



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

來函檔號 YOUR REF : FH CR 1/F/3261/92
本函檔號 OUR REF : LS/B/28/20-21
電話 TELEPHONE : 3919 3509
電郵 EMAIL : wkan@legco.gov.hk

By Email (cpcfung@fhb.gov.hk)

22 June 2021

Mr Chris FUNG
Principal Assistant Secretary for Food and Health (Health)3
Food and Health Bureau
19/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr FUNG,

Medical Registration (Amendment) Bill 2021

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the issues set out at the **Annex**.

We would appreciate it if you would let us have the Administration's response in bilingual form as soon as practicable, preferably before the second meeting of the Bills Committee.

Yours sincerely,

(Wendy KAN)
Assistant Legal Adviser

Encl.

c.c. Department of Justice
(Attn: Ms Amy CHAN, Senior Assistant Law Draftsman)
(By email: amywychan@doj.gov.hk)
(Attn: Ms Carmen CHAN, Senior Government Counsel)
(By email: carmenchan@doj.gov.hk)
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to Bills Committee

Clause 6 of the Bill

1. Under the proposed new section 8(1)(ba) of the Medical Registration Ordinance (Cap. 161), a person would be eligible for full registration as a medical practitioner in Hong Kong if the requirements in the proposed new section 8(1)(ba)(i) to (iii) are met.

- (a) Pursuant to the proposed new section 8(1)(ba)(i) of Cap. 161, the person must have been engaged in full-time employment as a medical practitioner with special registration in one or more than one institution specified in the proposed new Schedule 1B to Cap. 161 ("specified institution") for a total of at least five years ("service period") after the person (a) was awarded a Fellowship of the Hong Kong Academy of Medicine ("Academy of Medicine") in a specialty, or (b) was certified by the Academy of Medicine to have completed the training, and obtained the qualification, comparable to that required of a Fellow in a specialty by the Academy, whichever is the earlier. Please clarify what would be the requirements that the person has to fulfil in order for the Academy of Medicine to certify that the person has completed the training, and obtained the qualification, comparable to that required of a Fellow in a specialty by the Academy.
- (b) Under the proposed new section 8(1)(ba)(ii) of Cap. 161, the person must be certified by the Academy of Medicine to have satisfied the continuing medical education requirements for the specialty during the service period. Please clarify whether such continuing medical education requirements would be same as those for the Fellows in the specialty concerned who are medical practitioners with full registration registered pursuant to the current sections 8(1) and 14 of Cap. 161.
- (c) With respect to the proposed new section 8(1)(ba)(iii) of Cap. 161, the person must be considered by the specified institution(s) concerned to have served satisfactorily and competently as a medical practitioner during the service period. In order for the specified institution(s) to consider so, please clarify what standard of performance would be

required to be attained by the medical practitioners. Would such standard of performance be that required of a Fellow in the specialty concerned? If so, please clarify whether such standard should be explicitly stated in the Bill.

Clause 7 of the Bill

2. Section 14B(1) of Cap. 161 currently provides for the temporary registration of a person who will be engaged exclusively in performing clinical teaching or research for an institution specified in section 14B(2) of Cap. 161. Section 14B(2) contains four institutions, which are exactly the same as those listed in the proposed new Schedule 1B to Cap. 161 (i.e. "specified institutions"). The effect of clause 7 of the Bill (together with the proposed new section 14I under clause 8) is that future amendments to the specified institutions concerned would be made by subsidiary legislation subject to scrutiny by the Legislative Council ("LegCo") pursuant to the negative vetting procedure, instead of by a bill to be introduced into LegCo. Please clarify the reason(s) for proposing such a change.

Clause 8 of the Bill

Proposed new section 14C(1) and (4) of Cap. 161

3. It is proposed under the new section 14C(1) of Cap. 161 that the Registrar of Medical Practitioners ("Registrar") must grant a special registration, or renew a special registration so granted, to a person if the Registrar is, upon an application by the person in accordance with the proposed prescribed requirements, satisfied that the person has met all the requirements specified in the proposed new section 14C(3) of Cap. 161 (including that the person is of good character and has good professional conduct under the proposed new section 14C(3)(e)). It is also proposed in the proposed new section 14C(4) of Cap. 161 that if the Registrar has doubts about whether an applicant has met the requirement specified in the proposed new section 14C(3)(e), the Registrar must refer the matter to the Medical Council of Hong Kong ("Medical Council") which would deliberate on the matter and, if the Medical Council considers appropriate, hold an inquiry into the matter, and then notify the Registrar of the result/findings accordingly.

