



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2840 0467)

21 May 2018

Miss Natalie LAU  
AS for Food & Health (Health)3A  
Food and Health Bureau  
Health Branch  
19/F, East Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Miss LAU,

**Medical Council (Election and Appointment of Lay Members) Regulation  
("the Regulation")**

We are scrutinizing the Regulation with a view to advising Members.

Please find attached a schedule listing our observations on the legal and drafting aspects of the Regulation. We would be grateful if you could let us have your response in bilingual form on or before 1:00 pm on 28 May 2018.

Yours sincerely,

(Wendy KAN)  
Assistant Legal Adviser

c.c. DoJ (Attn: Miss Bonita WONG and Miss Ting CHEUNG)

(By Fax: 3918 4613)

Clerk to the Subcommittee

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## Schedule

### Part I: Legal Issues

#### Section 2 of the Regulation

##### *Definition of "election"*

1. 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 sections 20, 30 or 31 of the Regulation. Section 2(2) of the Regulation, on the other hand, 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 sections 20, 30 or 31 of the Regulation. Please amend the provisions to resolve the inconsistency.

##### *Definition of "term of office"*

2. Under section 3(5AAB) of the Medical Registration Ordinance (Cap. 161), a member elected or appointed to fill a vacancy of a specified lay member (as defined in section 2(1) of the Regulation) that arises before the term of office of such a member expires holds office from the date of election or appointment until the end of the unexpired term. Pursuant to section 71(1)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), in computing time for the purposes of Cap. 161, a period of days from the happening of any event shall be deemed to be exclusive of the day on which the event happens.

Under paragraph (b) of the definition of "term of office" in section 2(1) of the Regulation, "term of office" for such a member, however, is defined to mean the period beginning on the date of election or appointment of the member until the expiry of the unexpired term of office of the predeceasing incumbent. Please amend paragraph (b) of the definition of "term of office" under section 2(1) of the Regulation to ensure consistency with section 3(5AAB) of Cap. 161.

#### Section 3 of the Regulation

3. It appears that the Secretary ("the Secretary") of the Medical Council of Hong Kong ("the Medical Council") is not required to compile an electoral register and invite applications for registration as an elector in relation to a by-election (as defined in section 2(1) of the Regulation). Accordingly,

only those organizations that have been registered in relation to the previous ordinary election (as defined in section 2(1) of the Regulation) are entitled to elect. Please clarify.

#### Section 4(2) of the Regulation

4. Will a designation of an entity by the Permanent Secretary for Food and Health (Health) ("the Permanent Secretary") as a reference authority pursuant to section 4(2)(d) of the Regulation be notified to the public by, for example, publishing a notice in the Gazette?

#### Sections 5(1) and 8 of the Regulation

5. It is noted that under the Regulation, the Secretary is required, among other things, to send a notice of election and issue a polling notice to every elector. Will an applicant for registration as an elector be required to provide the Secretary with the applicant's address and other means of communication for the purposes of the Regulation?

#### Section 5(5) to (7) of the Regulation

6. Please clarify whether the Permanent Secretary will give, before refusing an application for registration as an elector, the applicant concerned an opportunity to be heard or to make written representations, and whether in the event that he or she refuses the application, he or she will give the applicant written reason(s) for his or her refusal of the application. If so, please provide so in the Regulation. If not, please explain the reason(s) for not making such provisions.

#### Section 6(2) of the Regulation

7. Section 6(2) of the Regulation requires the Secretary to publish the electoral register by notice in the Gazette and inform applicants for registration as electors of the results of their applications at least one week before issuing a notice of election in relation to an ordinary election. Given that the applicants may only be informed of such results one week before the issue of a notice of election in relation to the election, will the applicants whose applications have been refused have sufficient time to take follow-up actions with the Permanent Secretary in respect of their applications?

Section 6(4)(b) of the Regulation

8. According to section 6(4)(b) of the Regulation, the Secretary may amend an electoral register to reflect a change in the particulars of an elector entered into the register. Please clarify under what circumstances the Secretary may make such a change and whether the elector concerned will be notified after such a change is made. Will the updated register be published in the Gazette?

Section 9(1)(a) of the Regulation

9. The Secretary is required, under section 9(1)(a) of the Regulation, to issue, for each election to be held, a notice of election by publishing the notice in a manner that the Secretary considers appropriate, instead of in the Gazette as for the publication of an electoral register under section 6(2)(a) of the Regulation. Please clarify the manner in which the notice of election is to be published under contemplation.

