appeal may be made under section 26(1A) of the amended Ordinance against an order made by the deemed panel under section 21 of the amended Ordinance; and
 - (d) sections 13A, 15, 16, 17 and 18 and Part IV of the amended Regulation apply in relation to the inquiry conducted by the deemed panel.
- (5) Anything validly done before the commencement by or in relation to the inquirers as the Council conducting the inquiry referred to in subsection (1) is, on and after the commencement, taken to have been done by or in relation to the deemed panel.
- (6) Without limiting subsection (5), a matter referred to the Ethics Committee by the inquirers under section 21(2A) of the pre-amended Ordinance is, on and after the commencement, taken to have been referred to that

Committee by the deemed panel under section 20Y(a) of the amended Ordinance.

7. Appeal against order of Council

If an order was made by the Council under section 21 of the pre-amended Ordinance and, immediately before the commencement, the period provided in section 26(3) of the pre-amended Ordinance for an appeal to be made under section 26(1) of the pre-amended Ordinance against the order has not yet expired, then, on and after the commencement, an appeal against the order may be made under section 26(1A) of the amended Ordinance as if the order were an order made by an inquiry panel.”.

Part 3

Amendments to Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg. B)

35. Section 4 amended (qualifications for nomination as a candidate and disqualification for election and holding office)

(1) Section 4(2)(a)—

Repeal

“of the Council”.

(2) Section 4(2)—

Repeal paragraph (b).

(3) Section 4(2)(c)—

Repeal

“3(2)(i)”

Substitute

“3(2)(h) or (i)”.

(4) Section 4(2)(d), after “composition”—

Add

“or arrangement”.

36. Section 15 amended (declaration of election result where number of candidates is same as number of vacancies)

Section 15—

Repeal

“, and unless section 25 applies, the Secretary shall”

Substitute

“and”.

37. **Section 16 amended (procedure where no candidates are nominated or vacancies exceed number of candidates nominated)**

Section 16(2)(a)—

Repeal

“subject to section 25,”.

38. **Part VI heading amended (result of election and first election)**

Part VI, heading—

Repeal

“AND FIRST ELECTION”.

39. **Section 24 amended (result of election and declaration of result)**

Section 24(4)—

Repeal

“, 16 or 25”

Substitute

“or 16”.

40. **Section 25 repealed (special provisions relating to first election)**

Section 25—

Repeal the section.

41. **Schedule 1 amended**

Schedule 1, Form 2, Part II, paragraph 3—

Repeal

“or elected”.

Part 4

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

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

- (1) Section 6, heading—

Repeal

“Duties of Legal Adviser in inquiry by Council”

Substitute

“Presence of legal adviser at inquiry and specified meetings”.

- (2) Section 6—

Repeal subsection (1)

Substitute

“(1) A legal adviser must be present at—

- (a) every meeting of the Council held for considering whether to make an order under section 19B(2) or 21A(1) of the Ordinance;
- (b) every inquiry held by an inquiry panel under section 21 of the Ordinance; and
- (c) every meeting of an inquiry panel held for reviewing its decision or order under section 21(4B) of the Ordinance.”.

- (3) After section 6(1)—

Add

“(1A) A meeting or an inquiry mentioned in subsection (1) must not be commenced if a legal adviser is not present.”.

- (4) Section 6—

Repeal subsection (2)

Substitute

“(2) A legal adviser must be present at—

- (a) any appeal hearing from the decision of a committee; or
- (b) a meeting of the Council held pursuant to an election petition under—
 - (i) the Medical Practitioners Election Regulation; or
 - (ii) the Patient Organizations Election Regulation.”.

43. Section 7 amended (duties of Legal Adviser in ordinary meetings of Council)

- (1) Section 7, heading—

Repeal

“Duties of Legal Adviser in”

Substitute

“Presence of legal adviser at”.

- (2) Section 7—

Repeal

“the Legal Adviser to the Council”

Substitute

“a legal adviser”.

- (3) Section 7—
Repeal
“section 6”
Substitute
“section 6(1)(a) and (2)”.
- (4) Section 7, English text—
Repeal
“the Legal Adviser shall”
Substitute
“the legal adviser must”.

44. Section 8 amended (advice by Legal Adviser)

- (1) Section 8, English text, heading—
Repeal
“**Legal Adviser**”
Substitute
“**legal adviser**”.
- (2) Section 8—
Repeal subsection (1)
Substitute
“(1) This section applies if a legal adviser gives advice on a question of law as to evidence, procedure or any other matter—
(a) at an inquiry held by an inquiry panel under section 21 of the Ordinance;
(b) at an appeal hearing from a decision of a committee; or

- (c) at a meeting of the Council held pursuant to an election petition under—
(i) the Medical Practitioners Election Regulation; or
(ii) the Patient Organizations Election Regulation.”.
- (3) After section 8(1)—
Add
“(1A) The legal adviser must give the advice in the presence of every party to the proceedings.
(1B) If the advice is given after the inquiry panel or Council has commenced to deliberate as to its findings, every party to the proceedings must be informed of it.
(1C) If a party to the proceedings is represented by a solicitor or counsel—
(a) subsection (1A) is regarded as having been complied with in relation to the party if the advice is given in the presence of the solicitor or counsel; and
(b) subsection (1B) is regarded as having been complied with in relation to the party if the solicitor or counsel is informed of the advice.”.
- (4) Section 8(2), after “where”—
Add
“an inquiry panel or”.
- (5) Section 8(2)—
Repeal
“the Legal Adviser to the Council”
Substitute

“a legal adviser”.

- (6) Section 8(2)—

Repeal

“person shall”

Substitute

“solicitor or counsel must”.

45. Section 9 amended (duties of Secretary in inquiry by Council)

- (1) Section 9, heading—

Repeal

“in inquiry by Council”

Substitute

“at inquiry by inquiry panel”.

- (2) Section 9(b)—

Repeal

“Council such evidence as the Council may require”

Substitute

“inquiry panel evidence required by it”.

- (3) Section 9(d)—

Repeal

“Council in reply;”

Substitute

“inquiry panel in reply; and”.

- (4) Section 9(e)—

Repeal

“Council past records of any meeting of”

Substitute

“inquiry panel past records of any meeting of an inquiry panel or”.

- (5) Section 9(e)—

Repeal the semicolon

Substitute a full stop.

- (6) Section 9—

Repeal paragraph (f).

Part 5

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

46. Section 2 amended (interpretation)

- (1) Section 2, English text, definition of *Committee*—

Repeal

“the”

Substitute

“a”.

- (2) Section 2, English text, definition of *defendant*—

Repeal

“the Preliminary”

Substitute

“a Preliminary”.

47. Part III heading amended (proceedings preparatory to holding of an inquiry by Council or a hearing by Health Committee)

Part III, heading—

Repeal

“COUNCIL”

Substitute

“INQUIRY PANEL”.

48. Section 6 amended (receipt and submission of complaint or information or referral to chairman of Committee)

- (1) Section 6(1)(a)(v)—

Repeal

“of the Council”.

- (2) Section 6(1)(a)(vi), after the semicolon—

Add

“or”.

- (3) Section 6(1)(a)(vii)—

Repeal

“; or”

Substitute a semicolon.

- (4) Section 6(1)(c), English text—

Repeal

“the Committee”

Substitute

“a Committee”.

49. Section 7 amended (declaration of interest by members of Committee)

Section 7(1), English text—

Repeal

“the Committee”

Substitute

“a Committee”.

50. Section 8 amended (clarification and support for complaint or information)

Section 8(1) and (2), English text—

Repeal

“the Committee”

Substitute

“a Committee”.

51. Section 9 amended (reference of case to Committee)

Section 9(1), English text—

Repeal

“the Committee under”

Substitute

“a Committee under”.