- (a) Given that it would be the Registrar who has to be satisfied that the applicant has met all the relevant requirements, please

clarify whether the Registrar would have the discretion not to adopt the result of the Medical Council's deliberation or findings of the inquiry.

- (b) If your answer in (a) is in the affirmative, please clarify the reason(s) for giving the Registrar such a discretion. If not, please clarify whether it is necessary to state so explicitly in the Bill.

Proposed new section 14C(5) of Cap. 161

4. Under the proposed new section 14C(5) of Cap. 161, section 21 and Parts III, IV and X of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) ("Relevant Provisions"), with necessary modifications, would apply to an inquiry held for the purposes of the proposed new section 14C(4) of Cap. 161. It is noted that in connection with full registration as a medical practitioner currently under section 14 of Cap. 161 where an inquiry is held, section 14(5) of Cap. 161 provides that the Relevant Provisions that are capable of application to an inquiry held for the purposes of section 14 apply to the inquiry, as if the references to an inquiry panel in the Relevant Provisions were references to the Medical Council. Please clarify whether there would be any difference(s) between the application of the Relevant Provisions to, and accordingly the procedures to be involved in, an inquiry to be held under the proposed new section 14C(4) and those currently under section 14.

Proposed new section 14E(1) of Cap. 161

5. Under the proposed new section 14E(1) of Cap. 161, the special registration of a person would be in force until the earliest of three specified events, one of which being the removal of the person's name from the General Register under an order made under section 19, 21(1)(i) or 21A(1)(a) of Cap. 161 as set out in the proposed new section 14E(1)(c). It is noted that the current sections 21(1)(ii) and 21A(1)(b) of Cap. 161 also provide for the making of an order for removing the name of a registered medical practitioner from the General Register for a specified period. Please clarify the reason(s) for not including sections 21(1)(ii) and 21A(1)(b) in the proposed new section 14E(1)(c).

Proposed new section 14F(1) and (4) of Cap. 161

6. Under the proposed new section 14F(1) of Cap. 161, a new committee known as the Special Registration Committee ("SRC") would be established for making recommendations independently to the Registrar direct on the medical qualifications to be, or no longer to be, recognized for the purposes of the proposed new section 14C of Cap. 161. Pursuant to the proposed new section 14F(4) of Cap. 161, if the Secretary for Food and Health ("SFH") considers that the public interest so requires, SFH could issue to SRC directives about SRC's performance of its functions under Cap. 161.

- (a) It is noted that a non-locally trained person may be registered as a medical practitioner with limited registration under the current section 14A of Cap. 161 if the Medical Council is satisfied that the person fulfills certain requirements, such as having obtained an acceptable overseas qualification and having registered with an approved medical authority outside Hong Kong. Please clarify the reason(s) for not proposing the Medical Council to recommend on the medical qualifications to be, or no longer to be, recognized for the purposes of the proposed new section 14C of Cap. 161.
- (b) Please clarify whether SRC must comply with the directives issued by SFH under the proposed new section 14F(4) of Cap. 161. If so, please clarify whether it is necessary to have such an express provision in the Bill. Please also clarify whether such directives would affect directly or indirectly SRC's recommendations (which should be made independently) as to which medical qualifications are to be, or no longer to be, recognized.
- (c) Please clarify whether, and if so how, the proposed establishment of SRC and the proposed new regime for non-locally trained medical practitioners to obtain full registration as medical practitioners in Hong Kong under the Bill are in conformity with Article 142(3) of the Basic Law.

Proposed new section 14F(2) of Cap. 161

7. Pursuant to the proposed new section 14F(2) of Cap. 161, SRC would be established under the Medical Council so that the Medical

Council may provide the administrative, secretarial or other services that SRC requests for performing its functions under Cap. 161. According to footnote 6 of the LegCo Brief (File Ref.: FH CR 1/F/3261/92) issued by the Food and Health Bureau on 18 May 2021, SRC may, as a committee under the Medical Council, report the progress of its work to the Medical Council on a regular basis, in line with the established practice of other committees under the Medical Council.

