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**Report of the Bills Committee
on Medical Registration (Amendment) Bill 2017**

Purpose

This paper reports on the deliberations of the Bills Committee on Medical Registration (Amendment) Bill 2017 ("the Bills Committee").

Background

2. The Medical Council of Hong Kong ("the Medical Council") is established under the Medical Registration Ordinance (Cap. 161) ("the Ordinance"). Its major functions include, among others, maintaining registers of medical practitioners; administering the Licensing Examination; determining and promulgating from time to time the employment or type of employment in respect of which limited registration is appropriate or necessary; handling complaints received against registered medical practitioners; conducting investigations into allegations of professional misconduct; and taking disciplinary actions.

3. The Boards and Councils Office of the Department of Health currently provides secretariat support to the Medical Council. In 2017-2018, the Government has earmarked additional funding of \$8.4 million for increasing manpower resources of the Medical Council Secretariat, and provision of honorarium to experts at the preliminary investigation stage of the Medical Council¹ to facilitate the Medical Council to expedite its complaint handling process through administrative measures. The expenses incurred in relation to the provision of secretariat support to the Medical Council are partially recovered by

¹ Starting from October 2016, honorarium is provided to experts providing expert advice at the preliminary investigation stage of the Medical Council.

statutory fees and charges relating to the registration of medical practitioners (including the Licensing Examination fees) collected in accordance with the Medical Registration (Fees) Regulation (Cap. 161C).

4. According to the Administration, there is a global trend for greater involvement of lay persons in regulatory bodies of the healthcare professions so as to provide an institutional assurance for enhanced public accountability while preserving professional self-regulation. Locally, there is increasing call for enhancing the participation of lay members in the composition of the Medical Council, which currently stands at about 14% (i.e. four out of 28 members). In addition, there is grave public concern over the efficiency of the Medical Council in complaint investigation and conducting disciplinary inquiries. As at the end of 2016, the total backlog of complaint cases handled by the Medical Council was about 940. It is estimated that it would take about 72 months for the Medical Council to conclude a complaint case requiring disciplinary inquiry. The Administration considers that increase in resources and administrative support to the Medical Council can only provide limited relief, as there are inherent bottlenecks in the complaint investigation and disciplinary inquiry mechanism of the Medical Council prescribed in the Ordinance. Separately, the lack of flexibility for the Medical Council to approve applications under prescribed conditions by way of limited registration has also aroused public concern. The medical manpower constraint of the Hospital Authority ("HA") in recent years has further intensified the concerns.

The Medical Registration (Amendment) Bill 2016

5. The Administration introduced the Medical Registration (Amendment) Bill 2016 ("the 2016 Bill") into the Legislative Council ("LegCo") on 2 March 2016. The Bills seeks to, among others, increase the number of lay members appointed by the Chief Executive ("CE") to the Medical Council from four to eight, and the respective numbers of lay persons appointed to the Preliminary Investigation Committee ("PIC") and the Health Committee from one to two; enable the Medical Council to establish more than one PIC; extend the validity period and renewal period of limited registration from not exceeding one year to not exceeding three years; refine the quorum for disciplinary inquiries and increase the number of assessors from 14 to 34; enable solicitor or counsel to be appointed to carry out the statutory duties of the Secretary of the Medical Council in inquiries; and increase the number of legal advisers to the Medical Council.

6. A Bills Committee was formed to scrutinize the 2016 Bill. It completed scrutiny work in June 2016. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)1795/15-16) for details of its deliberations. The

Second Reading debate on the 2016 Bill was resumed at the Council meeting of 29 June 2016. 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 Medical Registration (Amendment) Bill 2017

7. The Administration introduced the Medical Registration (Amendment) Bill 2017 ("the Bill") into LegCo on 7 June 2017 to amend the Ordinance and three items of its subsidiary legislation to change the composition of the Medical Council; amend the arrangements for preliminary investigation, disciplinary inquiries and Health Committee meetings; extend the period of limited registration of medical practitioners; and provide for technical, textual and consequential amendments and transitional and savings arrangements. According to the Administration, the Bill is formulated on the basis of the original proposals of the 2016 Bill and the then amendments proposed by the Administration to the 2016 Bill, and with regard to the discussions and concerns of LegCo Members and the community on the 2016 Bill; the views expressed by members of the Tripartite Platform on the Amendments to the Ordinance (which was set up by the Administration in November 2016²) on various occasions; as well as the deliberations and views raised at the Tripartite Platform.

The Bills Committee

8. At the House Committee meeting on 9 June 2017, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Mr Tommy CHEUNG, the Bills Committee has held 11 meetings with the Administration. The Bills Committee has also received oral representation from 23 organizations and 13 individuals at two of these meetings. A list of organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

² The Tripartite Platform on the Amendments to the Ordinance, which comprises registered medical practitioners, representatives of patients' interests and consumers' interests, and LegCo Members, is aimed to promote understanding and communication, as well as provide views and deliberate on proposals relating to amendments to the Ordinance.

Deliberations of the Bills Committee

Increasing lay participation in the Medical Council, PIC and the Health Committee

Proposals in the Bill

10. According to section 3(2) of the Ordinance, the Medical Council comprises a total of 28 members, with 24 being registered medical practitioners and four lay members appointed by CE. Among the 24 members of the Medical Council who are registered medical practitioners, seven are elected by registered medical practitioners with full and limited registration, seven others are members of the Hong Kong Medical Association ("the Medical Association") nominated in accordance with its relevant regulations or procedures and elected by its Council members in accordance with those regulations or procedures, and the remaining 10 being registered medical practitioners nominated by specified persons for appointment by CE (i.e. two each nominated by the Director of Health, the University of Hong Kong ("HKU"), The Chinese University of Hong Kong ("CUHK"), HA and the Hong Kong Academy of Medicine ("the Academy of Medicine") respectively). To increase lay participation in the Medical Council and two of its committees³, the Bills seeks to:

- (a) increase the number of lay members of the Medical Council from four to eight, three of whom would be elected by patient organizations⁴ (the proposed new section 3(2)(ga) of the Ordinance) and the remaining one would be nominated by the Consumer Council (the proposed new section 3(2)(gb) of the Ordinance). This would in effect increase the proportion of lay members in the Medical Council from about 14% to 25% (i.e. eight out of 32 members);
- (b) increase the number of lay persons on PIC⁵ from one of the four lay members of the Medical Council to three lay persons being either a lay

³ According to section 20BA(2) of the Ordinance, the Medical Council may establish five committees in accordance with, and having such functions as are assigned to them by the Ordinance or delegated to them by the Medical Council, namely the Licentiate Committee, the Education and Accreditation Committee, the Ethics Committee, PIC and the Health Committee. Among these committees, only PIC and the Health Committee require a membership that comprises lay members of the Medical Council.

⁴ Under the proposed section 2(2) of the Ordinance, "patient organization" means an organization that satisfies the eligibility requirements prescribed by the Patient Organizations Election Regulation to be made under the proposed new section 33(3A) of the Ordinance. The proposed eligibility requirements are detailed in paragraph 14 below.

⁵ The existing composition and functions of PIC are detailed in paragraph 29 below.

member of the Medical Council or a lay assessor appointed under the proposed new section 20BB of the Ordinance (the proposed new section 20S(1)(b) of the Ordinance); and

- (c) increase the number of lay persons sitting on the Health Committee from one of the four lay members of the Medical Council to two lay persons being either a lay member of the Medical Council or a lay assessor (the proposed section 20U(1)(g) of the Ordinance).

Election of three lay members representing the interests of patients

11. Members are supportive of the proposed increase in the number of lay members in the Medical Council so as to enhance public accountability and credibility of the Medical Council in discharging its self-regulatory function to safeguard public interest. Some members including Dr Junius HO are of the view that while the proposal would increase lay membership of the Medical Council from about 14% to 25%, the proportion of lay members on the Medical Council would still be on the low side when compared to that of the medical regulatory bodies in the United Kingdom (for which lay persons comprise half of the membership). He urges the Administration to consider further increasing the number of lay members on the Medical Council in the future such that the proportion of lay members will account for half of the membership. Dr Pierre CHAN holds another view that it is of paramount importance for the majority of members of the Medical Council to be registered medical practitioners in order to uphold professional autonomy of the medical profession.

12. For the purpose of enabling the patient organizations to elect three lay members to the Medical Council, the Permanent Secretary for Food and Health (Health) ("the Permanent Secretary") is empowered under the proposed new section 33(3A) of the Ordinance to make a regulation (i.e. the proposed Patient Organizations Election Regulation) ("the new regulation") to provide for the procedure and other matters in relation to an election or appointment of these three lay members, 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.

13. According to the Administration, it is proposed that each elector eligible for electing three persons representing patients' interests to sit on the Medical Council may nominate one candidate for election in accordance with its own rules and each elector will be entitled to up to three votes according to the number of vacancies. The three candidates who obtain the greatest number of votes will be elected. Pursuant to the proposed new section 3(3AA) of the Ordinance, the lay

members so elected hold office for three years from the date of notification in the Gazette of the member's election. Some members including Dr KWOK Ka-ki and Dr Pierre CHAN have expressed concern about whether the eligibility requirements for being an elector in these elections could prevent vote-rigging and ensure that the representatives so elected truly represent the interests of patients.

14. The Administration has advised the Bills Committee that its initial thought is that an organization that wishes to be an elector will have to make an application to the Permanent Secretary and prove to the satisfaction of the Permanent Secretary that it meets all of the following requirements:

- (a) the organization is either a company as defined by section 2(1) of the Companies Ordinance (Cap. 622) or a society, or a branch of a society, registered under section 5A(1) of the Societies Ordinance (Cap. 151);
- (b) the principle objective of the organization is to safeguard or represent patients' interests;
- (c) the organization has incorporated or registered under the Companies Ordinance or the Societies Ordinance for at least two years immediately before the application and has been carrying on activities to safeguard or represent patients' interests; and
- (d) the organization is recognized by or registered with an overseeing or management authority which includes HA, the Social Welfare Department, the Hong Kong Society for Rehabilitation,⁶ and any other entity recognized and accepted by the Permanent Secretary.