52. Section 11 amended (consideration of case by Committee)

(1) Section 11(1), English text—

Repeal

“The”

Substitute

“A”.

(2) Section 11(2), English text—

Repeal

“by the Committee”

Substitute

“by a Committee”.

(3) Section 11(3), English text—

Repeal

“the Committee”

Substitute

“a Committee”.

(4) Section 11(4), English text—

Repeal

“The”

Substitute

“A”.

(5) Section 11(5), English text—

Repeal

“the Committee”

Substitute

“a Committee”.

(6) Section 11(5), after “no inquiry”—

Add

“by an inquiry panel”.

(7) Section 11(6), English text—

Repeal

“Where the Committee”

Substitute

“If a Committee”.

(8) Section 11(7), English text—

Repeal

“the Committee may”

Substitute

“a Committee may”.

- (9) Section 11(8), English text—

Repeal

“The”

Substitute

“A”.

- (10) Section 11(8)(a) and (b)—

Repeal

“shall”

Substitute

“by an inquiry panel is to”.

- (11) Section 11(8)(c)—

Repeal

“the Council”

Substitute

“an inquiry panel”.

53. Section 12 amended (decision of Committee that no inquiry be held)

- (1) Section 12, Chinese text, heading—

Repeal

“不”

Substitute

“無須”.

- (2) Section 12(1)—

Repeal

“the Committee decides that no inquiry”

Substitute

“a Committee decides that no inquiry by an inquiry panel”.

- (3) Section 12—

Repeal subsection (2).

54. Section 13 amended (referral of case to Council for inquiry)

- (1) Section 13, heading—

Repeal

“Referral of case to Council for inquiry”

Substitute

“Fixing date for holding inquiry”.

- (2) Section 13—

Repeal subsections (1) and (2)

Substitute

“(1) If a Committee decides to refer a case to an inquiry panel for inquiry, the chairman of the Committee must—

- (a) send a written notification of the decision to the Council under section 20T(2A) of the Ordinance; and

- (b) on the appointment of an inquiry panel by the Council under section 20X(1) of the Ordinance for the inquiry, send a written notification of the decision to the chairperson of the panel, specifying the matters—

- (i) that the Committee identifies to be so referred; and

- (ii) that form the basis of the charge or charges into which an inquiry is to be held.

- (2) On receipt of a notification under subsection (1)(b), the chairperson of the inquiry panel must direct the Secretary to fix a date for holding an inquiry.”.
- (3) Section 13—
Repeal subsection (3).
- (4) After section 13(5)—
Add
- “(6) After the Court of Appeal remits a case under section 26(1A)(b) of the Ordinance, the chairperson of the inquiry panel concerned must direct the Secretary to fix a date for holding an inquiry.
- (7) After an appointment is made under section 13A(4), the chairperson of the inquiry panel appointed under that section must direct the Secretary to fix a date for holding an inquiry.
- (8) After the Court of Appeal remits a case under section 26(1) of the Ordinance, the Chairman must direct the Secretary to fix a date for reconsidering the case.”.

55. Section 13A added

After section 13—

Add**“13A. Declaration of interest by members of inquiry panel**

- (1) This section applies to an inquiry panel that—
- (a) reviews its decision or order under section 21(4B) of the Ordinance; or
 - (b) holds an inquiry after the Court of Appeal remits a case under section 26(1A)(b) of the Ordinance.

- (2) If, before the opening of an inquiry by an inquiry panel or at any stage of the inquiry, the chairperson of the panel becomes aware that he or she is in any way interested in the case, the chairperson must declare the interest to the Chairman as soon as practicable after becoming so aware.
- (3) If, before the opening of an inquiry by an inquiry panel or at any stage of the inquiry, another member of the panel becomes aware that he or she is in any way interested in the case, the member must declare the interest to the chairperson of the panel as soon as practicable after becoming so aware.
- (4) If a declaration of interest is made under this section, the Council must appoint another inquiry panel to inquire into the case.”.

56. Section 15 amended (referring back to committee)

- (1) Section 15, heading—

Repeal**“Referring back to committee”****Substitute****“Referral of cases”.**

- (2) Section 15—

Repeal subsection (1)**Substitute**

- “(1) If, after a case has been referred to an inquiry panel under section 11(8)(c) for inquiry, further information is subsequently produced in writing that suggests that an inquiry should not be held, the chairperson of the panel may—

- (a) refer the case back to the Committee concerned for further consideration; or
 - (b) refer the case to the Education and Accreditation Committee or the Health Committee for consideration.”.
- (3) Section 15(2)—
- Repeal**
- “, the Health Committee or the Education and Accreditation Committee”
- Substitute**
- “concerned, or referred to the Education and Accreditation Committee or the Health Committee”.

57. Section 16 amended (consolidation of charges and amendment of notice of inquiry)

- (1) Section 16—
- Repeal subsection (1)**
- Substitute**
- “(1) If the Secretary receives further allegations of misconduct in a professional respect against the defendant of the same nature as a case referred to an inquiry panel, the Secretary must send a written notification to the chairperson of the panel.
- (1A) On receipt of a notification under subsection (1)—
- (a) the chairperson of the inquiry panel may direct that any or all of the allegations are to be inquired into at the same inquiry against the defendant; and
 - (b) if the chairperson makes that direction, evidence relating to the allegations may be introduced at the

- inquiry in respect of the case even if those allegations—
- (i) have not been referred to the Committee concerned; or
 - (ii) have not formed the subject of a determination of the Committee concerned.”.
- (2) Section 16(2)—
- Repeal**
- “the inquiry, it appears to the Chairman that a notice of inquiry is defective, the Chairman”
- Substitute**
- “an inquiry by an inquiry panel, it appears to the chairperson of the panel that a notice of inquiry is defective, the chairperson”.

58. Section 17 amended (documents to be available to other party)

- Section 17(2)—
- Repeal**
- “Council”
- Substitute**
- “inquiry panel”.

59. Section 18 amended (notice to produce)

- Section 18—
- Repeal**
- “Chairman”
- Substitute**
- “chairperson of an inquiry panel”.

60. Part IV heading amended (proceedings at an inquiry of Council)

Part IV, heading—

Repeal

“COUNCIL”

Substitute

“INQUIRY PANEL”.

61. Section 19 amended (inquiry in public or in camera)

(1) Section 19(1)—

Repeal

“the Council, an inquiry of the Council”

Substitute

“an inquiry panel, an inquiry by the panel”.

(2) Section 19(2)—

Repeal

“, the Council”

Substitute

“by an inquiry panel, the panel”.

62. Section 20 amended (adjournment of inquiry)

Section 20(1)—

Repeal

“Chairman may adjourn an inquiry”

Substitute

“chairperson of an inquiry panel may adjourn an inquiry by the panel”.

63. Section 21 amended (representation)

Section 21—

Repeal subsection (2)**Substitute**

“(2) On the application of the chairperson of an inquiry panel, the Secretary for Justice may appoint a solicitor or counsel, including 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 by the panel.”.

64. Section 22 amended (record of proceedings)

(1) Section 22(1)—

Repeal

“The Council”

Substitute

“An inquiry panel”.

(2) Section 22(1), after “an inquiry”—

Add

“by the panel”.

(3) Section 22(2)—

Repeal

“Chairman”

Substitute

“chairperson of an inquiry panel”.

65. Section 23 amended (opening of inquiry)

(1) Section 23(1)—

Repeal

“the Secretary shall read the notice of inquiry to the Council”

Substitute

“, the Secretary must read the notice of inquiry to the inquiry panel”.

- (2) Section 23(2)—

Repeal

“Council such evidence as the Council may require”

Substitute

“inquiry panel evidence required by it”.