- (a) Please clarify whether there is any statutory duty on SRC to report to the Medical Council.
- (b) If so, please clarify why it is necessary to impose such a duty on SRC, given that SRC would be established for making recommendations independently to the Registrar direct.

Proposed new section 14F(3) of Cap. 161

8. Under the proposed new section 14F(3) of Cap. 161, SRC could only recommend a medical qualification for the purposes of special registration if the medical qualification meets the criteria set out in the proposed new section 14F(3)(a) to (c).

- (a) Pursuant to the proposed new section 14F(3)(b) of Cap. 161, the medical qualification must be awarded by a body in a place outside Hong Kong that is broadly comparable to any local university (i.e. The University of Hong Kong or The Chinese University of Hong Kong currently specified in Schedule 1 to Cap. 161) in terms of international rankings. It seems that there are various international rankings on universities conducted by different organizations. Please clarify which international ranking(s) would be taken into account.
- (b) Under the proposed new section 14F(3)(c) of Cap. 161, the medical qualification must be broadly comparable to the medical qualifications awarded by any local university in terms of, among others, any other aspects as SRC considers appropriate. Please provide examples of what those other aspects could be.

Proposed new section 14G of Cap. 161

9. Under the proposed new section 14G(1) of Cap. 161, one of the members of SRC would be the Dean of the Faculty of Medicine of The University of Hong Kong ("Dean"). It is noted that under section 5E(k) of the Schedule to the Chief Executive Election Ordinance (Cap. 569), the Dean is referred to as "the Dean of Li Ka Shing Faculty of Medicine of The University of Hong Kong". Please clarify which phrase is the accurate one.

10. Under the proposed new section 14G(5) of Cap. 161, SRC could transact any of its business by circulation of papers without meeting, and a resolution signed by a majority of its members is as valid and effective as if the resolution had been passed at its meeting. It is however noted that under the current section 5(2) of Schedule 2 to Cap. 161, a committee established by the Medical Council pursuant to section 20BA of Cap. 161 may, subject to certain exceptions, transact any of its business by circulation of papers without meeting, and a resolution signed by all the members of the committee for the time being present in Hong Kong is as valid and effective as if it had been passed at a meeting by the votes of the members so signing. Please clarify the reason(s) for the different requirements for transacting business by circulation of papers without meeting as stated above.

11. It is noted that section 20BA(13) of Cap. 161 currently provides, among others, for the application of Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) to a committee established under section 20BA and appointments to such committee except in so far as it is inconsistent with Cap. 161. It is however noted that no such similar provision is provided in the Bill for the purposes of SRC. Please clarify the reason(s) for not proposing so.

Proposed new section 14H of Cap. 161

12. Under the proposed new section 14H of Cap. 161, on receiving a recommendation made by SRC on the medical qualifications to be, or no longer to be, recognized for the purposes of the proposed new section 14C, the Registrar must, by amending the proposed new Schedule 1A to Cap. 161 by notice published in the Gazette, recognize, or revoke the recognition of, the medical qualifications. Such notice would be subsidiary legislation subject to scrutiny by LegCo pursuant to the negative vetting procedure.

- (a) It is noted that the list of local universities which may award recognized medical qualifications for full registration as a medical practitioner in Hong Kong is currently specified in Schedule 1 to Cap. 161. Pursuant to section 8(2) of Cap. 161, the Medical Council may, with the prior approval of LegCo, by notice in the Gazette, amend Schedule 1 (i.e. the positive vetting procedure). Please clarify why the negative vetting procedure (instead of the positive vetting procedure) is proposed for amending the proposed new Schedule 1A to Cap. 161.

- (b) Under the proposed new section 14H of Cap. 161, once the Registrar receives SRC's recommendation on the medical qualifications to be, or no longer to be, recognized, the Registrar must recognize, or revoke the recognition of, the medical qualifications by amending the proposed new Schedule 1A to Cap. 161 by notice published in the Gazette. As stated in paragraph 15 of the LegCo Brief, there would not be any discretionary power for the Registrar to vary the list so recommended by SRC. Please clarify the Administration's view as to whether the power of LegCo to amend, including repeal, such a notice under section 34 of Cap. 1 would have been displaced (please refer to the President's ruling on proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 proposed by Hon Tanya CHAN dated 11 October 2010).

