



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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20 July 2021

Wendy KAN  
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Legislative Council Complex  
1 Legislative Road  
Central  
Hong Kong

Dear Ms KAN,

**Medical Registration (Amendment) Bill 2021**

In response to the issues set out in your letter dated 22 June 2021 regarding the captioned Bill, we enclose our response at **Enclosure**.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Chris FUNG', written over a light blue circular stamp.

(Chris FUNG)

Principal Assistant Secretary for  
Food and Health (Health)

## **Responses to Issues on the Legal and Drafting Aspects of the Medical Registration (Amendment) Bill 2021**

### 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.

### Response

The vetting of specialist qualification of special registration doctors would be the same as the existing mechanism for application for Certification for Specialist Registration. In considering the application, the Hong Kong Academy of Medicine (“HKAM”) would assess the postgraduate medical training and examinations that the applicant has undergone, by reference to its requirements of at least six years of supervised post-medical registration training and of passing the Intermediate and Exit examinations. All other relevant aspects which may show the applicant’s professional standard

and postgraduate medical training would also be assessed. In this regard, assistance may be enlisted from the Colleges under HKAM. Based on the above, an overall assessment would be made as to whether the applicant has achieved a professional standard comparable to that recognised by HKAM for the award of its Fellowship in a particular specialty.

- (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.

Response

The continuing medical education requirements for special registration doctors who have obtained specialist qualification would be the 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.

Response

After obtaining specialist qualifications, doctors with special registration must undergo continuous on-the-job assessments

during his/her service in the public healthcare institutions, namely the Department of Health, Hospital Authority (“HA”), The University of Hong Kong and The Chinese University of Hong Kong, with a view to assessing his/her performance and competence over the requisite minimum period of five years. We consider that the employing institutions would be best placed to conduct such assessments. While there is already established mechanism for assessing the performance of doctors working in the public healthcare institutions, we plan to discuss with the public healthcare institutions in due course as to whether it is advisable and practicable to adopt some common core competencies (such as application of medical knowledge, patient-centered care, clinical judgment, integrity and teamwork) in their respective assessment processes to facilitate their evaluation on whether the special registration doctors have served satisfactorily and competently during the requisite service period. Such on-the-job assessment has no direct correlation with the standard required by HKAM of a Fellow in the specialty concerned, where the latter should have already been ascertained in the context of HKAM’s process of recognition of specialist qualifications before the commencement of the requisite service period.

### 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.

## Response

For the purpose of the proposed special registration scheme, we have listed in the proposed new Schedule 1B to Cap. 161 the four public healthcare institutions, in which the special registration doctors have to serve for the requisite minimum period of five years. Since the four public healthcare institutions are identical to those specified in the existing section 14B(2) (governing temporary registration), we have proposed the changes as set out in Clause 7 of the Bill so that any future changes to the list could be made applicable to both special registration and temporary registration simultaneously. Moreover, as the listing of specified institutions should not be controversial, for streamlining of the legislative process and yet without compromising the scrutiny power of the Legislative Council (“LegCo”), we have proposed that future changes to the list be subject to negative vetting by LegCo.

## 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.

Response

If the Registrar has doubts on whether an applicant has met the registration requirement of good character and good professional conduct as specified in the proposed new section 14C(3)(e), the Registrar would refer the matter to the Medical Council. The Registrar would have no discretion not to adopt the result of the Medical Council's deliberation or the findings of the Medical Council's 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.

Response

In practical terms, the Registrar would not act contrary to the Medical Council's deliberation result or inquiry findings. If considered necessary for better clarity in the Bill, we may propose a Committee Stage Amendment ("CSA") to put it beyond doubt that the Registrar must not grant or renew a special registration if the Medical Council considers that an applicant is not of good character and does not have good professional conduct.

*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.

#### Response

There would be no difference 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 of Cap. 161.

#### *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).

#### Response

The proposed new section 14E(1)(c) should also cover the current sections 21(1)(ii) and 21A(1)(b) of Cap. 161. We will propose CSA to adopt the changes.

#### *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, recognised 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, recognised for the purposes of the proposed new section 14C of Cap. 161.

#### Response

Unlike the existing arrangement for limited registration doctors where their medical qualifications are considered by the Medical Council on an applicant-by-applicant basis, for greater certainty under the proposed new pathway (i.e. special registration) for admission of non-locally trained doctors, we have proposed that a list of recognised medical qualifications awarded by non-local medical schools be drawn up upfront. We consider that a newly-established and dedicated SRC under the Medical Council, with a more confined number of members and yet diversified knowledge and expertise, would be best placed to take up the very specific task of coming up with the said list, after examining the programmes of the non-local medical schools which are comparable to the two medical schools in Hong Kong.

The composition of SRC is also proposed with the specific task in mind and hence it covers different relevant perspectives. For example, the Deans of the two local medical schools would be able to provide insights on the comparison between the curricula of the non-local medical programmes and those of the local programmes, while the Director of Health and the Chief Executive of HA would be able to render advice from the perspective of employing institutions for special registration doctors. The Chairman of Medical



Council and the President of HKAM would be able to offer views from the professional standard perspective.