- (3) Section 23(2)—

Repeal

“the Council being satisfied as to such evidence,”

Substitute

“being satisfied as to the evidence, the panel”.

- (4) Section 23(3)—

Repeal

“Chairman”

Substitute

“chairperson of the inquiry panel”.

66. Section 24 amended (objections on point of law)

Section 24(2)—

Repeal

“Council”

Substitute

“inquiry panel,”.

67. Section 25 amended (order of procedure)

- (1) Section 25(1)(b)(i)—

Repeal

“Council”

Substitute

“inquiry panel”.

- (2) Section 25(1)(c)—

Repeal

“, the Council shall”

Substitute

“, the inquiry panel must”.

- (3) Section 25(1)(c)(i)—

Repeal

“Chairman shall”

Substitute

“chairperson of the panel must”.

- (4) Section 25(1)(c)(i)—

Repeal

“Council; and”

Substitute

“panel;”.

- (5) Section 25(1)(c)(ii)—

Repeal

“Council uphold”

Substitute

“panel upholds”.

- (6) Section 25(1)(c)(iii)—
Repeal
“Council reject the submission, the Chairman shall”
Substitute
“panel rejects the submission, the chairperson of the panel must”.
- (7) Section 25(1)(d)—
Repeal
“Council”
Substitute
“inquiry panel”.
- (8) Section 25(1)(e)—
Repeal
“address the Council”
Substitute
“address the inquiry panel”.
- (9) Section 25(1)(e)—
Repeal
“to the Council”
Substitute
“to the panel”.
- (10) Section 25(2)—
Repeal
“the Council may”
Substitute
“an inquiry panel may”.

- (11) Section 25(2)—
Repeal
“if the Council”
Substitute
“if the panel”.
- 68. Section 26 amended (postponement of judgment)**
- (1) Section 26(1)—
Repeal
“the Council shall”
Substitute
“an inquiry panel must”.
- (2) Section 26(2)—
Repeal
“If the Council”
Substitute
“If an inquiry panel”.
- (3) Section 26(2)—
Repeal
“Council stands postponed until such future meeting of the Council as the Council”
Substitute
“panel stands postponed until a future meeting of the panel that it”.
- (4) Section 26(2)—
Repeal
“Chairman shall”

Substitute

“chairperson of the panel must”.

- (5) Section 26(2)—

Repeal

“Council in such terms as the Council may approve”

Substitute

“panel in terms approved by it”.

- (6) Section 26(3)—

Repeal

“If the Council decides not to postpone judgment, the Council shall”

Substitute

“If an inquiry panel decides not to postpone judgment, the panel must”.

- (7) Section 26(3)—

Repeal

“before the Council”

Substitute

“before it”.

- (8) Section 26—

Repeal subsection (4)

Substitute

“(4) When an inquiry panel has come to its decision under subsection (3), the chairperson of the panel must announce the decision of the panel in terms approved by it.”.

69. Section 27 amended (notice of determination of judgment)

- (1) Section 27(1)—

Repeal

“judgment of the Council”

Substitute

“judgment of an inquiry panel”.

- (2) Section 27(1)—

Repeal

“Council,”

Substitute

“panel,”.

- (3) Section 27(1)—

Repeal

“of the Council and”

Substitute

“and”.

- (4) Section 27(3)—

Repeal

“the Chairman”

Substitute

“, the chairperson of the inquiry panel”.

- (5) Section 27(3)—

Repeal

“Council, the position in which the case stands and the Council”

Substitute

“panel, the position in which the case stands and the panel”.

- (6) Section 27(4)—

Repeal

“The Council shall”

Substitute

“The inquiry panel must”.

- (7) Section 27(4)—

Repeal

“Chairman shall announce the decision of the Council in such terms as the Council may approve”

Substitute

“chairperson of the panel must announce the decision of the panel in terms approved by it”.

70. Section 28 amended (postponement of sentence)

- (1) Section 28(1)—

Repeal

“decision of the Council”

Substitute

“decision of an inquiry panel”.

- (2) Section 28(1)—

Repeal

“Council shall”

Substitute

“panel must”.

- (3) Section 28(2)—

Repeal

“If the Council”

Substitute

“If an inquiry panel”.

- (4) Section 28(2)—

Repeal

“Council stands postponed until such future meeting of the Council as the Council”

Substitute

“panel stands postponed until a future meeting of the panel that it”.

- (5) Section 28(2)—

Repeal

“Chairman shall”

Substitute

“chairperson of the panel must”.

- (6) Section 28(2)—

Repeal

“Council in such terms as the Council may approve”

Substitute

“panel in terms approved by it”.

71. Section 29 amended (address in mitigation)

- (1) Section 29(1)—

Repeal

“At any meeting of the Council at which sentence on a defendant is to be decided by the Council”

Substitute

- “At a meeting of an inquiry panel at which sentence on a defendant is to be decided”.
- (2) Section 29(1)—
Repeal
“Council may produce to the Council the records of any meeting of the Council”
Substitute
“panel may produce to it past records of any meeting of the Council or the panel (as the case requires)”.
- (3) Section 29(2)—
Repeal
“the Council decides the sentence, the Chairman shall”
Substitute
“an inquiry panel decides the sentence, the chairperson of the panel must”.
- (4) Section 29(2)—
Repeal
“address the Council” (wherever appearing)
Substitute
“address the panel”.
- (5) Section 29(2)—
Repeal
“Council under”
Substitute
“panel under”.
- (6) Section 29(3)—
Repeal

- “The Council shall”
Substitute
“The inquiry panel must”.
- (7) Section 29(3)—
Repeal
“Chairman shall”
Substitute
“chairperson of the panel must”.
- (8) Section 29(3)—
Repeal
“Council in such terms as the Council may approve”
Substitute
“panel in terms approved by it”.
- 72. Section 30 amended (notice of postponement of sentence)**
- (1) Section 30(1)—
Repeal
“the provisions of section 28, the decision of the Council”
Substitute
“section 28, the decision of an inquiry panel”.
- (2) Section 30(1)—
Repeal
“Council,”
Substitute
“panel,”.
- (3) Section 30(1)—
Repeal

“of the Council and”

Substitute

“and”.

73. Section 31 amended (evidence)

- (1) Section 31(2)—

Repeal

“the Council”

Substitute

“an inquiry panel”.

- (2) Section 31(2)—

Repeal

“Chairman”

Substitute

“chairperson of the panel”.

- (3) Section 31(4)—

Repeal

“The Council”

Substitute

“An inquiry panel”.

- (4) Section 31(4), English text, after “submit to”—

Add a comma.

- (5) Section 31(5)—

Repeal

“The Chairman, and members and assessors of the Council through the Chairman”

Substitute

“The chairperson of an inquiry panel, and other members of the panel through the chairperson”.

- (6) Section 31(6)—

Repeal

“The Council”

Substitute

“An inquiry panel”.

74. Section 32 amended (voting)

- (1) Section 32(1)—

Repeal

“votes of the Council on any question to be determined by it, the Chairman shall call upon the members and assessors, if any,”

Substitute

“votes of an inquiry panel on any question to be decided by it, the chairperson of the panel must call on the members of the panel”.

- (2) Section 32(1)—

Repeal

“determination of the Council”

Substitute

“decision of the panel”.

- (3) Section 32(2)—

Repeal

“Where the determination of the Council so declared by the Chairman is challenged by any member or assessor of the

Council, the Chairman shall call upon each member or assessor”

Substitute

“If the decision of an inquiry panel so declared by the chairperson of the panel is challenged by any other member of the panel, the chairperson must call on each member”.

- (4) Section 32(2)—

Repeal

“and assessors (if any) of the Council”

Substitute

“of the panel”.