Clause 9 of the Bill

13. Clause 9(1) and (2) of the Bill proposes to amend section 15(1) and (2) of Cap. 161 to the effect that certain particulars of medical practitioners whose names appear on the proposed new Part V of the General Register (i.e. medical practitioners with special registration) would be required to be prepared and published in the Gazette by the Registrar. It also proposes to revise the particulars of medical practitioners whose names appear on Part I or III of the General Register (i.e. medical practitioners with full registration or limited registration) to be so prepared and published, namely, the proposed addition of their registration numbers and other particulars that the Registrar considers appropriate, and the proposed deletion of their qualifications and dates of their qualifications.

- (a) Please clarify the reason(s) for publishing the registration numbers of the medical practitioners in the Gazette. Please also provide examples of what those other particulars that the Registrar considers appropriate would be. Would those other particulars include qualifications and dates of the qualifications of the medical practitioners? If so, please clarify why it is necessary to propose the deletion of their qualifications and dates of their qualifications in the revised section 15(1) and (2) of Cap. 161.
- (b) With the proposed new requirements under the revised section 15(1) and (2) of Cap. 161, please clarify whether, and if so how, Data Protection Principle 3 under the Personal Data (Privacy) Ordinance (Cap. 486) would be complied with.

Clause 14 of the Bill

14. Under the proposed new items 3A and 10(d) of the Schedule to the Medical Registration (Fees) Regulation (Cap. 161C), the prescribed fees for the registration in the proposed new Part V of the General Register and the issue of a practising certificate to a medical practitioner with special registration would be \$3,600 and \$690 respectively. It is noted that such prescribed fees would be higher than those payable by medical practitioners registered in Part I (i.e. \$1,220 and \$405 respectively as set out in items 1 and 10(a) of the Schedule) or III (i.e. \$1,270 and \$405 respectively as set out in items 3 and 10(b) of the Schedule) of the General Register. Please clarify the reason(s) for proposing higher prescribed fees for medical practitioners with special registration.

15. It is noted that the Bill does not propose amendments to the Medical Practitioners (Fee Concessions) Regulation 2020 (Cap. 161G). Cap. 161G provides for concessions on the prescribed fees payable for, among others, the registration in Part I or III of the General Register and the issue of practising certificates to medical practitioners with full registration or limited registration, with the effect that such fees are waived for three years from 1 July 2020 to 30 June 2023, subject to certain restrictions. Please clarify the reason(s) for not proposing similar waiver of the prescribed fees payable for registration in the proposed new Part V of the General Register and the issue of a practising certificate to a medical practitioner with special registration under the Bill.

Clause 15 of the Bill

16. Under the proposed revised section 3(1)(b)(ii) of Cap. 161E, an application for registration under the proposed new section 14C of Cap. 161 (i.e. special registration) would be required to contain a statement as to whether the applicant has or has not been convicted of any offence punishable with imprisonment and as to whether the applicant has or has not been found guilty of misconduct in a professional respect. It is noted that for the grant or renewal of a special registration, the proposed new section 14C(3) of Cap. 161 does not expressly require that the applicant must not have been convicted of any offence punishable with imprisonment or must not have been guilty of misconduct in a professional respect, unlike the requirements for limited registration pursuant to the current section 14A(6) of Cap. 161. Please clarify the reason(s) for the proposed requirements under the proposed revised section 3(1)(b)(ii) of Cap. 161E for an application for registration under the proposed new section 14C. Please also clarify whether, and if so how, Data Protection Principle 1(1) under Cap. 486 would be complied with.

17. Under the proposed new section 3(4)(c) of Cap. 161E, a certificate of good standing issued by the relevant medical authority of a place outside Hong Kong under the law of which the applicant concerned is registered as a medical practitioner in that place would be required to be submitted to the Registrar in his or her application for the grant of a special registration. It is noted that such a certificate would not be required to be so submitted in the case of an application for a renewal of a special registration. Please clarify the reason(s) for not proposing so.