

立法會

Legislative Council

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Paper for the House Committee

Report of the Subcommittee on Medical Council (Election and Appointment of Lay Members) Regulation

Purpose

This paper reports on the deliberations of the Subcommittee on Medical Council (Election and Appointment of Lay Members) Regulation ("the Subcommittee").

Background

2. The Medical Registration (Amendment) Bill 2017 was passed by the Legislative Council ("LegCo") on 28 March 2018 and the enacted Ordinance was published in the Gazette as Ord. No. 15 of 2018 ("the Amendment Ordinance") on 6 April 2018. The Amendment Ordinance amends the Medical Registration Ordinance (Cap. 161) ("the Ordinance") and three items of its subsidiary legislation to, among others, change the composition of the Medical Council of Hong Kong ("the Medical Council"). Such changes include the addition of three lay members to the Medical Council elected by patient organizations ("Lay Members") under a regulation to be made by the Permanent Secretary for Food and Health (Health) ("the Permanent Secretary") under section 33(3A) of the Ordinance.

Medical Council (Election and Appointment of Lay Members) Regulation (L.N. 67 of 2018)

3. On 27 April 2018, the Medical Council (Election and Appointment of Lay Members) Regulation ("the Regulation") was published in the Gazette.

The Regulation is made by the Permanent Secretary under section 33(3A) of the Ordinance to provide for the procedure and other matters in relation to the election and appointment of the Lay Members. The major provisions are summarized below:

- (a) Parts 2 and 11 provide for the procedure and eligibility requirements for registration as an elector for the election of the Lay Members;
- (b) Parts 3 and 4 and the Schedule provide for the requirement to issue a notice of election for the election, and the procedure and eligibility requirements for nominating candidates for the election;
- (c) Parts 5 to 7 provide for the requirements in relation to the issue of a notice of result of nominations of candidates, the conducting of a poll and further rounds of the election, and the determination and declaration of the election result;
- (d) Parts 8 and 9 and the Schedule provide for the obligations of the Secretary of the Medical Council to keep and dispose of the election documents, and the rules on the questioning of the election result by an election petition to the Medical Council; and
- (e) Part 10 provides for the procedure in relation to the nomination and appointment of a person to fill a vacancy of an office of a Lay Member where the unexpired term of the office is less than one year when the vacancy arises.

4. The Regulation was tabled before LegCo at its meeting of 2 May 2018 and is subject to negative vetting by LegCo. It comes into operation on a day to be appointed by the Permanent Secretary by notice published in the Gazette.

The Subcommittee

5. At the House Committee meeting on 11 May 2018, Members agreed to form a subcommittee to study the Regulation. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Alice MAK, the Subcommittee has held one meeting with the Administration.

6. To allow more time for the Subcommittee to study the Regulation, a resolution was passed at the Council meeting of 23 May 2018 to extend the scrutiny period of the Regulation to the Council meeting of 20 June 2018.

Deliberations of the Subcommittee

Definition of "election"

7. Under section 2(1) of the Regulation, "election" is defined to mean an ordinary election or by-election and includes a further round of election conducted under section 20, 30 or 31 of the Regulation¹. The Legal Adviser to the Subcommittee has pointed out that there is an inconsistency between section 2(1) and section 2(2) of the Regulation. The latter provides that except for sections 6, 11 and 21(2) of the Regulation, a reference to an election in the Regulation includes, if applicable, a reference to a further round of that election conducted under section 20, 30 or 31 of the Regulation.

8. The Administration has explained that the definition of "election" should include all types of election in section 2(1) of the Regulation, but the exceptions (i.e. sections 6, 11 and 21(2) of the Regulation) are carved out in section 2(2) of the Regulation because the carved-out provisions do not apply to any further round of an election. The Administration notes the inconsistency between sections 2(1) and 2(2) of the Regulation but considers it not necessary to revise section 2(1) at this moment in view of the fact that it is unlikely that the inconsistency will affect the operation of the scheme under the Regulation. However, the Administration has undertaken that it would consider deleting section 2(2) of the Regulation and revising the definition of "election" under section 2(1) of the Regulation to mean "an ordinary election or by-election and, except for sections 6, 11 and 21(2), a reference to an election includes, if applicable, a reference to a further round of that election conducted under section 20, 30 or 31" in future amendment exercises to clarify the matter.

Eligibility for registration as an elector

9. Members note that according to section 4(1) of the Regulation, an organization is eligible for registration as an elector if it meets the following requirements:

¹ A further round of election has to be conducted if, for example, at the end of the day following the nomination closing date, no candidate is validly nominated or every validly nominated candidate has withdrawn candidature under the relevant section of the Regulation.