- (5) Section 32(3)—

Repeal

“determined by the Council”

Substitute

“decided by an inquiry panel”.

- (6) Section 32(4)—

Repeal

“and assessors of the Council and the Legal Adviser to the Council may be present when the Council”

Substitute

“of an inquiry panel and legal advisers may be present when the panel”.

75. Section 33 amended (reference of case to Health Committee by Council)

- (1) Section 33, heading—

Repeal

“**Council**”

Substitute

“**inquiry panel**”.

- (2) Section 33(1)—

Repeal

“referred to the Council”

Substitute

“referred to an inquiry panel”.

- (3) Section 33(1)(a)—

Repeal

“Chairman”

Substitute

“chairperson of the panel”.

- (4) Section 33(1)(b)—

Repeal

“Council,”

Substitute

“panel.”.

- (5) Section 33(1)—

Repeal

“Chairman or the Council”

Substitute

“chairperson of the panel or the panel”.

- (6) Section 33(2)—

Repeal

“On the Chairman or the Council”

Substitute

“On”.

- (7) Section 33(2)—

Repeal

“Chairman or the Council may”

Substitute

“chairperson of the inquiry panel or the panel may”.

- (8) Section 33(4)—

Repeal

“to the Council”

Substitute

“to the inquiry panel”.

- (9) Section 33(4)—

Repeal

“Council shall commence or resume”

Substitute

“panel may commence or resume the”.

76. Section 34 amended (review by Council)

- (1) Section 34, heading—

Repeal

“Council”

Substitute

“inquiry panel”.

- (2) Section 34(1)—

Repeal

“Where the Council has decided to review its decision under section 21”

Substitute

“If an inquiry panel has decided to review its decision under section 21(4B)”.

- (3) Section 34(1)—

Repeal

“Chairman shall”

Substitute

“chairperson of the panel must”.

- (4) Section 34(1)—

Repeal

“before the Council”

Substitute

“before the panel”.

- (5) Section 34(2)—

Repeal

“the review, the Council may invite the parties to address the Council in such order as the Council”

Substitute

“a review, an inquiry panel may invite the parties to address the panel in the order it”.

- (6) Section 34(3)—

Repeal

“Where the Council”

Substitute

“If an inquiry panel”.

- (7) Section 34(3)—

Repeal

“the Council may”

Substitute

“it may”.

- (8) Section 34(4)—

Repeal

“the Council”

Substitute

“an inquiry panel”.

- (9) Section 34(4)—

Repeal

“Chairman shall announce the Council’s”

Substitute

“chairperson of the panel must announce the panel’s”.

77. Section 35 amended (notice of hearing by Health Committee)

- (1) Section 35(1)(c)—

Repeal

“, but”

Substitute

“and”.

- (2) Section 35(1)(c)—

Repeal

“not”.

78. Section 37 amended (order of procedure of Health Committee)

- (1) Section 37(2), after “by the Health Committee”—

Add

“of a case referred to it under section 6(4) or 11(8)(d)”.

- (2) Section 37(2), after “the chairman of the Preliminary Investigation Committee”—

Add

“concerned”.

- (3) Section 37(2)—

Repeal

“, or”

Substitute

“, and”.

- (4) After section 37(2)—

Add

“(2A) At the commencement of a hearing by the Health Committee of a case referred to it under section 20Y(a) or 21(1)(ivb) of the Ordinance or section 15(1) or 33(1), the chairman of the Health Committee must invite the following persons to present the case and to call witnesses to give oral evidence—

- (a) the chairperson of the inquiry panel concerned; and
- (b) if the complainant is a registered medical practitioner and is willing to do so, the complainant.”.

- (5) Section 37(3), after “of the hearing”—

Add

“mentioned in subsection (2) or (2A)”.

- (6) Section 37(3)—
Repeal
“Council such evidence as the Council may require”
Substitute
“Health Committee evidence required by it”.
- (7) Section 37(3)—
Repeal
“the Council being satisfied as to such evidence,”
Substitute
“being satisfied as to the evidence, the Health Committee”.
- (8) Section 37(4) and (5), after “subsection (2)”—
Add
“or (2A)”.
- (9) Section 37(7), after “the Preliminary Investigation Committee”—
Add
“, the chairperson of the inquiry panel”.

79. Section 38 amended (finding of Health Committee)

- Section 38(6)—
Repeal
“Council or the chairman of the Preliminary Investigation Committee”
Substitute
“chairman of the Preliminary Investigation Committee concerned or the chairperson of the inquiry panel concerned”.

80. Section 39 amended (direction for further hearing by Health Committee)

- (1) Section 39(1)—
Repeal
everything after “by the Health Committee”
Substitute
“—
(a) if—
(i) the Council has, since its making of a section 21A order in respect of a registered medical practitioner, received information as to the fitness to practise of the practitioner; and
(ii) in the opinion of the Chairman, the information justifies a review of the order; or
(b) if—
(i) a section 21A order made by the Council in respect of a registered medical practitioner has been suspended subject to compliance with specified conditions; and
(ii) it appears to the Chairman, based on any complaint or information received, that any of the conditions has not been complied with.”.
- (2) After section 39(1)—
Add
“(1A) The chairperson of an inquiry panel may direct the Health Committee to conduct a further hearing—
(a) if—
(i) the panel has, since its making of a section 21 order in respect of a registered medical

- practitioner, received information as to the fitness to practise of the practitioner; and
- (ii) in the opinion of the chairperson, the information justifies a review of the order; or
- (b) if—
- (i) a section 21 order made by the panel in respect of a registered medical practitioner has been suspended subject to compliance with specified conditions; and
- (ii) it appears to the chairperson, based on any complaint or information received, that any of the conditions has not been complied with.”.
- (3) After section 39(2)—

Add

“(3) In this section—

section 21 order (第 21 條命令), in relation to a registered medical practitioner, means an order made under section 21(1) of the Ordinance as a result of a finding by the Health Committee of the practitioner’s physical or mental unfitness to practise;

section 21A order (第 21A 條命令), in relation to a registered medical practitioner, means an order made under section 21A(1) of the Ordinance as a result of a finding by the Health Committee of the practitioner’s physical or mental unfitness to practise.”.

81. Section 40 amended (notice of further hearing)

Section 40(1)—

Repeal

“the Chairman or the chairman of the Health Committee, as the case may be, makes a direction or order”

Substitute

“a direction or an order is made”.

82. Section 41 amended (further medical examination)

Section 41(1)—

Repeal

“Where the Chairman or the chairman of the Health Committee directs or orders the Health Committee to conduct a further hearing, the Chairman or the chairman of the Committee”

Substitute

“When making a direction or an order under section 39, the Chairman, the chairperson of the inquiry panel concerned or the chairman of the Health Committee, as the case may be,”.

Explanatory Memorandum

The main objects of this Bill are to amend the Medical Registration Ordinance (Cap. 161) (*principal Ordinance*) and its subsidiary legislation to change the composition of the Medical Council of Hong Kong (*Council*), to increase lay participation, to expedite the disciplinary procedures concerning registered medical practitioners by establishing more than one Preliminary Investigation Committee (*PIC*) and inquiry panel, and to extend the period of limited registration of medical practitioners.