Section 14(5) of the Regulation

10. Please clarify whether the Secretary, before determining that a nomination of a candidate for an election is invalid, will give the candidate concerned an opportunity to be heard or to make written representations. If so, please provide so in the Regulation. If not, please explain the reason(s) for not making such provision.

Section 16 of the Regulation

11. 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 specified lay member. Please explain 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.

Section 23(2) of the Regulation

12. Please consider whether the requirement that the ballot paper and the declaration form be sent to the Secretary to the specified address should be added to section 23(2) of the Regulation as one of the criteria for determining the validity of a ballot paper. It is required, under the notice of election and the polling notice, that the ballot paper and the declaration form must be sent to a specified address for casting a vote.

### Section 29 of the Regulation

13. Please clarify whether the Secretary will give, before varying the determination as to the validity of the nomination under section 29 of the Regulation, the candidate concerned an opportunity to be heard or to make written representations and will also give the candidate written reason(s) for the variation. If so, please provide so in the Regulation. If not, please explain the reason(s) for not making such provisions.
14. Please also note the question set out in paragraph 21 below regarding section 29(2) of the Regulation.
15. Will the electors be notified of the variation of the determination made by the Secretary under section 29(2) of the Regulation?

### Sections 30 and 31(3) of the Regulation

16. If an election is countermanded pursuant to section 30 or section 31(3) of the Regulation, please clarify whether the Secretary will give, before countermanding the election, the candidate concerned an opportunity to be heard or to make written representations, inform the candidate that the election is countermanded, and give the candidate written reason(s) for countermanding the election. If so, please provide so in the Regulation. If not, please explain the reason(s) for not making such provisions.

### Section 42 of the Regulation

17. Under section 42(2)(a) of the Regulation, in the case of an election petition jointly presented by five electors, the petitioner may be heard by the authorized representative of one of the electors at the hearing, without further requiring that such authorized representative should have been authorized by all the electors concerned. Should such a requirement be imposed?
18. It is noted that section 42 of the Regulation does not contain provisions as set out in section 37(3), (7), (8)(d) and (9) of the Medical Practitioners (Electoral Provisions) (Procedure) Regulation (Cap. 161B). Please explain the reason(s) for not providing so.

### Section 46(10) of the Regulation

19. Section 46(10) of the Regulation does not require all the lay members to be present in order for a meeting of lay members to be validly held pursuant to section 46(9)(d) of the Regulation. The section also does not provide for a quorum requirement for such a meeting. It follows that such a meeting can be validly held even if there is only one lay member attending it, provided that the Chairman of the Medical Council is present. Please explain the reason(s) for making such provision. Should a quorum requirement be imposed for such a meeting?

## **Part II: Drafting Issues**

### The definition of "selection" under section 2(1) of the Regulation

20. With respect to the definition of "selection" under section 2(1) of the Regulation:
- (a) it appears that "selection" should refer to a selection of candidates under section 46(9)(d) of the Regulation only, as a selection of candidates will only take place under that section. If the term is not intended to only cover such a selection, please amend the definition for the sake of clarity, as "selection" is also referred to in paragraph (b) of the definition of "term of office" under section 2(1) of the Regulation; and
  - (b) please replace "select" with "selecting", as it is "selecting", but not "select", that is used in the Regulation.

### Section 14(6) of the Regulation

21. Please clarify whether the content of a notice of the determination as to the validity of the nomination that must be issued under section 14(6) of the Regulation includes, where the nomination is determined to be invalid, the reasons for such determination as required to be given in section 14(5) of the Regulation. If so, please amend section 14(6) of the Regulation to make express provision to avoid uncertainty.

Section 10 of Schedule to the Regulation

22. For consistency with the relevant Chinese texts:

- (a) please add, in section 10(1) of the Schedule to the Regulation, "on his or her behalf" after "or inflict or threaten to inflict, by himself or herself or by any other person" and delete "on his or her behalf" after "any temporal or spiritual injury, damage, harm or loss upon or against any person"; and
- (b) please add, in section 10(3) of the Schedule to the Regulation, "on his or her behalf" after "or inflict or threaten to inflict, by himself or herself or by any other person".

Minor drafting issues

23. Please note that certain drafting amendments to the Regulation should be made. For example, under section 28(4) of the Regulation, "A specified candidate on whom the lots fall" should be "A specified candidate on whom the lot falls".