- (a) throughout the two years immediately before the end of the period within which an application for registration may be made ("registration application period")-
 - (i) it has been-
 - (A) a company defined by section 2(1) of the Companies Ordinance (Cap. 622); or
 - (B) a society or a branch of a society registered, or exempted from registration, under section 5A of the Societies Ordinance (Cap. 151); and
 - (ii) it has been carrying on activities to safeguard or represent the interests of patients;
- (b) its principal objective is to safeguard or represent the interests of patients;
- (c) it is recognized by a reference authority² as an organization that safeguards or represents the interests of patients.

Under section 5 of the Regulation, an application for registration must be made in the specified form and if the Permanent Secretary determines that the applicant is eligible for registration, he or she will approve the application. A transitional arrangement is provided for under section 47 of the Regulation such that for the purposes of compiling the first electoral register under the Regulation, an organization that is a company, a society or a branch of a society which meets the description in paragraph 9(a)(i)(A) or (B) above is eligible to be registered if the Permanent Secretary is satisfied that, before the end of the registration application period, the organization has satisfied the requirements under section 4(1) of the Regulation except that it has not been such a company, society or branch for at least two years.

10. Some members including Mr CHAN Han-pan and Dr Pierre CHAN have sought clarification on the following matters concerning the eligibility requirements for registration as an elector: whether various patient groups formed under a single umbrella patient organization would meet the eligibility requirements for registration as an elector for an election (other than the first election); and whether self-help patient organizations would be

² In section 4(2) of the Regulation, "reference authority" means the Hospital Authority; the Social Welfare Department; The Hong Kong Society for Rehabilitation; or any other entity designated by the Permanent Secretary as an authority that provides reference on whether an organization safeguards or represents the interests of patients.

regarded as safeguarding or representing the interests of patients. The Administration has advised that the application will be considered as long as the entity has met the requirement as set out in section 4(1) of the Regulation. The requirement on "safeguarding or representing the interests of patients" is broad in principle and self-help patient organizations would be considered as meeting such requirement.

11. According to the Administration, applicants need to submit proof so as to substantiate that they have met the eligibility requirements for registration. Pursuant to section 5 of the Regulation, the Secretary of the Medical Council has to conduct due vetting and then make recommendations to the Permanent Secretary as to whether an application should be approved. In the process, the Secretary of the Medical Council and the Permanent Secretary may make inquiry that they consider appropriate for assessing or determining the applicants' eligibility for registration and require the applicants to submit supplementary information or clarify their application. The Administration has advised the Subcommittee that as a reference, the respective numbers of patient organizations currently providing advice under the network of the Hospital Authority, engaging by the Community Rehabilitation Network under The Hong Kong Society for Rehabilitation, and receiving funding support under the Financial Support Scheme for Self-help Organizations of Persons with Disabilities/Chronic Illnesses of the Social Welfare Department are about 230, 180 and 80. There are some duplications among these lists and the overall number of patient organizations is over 200.

12. Members note that pursuant to section 5(7) of the Regulation, a determination of the Permanent Secretary on an application by an organization for registration as an elector is final. An aggrieved applicant may apply for judicial review to challenge the decision.

Nomination of candidates for an election

13. Section 10 of the Regulation sets out the eligibility requirements for candidates to be validly nominated for an election. The Chairman has enquired as to whether a person has to be a representative of a patient organization in order to be eligible for nomination as a candidate at an election. The Administration has advised that there is no such requirement under the Regulation. Dr Pierre CHAN has expressed concern about the handling of circumstance whereby a person holding multiple membership in various patient organizations that are registered as an elector which is eligible for subscribing nominations for candidates for an election. The

Administration has advised that there was no cause for such concern, as the registration as an elector for an election is entity-based but not membership-based.

14. The Administration has advised the Subcommittee that the Secretary of the Medical Council may make inquiry as appropriate for determining the validity of a nomination, and require an applicant to submit supplementary information or clarify the nomination when he or she is in doubt. Under section 35(b) of the Regulation, the result of an election may be questioned by an election petition presented on the ground that a person determined to be not validly nominated as a candidate under the Regulation should have been determined to be validly nominated. Members note that under section 43(2) of the Regulation, a determination of the Medical Council on an election petition is final. An aggrieved petitioner may apply for judicial review to challenge the decision.

15. Section 16 of the Regulation contains a list of circumstances under which a person who has been validly nominated as a candidate for an election is disqualified from being elected as a Lay Member. The Legal Adviser to the Subcommittee has sought clarification from the Administration as to the reason(s) for excluding from the list the person's entering into a composition or arrangement with his or her creditors without paying the creditors in full as provided for in section 10(c) of the Regulation.

16. As explained by the Administration, it is the Administration's view that a person who enters into a composition or arrangement with his or her creditors without paying them in full will not be elected as sections 29, 30 and 31 of the Regulation are wide enough to prevent such a person from being elected. In any event, where a member of the Medical Council becomes bankrupt or enters into a composition or arrangement with his or her creditors without paying them in full, the Medical Council may declare the member's office to be vacant under section 3(6A) of the Ordinance. As such, the Administration considers that the inconsistency does not affect the operation of the scheme under the Regulation and in view of the rather unlikely chance of the occurrence of the event in question, the Administration considers it undesirable to amend the Regulation at the moment. It would consider revising the same in future amendment exercises.

Arrangements for filling a vacancy of a Lay Member if the unexpired term of the office is less than one year when the office becomes vacant

17. Members note that under section 46(2) of the Regulation, if the unexpired term of office of a Lay Member is less than one year when the

office becomes vacant, the Secretary of the Medical Council has to immediately notify the Chairman of the Medical Council and the lay members of the Medical Council (i.e. those described in section 3(2)(g), (ga) and (gb) of the Ordinance) of the vacancy; and invite the lay members to make nominations of candidates for appointment as a Lay Member by a deadline specified in the invitation. There is a concern about the nomination arrangement if, for whatever reason(s), all the lay members of the Medical Council have resigned.

18. The Administration has advised that in such an extreme case, the Chief Executive could, as soon as possible, first make appointments to fill the vacancies in the offices of the lay members described in section 3(2)(g) of the Ordinance. The Secretary of the Medical Council will then invite these lay members to make nominations of candidates for appointment as Lay Members.

Commencement date

19. Pursuant to section 1 of the Regulation, the Regulation comes into operation on a day to be appointed by the Permanent Secretary by notice published in the Gazette. Section 3(1) of the Regulation provides that the Secretary of the Medical Council has to, within one month after the commencement date of the Regulation, announce that an electoral register is to be compiled for the purposes of the Regulation and invite applications for registration as an elector.

20. According to the Administration, its plan is to, upon the expiry of the scrutiny period of the Regulation³, publish, the latest, on 29 June 2018 a notice in the Gazette for appointing the gazettal date as the day of commencement of the Regulation. As explained by the Administration, while the commencement notice will be subject to negative vetting by LegCo, the Regulation will come into operation on the gazettal date referred to above in order to kick start the election process as soon as possible. The Secretariat of the Medical Council will immediately start the preparation work for the first election of the Lay Members. It is expected that the election will be completed by end 2018 and the three Lay Members will assume office in early 2019.

³ The scrutiny period of the Regulation will expire at the Council meeting of 20 June 2018.

The Administration's undertakings

21. The Administration has undertaken to consider amending the Regulation as referred to in paragraphs 7 and 16 above, as well as making some minor drafting amendments to the Regulation⁴ in future amendment exercises.

22. The Subcommittee will not move any amendments to the Regulation.

Advice sought

23. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
12 June 2018

⁴ Please refer to paragraph 23 of the letter from the Legal Adviser to the Subcommittee (LC Paper No. CB(2)1427/17-18(01)) and paragraph 27 of the reply letter from the Administration (LC Paper No. CB(2)1502/17-18(01)) for details.

**Subcommittee on Medical Council
(Election and Appointment of Lay Members) Regulation**

Membership list*

Chairman	Hon Alice MAK Mei-kuen, BBS, JP
Members	Hon Tommy CHEUNG Yu-yan, GBS, JP Hon Frankie YICK Chi-ming, SBS, JP Hon CHAN Han-pan, JP Hon Kenneth LEUNG Dr Hon KWOK Ka-ki Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan Hon IP Kin-yuen Hon HO Kai-ming Dr Hon Pierre CHAN Hon Vincent CHENG Wing-shun, MH

(Total : 12 members)

Clerk	Ms Maisie LAM
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Legal Adviser	Ms Wendy KAN
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* Changes in membership are shown in Annex to Appendix.

Annex to Appendix

Subcommittee on Medical Council (Election and Appointment of Lay Members) Regulation

Changes in membership

Member	Relevant date
Hon KWOK Wai-keung, JP	Up to 20 May 2018
Hon LUK Chung-hung	Up to 20 May 2018
Hon LAU Kwok-fan, MH	Up to 3 June 2018