2. The Bill is divided into 5 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Principal Ordinance

4. Clause 3 amends section 2 of the principal Ordinance by adding certain new definitions. In particular—
- (a) *patient organization* and *Patient Organizations Election Regulation* relate to the change in the composition of the Council;
 - (b) *assessor, lay assessor* and *medical assessor* relate to disciplinary procedures; and
 - (c) *legal adviser* relates to clause 5, which amends section 3B of the principal Ordinance to enable the appointment of more than one legal adviser to the Council.
5. Clause 4 amends section 3 of the principal Ordinance to—
- (a) increase the number of lay members of the Council (similar amendments are also made by clauses 18 and 20 respectively to sections 20S and 20U of the principal

Ordinance to increase the number of lay persons who may sit on a PIC and the Health Committee of the Council);

- (b) enable patient organizations to elect lay members to the Council, and, for that purpose, clause 31 adds a new section 33(3A) to the principal Ordinance to empower the Permanent Secretary for Food and Health (Health) to make an election regulation;
 - (c) enable the Consumer Council to nominate 1 lay member to the Council; and
 - (d) change the members who are currently nominated by the Hong Kong Academy of Medicine and appointed by the Chief Executive to elected members.
6. Clause 5 amends section 3B of the principal Ordinance to provide that a deputy secretary may carry out the duties of the Secretary of the Council in respect of an inquiry under section 21 of the principal Ordinance (*disciplinary inquiry*).
7. Clause 9 amends section 14A of the principal Ordinance to extend—
- (a) the term of registration of a medical practitioner with limited registration; and
 - (b) the term for which such a medical practitioner can renew his or her registration.
8. Clauses 12 and 18 respectively amend sections 20BA and 20S of the principal Ordinance to—
- (a) enable the Council to establish more than one PIC; and
 - (b) provide for matters relating to the membership of a PIC.
9. Clause 13 adds a new Part IIIAAB (new sections 20BB to 20BE) to the principal Ordinance to—

- (a) provide for the appointment of lay assessors and medical assessors (clause 34 adds a new Schedule 5 to the principal Ordinance to provide for the authorities that may nominate lay assessors and medical assessors, and the minimum and maximum numbers of assessors that may be nominated);
 - (b) provide for matters relating to the term of office of the assessors (the term of office of all assessors is extended to 3 years); and
 - (c) empower the Council to specify requirements relating to the qualifications and experience of an assessor (new sections 20BB(3) and 20BC(3)).
10. Clause 22 adds the new sections 20X and 20Y to the principal Ordinance to enable the Council to appoint more than one inquiry panel to inquire into disciplinary cases referred by a PIC. The Council's function of holding disciplinary inquiries is transferred to inquiry panels. Clauses 10, 11, 14, 19, 21, 24, 26, 27, 29, 30 and 31 respectively provide for consequential amendments to sections 19B, 20(2), 20I, 20T, 20V(1), 21A(1), 22, 23, 25, 26 and 33(4)(a)(iii), (vii) and (viii) of the principal Ordinance.
11. Clause 28 amends section 24 of the principal Ordinance to provide that a person who is the subject of a hearing by the Health Committee can be assisted by counsel or a solicitor.
12. Clauses 32 and 34 respectively add a new section 36 and Schedule 6 to the principal Ordinance to provide for transitional and savings matters.

Part 3—Amendments to Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg. B) (Electoral Regulation)

13. Clause 35 amends section 4 of the Electoral Regulation to remove the requirement that a convicted registered medical practitioner may not be nominated to be elected, or hold office, as a member of the Council.

Part 4—Amendments to Medical Registration (Miscellaneous Provisions) Regulation (Cap. 161 sub. leg. D) (Miscellaneous Regulation)

14. Clauses 42, 43, 44 and 45 respectively amend sections 6, 7, 8 and 9 of the Miscellaneous Regulation to provide for changes in relation to the transfer of the Council's function of holding disciplinary inquiries to inquiry panels.

Part 5—Amendments to Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) (Disciplinary Regulation)

15. Clauses 46 to 82 amend the Disciplinary Regulation. In particular—
 - (a) clause 53 amends section 12 of the Disciplinary Regulation to lift the restriction on the access to information and documents relating to a case handled by a PIC;
 - (b) clause 55 adds a new section 13A to the Disciplinary Regulation to require a member of an inquiry panel who has an interest in the inquiry to declare his or her interest;
 - (c) clause 63 amends section 21 of the Disciplinary Regulation to enable the Secretary for Justice to appoint any solicitor or counsel to assist in an inquiry; and

- (d) clauses 47, 53, 54, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81 and 82 provide for consequential amendments to the Disciplinary Regulation after the Council's function of holding disciplinary inquiries is transferred to inquiry panels.

Medical Registration (Amendment) Bill 2017

Proposals

I. Improvement to the Complaint Investigation and Disciplinary Inquiry Mechanism of the Medical Council of Hong Kong (MCHK)

(A) Assessors

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<ul style="list-style-type: none">● Appointed by MCHK● Total: 14, consisting of –<ul style="list-style-type: none">(a) 10 doctors nominated by 5 institutions, with 2 each from –<ul style="list-style-type: none">(i) Hospital Authority (“HA”);(ii) Director of Health (“DoH”);(iii) The University of Hong Kong (“HKU”);(iv) The Chinese University of Hong Kong (“CUHK”);and(v) Hong Kong Academy of Medicine (“HKAM”)(b) 4 lay assessors nominated by the Secretary for Food and Health (“SFH”)	<ul style="list-style-type: none">● Appointed by MCHK● MCHK to be empowered to set qualification requirements of assessors● Composition of assessors to be set out in schedule of the Ordinance● Total: 28 – 140, consisting of –<ul style="list-style-type: none">(a) 16–80 doctors, with 2–10 each nominated by –<ul style="list-style-type: none">(i) HA;(ii) DoH;(iii) HKU;(iv) CUHK;(v) HKAM;(vi) Hong Kong Medical Association (“HKMA”);(vii) Hong Kong Doctors Union; and(viii) Hong Kong Public Doctors’ Association(b) 12–60 lay assessors, with 2–10 each nominated by –<ul style="list-style-type: none">(i) patient organizations;(ii) Hong Kong Bar Association;(iii) Law Society of Hong Kong;(iv) Hong Kong Council of



- Social Service;
- (v) Hong Kong Institute of Certified Public Accountants
and
- (vi) SFH

(B) Preliminary Investigation Committee (PIC)

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<ul style="list-style-type: none"> ● only one PIC 	<ul style="list-style-type: none"> ● more than one PIC
<p><u>Composition of PIC</u></p> <ul style="list-style-type: none"> ● Appointed by MCHK ● 7 members consisting of – <ul style="list-style-type: none"> (a) 3 Council members (at least one lay Council member); and (b) 4 non-Council members – HKMA, DoH, HA and MCHK Council member each nominates one doctor <p><i>Current practice</i> 6 doctors + 1 lay Council member</p>	<p><u>Composition of PIC</u></p> <ul style="list-style-type: none"> ● Appointed by MCHK ● 7 members who may be MCHK member and/or assessor, consisting of – <ul style="list-style-type: none"> (a) 4 doctors (b) 3 lay persons
<p><u>Chairman and Deputy Chairman</u></p> <ul style="list-style-type: none"> ● Elected from among its MCHK members 	<p><u>Chairman and Deputy Chairman</u></p> <ul style="list-style-type: none"> ● Appointed by MCHK who may be MCHK member / assessor
<p><u>Quorum (3 members)</u></p> <ul style="list-style-type: none"> ● At least one of whom must be a <u>lay Council member</u>, subject to the majority being doctors, including the chairman or deputy chairman, or both 	<p><u>Quorum (3 members)</u></p> <ul style="list-style-type: none"> ● At least one of whom must be a <u>lay person</u> (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
<p><u>Term of office</u></p> <ul style="list-style-type: none"> ● Lay member – not exceeding three months ● All other members – 12 months 	<p><u>Term of office</u></p> <ul style="list-style-type: none"> ● All members – not exceeding 12 months

(C) Disciplinary Inquiry Stage

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<ul style="list-style-type: none"> ● Council conducting inquiry 	<ul style="list-style-type: none"> ● More than one Inquiry Panel
<p><u>Quorum</u></p> <ul style="list-style-type: none"> ● 5 MCHK members or ● 3 MCHK members + 2 assessors at least one lay Council member and the majority must be doctors 	<p><u>Composition</u></p> <ul style="list-style-type: none"> ● Appointed by MCHK ● 5 members who could be MCHK member and/or assessor, consisting of <ul style="list-style-type: none"> – (a) 3 doctors (b) 2 lay persons
<p><u>Chairman</u></p> <ul style="list-style-type: none"> ● Council Chairman¹ 	<p><u>Inquiry Panel Chairman</u></p> <ul style="list-style-type: none"> ● Appointed by MCHK who may be MCHK member / assessor
<p><u>Disciplinary power</u></p> <ul style="list-style-type: none"> ● The Council conducting inquiry has full disciplinary power to make order and review its decisions 	<p><u>Disciplinary power</u></p> <ul style="list-style-type: none"> ● The Inquiry Panel has full disciplinary power to make order and review its decisions

¹ If the Council Chairman has involved in the preceding investigation/proceeding of a case, a chairman will be elected from among its MCHK members

(D) Legal Support

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<p><u>Legal adviser to MCHK</u></p> <ul style="list-style-type: none">● may appoint one legal adviser	<p><u>Legal adviser to MCHK</u></p> <ul style="list-style-type: none">● may appoint more than one legal advisers
<p><u>Provision of legal support for disciplinary inquiries</u></p> <ul style="list-style-type: none">● 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	<p><u>Provision of legal support for disciplinary inquiries</u></p> <ul style="list-style-type: none">● 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

II. Composition of the Medical Council of Hong Kong

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<ul style="list-style-type: none"> ● 4 lay members appointed by the Chief Executive (“CE”) 	<ul style="list-style-type: none"> ● 8 lay members which consist of – <ul style="list-style-type: none"> (a) 4 lay members appointed by CE; and (b) 4 additional lay members (CE’s appointment is not required) including <ul style="list-style-type: none"> (i) 3 to be elected by organizations representing patients’ interests (ii) 1 nominated by the Consumer Council
<ul style="list-style-type: none"> ● 2 doctors nominated by HKAM and appointed by CE 	<ul style="list-style-type: none"> ● 2 doctors elected by HKAM in accordance with its rules and regulations
<ul style="list-style-type: none"> ● 7 doctors elected by all doctors ; ● 7 doctors nominated by HKMA and elected by its Council members; ● 2 doctors nominated by DoH and appointed by CE; ● 2 doctors nominated by HKU and appointed by CE; ● 2 doctors nominated by CUHK and appointed by CE; and ● 2 doctors nominated by HA and appointed by CE 	<ul style="list-style-type: none"> ● No change

III. Limited Registration

<u>Existing Arrangement</u>	<u>The Amendment Bill</u>
<p data-bbox="178 344 805 443"><u>Maximum term of registration and renewal</u></p> <ul data-bbox="178 504 805 600" style="list-style-type: none"><li data-bbox="178 504 805 600">● not exceeding one year	<p data-bbox="837 344 1528 443"><u>Maximum term of registration and renewal</u></p> <ul data-bbox="837 504 1528 600" style="list-style-type: none"><li data-bbox="837 504 1528 600">● not exceeding three years

**Complaint Handling and Disciplinary Inquiry Mechanism of
The Medical Council of Hong Kong**

The Medical Council of Hong Kong (MCHK) receives about 500 new complaint cases every year. As at end 2016, the total backlog of cases were about 940, with 560, 280 and 100 cases at Pre-Preliminary Investigation Committee (Pre-PIC), Preliminary Investigation Committee (PIC) and inquiry stages respectively.

2. Every new case needs to go through a Pre-PIC process i.e. the PIC chairman and deputy chairman will, in consultation with the lay member of PIC, decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full consideration. According to the latest policy of MCHK, it would be the PIC's responsibility to formulate and consider the draft charge¹ for cases referred to PIC for consideration. In general, if PIC considers that there is a need to formulate and consider the draft charge for a case, PIC needs to meet for at least three times i.e. (a) consider the case and formulate draft charge, (b) consider legal advice of the Department of Justice (DoJ) on the draft charge, and (c) consider the case when all relevant evidence is ready. Given the existing capacity of PIC, expected waiting time for a new case to be considered by one PIC is **about 12 months**². The number of backlog cases before and after the implementation of such new measure is as follows –

No. of backlog cases	Pre-PIC	PIC	Disciplinary Inquiry	Total
Before implementation of new measure (figures of May 2016)	about 700 cases	about 150 cases	about 80 cases	about 960 cases
After implementation of new measure (figures of Dec 2016)	about 560 cases	about 280 cases	about 100 cases	about 940 cases

¹ With reference to the judgment of the High Court case HCAL 46/2015, MCHK decides that PIC, instead of PIC chairman, should formulate and consider the draft charge.

² The Medical Council Secretariat and DoJ will work concurrently during the waiting time.

3. From 2012 to 2014, the average time required for handling complaint cases at Pre-PIC, PIC and inquiry stages were as follows –

	Pre-PIC	PIC	Disciplinary Inquiry	Total
Average time required for handling complaints in 2012-2014³	about 17 months	about 13 months	about 28 months	about 58 months

4. In 2012-2014, processing time required for the complaint handling procedures and relevant factors are summarized below –

	Statutory procedures regarding PIC and Inquiry	Procedures involving MC Secretariat and DoJ	Procedures involving complainant and doctor concerned	Procedures involving outside expert and clinics/hospitals	Total
Average time required for handling complaints in 2012-2014	about 27 months	about 15 months	about 6 months	about 10 months	about 58 months
Factors affecting processing time required	<p>Bottlenecks arising from the provisions of the Medical Registration Ordinance -</p> <p>(a) Capacity constraint of PIC – there can only be one PIC;</p> <p>(b) Inquiry meeting – there can only be one at a time;</p> <p>(c) Quorum requirement - mandatory presence of lay member for quorum purpose;</p> <p>(d) Limited roles for assessors - assessors cannot participate in PIC;</p> <p>(e) There can only be one Legal Adviser; and</p>	Depending on the manpower resources of MC Secretariat and DoJ	Depending on the turnaround time of complainant and doctor concerned	Depending on the turnaround time of outside expert, clinics/hospital as well as the nature and complexity of the case	Not applicable

³ Serious cases will be handled with priority.

	(f) Department of Justice has no flexibility to engage outside lawyers to represent the Secretary of MCHK in inquiries.				
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Latest situation and projection

5. The Government has provided additional funding for MCHK to employ six additional staff at various ranks to strengthen the manpower support of its Secretariat. The Government has also provided additional funding to MCHK to provide honorarium to experts at the preliminary investigation stage, with a view to expediting its complaint handling process through administrative measures under the current legislative limitation as far as practicable. However, increase in resources and administrative support can only provide limited relief.

6. Under the existing legislation, MCHK can only set up one PIC to process complaint cases. Given the current capacity of one PIC (at least meeting thrice for each case), expected waiting time for a new case at PIC stage is **about 12 months** under the latest PIC arrangement. Besides, as it is not possible to convene inquiry hearings more frequently and given the increasing backlog of cases at inquiry stage, the waiting time for a new case to be heard upon referral by PIC is **about 36 months**.

7. According to the latest projection by MC Secretariat, taking into account the processing time shortened by the administrative measures mentioned in paragraph 5 above, the projected average time required for handling complaint cases at Pre-PIC, PIC and inquiry stages will be about 15 months, 21 months and 36 months respectively and the total average time for handling complaint cases from receipt by MCHK to completion of inquiries will be increased to about 72 months.