- (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, recognised.

Response

We consider that it goes without saying that SRC must comply with the directives issued by SFH under the proposed new section 14F(4) in the Bill. In the event that SRC does not comply, SFH may seek a mandamus order from the Court to compel SRC to follow the directives. It should be noted that SFH will only issue directives to SRC about SRC's performance of its functions when public interest so requires. For instance, if SRC fails to draw up a list of recognised medical qualifications within a reasonable period of time, SFH may issue a directive to SRC requiring the latter to complete the list within a specified timeframe. SFH's directives are not meant to change SRC's statutory power of recognising the medical qualifications or revoking the recognition of medical qualifications.

- (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.

Response

Article 142(1) and (3) of the Basic Law ("BL") stipulate that "[t]he Government of the Hong Kong Special Administrative Region shall, on the basis of maintaining the previous systems concerning the professions, formulate provisions on its own

for assessing the qualifications for practice in the various professions”, and “[t]he Government of the Hong Kong Special Administrative Region shall continue to recognise the professions and the professional organisations recognised prior to the establishment of the Region, and these organisations may, on their own, assess and confer professional qualifications” respectively. The power of the Government to formulate provisions for assessing the qualifications for practice in the medical profession through the enactment or amendment of laws under BL 142(1) would not undermine the essence of the permission for the relevant professional organisation (i.e. the Medical Council) to assess and confer professional qualifications on their own under BL 142(3).

The Bill preserves not only the Medical Council’s status as the professional organisation to assess and confer medical qualifications and to regulate the medical practitioners, but also the existing medical registration regime, including such pathways as Licensing Examination and limited registration. The Bill only introduces special registration as a new pathway, thereby expanding the scope of qualified persons who may apply for registration as medical practitioners in Hong Kong. Before being granted full registration under the new pathway, the non-locally trained medical practitioners have to be registered as medical practitioners with special registration in Hong Kong and they will be subject to continuous assessment during the requisite minimum period of service in the specified institutions. In future, medical practitioners with special registration, like other registered medical practitioners, are required to register under the Medical Council, and will be subject to the disciplinary regulation of the Medical Council and the regulatory control of Cap. 161. Once complaints involving professional misconduct are found substantiated, the Medical Council has the power to exercise disciplinary actions on the medical practitioners concerned. The Bill will not compromise the statutory status of the Medical Council nor its statutory function in the registration and disciplinary regulation of medical practitioners in Hong Kong.

As regards the proposed establishment of SRC to determine a list of recognised medical qualifications awarded by non-local medical schools, the Government respects the statutory role of the Medical Council, and considers it appropriate to establish SRC under the Medical Council to enhance the professional organisation's oversight of SRC's work. As proposed in the Bill, among the 10 members of SRC, six of them (i.e. more than half) are prominent figures of the medical profession. This fully demonstrates the importance that the Government attaches to the medical profession. As for the remaining four members, three of them must be members of the Medical Council. In other words, there will be four representatives from the Medical Council (including the Chairman of the Medical Council and three Medical Council members) serving on SRC, reflecting a significant level of representation, which allows them to voice out the professional organisation's concern and defend their interest. Like other committees under the Medical Council, SRC will be expected to report its work to the Medical Council from time to time. We do not consider that the power of the Medical Council will be undermined by the establishment of SRC thereunder.

*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.

Response

While there is no statutory duty on SRC to report to the Medical Council as it is responsible for making recommendations independently to the Registrar direct, for greater transparency of its work, SRC as a committee established under the Medical Council may wish to follow the established practice of other committees to report progress to the Medical Council from time to time.

*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 organisations. Please clarify which international ranking(s) would be taken into account.

Response

The Government will defer to SRC to determine which international ranking(s) should be taken into account. There will be no intervention on the part of the Government over SRC's decision in this regard.

- (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.

Response

By including “any other aspects” that SRC considers appropriate in the proposed new section 14F(3)(c), we aim to provide flexibility for SRC such that aspects which we do not readily envisage could also be taken into account when drawing up the list of recognised medical qualifications. The Government does not intend to dictate what other aspects SRC should consider.

*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.

Response

For consistency with Cap. 569, we will propose a CSA to adopt “the Dean of Li Ka Shing Faculty of Medicine of The University of Hong Kong” in Cap. 161.

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.

Response

With the advance development of information technology, SRC members who are not present in Hong Kong should have no technical difficulty in gaining access to SRC papers and participate in the deliberation process through electronic means. Accordingly, we see no practical need to exclude them in the context of SRC's transaction of business by circulation of papers without meeting.

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.

Response

Under the existing section 20BA(13) of Cap. 161, Part VII of Cap. 1 applies to a committee established under section 20BA and appointments to such committee except insofar as it is inconsistent with Cap. 161. While SRC is not established under section 20BA, Cap. 1 has general application except where a contrary intention is shown in the relevant legislation.

*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, recognised 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, recognise, 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 recognised 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.