Provisions against corrupt and illegal conduct will be included in the new regulation, stipulating that a person will be disqualified from being nominated in an election or holding office if he or she engages in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance

⁶ According to the Administration, there are currently over 200 patient-related organizations or groups providing advice on service developments and patient support services under the network of HA. The Community Rehabilitation Network is a community-based rehabilitation service under the Hong Kong Society for Rehabilitation to assist persons with visceral disability or chronic illness and their families. It engages over 160 organizations or groups. Since 2001, the Social Welfare Department has been providing financial support to self-help organizations of persons with disabilities or chronic illness aiming at promoting the spirit of self-help and mutual help among persons with disabilities and their families. In 2016-2018, 82 organizations or groups receive funding support under the Financial Support Scheme for Self-help Organizations of Persons with Disabilities/Chronic Illnesses.

(Cap. 554). The new regulation will also provide for arrangements for election petition. Dr KWOK Ka-ki is of the view that an appeal mechanism should be put in place to enable an organization to appeal against the decision of the Permanent Secretary on whether an organization meets the eligibility requirements for electors.

15. At the request of the Bills Committee, the Administration has consulted major patient organizations on its proposed regulatory framework for the election. According to the Administration, the major patient organizations generally agree with the proposal.

16. According to the proposed new section 3(5AA) of the Ordinance, when a lay member representing the interests of patients resigns or the office otherwise becomes vacant and the unexpired term of the office is not less than one year when the vacancy arises, an election under the new regulation must be conducted to fill the vacancy. If the unexpired term of the office is less than one year when the vacancy arises, the Medical Council must, as soon as possible, on the nomination of any lay member of the Medical Council, appoint a person who, in its opinion, represents the interests of the patients to fill the vacancy. The latter arrangement is in line with the arrangement provided for in the proposed section 3(5B)(b) of the Ordinance for filling a vacancy where a registered medical practitioner member elected by registered medical practitioners with full and limited registration resigns or the office becomes vacant and the unexpired term of the office at the time the vacancy arises is less than one year.⁷ Pursuant to the proposed new section 3(5AAB) of the Ordinance, a lay member representing the interests of patients so elected or appointed holds office from the date of election or appointment until the end of the unexpired term.

17. Dr Pierre CHAN has expressed concern about the rationale for requiring the Medical Council to, in the case where the unexpired term of the vacated office is less than one year, decide whether a person nominated by any lay member of the Medical Council to fill the vacancy represents the interests of patients and then appoint a person to fill the vacancy based on such nomination. He pointed out that this is not in line with the arrangement when the office concerned is originally filled. Under the proposed new section 3(2)(ga) of the Ordinance, the lay members are elected, but not returned from an appointment by the Medical Council. At the request of the Bills Committee, the Administration has consulted major patient organizations on the above proposed arrangement. After

⁷ According to the proposed section 3(5B)(b) of the Ordinance, the Medical Council shall, as soon as possible, on the nomination of any member of the Medical Council who is a registered medical practitioner, appoint a registered medical practitioner whom the Medical Council considers appropriate to fill that vacancy.

consideration of the views gauged, the Administration will move amendments to the proposed new section 3(5AA)(b) of the Ordinance to the effect that the appointment on such nomination would be made by the Permanent Secretary, instead of the Medical Council as originally proposed in the Bill.

18. Under the Bill, the new regulation would be subject to negative vetting by LegCo. The Administration has advised the Bills Committee that it would introduce the new regulation into LegCo within three months after the passage of the Bill. It is expected that the Medical Council Secretariat will start the election work of the first election within 15 weeks upon the expiry of the scrutiny period of the new regulation.

Proportion of elected registered medical practitioner members in the Medical Council

19. Members note that the Medical Council currently comprises 14 members appointed by CE, with 10 being registered medical practitioners nominated by specified persons (i.e. two each nominated by the Director of Health, HKU, CUHK, HA and the Academy of Medicine respectively according to section 3(2)(c), (d), (da), (db) and (h) of the Ordinance) and four lay members. The remaining 14 members of the Medical Council include seven registered medical practitioners who are members of the Medical Association nominated in accordance with its relevant regulations or procedures and elected by its Council members in accordance with those regulations or procedures, and seven registered medical practitioners who are elected by registered medical practitioners with full registration and limited registration. In effect, elected registered medical practitioner members account for half of the membership in the Medical Council (i.e. 14 out of 28 members). Taking into account concerns of some members in the medical profession, the Bill proposes to change the two registered medical practitioner members who are currently nominated by the Academy of Medicine and appointed by CE to two registered medical practitioner members elected by the Academy of Medicine in accordance with its regulations or procedures. In effect, the proportion of elected registered medical practitioner members in the Medical Council would remain at 50% (i.e. 16 out of 32 members).

20. The Administration has advised the Bills Committee that the rationale for the above legislative proposal is that the Academy of Medicine is a statutory body governed by the Hong Kong Academy of Medicine Ordinance (Cap. 419) with

15 Colleges⁸. The Academy of Medicine has statutory power to organize, monitor, assess and accredit all medical specialist training and to oversee the provision of continuing medical education for specialists. Over the past 20 years, the number of Fellows⁹ of the Academy of Medicine ("Fellows") has increased from about 2 500 to 7 500. Having regard to the principle of professional and academic autonomy, the Administration considers that it is appropriate for the Academy of Medicine to elect two registered medical practitioners to sit on the Medical Council in accordance with the rules and regulations governing its operation, and appointment by CE is not required.

21. Members note that how the Academy of Medicine elects the two registered medical practitioners to fill the two elected seats would be decided by the Academy of Medicine itself, and there have been voices from Fellows that these two elected seats should be elected by all Fellows directly. If this is the case, the registered medical practitioners so elected would need to be accountable to their voters. This may run contrary to the existing role of the Academy of Medicine in the Medical Council which is to maintain the standard of medical specialist training and continuing medical education in Hong Kong. In the light of the above, some members including Dr KWOK Ka-ki and Dr Pierre CHAN share the view raised by some members of the medical profession that the two appointed seats of the Academy of Medicine should remain unchanged. Instead of converting the two appointed seats to be nominated by the Academy of Medicine to two elected seats to be elected by the Academy of Medicine as proposed in the Bill, a better option is to convert one of each of the two appointed seats to be nominated by HA and the Director of Health respectively for appointment by CE to two elected seats for direct election by all registered medical practitioners. The

⁸ The 15 Academy Colleges are Hong Kong College of Anaesthesiologists, Hong Kong College of Community Medicine, College of Dental Surgeons of Hong Kong, Hong Kong College of Emergency Medicine, Hong Kong College of Family Physicians, Hong Kong College of Obstetricians and Gynaecologists, College of Ophthalmologists of Hong Kong, Hong Kong College of Orthopaedic Surgeons, Hong Kong College of Otorhinolaryngologists, Hong Kong College of Paediatricians, Hong Kong College of Pathologists, Hong Kong College of Physicians, Hong Kong College of Psychiatrists, Hong Kong College of Radiologists and College of Surgeons of Hong Kong.

⁹ Under section 3(3)(a)(i) of the Hong Kong Academy of Medicine Ordinance, any member of an Academy College who is recommended by that Academy College for admission to the membership of the Academy of Medicine may, in accordance with section 3(4)(a) and subject to section 3(5) of that Ordinance, be admitted to such membership as a Fellow if the person has successfully completed such courses or periods of training and passed such examinations held, conducted or recognized by such Academy College as are specified in the bylaws in relation to the admission of Fellows; or if the person had specialized and practised in a branch of medicine for 25 years or more as at the commencement of that Ordinance, and in the opinion of the Council of the Academy of Medicine, the conduct of his practice was consistently good throughout such years.

remaining two seats should be taken up by the Director of Health (or his or her representative) and the Chief Executive of HA (or his or her representative) respectively.

22. After consideration of the views from members of the Bills Committee and major stakeholders including the medical profession and the patient groups, the Administration has agreed to move amendments to the proposed section 3 of the Ordinance according to the general consensus reached to the effect that the two existing appointed registered medical practitioner member seats to be nominated by the Academy of Medicine for appointment by CE would remain. The four registered medical practitioner member seats nominated by the Director of Health and HA (two each institution) should be halved; the two seats so spared would accommodate two registered medical practitioner members who are Fellows to be nominated and elected by Fellows in accordance with the regulations or procedures of the Academy of Medicine; and the remaining two seats should be taken up by the Director of Health (or his or her representative) and the Chief Executive of HA (or his or her representative) respectively. The proportion of elected registered medical practitioner members in the Medical Council would remain at 50%, as is the case proposed under the Bill (i.e. 16 out of 32 members). The Administration will also move an amendment to add a definition of "Fellow" in line with section 2 of the Hong Kong Academy of Medicine Ordinance in the proposed section 2 of the Ordinance.

23. Members in general are supportive of the proposed amendments put forth by the Administration to the composition of the Medical Council. Dr KWOK Ka-ki considers that it would be more desirable if Members, not only Fellows, of the Academy of Medicine could vote in the elections for filling the two proposed registered medical practitioner seats to be nominated by Fellows. This would expand the base of electors, making the election closer to a direct election by all registered medical practitioners as originally proposed by some members of the medical profession.

24. Noting that matters in relation to the elections held for the purpose of filling the two registered medical practitioner seats to be nominated and elected by Fellows would not be provided for in the legislation¹⁰, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr IP Kin-yuen and Dr Pierre CHAN have expressed

¹⁰ According to the Administration, objects of the Academy of Medicine as set out in section 4 of the Hong Kong Academy of Medicine Ordinance include promoting the integrity of the medical profession, ethical conduct in the practice of medicine and its specialties and the improvement of health care for Hong Kong citizens and that pursuant to section 7(q) of that Ordinance, the Academy of Medicine may do anything else which is conducive or incidental to the achievement of its objects. Electing members to take up the office of member of the Medical Council is within the above objects.

concern about whether any additional thresholds would be imposed on the eligibility to stand for the election, to nominate and to vote in the election under the regulations or procedures to be drawn up by the Academy of Medicine in this regard after the passage of the Bill. They have pointed out that if this turned out to be the case, it would deviate from the general consensus already reached amongst the relevant stakeholders under the steer of the Administration. Making reference to the existing qualifications for nomination as a candidate in the election for the seven registered medical practitioner member seats to be elected by registered medical practitioners with full registration and limited registration, as well as the qualifications of electors, proposers and seconders as set out in sections 4 and 5 of the Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161B), Dr KWOK Ka-ki and Dr Pierre CHAN are of the view that no requirements in addition to that related to the membership and residency status of the Fellows concerned should be imposed by the Academy of Medicine for the elections held for the purpose of filling the two seats.

25. In response to the concern raised by these members, the Academy of Medicine has advised the Bills Committee that it had held a consultation forum on 30 November 2017 to collect Fellows' view on the nomination and election mechanism of the two proposed additional seats. A survey among all Fellows had also been conducted during 12 December 2017 to 5 February 2018 to collect their views on the subject. Subsequently, the Council of the Academy of Medicine had resolved to accept the majority views reflected in the survey that all Fellows would be eligible to stand for election of the two proposed elected seats and there would be no prerequisite requirements or conditions. These two seats would be nominated and elected directly by all Fellows. As informed by the Administration, the details about the procedures of nomination and election arrangements for the two proposed seats are being worked out by the Academy of Medicine. Its plan is for the proposal be considered by the Council of the Academy of Medicine in mid-March 2018.

26. As a related issue, Dr KWOK Ka-ki and Dr Pierre CHAN have expressed concern that the professional element in the Medical Council would be reduced if the Director of Health and/or the Chief Executive of HA (or their appointed representatives) are not medical practitioners. Another concern raised by Dr Pierre CHAN is that it might not be conducive to the smooth operation of the Medical Council if different representatives would be appointed by the Director of Health or the Chief Executive of HA from time to time to attend meetings of the Medical Council on their behalf.

27. The Administration has advised that the appointment of the Director of Health is made in accordance with the relevant established mechanism. The position has been taken up by medical practitioners over the years. As a statutory

body, HA will recruit its Chief Executive through open recruitment exercise and it would be for HA to decide as to whether its Chief Executive has to be a medical practitioner. That said, it is expected that the opportunity of a non-medical practitioner to take up these two positions is low. The Administration has undertaken that after the passage of the Bill, it would relay to the Director of Health and the Chief Executive of HA members' views that in case they have to appoint representatives to attend meetings of the Medical Council on their behalf due to their unavailability, these representatives should be medical practitioners as far as practicable.

28. The Bills Committee has invited organizations and individuals which/who have made oral representation to the Bills Committee to give their views on the Administration's proposed amendments to the Bill concerning the composition of the Medical Council. They generally welcomed the proposal.

Complaint investigation and disciplinary inquiry mechanism

Establishment of more than one PIC and appointment of inquiry panels

29. Members note that the Medical Council currently receives about 500 new complaint cases each year. As of August 2017, the total backlog of cases was about 760. According to existing section 20T of the Ordinance, PIC is established by the Medical Council to, among others, make preliminary investigations into complaints or information touching any matter that may be inquired into by the Medical Council or heard by the Health Committee¹¹ and give advice on the matter to any registered medical practitioner. PIC currently comprises three members of the Medical Council (i.e. a chairman and a deputy chairman elected by the Medical Council from among its members, and one of the four lay members of the Medical Council) and four others who are registered medical practitioners not being members of the Medical Council, each nominated by the Medical Association, Director of Health, HA and any member of the Medical Council respectively.¹² The quorum of a PIC meeting is three, at least one of

¹¹ The Health Committee comprises a chairman and two members elected by the Medical Council from among its members; one of the four lay members of the Medical Council; one to three persons who are not members of the Medical Council, whom the Medical Council considers appropriate; and four others who are registered medical practitioners not being members of the Medical Council, with two nominated by the Medical Association and the other two each nominated by the Director of Health and HA respectively. One of the functions of the Health Committee is to conduct a hearing into any case or matter concerning the health or physical or mental fitness to practise of any registered medical practitioner.

¹² All members of PIC shall hold office for 12 months, except for the lay member of the Medical Council appointed to PIC who shall hold office for such period not exceeding three months as the Medical Council may specify in his or her letter of appointment. According to the Administration, the four lay members of the Medical Council are required to serve on PIC on a rotational basis under the existing arrangement.

whom shall be a lay member of the Medical Council, subject to the majority being registered medical practitioners, including the chairman or deputy chairman, or both.

30. According to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) and the established practice, complaints concerning professional conduct of registered medical practitioners will be considered by the chairman and deputy chairman of PIC to determine whether a complaint should be referred to PIC or the Health Committee for consideration. For those complaints which are considered groundless or frivolous, and hence should not be proceeded further, the chairman and deputy chairman of PIC will consult the lay member of PIC before a decision is made to dismiss the complaints. For those cases which are referred to PIC for full consideration, PIC will examine each complaint and explanation of the medical practitioner concerned at meetings to decide whether or not there is a prima-facie case to refer the complaint to the Medical Council for a formal inquiry.¹³ At present, the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry comprises 10 registered medical practitioners (not being members of the Medical Council), two each are nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively; and four lay persons (not being members of the Medical Council) nominated by the Secretary for Food and Health ("SFH"). The quorum of a meeting of the Medical Council held for the purpose of an inquiry on a case referred to it by, among others, PIC is five members of the Medical Council; or not less than three members of the Medical Council and two assessors from the panel appointed for the purpose of conducting an inquiry, at least one of whom shall be a lay member but subject to the majority being registered medical practitioners.

31. The Bill amends section 20BA(2)(d) of the Ordinance and adds new sections 20X and 20Y to the Ordinance to enable the Medical Council to establish one or more PICs and appoint inquiry panels to take over the current function of the Medical Council of holding disciplinary inquiries. According to the proposed section 20S(1) of the Ordinance, a PIC would comprise four registered medical practitioners each of whom must be either a member of the Medical Council or a medical assessor, and three lay persons each of whom must be either a lay member of the Medical Council or a lay assessor. According to the proposed new section 20X(2) of the Ordinance, an inquiry panel would consist of three registered medical practitioners each of whom must either be a member of the

¹³ According to the latest measure of the Medical Council, PIC may, at the first meeting to consider a complaint case, either dismiss the complaint case or decide to seek explanation or clarification from the registered medical practitioner under complaint to facilitate the making of a decision on the complaint case.

Medical Council or a medical assessor and two lay persons each of whom must either be a lay member of the Medical Council or a lay assessor.

32. Under the proposed new Part IIIAAB of and Schedule 5 to the Ordinance, the Director of Health, HKU, CUHK, HA, the Academy of Medicine, the Medical Association, Hong Kong Doctors Union and Hong Kong Public Doctors' Association may each nominate a minimum of two and not more than 10 medical assessors in accordance with the proposed requirements, making the pool of medical assessors increased from the present 10 to the range of 16 to 80. Separately, patient organizations, Hong Kong Bar Association, Hong Kong Council of Social Service, Hong Kong Institute of Certified Public Accountants, The Law Society of Hong Kong and SFH may each nominate a minimum of two and not more than 10 lay assessors in accordance with the proposed requirements, making the pool of lay assessors increased from the present four to the range of 12 to 60. The Medical Council may specify requirements relating to the qualifications and experience that a person must possess in order to be eligible for nomination as a medical assessor and a lay assessor. Pursuant to the proposed new section 20BD of the Ordinance, an assessor holds office for a period not exceeding three years as specified by the Medical Council in the assessor's letter of appointment. If re-nominated by the nominating authority concerned, the assessor is eligible for reappointment for a further period or periods not exceeding three years each on the expiry of the assessor's period of appointment or reappointment.

33. Members note that the legislative proposals are more comprehensive than that as proposed in the 2016 Bill. Apart from removing the bottlenecks under the current legislation, a modern mechanism (i.e. inquiry panels) is recommended to be set up under the Medical Council for conducting inquiries. Members in general are supportive of the legislative proposals which, in their view, would improve the efficiency and enhance the flexibility of the complaint investigation and disciplinary inquiry mechanism of the Medical Council to ensure that all complaint cases could be handled within a reasonable time. That said, Mr LEUNG Yiu-chung considers that it would be more desirable to make reference to the practice of some overseas countries such that the complaint investigation and disciplinary inquiry mechanism for the medical profession would be separated from the Medical Council through the setting up of an independent medical complaints office, instead of establishing inquiry panels under the auspices of the Medical Council with the possibility of overlapping membership between the two to perform the above function.

34. The Administration has advised that under the legislative proposals, the inquiry panels would have full disciplinary power to make order and review its decisions. While registered medical practitioners would continue to constitute the

majority of PICs (i.e. four out of seven members) as well as the inquiry panels (i.e. three out of five members) under the principle of peer review, lay participation would be increased (i.e. increased from one to three out of seven in PICs and increased from at least one in inquiry meeting of the Medical Council to two out of five in inquiry panels) throughout the complaint investigation and disciplinary inquiry process. In addition, the composition of assessors would be more balanced and diversified. With the refined composition of PIC and the substantial increase in the number of assessors (i.e. from 14 to up to 140 assessors), it is expected that enough PICs and inquiry panels could be formed to handle complaints within a reasonable time. As of August 2017, the total backlog of complaint cases at the pre-PIC stage (i.e. under initial consideration by the PIC chairman and deputy chairman), preliminary investigation stage and inquiry stage was about 330, 330 and 100. The latest schedule for disciplinary inquiry was March 2020. If the Bill is passed, the target is for the Medical Council to clear the backlog in three years' time and thereafter complete the majority of complaint cases requiring disciplinary inquiries within two years.

35. As a related issue, members note that the Administration will move amendments to clauses 22 and 23 of the Bill to, among other things, provide that the Medical Council must appoint an inquiry panel for the inquiry of a case if the Court of Appeal ("CA") remits the case to the Medical Council under the proposed new section 26(1A)(b)(ii) of the Ordinance, and extend the disciplinary powers of inquiry panels to a case remitted by CA under the Ordinance.

Meeting arrangements for disciplinary inquiries

36. Members have been informed that at present, the Medical Council Secretariat would prepare the inquiry rota on a quarterly basis and would inform members of the Medical Council and assessors who are scheduled to be on the next duty roster in the second month of the current roster. Each panel would include four registered medical practitioner members, one lay member and two assessors. Each member of the Medical Council, except the Chairman of the Medical Council who would preside at all inquiries under normal circumstances, and assessor, will be rostered in accordance with the alphabetical order of their English names to attend the scheduled inquiries. The Medical Council Secretariat will invite other members of the Medical Council or assessors to attend the inquiries upon being notified of the unavailability of individual member of the Medical Council or assessor. Similar administrative arrangement would be made for meetings of the inquiry panels after the passage of the Bill.