	Pre-PIC	PIC	Disciplinary Inquiry	Total
Average time required for handling complaints in 2012-2014	about 17 months	about 13 months	about 28 months ⁵	about 58 months

Latest projection	about 15 months	about 21 months ⁴	about 36 months ⁵	about 72 months
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8. According to the latest projection of MC Secretariat, the processing time required for various complaint handling procedures is as follows -

	Statutory Procedures regarding PIC and Inquiry	Procedures involving MC Secretariat and DoJ	Procedures involving complainant and doctor concerned	Procedures involving outside expert and clinics/hospitals	Total
Latest projection	about 47 months	about 11 months	about 6 months	about 8 months	about 72 months
Latest situation	(a) Latest PIC arrangement: at least meeting thrice for each case (b) Increasing backlog aggravating waiting time	Increased manpower resources for MC Secretariat (shortened by about 4 months)	Not applicable	Provision of honorarium in Pre-PIC stage (shortened by about 2 months)	Not applicable

⁴ Including 12-month waiting time, during which MC Secretariat and DoJ will work concurrently on the case.

⁵ Waiting time, during which MC Secretariat and DoJ will work concurrently on the case.

Key proposed election arrangement for the three persons representing patients' interests at the Medical Council of Hong Kong

(A) Eligibility of an elector

An organization that wishes to be an elector will make an application to the Permanent Secretary for Food and Health (Health) and it must prove to the satisfaction of the Permanent Secretary that it meets all of the following requirements —

- (a) it is —
 - (i) a company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
 - (ii) a society, or a branch of a society, registered under section 5A(1) of the Societies Ordinance (Cap. 151);
- (b) its principal objective is to safeguard or represent patients' interests;
- (c) it has incorporated or registered under the Companies Ordinance (Cap. 622) or the Societies Ordinance (Cap. 151) for at least 2 years immediately before the application and has been carrying on activities to safeguard or represent patients' interests;
- (d) it is recognized by or registered with an overseeing/management authority which includes —
 - (i) the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113);
 - (ii) the Social Welfare Department;
 - (iii) the Hong Kong Society for Rehabilitation; and
 - (iv) any other entity recognized and accepted by the Permanent Secretary for Food and Health (Health).

2. A valid nomination shall be made by one elector as proposer and four electors as seconders.

(B) Electoral office

3. The Secretary of MCHK will conduct the election in accordance with the procedures as set out in the subsidiary legislation.

(C) Conduct of election

4. The election will be conducted on a triennial basis.

(D) Nomination of candidates

5. Each elector may nominate one candidate for election in accordance with its own internal rules.

(E) Voting

6. Voting at the polls is to be done by secret ballot. Each elector will be entitled to three votes. The three candidates who obtain the greatest number of votes will be elected.

(F) Term of office

7. The term of office of the three lay Council members is three years, and the members may be re-elected.

(G) By-election

8. If the office of an elected member becomes vacant, and at the time the vacancy arises, the unexpired term of office is not less than twelve months, the electoral office must, as soon as practicable, hold a by-election to elect a qualified candidate to hold that office for the unexpired term. The term of office of the member elected through the by-election is the unexpired term of the vacant office.

(H) Transitional arrangement

9. If the Permanent Secretary for Food and Health (Health) is satisfied that an applicant, who does not fulfill the requirements in paragraph 1(c), has been in operation for two years before the commencement date of section 4 of the Medical Registration (Amendment) Ordinance 2017 (of 2017), such application may be approved. The above transitional arrangement ceases to have effect on the expiry of two

years after the first election.

Information on Limited Registration**Promulgations of limited registration**

So far, the Medical Council of Hong Kong (MCHK) has published 12 promulgations of limited registration in the Government Gazette. At present, there is no registration under Promulgations No. 1, 5, 6, 7, 8 and 11 as the types of employment as described in those promulgations no longer exist. Currently, application for limited registration can be made under the following six promulgations –

Promulgation No.	Employment
No. 2	For the following types of full-time employment:- (a) Employment as a medical practitioner by the Government for the purpose of research work or for such clinical practice of medicine or special health care services, as specified by the Director of Health; (b) Employment as a medical practitioner by the Hospital Authority (HA) for the purpose of research work or for such clinical practice of medicine or hospital work, as specified by the Authority; (c) Employment as a medical practitioner by The University of Hong Kong (HKU) or The Chinese University of Hong Kong (CUHK) for the purpose of teaching, research or performing hospital work, in the Faculty of Medicine
No. 3	Being such persons (whose names were entered prior to the end of 1964 into a list maintained by the Registrar of Clinics, Department of Health (DH)) appointed for the provision of primary healthcare, and to be responsible for the medical management of those clinics exempted from the provisions of section 7 of the Medical Clinics Ordinance, Cap 343
No. 4	Being such persons (whose names were entered prior to the end of 1964 into a list maintained by the Registrar of Clinics, DH and who are or who have

Promulgation No.	Employment
	been registered under Promulgation No. 3 of MCHK on Limited Registration) appointed for the provision of primary healthcare, and to be responsible for the medical management of those clinics registered under the Medical Clinics Ordinance, Cap 343
No. 9	Employment for the purpose of supervising the medical matters which may arise in connexion with the construction work in compressed air for the Tuen Mun – Chek Lap Kok Link – Northern Connection Sub-sea Tunnel Section project under Highways Department’s contract number HY/2012/08
No. 10	Employment by a firm of solicitors registered by the Law Society of Hong Kong to carry out a medical examination of a person in Hong Kong for the sole purpose of preparing a medical expert report on that person for use in a pending court proceedings in Hong Kong
No. 12	Employment for the purpose of the annual rugby event “Sevens World Series”

Limited registration

2. According to section 14A of the Medical Registration Ordinance, a person may be registered as a medical practitioner with limited registration if MCHK satisfies that -

- (a) he / she has been selected for an employment or for a type of employment determined and promulgated by MCHK;
- (b) he / she has obtained an acceptable overseas qualification;
- (c) he / she has had adequate and relevant full-time post-qualification clinical experience;
- (d) he / she is registered with a medical authority outside Hong Kong; and
- (e) he / she is of good character.

3. If a person does not satisfy MCHK that he / she fulfills the requirement at (b), (c) or (d) above but satisfies MCHK that he fulfills other requirements above, MCHK may grant limited registration under section 14A(2A) of the Ordinance subject to additional restrictions and conditions

regarding his practice as specified by MCHK. This clause mainly applies to Promulgations No. 3 and 4. As for Promulgation No.2, as at end 2016, there were only three doctors employed by CUHK being granted limited registration without meeting the requirement under section 14A(c) or (d). One of the doctors obtained medical bachelor and master degrees overseas and registered with an overseas medical authority, and subsequently obtained doctorate degree in Hong Kong. This doctor did not have full-time post-qualification clinical experience when applying for limited registration. The remaining two doctors did not continue their overseas registration with the relevant overseas medical authorities when submitting renewal applications for limited registration.

4. The maximum duration of limited registration is one year. Upon expiry of the registration, the person can apply for renewal for another period up to one year.

Figures on limited registration

Promulgation	As at end 2012	As at end 2013	As at end 2014	As at end 2015	As at end 2016
No. 2	118	115	97	104	93
HKU	(45)	(45)	(33)	(30)	(27)
CUHK	(62)	(58)	(51)	(62)	(52)
HA¹	(11)	(12)	(13)	(12)	(14)
DH	(-)	(-)	(-)	(-)	(-)
No. 3	41	36	34	31	27
No. 4	16	15	15	13	12
No. 9	-	-	-	2	2
No. 10	-	-	-	0	0
No. 11	-	-	-	0	0
No. 12	-	-	-	0	0
Total	175	166	146	150	134

¹ Since January 2012 up to end 2016, MCHK has approved a total of 29 applications for limited registration of non-locally trained doctors who are employed by HA to address manpower shortage. All of them were employed as Service Residents. The annual figures are as follows. As at end 2016, there were 12 doctors with limited registration working in HA to address manpower shortage.