#### Response

Upon receipt of the recommended list of recognised medical qualifications from SRC, the Registrar will promulgate the list by legal notice. As the list will be determined by SRC with due regard to the parameters laid down in the proposed new section 14F(3), which is now subject to LegCo's scrutiny, for streamlining of the subsequent legislative process and yet without compromising the scrutiny power of LegCo, we have proposed that the list so drawn up be subject to negative vetting by LegCo.

- (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, recognised, the Registrar must recognise, 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).

#### Response

LegCo retains full power to decide whether or not to enact the proposed new section 14H and the power to be given to the

delegated authority (i.e. the Registrar). Once LegCo has stipulated the ambit of the power of the Registrar to make the subsidiary legislation by enacting the proposed new section 14H, LegCo is bound to respect the ambit in exercising its negative vetting power under the section. Since under the proposed new section 14H, the Registrar must by notice (being a piece of subsidiary legislation) publish the list of recognised medical qualifications in the Gazette after receiving the recommendation made by SRC (i.e. no discretionary power for the Registrar to vary the list) and given the principle under Cap. 1 that any amendment to be made by LegCo has to be consistent with the power to make the subsidiary legislation, LegCo will likewise have no power to amend or repeal the notice, except for the commencement date thereof.

#### 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.



Response

As specified in the published Gazette, “[t]he purpose of publishing a list of persons whose names appear in the General Register is to inform the public that each person named in the list is qualified to practise medicine and surgery in Hong Kong”. The list has therefore captured the minimum and most crucial information relating to the persons’ “eligibility for registration” as medical practitioners in Hong Kong. For full registration, those who are locally trained or through the pathway of Licentiate of Medical Council of Hong Kong (“LMCHK”), their local qualifications (i.e. “MBBS”, “MB ChB”) or the status of “LMCHK” (instead of non-local qualifications) and the years of obtaining such qualifications/status will be published in the Gazette. For special registration, the Registrar considers that the names of the employing institutions and the approved registration period, instead of qualifications and dates of qualifications, are the most crucial information to prove the persons’ “eligibility for registration” as medical practitioners in Hong Kong since doctors under special registration are not allowed by law to practise in places outside the specified institutions and beyond the approved registration periods.

- (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.

Response

The existing practice of disclosure by Gazette is a legal requirement under section 15(1) and (2) of Cap. 161. Given that it is a legal requirement, the data subjects either have known or ought to have known that their relevant particulars would be published in the Gazette, and it follows that the publication thereof in the Gazette is not for a new purpose. As such, Data Protection Principle 3 is not engaged. After the passage of the Bill, the Registrar shall prepare and publish the names, the registration numbers and other particulars of all persons whose names appear on the relevant part of the

General Register. Following the analysis above, the publication of other particulars, etc. in the Gazette under the proposed revised section 15 is not for a new purpose and there should be no concern in respect of Data Protection Principle 3.

#### 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.

#### Response

The current prescribed fees for registration payable by medical practitioners registered in Parts I and III of the General Register are based on the 2015-16 price level at a cost recovery rate of 59% and 49% respectively and the current prescribed fee for issue of a practising certificate payable by them is at a cost recovery rate of 81%. In accordance with the Government's policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services, the proposed fee amounts applicable to special registration are set based on the 2021-22 price level at full-cost recovery. The other existing fee amounts in the Schedule to Cap. 161C will be reviewed in the next fee revision exercise.

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.

#### Response

The fee waiver provided for in Cap. 161G was introduced as a token of the Government's appreciation to healthcare professionals for their concerted efforts in the fight against COVID-19. The waiver was announced by the Chief Executive in the context of the second round of relief measures in April 2020. Given such backdrop, the one-off waiver is not applicable to doctors with special registration who are expected to practise in Hong Kong in the coming years.

#### 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.

#### Response

The existing section 14A(6) of Cap. 161 provides that section 14 of Cap. 161 applies, with necessary modifications, to an application for limited registration, thus empowering the Medical Council to conduct an inquiry

in respect of an applicant for limited registration who has been convicted of any offence punishable with imprisonment and has been guilty of misconduct in a professional respect, etc. before deciding whether to enter the name of the applicant on the General Register. It is possible for the Medical Council to allow an applicant for limited registration to be registered notwithstanding his/her conviction and/or disciplinary record depending on the gravity of the matters involved. Under the proposed section 14C(3)(e) of Cap. 161, the requirements for the grant or renewal of special registration include, among others, that the applicant is of good character and has good professional conduct. Similar to the existing arrangement for limited registration, the Registrar and the Medical Council (when the Registrar has doubts) are empowered to exercise judgment under the proposed new section 14C(4) as to whether an applicant for special registration is of good character and has good professional conduct, notwithstanding his/her conviction and/or disciplinary record depending on the gravity of the matters involved. In other words, good character and good professional conduct are common requirements for applicants for limited registration and those for special registration.

Similar to the forms for application for full or limited registration, applicants for special registration will be requested to provide in the application form information on their criminal conviction and professional misconduct (if any). