

立法會
Legislative Council

LC Paper No. LS74/16-17

**Paper for the House Committee Meeting
on 9 June 2017**

**Legal Service Division Report on
Medical Registration (Amendment) Bill 2017**

I. SUMMARY

- 1. The Bill** The Bill seeks to amend the Medical Registration Ordinance (Cap. 161) and three items of its subsidiary legislation to:

 - (a) change the composition of the Medical Council of Hong Kong ("the Medical Council");
 - (b) amend the arrangements for preliminary investigation, disciplinary inquiries and Health Committee meetings;
 - (c) extend the period of limited registration of medical practitioners; and
 - (d) provide for technical, textual and consequential amendments and transitional and savings arrangements.

- 2. Public Consultation** The Administration has set up the Tripartite Platform on Amendments to the Medical Registration Ordinance, consulted the Medical Council and met with stakeholders to hear their views on the proposals.

- 3. Consultation with LegCo Panel** The Panel on Health Services was consulted on 29 May 2017. Members generally supported the legislative proposals but expressed certain concerns.

- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of changes to Cap. 161 and its subsidiary legislation, members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 7 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: FHCR1/F/3261/92) issued by the Food and Health Bureau on 24 May 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Medical Registration Ordinance (Cap. 161) and three items of its subsidiary legislation to:
 - (a) change the composition of the Medical Council of Hong Kong ("the Medical Council");
 - (b) amend the arrangements for preliminary investigation, disciplinary inquiries and Health Committee ("HC") meetings;
 - (c) extend the period of limited registration of medical practitioners; and
 - (d) provide for technical, textual and consequential amendments and transitional and savings arrangements.

Background

3. The Medical Council, which is established under Cap. 161, is responsible for the registration of medical practitioners and specialists, the conduct of Licensing Examination, and the maintenance of ethics, professional standards and discipline in the medical profession. The Preliminary Investigation Committee ("PIC") and HC are two of the committees formed by the Medical Council. One of the functions of PIC is to make preliminary investigations into complaints that may be inquired into by the Medical Council. HC has various functions such as conducting hearings into cases or matters concerning the health or physical or mental fitness to practise of any registered medical practitioner.

4. In March 2016, the Administration introduced the Medical Registration (Amendment) Bill 2016 ("the 2016 Bill") into the Fifth LegCo to propose, among other things, amendments in relation to the operation of the Medical Council. Members may refer to the Report of the Bills Committee on the 2016 Bill as formed (LC Paper No. CB(2)1818/15-16) for further details. The Second Reading of the 2016 Bill was passed at the Council meeting of 6 July 2016 but the Committee stage proceedings of the 2016 Bill could not be completed before the Fifth LegCo stood prorogued. The Administration now

introduces the Bill to propose legislative amendments to Cap. 161 and its subsidiary legislation. The Bill includes some of the proposals proposed in the 2016 Bill. Some new proposals are also proposed in the Bill. The key provisions are summarized in the ensuing paragraphs.

Provisions of the Bill

Changes to the composition of the Medical Council

5. The Medical Council currently consists of a total of 28 members. 24 of whom are registered medical practitioners, with 14 to be elected and 10 to be appointed by the Chief Executive ("CE") upon nomination by specified persons. The remaining four members are lay persons to be appointed by CE.

6. The 2016 Bill, as amended by the Administration's proposed Committee stage amendments, proposed to change the composition of the Medical Council to (a) increase the number of lay members appointed by CE from four to eight, three of whom were to be elected by patient organizations specified by the Permanent Secretary for Food and Health (Health) ("Permanent Secretary") and the remaining one was to be nominated by the Consumer Council; and (b) convert the two members to be nominated by the Hong Kong Academy of Medicine ("the Academy of Medicine") for appointment by CE to members to be elected by the Academy of Medicine in accordance with its regulations or procedures.

7. The Bill proposes the same proposals to change the composition of the Medical Council as in the 2016 Bill, except with the following modifications in respect of the proposed addition of four additional lay members:

- (a) the appointment by CE would not be required for these proposed additional lay members; and
- (b) the eligibility requirements for patient organizations for electing the three proposed additional lay members and the relevant election procedures would be specified in regulations to be made by the Permanent Secretary which would be subject to negative vetting by LegCo.

Amendments to the arrangements for preliminary investigation, disciplinary inquiries and HC meetings

Appointment of medical assessors and lay assessors

8. Currently under section 21B(2) of Cap. 161, the Medical Council is empowered to appoint 10 registered medical practitioners ("medical assessors")

and four lay persons ("lay assessors") not being members of the Medical Council upon nomination by specified persons to form a panel of assessors for the purposes of conducting disciplinary inquiries.

9. The 2016 Bill proposed to amend section 21B(2) of Cap. 161 to increase the total number of medical assessors to be nominated from 10 to 20 and the total number of lay assessors to be nominated from four to 14.

10. The Bill does not adopt the proposal in the 2016 Bill but proposes a new scheme for the nomination of medical assessors and lay assessors to be appointed by the Medical Council under a new Part IIIAAB of, and new Schedule 5 to, Cap. 161. Under the new Part IIIAAB of Cap. 161, the Medical Council would be empowered to specify the qualifications and experience that a person must possess in order to be eligible for nomination as a medical assessor and lay assessor. The new Schedule 5 to Cap. 161 provides for the authorities that may nominate lay assessors and medical assessors, and the minimum and maximum numbers of assessors that may be nominated.

PIC

11. Currently under section 20BA(2)(d) of Cap. 161, the Medical Council may only establish one PIC. Pursuant to the current section 20S of Cap. 161, PIC consists of seven members, namely, two members of the Medical Council, four registered medical practitioners not being members of the Medical Council to be nominated by specified persons, and one lay member of the Medical Council.

12. Under the 2016 Bill, the Medical Council was empowered to establish more than one PIC. The 2016 Bill also proposed to increase the number of lay persons on PIC from one lay member of the Medical Council to two lay persons being either a lay member of the Medical Council or a lay assessor. The term of appointment of such lay persons were to be extended from a period of not exceeding three months to a period of not exceeding 12 months.

13. As in the 2016 Bill, the Bill proposes that more than one PIC could be established. In relation to the composition of PIC, the Bill proposes a different approach from the 2016 Bill. Under the Bill, PIC would comprise four registered medical practitioners being either a member of the Medical Council or a medical assessor and three lay persons being either a lay member of the Medical Council or a lay assessor. The Bill further proposes to align the maximum term of office of all members of PIC to be 12 months.

Appointment of inquiry panels

14. The Bill proposes to add new section 20X to Cap. 161 to empower the Medical Council to appoint inquiry panels ("IPs") upon referrals by PIC to take over the current function of the Medical Council of holding disciplinary inquiries. Under the Bill, IP would consist of three registered medical practitioners who must either be a member of the Medical Council or a medical assessor and two lay persons who must either be a lay member of the Medical Council or a lay assessor. This is a new proposal which was not provided in the 2016 Bill.

HC

15. The 2016 Bill proposed to increase the number of lay persons on HC from one of the lay members of the Medical Council to two of the lay members of the Medical Council. The Bill revises that proposal by proposing to increase the number of lay persons from one of the lay members of the Medical Council to two lay persons who would either be a lay member of the Medical Council or be a lay assessor.

Extension of the period of limited registration of medical practitioners

16. Under the current section 14A(2) of Cap. 161, the Medical Council may approve the registration of a person as a medical practitioner with limited registration if all the specified conditions are met. One of the conditions is that the applicant must have obtained an acceptable overseas qualification.

17. The Bill proposes to amend section 14A of Cap. 161 to extend the maximum term of limited registration and renewal of such registration from a period of not exceeding one year to a period of not exceeding three years. This proposal is the same as that proposed in the 2016 Bill.

Other amendments

18. Other amendments relate to technical, textual and consequential amendments to Cap. 161 and three items of its subsidiary legislation and provide for transitional and savings arrangements.

Commencement

19. Except for certain provisions that would come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette, the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance. The provisions that would come into operation on a later date relate to the proposed addition of three lay members of the Medical Council to be elected by patient organizations and the proposed nomination of lay assessors by patient organizations.

Public Consultation

20. According to paragraph 13 of the LegCo Brief, the Administration has set up the Tripartite Platform on Amendments to the Medical Registration Ordinance, comprising doctors, representatives of patients' interests and consumers' interests, and LegCo Members to, among other things, provide views and deliberate on amendment proposals to Cap. 161. The Administration has also consulted the Medical Council on the proposals and met with stakeholders including medical professional and patient groups to hear their views.

Consultation with LegCo Panel

21. As advised by the Clerk to Panel on Health Services, the Administration briefed the Panel on 29 May 2017 on the legislative proposals. Members generally supported the proposals, but raised concerns on certain issues, including the number of directly elected registered medical practitioner members in the Medical Council and the implications on professional autonomy, the requirements relating to the qualifications and experience of medical assessors and lay assessors, the effectiveness of the proposed extension of the maximum term of limited registration and renewal of such registration in attracting more non-locally trained specialists to perform hospital work in the Hospital Authority ("HA"), as well as the recruitment and monitoring mechanism put in place by HA on medical practitioners employed under limited registration.

Conclusion

22. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of changes to Cap. 161 and its subsidiary legislation, members may wish to form a Bills Committee to study the Bill in detail.

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