Year	Number of registrants with first registration	Number of registrants as at year-end
2012	13	9
2013	3	10
2014	4	11
2015	3	10
2016	6	12
Total	29	-

Note:

1. Promulgations No. 1, 5, 6, 7 and 8 had ceased to be in force in 2012.
2. Promulgations No. 9 to 12 came into force in 2015.

5. The majority of doctors with limited registration are registered under Promulgation No. 2, i.e. they are employed by the medical schools of HKU and CUHK, HA and DH. At present, there are about 100 doctors registered under such promulgation, with the majority being employed by the two medical schools, 14 by HA and none by DH. The details on the recruitment procedures and relevant figures on doctors recruited by HA, HKU and CUHK under limited registration is at **Appendix**.

**Hospital Authority, University of Hong Kong and
Chinese University of Hong Kong
Limited Registration – Recruitment Procedures and Relevant
Figures**

A. Hospital Authority

Initiation

- The Hospital Authority (HA) conducts annual recruitment exercise for resident doctors to recruit medical graduates from local universities and other qualified doctors. HA will also recruit doctors during the year to cater for service and operational needs.
- HA conducts regular manpower assessment in consultation with specialties with severe staff shortage, frontline doctors, doctors unions and Doctors Staff Group Consultative Committee.
- With requests from relevant departments and agreement with Specialty Coordinating Committee, HA will initiate recruitment process for doctors under limited registration.

Recruitment and selection

- Selection Panel members include relevant Constituent Colleges of the Hong Kong Academy of Medicine and respective HA's Specialty Coordinating Committee.
- HA will ensure that the applicant's eligibility meets the requirements, and then submit limited registration application to MCHK and provide relevant information to facilitate MCHK's approval.

Monitoring

- The Task Force on Limited Registration Scheme, comprising Deans of the two faculties of medicine, President of Hong Kong Academy of Medicine, Chief Executive of HA and representative, is responsible for monitoring the arrangements.
- Regular reportings are made to HA Board meetings and Directors' meetings.

Countries/Regions where doctors with limited registration received medical training (as at end 2016) *(Since January 2012 up to end 2016, MCHK has approved a total of 29 applications for limited registration of non-locally trained doctors who are employed by HA to address manpower shortage. All of them were employed as Service Residents. As at end 2016, there were 12 doctors with limited registration working in HA to address manpower shortage.)*

	United Kingdom	Australia/ New Zealand	United States	Canada	Total (no. of doctors)
Family Medicine	3	1		3 ^{Note 2}	7
Anaesthesiology	3	7			10
Internal Medicine	3				3
Emergency Medicine	5				5
Paediatrics			1		1
Radiology	1 ^{Note1}				1
Intensive Care	1 ^{Note1}				1
Psychiatry	1				1
Total (no. of doctors)	17	8	1	3	29

Note 1: The applicant obtained the basic medical degree from Malaysia and specialty qualification from the UK. The applicant was a registered doctor in Malaysia.

Note 2: One applicant obtained the basic medical degree from the Netherlands and specialty qualifications from Canada, the USA and Australia. The applicant was a registered doctor in Canada, the USA, Australia and the UK. Another applicant obtained the basic medical degree from the Mainland China and specialty qualification from Canada. The applicant was a registered doctor in Canada.

B. The University of Hong Kong

Initiation of recruitment

- Recruitments of clinical professoriate staff, clinical associates and lecturers (incl. principal and senior lecturers) as with all staff are determined by the academic needs of the University from time to time.

System / procedures of recruitment, selection and appointment to different posts

- As with all positions, vacancies are normally openly advertised to ensure that the recruitment is open and competitive and targeting at the best candidates available. After a fair and rigorous selection process, the recommendation for appointment is then considered at both the Faculty and University levels.

Monitoring of the standard of service provided by limited registration doctors and review of their suitability for continued appointment

- All staff is required to undergo an annual Performance Review and Development exercise of the University covering all aspects of teaching, research, clinical work, and service/administration/knowledge exchange, with relativity in weighting adjusted depending on an individual's job portfolio. All re-appointment cases are then considered and approved by both the Faculty and the University.

Countries/Regions where doctors with limited registration received medical training (as at end 2016)

Country/Region	Number of doctors
United Kingdom	8
Mainland China	7
Australia	3
Canada	2
USA	2
Brazil	1
Czech Republic	1
Georgia	1
India	1
Sri Lanka	1
Total	27

C. The Chinese University of Hong Kong

Initiation of recruitment

- The Department Chairman concerned will initiate action on placement of a recruitment advertisement based on the Department's manpower plan, clinical research strategic directions, and/or teaching and service needs. The recruitment advertisement is expected to reflect the duties and requirements of the position and invite qualified candidates to apply for the position.

Recruitment and selection

- Appointments can only be made after the proper selection process has been carried out at the Departmental, Faculty and University levels.
- To ensure that the best candidates are selected, external assessment for the suitability of potential candidates is one of the required procedures if the appointment is made on a longer duration.
- For visiting appointments and short-term appointments of one year or less, advertising may be dispensed with. Nevertheless, the appointment will still need to go through the Department, Faculty and University.
- Under reciprocal arrangements with other institutions concerning collaborative training, academic exchange and skills transfer, CUHK also receives clinical trainees from other places. The clinical trainees are all with a medical qualification and possess relevant clinical experience as appropriate. They will participate in training programmes organized by the respective Department. Upon completion of training, they will return to their institutions.

Appointment review

- All academic members including clinical academics are subject to annual performance review. They have to submit an activities report in respect of teaching, research and scholarship, and service (including clinical services for clinical academics) as applicable.
- Annual performance assessment will be conducted by the relevant review committees based on the activities report and the assessment criteria at Department and Faculty levels as applicable.
- Same as the first appointment, further appointment will be subject to review by relevant committees at the Department, Faculty and University levels.

Countries/Regions where doctors with limited registration received medical training (as at end 2016)

Country/Region	Number of doctors
United Kingdom	13
Mainland China	11
Philippines	6
India	5
South Africa	4
Canada	3
Australia	2
Bahrain	1
France	1
Germany	1
Nepal	1
Oman	1
Taiwan	1
Thailand	1
USA	1
Total	52

Implications of the Proposal

Financial and Civil Service Implications

Additional secretariat support to be provided by Boards and Councils Office of the Department of Health

The Boards and Councils Office of the Department of Health (DH) 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. With the passage of the Medical Registration (Amendment) Bill 2017, additional manpower would be required for the MC Secretariat to meet the increase of caseload in the long term and to clear the existing backlog of complaint cases.

Additional legal support

3. Under the current regime, upon the request made by the Chairman of MCHK, a legal officer (mainly a Senior Government Counsel from the Department of Justice (DoJ)) 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 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

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.”

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, will be sought with justifications in accordance with the established mechanism as appropriate.

Economic Implications

5. The proposal to enable MCHK to approve applications for limited registration from not exceeding one year to not exceeding three years would help alleviate manpower shortage in the public sector in the short term.

Sustainability Implications

6. The proposed revised complaint investigation and disciplinary inquiry mechanism could speed up the processing of cases, while the proposal of enabling MCHK to approve applications for limited registration from not exceeding one year to not exceeding three years would help alleviate manpower shortage in the public sector in the short term which could in turn improve the provision of healthcare services, and bring about positive sustainability impact.