37. Some members including Mrs Regina IP, Dr Pierre CHAN, Mr CHENG Chung-tai and Mr Jeremy TAM have expressed grave concern about the low attendance rates of certain members of the Medical Council and assessors

(except those who could not take part in disciplinary inquiries due to their other capacities¹⁴) in inquiries, which has resulted in an uneven distribution of caseloads among members of the Medical Council and assessors. Dr Pierre CHAN has opined that the Medical Council Secretariat could consider making public the attendance of members of the Medical Council and assessors in inquiries. Mr Jeremy TAM has suggested that the specified persons and nominating authorities should in future consider the past attendance of their nominated representatives in inquiries when deciding whether the person concerned should be re-nominated.

38. Dr Pierre CHAN has pointed out that it is currently not uncommon that disciplinary inquiries would be conducted on Saturdays and Sundays and would last for a few full days. Pursuant to the proposed new section 20X of the Ordinance, all the members of an inquiry panel must be present throughout the inquiry proceedings. Making reference to the existing arrangement for jurors to receive an allowance for each day during the whole or part of which the juror serves, he has suggested that assessors should be provided with an allowance for their voluntary work in the future. The Administration is open-minded to the suggestion and will discuss with the Medical Council after the passage of the Bill.

39. Members note that pursuant to the proposed new section 20X(4) of the Ordinance, 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 Medical Council must, as soon as possible, appoint another inquiry panel to hold a new inquiry. Dr Helena WONG has enquired as to whether membership of the new panel has to be all new. The Administration has advised that members of such new panel may be all new or partly new.

Strengthening the legal support to the Medical Council

40. At present, under section 3B of the Ordinance, a Legal Adviser is appointed by SFH under the delegated authority by CE to provide legal advice to the

¹⁴ As explained by the Administration, both the Chairman and the Deputy Chairman of PIC shall not attend disciplinary inquiry into a case of which they have taken part in the preliminary investigation. The same applies to all members (including the lay members) of PIC. In addition, the Chairmen of the Health Committee and the Education and Accreditation Committee have refrained from taking part in all disciplinary inquiries (the former from 12 July 2016 onwards), so as to stay untainted to respectively preside in subsequent proceedings of the Health Committee and the Education and Accreditation Committee (if any) related to the defendant registered medical practitioners. Separately, the Director of Health, being also the Registrar of Medical Practitioners who is responsible for maintaining the General Register and the Specialist Register, does not take part in disciplinary inquiries.

Medical Council in inquiries and hearings. It is a statutory requirement that the Legal Adviser so appointed must be present at every inquiry held by the Medical Council. Given that the Medical Council could only appoint one Legal Adviser under the Ordinance, the Medical Council could only conduct one inquiry at one time.

41. According to the Administration, at present, upon the request made by the Chairman of the Medical Council, the Secretary for Justice will provide legal support to the Medical Council at the PIC and inquiry stages through appointing a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) under the Medical Practitioners (Registration and Disciplinary Procedure) Regulation to 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 the Medical Council. This apart, the Department of Justice also provides legal representation to the Medical Council in respect of litigation arising from appeals against its decisions made in inquiries and applications for judicial review of the decisions made by the Medical Council and its various committees.

42. With a view to help clearing the backlog of cases and shortening the waiting time for inquiry, clause 5 of the Bill amends section 3B of the Ordinance to enable the appointment of more than one legal adviser to the Medical Council. Separately, clause 63 of the Bill amends section 21 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation to enable the Secretary for Justice to, on the application of the chairperson of an inquiry panel, appoint a solicitor or counsel, including a legal officer within the meaning of the Legal Officers Ordinance, to carry out the duties of the Secretary in respect of an inquiry by the inquiry panel.

43. Members have been informed that a Legal Adviser, who is a barrister, is currently engaged by the Medical Council on an hourly basis, with working hours amounted to about 140 hours per month (close to a full-time post). The current rate of remuneration for the Legal Adviser is \$2,000 per hour, subject to a monthly cap of \$280,000. Some members including Mrs Regina IP, Dr KWOK Ka-ki and Dr Pierre CHAN are of the view that in future, the Government should consider adjusting the existing engagement arrangement by, say, changing it to a full-time basis for facilitating inquiry panels to conduct inquiries. Mrs Regina IP is of the view that that the current hourly rate is on a low side and urges the Administration to increase the remuneration rate for the legal advisers to attract more qualified persons to assume the role of legal adviser to the Medical Council. The Administration has advised that if the Bill is passed, the Medical Council would work out how many legal advisers would be required based on the workload and the estimated number of disciplinary inquiries to be

conducted each year. The Administration would provide additional resources to the Medical Council for engaging more than one legal adviser.

The handling of conflict of interest

44. Clause 55 of the Bill adds a new section 13A to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation to provide for declaration of interest by members of an inquiry panel.

45. Given that the size of the pool of lay assessors and medical assessors is proposed to be expanded significantly, Dr KWOK Ka-ki has expressed concern about whether the existing administrative measures put in place by the Medical Council for handling conflict of interest under inquiries would be able to ensure that each and every complaint would be handled in a fair and impartial manner. Dr Pierre CHAN has enquired whether at present, members of the Medical Council or assessors sitting for an inquiry could continue to participate in the deliberation or decision of the matter if they have stated openly their stances on the professional conduct of the defendant registered medical practitioner. Mrs Regina IP is concerned about whether a member of an inquiry panel who becomes aware that he or she is in any way interested in the case and hence, has declared the interest to the chairperson of the inquiry panel could continue to participate in any deliberation or decision regarding the matter.

46. According to the Administration, additional administrative measures have been put in place by the Medical Council to ensure that each and every complaint is handled in a fair and impartial manner. When inviting members of the Medical Council or assessors to sit for a disciplinary inquiry one month before its opening, the Secretariat will provide members of the Medical Council or assessors in advance with the information relating to the disciplinary inquiries, including the identity of the defendant registered medical practitioner and the nature of the case, and remind them to consider if they may have actual or perceived conflicts of interest. The Secretariat will inform the defendant (if he or she has no legal representative) or the defendant's legal representative of the information on the participating members of the Medical Council or assessors at least 10 days before the opening of an disciplinary inquiry. If the defendant considers it inappropriate for any of the members of the Medical Council or assessors to join the inquiry, an objection may be lodged with the Chairman of the Medical Council for his or her decision. Before the opening of a disciplinary inquiry, the Chairman of the disciplinary inquiry will formally invite participating members to make declaration of interest, and ask whether the defendant will have any objection to the member composition of the inquiry in accordance with the procedural guide of the Medical Council Disciplinary Inquiry.

47. The Administration has further advised that new members of the Medical Council are provided with reference materials on the scope of work of the Medical Council and their particular attention is drawn to the guidelines on declaration of interest as set out in Standing Order No. 6 "Conflict of interests of members" such that these new members will be conversant with the rules before carrying out duties of the Medical Council. Separately, the Medical Council has undertaken to review and consider how to further improve the mechanism on declaration of interest and handling conflicts of interests after the passage of the Bill.

48. In response to an enquiry by the Legal Adviser to the Bills Committee, the Administration has affirmed that its policy intent is that declaration of interest by members of an inquiry panel is required for all inquiries, including an inquiry held by an inquiry panel under the proposed section 21(1) of the Ordinance. It will move amendments to the proposed new section 13A of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation to this effect.

Extending the period of limited registration of medical practitioners

Limited registration

49. Any person wishing to practise medicine, surgery or midwifery in Hong Kong is required to apply for registration with the Medical Council in accordance with the Ordinance. According to sections 8(1) and 9 of the Ordinance, persons who have been awarded a degree of medicine and surgery by HKU or CUHK and have undergone internship training at HA as required are qualified to be registered as medical practitioners. Non-locally trained medical graduates are required to pass the Licensing Examination administered by the Medical Council¹⁵ and complete a prescribed period of internship at HA before they can be fully registered with the Medical Council. Apart from the above avenues, the existing section 14A of the Ordinance provides that the Medical Council may determine and promulgate from time to time the employment or type of employment in respect of which limited registration is appropriate or necessary.¹⁶ Subject to Section 14(2A) of the Ordinance, a person may be registered as a medical

¹⁵ The Licensing Examination comprises three parts, namely, Part I - Examination on Professional Knowledge, Part II - Proficiency Test in Medical English, and Part III - Clinical Examination.

¹⁶ A total of 12 promulgations have so far been published by the Medical Council in the Gazette. Since the types of employment described in six of these promulgations no longer exist, promulgation nos. 1, 5, 6, 7, 8 and 11 have ceased to be in force. Application for limited registration can currently be made under the types of employment set out in promulgation nos. 2, 3, 4, 9, 10 and 12. These six promulgations are available at the Medical Council website at http://www.mchk.org.hk/english/registration/limited_registration.html.

practitioner with limited registration if the Medical Council is satisfied that the person has been selected for an employment or for a type of employment determined and promulgated by the Medical Council; has obtained an acceptable overseas qualifications;¹⁷ has had adequate and relevant full-time post-qualification clinical experience; is registered with an approved medical authority outside Hong Kong; and is of good character. Each limited registration for the purpose of the specified employment or type of employment is currently valid for a period not exceeding one year, and upon expiry the relevant person may apply for renewal of the registration by the Medical Council for another period not exceeding one year.

50. Clause 9 of the Bill amends section 14A(3)(a) and (7)(a) of the Ordinance to extend the term of registration of a medical practitioner with limited registration and the term for which such a medical practitioner could renew his or her registration from a period of not exceeding one year to a period of not exceeding three years. The Administration has advised the Bills Committee that from January 2012 to June 2017, the Medical Council approved under promulgation no. 2 a total of 34 applications for limited registration from non-locally trained medical practitioners employed by HA as Service Residents on a full-time basis¹⁸ to relieve its medical manpower constraint. It is expected that more experienced non-locally trained medical practitioners would apply for limited registration after the passage of the Bill and in turn help alleviate the medical manpower shortage of HA in the short term.

Qualification requirements for employment under promulgation no. 2

51. Members note that under promulgation no. 2 which was published by the Medical Council in the Gazette on 23 December 1994, the types of full-time employment in respect of which limited registration is appropriate and necessary include employment as a medical practitioner by (a) 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) by HA for the purpose of research work or for such clinical practice of medicine or hospital work, as specified by HA; and (c) by HKU or CUHK for the purpose of teaching, research or performing hospital work, in the Faculty of Medicine. As at the end of

¹⁷ Under section 14A(9) of the Ordinance, "acceptable overseas qualification" means any qualification obtained outside Hong Kong which is recognized by the Medical Council for the purposes of section 14A of the Ordinance as being sufficient evidence of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery and midwifery.

¹⁸ According to the Administration, a medical practitioner did not accept the employment offer from HA in the end. Hence, a total of 33 medical practitioners are involved.

June 2017, there were 17¹⁹, 35 and 53 non-locally trained medical practitioners with limited registration employed by HA, HKU and CUHK respectively.

52. Taking into account that non-locally trained medical practitioners with limited registration are not required to take the Licensing Examination, which is pitched at a level on par with the qualifying examination on Medicine and Surgery of HKU and CUHK for assessing the undergraduates of the two facilities of medicine, and undergo internship training at HA, some members including Dr KWOK Ka-ki, Ms Claudia MO and Mr CHENG Chung-tai have expressed concern about whether those medical practitioners with limited registration employed by HA, HKU and CUHK would have attained a professional standard comparable to that of local medical graduates so as to safeguard patient safety when they perform clinical duties as assigned. Of Ms Claudia MO's particular concern is whether this avenue would open the gate for medical practitioners who received their medical training in the Mainland to come to practise medicine in HA and the two teaching hospitals (i.e. the Queen Mary Hospital and the Prince of Wales Hospital), as statistics showed that the passing rate of those candidates from the Mainland sitting for the Licensing Examination is lower than that of those candidates from other places.

53. The Medical Council has stressed that the statutory requirements for limited registration as set out in section 14A(2) of the Ordinance are aimed to ensure that the medical practitioners so registered have met the required professional standard to practise medicine safely in Hong Kong. The Administration has advised the Bills Committee that HA, HKU and CUHK have respectively put in place mechanisms to govern the initiation of recruitment, recruitment as well as selection of non-locally trained medical practitioners for employment under limited registration. For the case of HA, HA would only employ those non-locally trained medical practitioners who, in addition to their meeting of the statutory requirements for limited registration, possess a specialist qualification comparable to the intermediate examination of the constitute colleges of the Academy of Medicine; have had at least three years' working experience in hospital after completion of internship; and are able to speak fluent English and Cantonese (except for the specialties of anaesthesia, pathology and radiology) to ensure that they have attained the required medical standard for performing frontline clinical work in pressurized areas of public hospitals independently. It should be noted that there is currently no relevant framework

¹⁹ Among these 17 non-locally trained medical practitioners with limited registration, 15 are employed as Service Residents to address the medical manpower shortage of HA. The two remaining medical practitioners have been employed by HA since 1997 and 1998. They currently work as Consultant at the Department of Cardiothoracic Anaesthesia and Senior Medical Officer at the Department of Pathology & Clinical Biochemistry respectively.

for recognizing specialist qualification in the Mainland. Regardless of where a medical practitioner obtains a medical degree, he or she must obtain a specialist qualification which is comparable to the intermediate examination of the constituent colleges of the Academy of Medicine before he or she would be regarded as meeting the requirement concerning specialist qualification.

54. The Administration has further explained that the purposes of HA and the two universities in employing non-locally trained medical practitioners with limited registration are different. One category of medical practitioners with limited registration employed by HKU and CUHK is senior scholars who have achieved great attainment of their specialties. They all contribute significantly to local medical education, medical research and clinical services by teaching local medical students and serving local patients with their technical skills and medical knowledge. Another category of medical practitioners so employed is resident trainees who have obtained a medical qualification and possessed relevant clinical experience as appropriate. Under reciprocal arrangements with other institutions concerning collaborative training, academic exchange and skills transfer, these medical practitioners will participate in training and/or exchange programmes organized by the Faculties of Medicine and will return to their institutions upon completion of training which usually lasts for six to 12 months.²⁰ This category of medical practitioners and such reciprocal arrangements are important to the exchanges and training for local medical practitioners.

55. Some members including Dr KWOK Ka-ki and Mr Jeremy TAM consider that for the sake of patient safety, non-locally trained medical practitioners with limited registration employed by HKU and CUHK (in particular those falling into the category of resident trainees) should be subject to more stringent qualification requirements as is the case of HA, as these medical practitioners may have to perform clinical duties according to the need in their teaching, research or hospital work. Mr Michael TIEN has gone further to suggest that the proposed extension of limited registration from a period of not exceeding one year to a period of not exceeding three years should only be applicable to those medical practitioners having a specialist qualification comparable to the intermediate examination of the constituent colleges of the Academy of Medicine.

56. In the Administration's view, under the principle of professional autonomy and academic autonomy, HA, HKU and CUHK are in a better position to, based

²⁰ These medical practitioners with limited registration are employed by HKU and CUHK at the ranks of Clinical Associate or Honorary Clinical Associate and Honorary Researcher or Visiting Scholar respectively. As at the end of June 2017, there were 20 Clinical Associate or Honorary Clinical Associate and another 20 Honorary Researcher or Visiting Scholar in HKU and CUHK respectively who are medical practitioners with limited registration.

on their operational need, determine their own qualification requirements in respect of recruitment of non-locally trained medical practitioners with limited registration. The Administration has assured members the two universities would ensure that resident trainees so employed by them would receive supervision from senior clinicians during their study in Hong Kong.

57. According to the existing section 14A(2A) of the Ordinance, a person who does not satisfy the Medical Council that he or she fulfills the overseas qualification, post-qualification clinical experience or registration requirements set out in section 14A(2)(b), (c) or (d) of the Ordinance but satisfies the Medical Council that he or she fulfills the other requirements of section 14A(2) of the Ordinance may, if the Medical Council so directs, be registered as a medical practitioner with limited registration subject to such restrictions and conditions regarding his or her practice as specified by the Medical Council. Dr Pierre CHAN and Mr CHENG Chung-tai are of the view that the Administration should review whether the Medical Council should be conferred with the discretionary power. They note that as at the end of June 2017, there were three medical practitioners employed by CUHK and one medical practitioner employed by HKU being granted limited registration accordingly. Three among these four medical practitioners did not continue their overseas registration with the overseas medical authorities concerned when submitting applications to the Medical Council for renewal of limited registration²¹.

58. The Administration has advised that applicants for limited registration have to specify on the application form the information of the medical authorities

²¹ According to the Administration, among the four medical practitioners,

- (a) one in CUHK was a registered medical practitioner in Canada and the United States ("US") when applying for limited registration in 2014. He did not continue his registration with the relevant overseas medical authorities when submitting renewal application for limited registration in 2015;
- (b) one in CUHK was a registered medical practitioner in US when applying for limited registration in 1995. He did not continue his registration with the relevant overseas medical authority when submitting renewal application for limited registration in 2003;
- (c) one in CUHK registered as a medical practitioner in the Mainland in 2011 after obtaining medical bachelor and master degrees. Subsequently, she came to Hong Kong in 2011 to pursue a doctorate programme and obtained doctorate degree in 2014. She did not have full-time post-qualification clinical experience when applying for limited registration in 2015. According to the information, the medical programme that the applicant studied in the Sichuan University covered a 14-month clinical practicum period; and
- (d) one in HKU was a registered medical practitioner in Singapore when applying for limited registration in 2016. She did not continue her registration with the relevant overseas medical authority when submitting renewal application for limited registration in 2017.

outside Hong Kong with which they registered, and submit a certificate of registration as a medical practitioner and a certificate of good standing issued by the authorities concerned. The Medical Council would consider each application on a case-by-case basis. The applications for the first and subsequent renewal of limited registration of the four cases referred to in paragraph 57 above were approved by members of the Medical Council unanimously.

Monitoring of performance

59. Members note that from 2012 to 2017, a total of 22 complaints were received by the Medical Council against non-locally trained medical practitioners with limited registration. Six out of the 22 cases were related to those medical practitioners employed under promulgation no. 2 published by the Medical Council, with five being employed by CUHK and the remaining one being employed by HKU. There is a concern that by the time the complaint cases are concluded, the medical practitioners concerned may no longer be practising in Hong Kong under limited registration. Hence, they would not be subject to the disciplinary sanctions, if any, imposed by the Medical Council. The Administration has advised the Bills Committee that the Medical Council would provide the particulars and related information of those medical practitioners registered in Hong Kong upon request from medical authorities outside Hong Kong.

60. Dr KWOK Ka-ki and Dr Pierre CHAN have enquired about the mechanism put in place by the two universities to monitor the performance and the renewal of limited registration of the non-locally trained medical practitioners with limited registration under their employment. Mr CHENG Chung-tai is of the view that for cases whereby the validity period specified in a practicing certificate for limited registration would be longer than 12 months upon passage of the Bill, the medical practitioners concerned should be subject to an annual review of their performance.

61. The Administration has advised that the Faculties of Medicine of the two universities will closely monitor the work performance of medical practitioners with limited registration so employed and review their suitability for continued appointment as appropriate. According to CUHK, it treats all clinicians equally in accordance with established guides, codes of practice and monitoring mechanism in place to ensure that clinical services provided would meet the required standards so as to safeguard the safety of patients. As regards HKU, a uniform clinical management mechanism has been implemented for all types of clinicians (including trainees) on different employment terms to ensure their professional standards and protect patients' safety. It would not deviate from this principle of equal treatment with regard to the background and qualifications of individual clinicians.

Effectiveness of the legislative proposal

62. Members note that the majority of non-locally trained medical practitioners with limited registration registered under promulgation no. 2 published by the Medical Council have all long been employed by the two universities (i.e. 88 out of 105 as at the end of June 2017) but not HA. Some members including Mr LEUNG Yiu-chung cast doubt about the effectiveness of the legislative proposal in attracting more non-locally trained medical practitioners to serve in HA with limited registration, as these medical practitioners will consider a basket of factors such as job nature and working environment in deciding whether to come to work in Hong Kong. There was also lack of evidence (such as survey outcomes) to support that the legislative proposal would meet its purpose.

63. HA has explained that potential non-locally trained medical practitioners may find it difficult to leave their current job and accept a one-year employment term to work in Hong Kong as they, in most cases, have a licence to practise in other places outside Hong Kong. Experience and feedback show that the average length of service of medical practitioners with limited registration employed by HA is 1.7 years and 50% and 75% of these medical practitioners have served in HA for less than two and three years respectively, as the current arrangement only attracts those who regarded such employment as a short-term exchange opportunity and would then return to the places where they were practising originally.

64. Ms Claudia MO, Dr KWOK Ka-ki, Dr Junius HO and Dr Pierre CHAN have expressed concern that about 90% of the applications received by HA during its recruitment exercises for non-locally trained medical practitioners with limited registration conducted during the period between 2011-2012 and 2016-2017 were considered by HA as not meeting its prescribed qualification requirements. During the period of 2012 to 2017, HA could only recruit less than 20 medical practitioners with limited registration in each year and many of them did not work in the pressurized specialties such as Emergency Medicine, Internal Medicine and Paediatrics. In the light of the above, Dr Junius HO has suggested that HA should relax its stringent qualification requirements concerning employment of non-locally trained medical practitioners with limited registration. Noting that most of the unsuccessful applicants could not meet the requirements of specialist qualification and language proficiency as specified by HA, Dr Pierre CHAN is of the view that one way to make the legislative proposal to meet its aim of facilitating HA to recruit more non-locally trained medical practitioners with limited registration in order to address its medical manpower shortage would be for HA to lower the required number of years of working experience in hospitals after completion of internship. In his view, this would help increase the number of applicants meeting HA's qualification threshold.

65. HA has explained that the setting of all the three qualification requirements is based on operational need. The experience and qualification requirement not only safeguard patients' interest, but also ensure that the medical practitioners concerned could work independently and help alleviate manpower shortage of HA. It should be noted that it on average takes three years for a non-locally trained medical practitioner to possess a specialist qualification comparable to the intermediate examination of the constituent colleges of the Academy of Medicine. Locally, for inclusion in the Medical Council's Specialist Register, a local medical graduates has to complete at least six years of supervised post-registration training in a manner approved by the Academy of Medicine. Registered medical practitioners who pass the intermediate examination and exit examination are respectively fit to practise in their field of specialty under an appropriate degree of supervision. That said, HA is open-minded as to whether the existing qualification requirements could be reviewed in due course after the passage of the Bill.

66. Some members including Mr LEUNG Yiu-chung and Ms Alice MAK have requested the Administration to address squarely the medical manpower shortage problem of HA by increasing the number of first-year-first-degree publicly funded places in medicine to increase the manpower supply at source and improving the working environment at public hospitals to retain its frontline medical staff. In addition, the employment of non-locally trained medical practitioners by HA should not affect the promotion of those HA medical staff who are local medical practitioners with full registration. Mr Paul TSE is of the view that the Medical Council should lower the high standard of the Licensing Examination in order to relive local medical manpower shortage.

67. The Administration has assured the Bills Committee that as announced in CE's 2017 Policy Address, it is the Government's policy that HA would employ all qualified fresh local medical graduates to provide training opportunities for these graduates. Medical practitioners with full registration, including local medical graduates and persons who have passed the Licensing Examination and completed internship assessment, would continue to be the primary sources of medical manpower supply for HA. While the number of first-year-first-degree publicly funded places in medicine has been increased from 250 from the 2005-2006 academic year to 470 since the 2016-2017 academic year and the Government would consider further increasing the number of such places from the 2019-2020 to 2021-2022 triennium of the University Grants Committee, it would take at least 13 years to train a specialist. Separately, HA has put in place various measures to retain its medical staff and attract retired medical staff to work in HA for an extended period of time after retirement. The recruitment of non-locally trained medical practitioners with limited registration as an additional

and immediate measure to supplement the local recruitment drive is a measure introduced by HA since 2012 to flexibly meet HA's imminent service needs in the short term.

Commencement date

68. Members note that except for certain provisions that would come into operation on a day to be appointed by SFH 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, as well as the proposed nomination of lay assessors by patient organizations.

Transitional arrangements

69. Members note that the proposed new Schedule 6 to the Ordinance contains transitional and savings provisions for the Bill, if passed. The scope of such transitional and savings arrangements covers matters such as PICs established prior to the commencement of the Bill ("the Commencement") and ongoing inquiries by the Medical Council under the existing section 21 of the Ordinance commenced prior to the Commencement.

70. In response to the observations of the Legal Adviser to the Bills Committee, the Administration will move several amendments to the proposed new Schedule 6 to the Ordinance to provide for additional transitional arrangements required which include arrangements for filling vacancy in the office of a member of the Medical Council under the existing section 3(5B)(b) of the Ordinance; the referral of existing cases back to PIC on or after the Commencement; and the remittal of cases on or after Commencement for inquiry.

Amendments to the Bill

71. Apart from the amendments to be moved by the Administration to the Bill as elaborated in paragraphs 17, 22, 35, 48 and 70 above, the Administration has proposed some textual, technical and consequential amendments to the Bill. A full set of the amendments to be moved by the Administration is in **Appendix III**. The Bills Committee does not object to these amendments.

72. The Bills Committee will not propose any amendments to the Bill.

Follow-up actions by the Administration

73. The Administration has undertaken to, upon passage of the Bill, relay to the Director of Health and Chief Executive of HA members' views that they should, as far as practicable, appoint medical practitioners as their representatives to attend meetings of the Medical Council on their behalf due to their unavailability (paragraph 27 refers).

Resumption of Second Reading debate on the Bill

74. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 28 March 2018, subject to the moving of the amendments to the Bill by the Administration.

Advice sought

75. Members are invited to note the deliberations of the Bills Committee and the date for the resumption of the Second Reading debate on the Bill.

Council Business Division 2
Legislative Council Secretariat
15 March 2018

Bills Committee on Medical Registration (Amendment) Bill 2017

Membership list*

| | |
|------------------------|--|
| Chairman | Hon Tommy CHEUNG Yu-yan, GBS, JP |
| Deputy Chairman | Hon LAU Kwok-fan, MH |
| Members | Hon LEUNG Yiu-chung Prof Hon Joseph LEE Kok-long, SBS, JP Hon Mrs Regina IP LAU Suk-yee, GBS, JP Hon Paul TSE Wai-chun, JP Hon Claudia MO Hon Michael TIEN Puk-sun, BBS, JP Hon Steven HO Chun-yin, BBS Hon Frankie YICK Chi-ming, SBS, JP Hon WU Chi-wai, MH Hon YIU Si-wing, BBS Hon CHAN Han-pan, JP Hon Kenneth LEUNG Hon Alice MAK Mei-kuen, BBS, JP Dr Hon KWOK Ka-ki Hon KWOK Wai-keung, JP Hon Dennis KWOK Wing-hang Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan Hon IP Kin-yuen Dr Hon Elizabeth QUAT, BBS, JP Hon Martin LIAO Cheung-kong, SBS, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon CHU Hoi-dick Dr Hon Junius HO Kwan-yiu, JP Hon HO Kai-ming Hon Holden CHOW Ho-ding Hon SHIU Ka-chun Dr Hon Pierre CHAN Hon CHAN Chun-ying Hon CHEUNG Kwok-kwan, JP Dr Hon CHENG Chung-tai Hon Jeremy TAM Man-ho |

(Total : 34 members)

Clerk Ms Maisie LAM

Legal Adviser Ms Wendy KAN

* Changes in membership are shown in Annex to Appendix I.

Annex to Appendix I

Bills Committee on Medical Registration (Amendment) Bill 2017

Changes in membership

| Member | Relevant date |
|---|----------------------|
| Hon Wilson OR Chong-shing, MH | Up to 12 July 2017 |
| Dr Hon Priscilla LEUNG Mei-fun, SBS, JP | Up to 20 July 2017 |

According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

Bills Committee on Medical Registration (Amendment) Bill 2017

A. Organizations and individuals which/who have made oral representation to the Bills Committee

1. Committee on Youth, Business and Professionals Alliance for Hong Kong
2. Concern Group on Medical Council Reform
3. Consumer Council
4. Democratic Alliance for the Betterment and Progress of Hong Kong
5. Doctors for Democracy
6. Elderly Health Concern Group
7. Frontline Doctors' Union
8. Hong Kong Academy of Medicine
9. Hong Kong Alliance of Patients' Organizations Limited
10. Hong Kong Ample Love Society Ltd.
11. Hong Kong Doctors Union
12. Hong Kong Patients' Rights Association
13. Hong Kong Patients' Voices
14. Hong Kong Prostate Foundation
15. Hong Kong Public Doctors' Association
16. Liberal Party
17. New People's Party
18. Patients' Alliance on Healthcare Reform
19. Rehabilitation Alliance Hong Kong
20. Society for Community Organization
21. The Democratic Party
22. The Hong Kong Medical Association
23. The Medical Council of Hong Kong
24. Dr AU Yiu-kai
25. Mr CHAN Wai-kit
26. Mr James FUNG Tak-kwan
27. Mr KEE Chi-fai
28. Miss KWAN Kit-man
29. Miss LAM Tin-kei
30. Dr LEUNG Ka-lau
31. Dr Arisina MA Chung-yee

32. Dr MAK Siu-king
33. Mr SIT Pui-yu
34. Mr TAM Hoi-pong
35. Dr WAI Yuk-chun
36. Dr WONG Yam-hong

B. Organizations and individuals which/who have provided written submissions to the Bills Committee only

1. Eramedics
2. Health for Community Association
3. Hong Kong Democratic Foundation
4. The Association of Licentiates of Medical Council of Hong Kong
5. A member of the public
6. Mr Edward LAU Chi-hang
7. Mr TSE Chun-wai

Medical Registration (Amendment) Bill 2017

Committee Stage

Amendments to be moved by the Secretary for Food and Health

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1(3)(b) | By deleting “4(25)” and substituting “4(27)”. |
| 3 | <p>By adding—</p> <p>“(1A) Section 2(1), definition of <i>Secretary</i>—</p> <p style="padding-left: 40px;">Repeal</p> <p style="padding-left: 40px;">“section 3B”</p> <p style="padding-left: 40px;">Substitute</p> <p style="padding-left: 40px;">“section 3B(1)”.</p> |
| 3(2) | <p>By adding in alphabetical order to the proposed definitions—</p> <p style="padding-left: 40px;">“<i>Fellow</i> (院士) has the meaning given by section 2 of the Hong Kong Academy of Medicine Ordinance (Cap. 419);</p> <p style="padding-left: 40px;"><i>Permanent Secretary</i> (常任秘書長) means the Permanent Secretary for Food and Health (Health);”.</p> |
| 4 | <p>By adding—</p> <p>“(1A) Section 3(2)—</p> <p style="padding-left: 40px;">Repeal paragraph (c)</p> <p style="padding-left: 40px;">Substitute</p> <p style="padding-left: 40px;">“(c) the Director, or his or her representative, as ex officio member (<i>ex officio member</i>);”.</p> <p>(1B) Section 3(2)—</p> <p style="padding-left: 40px;">Repeal paragraph (db)</p> <p style="padding-left: 40px;">Substitute</p> <p style="padding-left: 40px;">“(db) the Chief Executive of the Hospital Authority, or his or her representative, as ex officio member;”.</p> |

- 4 By deleting subclause (4) and substituting—
“(4) After section 3(2)(h)—
Add
“(ha) 2 registered medical practitioners who are Fellows nominated and elected by Fellows in accordance with the regulations or procedures of the Academy of Medicine;”..”.
- 4 By deleting subclause (6) and substituting—
“(6) Section 3(3)—
Repeal
“(2)(c), (d), (da), (g) or (h) shall hold office for a period of”
Substitute
“(2)(d), (da), (g) or (h) holds office for”..”.
- 4(7) In the proposed section 3(3AA), by adding “or (ha)” after “subsection (2)(ga)”.
- 4(8) By deleting the proposed section 3(3AAC).
- 4(9) In the proposed section 3(3A), by deleting “or elected to fill a vacancy caused by a person ceasing to be a member in accordance with subsection (4) or (6A)”.
- 4(9) In the proposed section 3(3AB), by deleting “(2)(h)” and substituting “(2)(ha)”.
- 4 By adding—
“(10A) Section 3(4), after “Council”—
Add
“who is not an ex officio member”..”.
- 4(11) In the proposed section 3(5AA)(b), by deleting “Council must, as soon as possible, on the nomination of any lay member of the Council, appoint a person who, in its opinion” and substituting “Permanent Secretary must, as soon as possible, on the nomination by any lay member of the Council, appoint a person who, in the opinion of the

Permanent Secretary”.

- 4(11) By adding—
“(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.”.
- 4(12) By deleting the proposed section 3(5AAB).
- 4(12) In the proposed section 3(5AAE), by deleting “(2)(h)” and substituting “(2)(ha)”.
- 4 By deleting subclause (17) and substituting—
“(17) Section 3(5B)(b)—
Repeal
“of any member of the Council”
Substitute
“by any member of the Council who is a registered medical practitioner”.”.
- 4 By adding—
“(19A) Section 3(6), after “by the Chief Executive”—
Add
“, or any ex officio member”.”.
- 4(22) By deleting “appointed by the Chief Executive” and substituting “described in subsection (6)”.
- 4(27) In the proposed section 3(9), by deleting “office under subsection (2)(ga), (gb), (h) or (i)” and substituting “an office in the Council described in subsection (2)(ga), (gb), (ha), (i) or (j)”.
- 6 By adding—
“(1A) After section 3C(1)—
Add
“(1AA) If any member of the Council described in section 3(2)(ga) 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 for any period, the Permanent Secretary may appoint another person who is suitably qualified for appointment under section 3(2) (not being one who is disqualified from holding office under section 3 or who has been removed from office under that section) to be a temporary member of the Council in the place of the member during that period.”.”.

6 By deleting subclause (2) and substituting—

“(2) Section 3C(1A)—

Repeal

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

Substitute

“member of the Council described in section 3(2)(gb), (ha), (i) or (j) 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”.

(3) After section 3C(1A)—

Add

“(1B) In subsections (1), (1AA) and (1A), a reference to any member of the Council includes a person who is appointed, nominated or elected under section 3 to fill a vacancy in the office of the Council.”.”.

7 By adding—

“(1A) Section 4(3), after “appointment”—

Add

“, nomination or election”.”.

13 In the proposed section 20BD(3)(c), in the English text, by adding a comma after “bankrupt”.

18(4) In the Chinese text, by deleting “Preliminary” and substituting “Preliminary”.

22 By deleting the proposed section 20X(1) and substituting—

“(1) The Council must appoint an inquiry panel for the inquiry of a

case if—

- (a) the Council receives a notification under section 20T(2A) informing the Council of a Preliminary Investigation Committee's decision to refer the case to an inquiry panel; or
- (b) the Court of Appeal remits the case to the Council under section 26(1A)(b)(ii).".

- 22 By deleting the proposed section 20X(5)(a) and (b) and substituting—
- “(a) the inquiry panel has decided to make an order referred to in section 21(1); but
 - (b) the order has not yet been issued.”.

- 23(2) By adding “or any case remitted by the Court of Appeal,” after “section 33,”.

- 23(30) By adding—
- “(4CB) Subsection (4CA) does not apply if, when the vacancy occurs because of the circumstances mentioned in that subsection, the inquiry panel—
 - (a) has made a determination under subsection (4D)(a); but
 - (b) has not yet announced the determination under subsection (4D)(b).”.

- 23 By deleting subclause (31) and substituting—
- “(31) Section 21—
- Repeal subsection (4D)**
- Substitute**
- “(4D) On a review by an inquiry panel under subsection (4B), the panel must—
 - (a) make a determination as to any decision or order made in the inquiry by affirming, varying or revoking it; and
 - (b) announce the determination.”.

- 24(2) By deleting “, (b) and (c)” and substituting “and (b)”.

By adding—

“(3) Section 21A(1)—

Repeal paragraph (c)

Substitute

“(c) make an order referred to in paragraph (a) or (b) but suspend its application, subject to the conditions that the Council thinks appropriate, for a period, or periods in the aggregate, not exceeding 3 years;”.

(4) Section 21A(1)(d)—

Repeal

“any such order as aforesaid and further order that such”

Substitute

“an order referred to in paragraph (a) or (b) and further order that the”.

(5) Section 21A(3)—

Repeal

“, (b) or (c)”

Substitute

“or (b)”.

By deleting subclause (2) and substituting—

“(2) Section 25—

Repeal subsection (1A)

Substitute

“(1A) If an inquiry panel makes an order under section 21(1)(v), the Registrar must immediately serve the order, together with the warning letter, on the registered medical practitioner concerned, either personally or by registered post addressed to the practitioner’s registered address.”.

In the proposed section 26(1A)(b)(i), by adding “(*old panel*)” after “panel”.

In the proposed section 26(1A)(b)(ii), by adding “(*new panel*)” after “panel”.

- 30 By adding—
 “(5A) Section 26(3), proviso, after “25(1)”—
Add
 “or (1A)”.”.
- 30(6) In the proposed section 26(6), by deleting everything after “subsection” and substituting—
 “(1A)(b)(ii) (*new inquiry*), the validity of the proceedings before the new panel is not to be called into question only because—
 (a) a member of the old panel who was present at the former inquiry is not present at the new inquiry; or
 (b) a member of the new panel who is present at the new inquiry was not present at the former inquiry.”.
- 31(3) In the proposed section 33(3A), by deleting “for Food and Health (Health)”.
- 31 By deleting subclause (7) and substituting—
 “(7) Section 33(4)(a)—
Repeal subparagraph (viii)
Substitute
 “(viii) inquiries held by the Council or an inquiry panel;”.”.
- 34 In the proposed Schedule 5, in the English text, in Table 2, in item 6, in Column 2, by deleting “Hong Kong” and substituting “The Hong Kong”.
- 34 In the proposed Schedule 6, in section 1, by deleting the definitions of *pre-amended Ordinance* and *pre-amended Regulation*.
- 34 In the proposed Schedule 6, in section 1, by adding in alphabetical order—
 “*pre-amended Disciplinary Regulation* (《原有紀律處分規例》) means the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161 sub. leg. E) as in force immediately before the commencement;

pre-amended Electoral Regulation (《原有選舉規例》) means the Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161 sub. leg. B) as in force immediately before the commencement;

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

34 In the proposed Schedule 6, by deleting section 2 and substituting—

“2. Filling vacancy in office of member of Council under section 3(5B)(b) of pre-amended Ordinance

If, immediately before the commencement, the Secretary has sent an invitation under section 8 of the pre-amended Electoral Regulation, then section 3(5B)(b) of the pre-amended Ordinance and section 8 of that Regulation continue to apply in relation to a nomination of candidate made pursuant to the invitation.”.

34 In the proposed Schedule 6, in section 5(1)(a), by deleting “pre-amended Regulation” and substituting “pre-amended Disciplinary Regulation”.

34 In the proposed Schedule 6, in section 5(1)(b), by deleting “, a decision” and substituting—

“—

(i) a decision”.

34 In the proposed Schedule 6, in section 5, by deleting everything after “direct that it be” and before subsection (3) and substituting—

“investigated further under section 6(3), (4) or (5) of the pre-amended Disciplinary Regulation;

(ii) the chairman or the deputy chairman of the former PIC has directed that the existing case be referred to the former PIC under section 9(1) or 10(1) of the pre-amended Disciplinary Regulation for its consideration (*existing direction*), and a decision has not yet been made under section 11(8) or (9) of that Regulation in respect of the existing case; or

(iii) the Chairman has, under section 15(1) of the pre-amended Disciplinary Regulation, referred the existing case back to the former PIC for further consideration, and a decision has not yet been made under section 11(8) or (9) of that Regulation in

respect of the existing case.”.

34 In the proposed Schedule 6, in section 5(5), by deleting “section 20S(1), (1A), (2)” and substituting “sections 20BA(5) and 20S(1), (1A), (2), (2A)”.

34 In the proposed Schedule 6, in section 5(5), by deleting “, apply to and” and substituting “, apply”.

34 In the proposed Schedule 6, in section 5(5)(b), by deleting “to and”.

34 In the proposed Schedule 6, in section 5(8), by deleting “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” and substituting “Sections 20BA(5) and 20S(1), (2), (3) and (5) of the pre-amended Ordinance apply in relation to the deemed PIC as if those sections”.

34 In the proposed Schedule 6, in Part 3, by adding—

“5AA. Referral of existing cases back to PIC on or after commencement

(1) This section applies if—

- (a) an existing case (within the meaning of section 5(1)(a) of this Schedule) has been referred by the former PIC to the Council for an inquiry under section 21 of the pre-amended Ordinance; and
- (b) the case falls within the description of section 5A(1)(b) or 6(1)(b)(i) of this Schedule.

(2) If the chairperson of an inquiry panel exercises the power under section 15(1)(a) of the amended Regulation to refer the case back to a Preliminary Investigation Committee (**PIC**) by virtue of section 5A(2)(b) of this Schedule, or the chairperson of the deemed panel (within the meaning of section 6(2)(a) of this Schedule) exercises that power by virtue of section 6(3) of this Schedule, then—

- (a) the deemed PIC (within the meaning of section 5(3)(a) of this Schedule) is taken to be the PIC to which the case is referred back; and
- (b) section 5 (other than section 5(1) and (7)) of this Schedule applies for all purposes in relation to the

further consideration of the case by the deemed PIC.”.

34

In the proposed Schedule 6, in Part 4, by adding—

“5A. Council’s inquiry yet to commence 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 (*former PIC’s decision*); and
 - (b) immediately before the commencement, no meeting has been held in accordance with section 21B of the pre-amended Ordinance for the purpose of conducting the inquiry.
- (2) The former PIC’s decision is taken to be a decision referred to in section 20T(2A) of the amended Ordinance, and the Council is taken to have received a notification referred to in section 20X(1) of the amended Ordinance, and accordingly, on and after the commencement—
 - (a) the Council must, as required by section 20X(1) of the amended Ordinance, appoint an inquiry panel for the inquiry; and
 - (b) the provisions of this Ordinance apply for all purposes in relation to the further conduct (including the inquiry) of the case.

5B. Council’s inquiry yet to commence under section 26 of pre-amended Ordinance

If the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for another inquiry and immediately before the commencement, the inquiry has not yet commenced, then—

- (a) the Council must appoint an inquiry panel for the inquiry under section 20X(1) of the amended Ordinance; and
- (b) the provisions of this Ordinance apply for all purposes in relation to the further conduct (including the inquiry) of the case.”.

34 In the proposed Schedule 6, in section 6(1)(b), by deleting “, a meeting” and substituting—

“—

(i) a meeting”.

34 In the proposed Schedule 6, in section 6(1)(b)(i), by deleting “order or referral has been made under section 21(1) of the pre-amended Ordinance.” and substituting—

“decision or order has been made under section 21(1) of the pre-amended Ordinance;

(ii) a decision or order has been made by the Council under section 21(1) of the pre-amended Ordinance and—

(A) no review is taking place under section 21(4B) of that Ordinance and the period for reviewing the decision or order under that section has not yet expired; or

(B) the Council is reviewing the decision or order, but has not yet made any determination under section 21(4D) of that Ordinance;

(iii) the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for an, or another, inquiry, and the inquiry has commenced but has not yet been concluded; or

(iv) the Court of Appeal has remitted a case under section 26(1) of the pre-amended Ordinance to the Council for an inquiry, and the inquiry has not yet commenced.”.

34 In the proposed Schedule 6, in section 6(2), by deleting everything before paragraph (a) and substituting—

“(2) Despite sections 3 and 4 of this Schedule, on and after the commencement, the members of the Council and (if applicable) assessors who, immediately before the commencement, have conducted the inquiry, or have been conducting the inquiry or review (*inquirers*), may continue to conduct the inquiry or review (including a review that commences before the expiry of the period referred to in subsection (1)(b)(ii)(A)) as an inquiry panel, and may do so beyond the expiry of their term of office, as if—”.

34 In the proposed Schedule 6, in section 6(2)(b), by deleting “mentioned

in subsection (1)(b)” and substituting “held in accordance with section 21B of the pre-amended Ordinance”.

34 In the proposed Schedule 6, in section 6(3), by deleting “to and in relation to the deemed panel, the inquirers and the inquiry” and substituting “in relation to the deemed panel, the inquirers and the inquiry or review”.

34 In the proposed Schedule 6, in section 6(3)(b), by deleting “to and in relation to an inquiry panel, its members and an inquiry” and substituting “in relation to an inquiry panel, its members and an inquiry or review”.

34 In the proposed Schedule 6, in section 6(4)(a), by deleting “if a vacancy occurs amongst the members of the deemed panel” and substituting “in relation to the inquiry conducted by the deemed panel if a vacancy occurs amongst its members”.

34 In the proposed Schedule 6, in section 6(4), by adding—
“(ba) section 21(4CA) of the amended Ordinance applies in relation to the review conducted by the deemed panel if a vacancy occurs amongst its members;”.

34 In the proposed Schedule 6, in section 6(4)(c), by deleting “and”.

34 In the proposed Schedule 6, in section 6(4)(d), by deleting the full stop and substituting “; and”.

34 In the proposed Schedule 6, in section 6(4), by adding—
“(e) section 13A of the amended Regulation applies in relation to the review conducted by the deemed panel.”.

34 In the proposed Schedule 6, in section 6(5), by deleting “referred to in subsection (1)” and substituting “or review”.

34 In the proposed Schedule 6, by adding—

“6A. Remittal of cases on or after commencement for inquiry by deemed panel

If the Court of Appeal, by virtue of section 7(3) of this Schedule, exercises its power to remit a case referred to in

section 7(1) or (2) of this Schedule under section 26(1A)(b)(i) of the amended Ordinance to an inquiry panel for holding a new inquiry, then—

- (a) the deemed panel (within the meaning of section 6(2)(a) of this Schedule) is taken to be the inquiry panel to which the case is remitted; and
- (b) section 6 (other than section 6(1) and (6)) of this Schedule applies for all purposes in relation to the further conduct of the case by the deemed panel.

Part 5

Appeal Against Orders in Inquiries”.

34

In the proposed Schedule 6, in section 7, by deleting everything after the heading and substituting—

“(1) If—

- (a) in respect of an existing case (within the meaning of section 5(1)(a) of this Schedule), an order was made by the Council under section 21 of the pre-amended Ordinance; and
- (b) immediately before the commencement, an appeal has been made to the Court of Appeal against the order under section 26(1) of the pre-amended Ordinance,

then, on and after the commencement, the appeal is taken to be made under section 26(1A) of the amended Ordinance.

(2) If—

- (a) in respect of an existing case (within the meaning of section 5(1)(a) of this Schedule), an order was made by the Council under section 21 of the pre-amended Ordinance; and
- (b) 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 that 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.

- (3) On and after the commencement, the provisions of this Ordinance apply for all purposes in relation to the further conduct (including any appeal or remittal) of the case referred to in subsection (1) or (2).”.

35(3) By deleting “3(2)(h)” and substituting “3(2)(ha)”.

35 In the English text, by deleting subclause (4) and substituting—

“(4) Section 4(2)(d)—

Repeal

“composition”

Substitute

“a composition or arrangement”.”.

New By adding—

“35A. Section 8 amended (filling of casual vacancy where unexpired period is less than 1 year)

(1) Section 8(1), after “members of the Council”—

Add

“who are registered medical practitioners”.

(2) Section 8(2)(b), after “Council”—

Add

“who are registered medical practitioners”.

(3) Section 8(4), after “members of the Council”—

Add

“who are registered medical practitioners”.”.

39 (a) By renumbering the clause as clause 39(1).

(b) By adding—

“(2) Section 24(4)—

Repeal

“may”

Substitute

“must”.”.

- 41 (a) By renumbering the clause as clause 41(2).
(b) By adding—
 “(1) Schedule 1, Form 2, Part II, paragraph 2—
 Repeal
 “and for”
 Substitute
 “in an”.”.
- 44(2) By deleting the proposed section 8(1)(a) and substituting—
 “(a) at a meeting or an inquiry mentioned in section 6(1);”.
- 51 By deleting the clause and substituting—
 “51. Section 9 amended (reference of case to Committee)
 Section 9—
 Repeal subsection (1)
 Substitute
 “(1) Except where section 10 or 16(1A) applies, the chairman or the deputy chairman of a Committee who receives a case under section 6 must make the directions specified in subsection (1A) if—
 (a) the case has not been dismissed under section 6(3);
 (b) the case has not been referred to the Health Committee under section 6(4); or
 (c) he or she has directed that the case be investigated further under section 6(5).
 (1A) The directions specified for subsection (1) are—
 (a) that the case must be referred to the Committee for its consideration; and
 (b) that the Secretary must fix a date on which it is proposed that the Committee meets to consider the case.”.”.
- 54 By adding—
 “(3A) Section 13(4)—

Repeal

“of the receipt of a notification under subsection (1)”

Substitute

“after a direction by the chairperson of the inquiry panel under subsection (2)”.’.

55 By adding before the proposed section 13A(1)(a)—

“(aa) holds an inquiry under section 21 of the Ordinance;”.

55 In the proposed section 13A, by adding—

“(3A) Subsections (2) and (3) have effect in relation to a review under section 21(4B) of the Ordinance as if the references to inquiry in those subsections were references to review.”.

55 In the proposed section 13A(4), by adding “or review the decision or order, as the case may be” after “the case”.

63 In the proposed section 21(2), by deleting “including” and substituting “or”.

74 By deleting subclause (5) and substituting—

“(5) Section 32—

Repeal subsection (3).’.

76 By deleting the clause and substituting—

“76. Section 34 substituted

Section 34—

Repeal the section

Substitute

“34. Review by inquiry panel

(1) If, after an inquiry under section 21 of the Ordinance, an inquiry panel has decided to—

(a) review its decision or order under section 21(4B) of the Ordinance; and

(b) invite any specified person to attend the review

under section 21(4C) of the Ordinance,

the chairperson of the panel must direct the Secretary to notify the specified person in writing and invite the specified person to appear before the panel at the time and place fixed for holding the review.

- (2) At the review, the inquiry panel may invite a specified person to address the panel in the order it thinks appropriate.
- (3) The inquiry panel may proceed with the review in the absence of any specified person.
- (4) After the review, the chairperson of the inquiry panel must—
 - (a) announce the panel's latest decision in writing; and
 - (b) direct the Secretary to—
 - (i) serve a notice of the decision on the defendant; and
 - (ii) notify the complainant of the decision.
- (5) The Secretary must comply with a direction given under subsection (1) or (4).
- (6) In this section—

specified person (指明人士) means—

 - (a) a party to an inquiry under section 21 of the Ordinance; or
 - (b) any other person who has appeared before an inquiry panel in the inquiry.”.”.

78

By adding—

“(8A) Section 37(6)—

Repeal

“, the deputy chairman”.”.

80

By deleting subclause (2).

80(3)

In the proposed section 39(3), by deleting the definition of *section 21*

order.

81 By deleting the clause.

82 By deleting the clause.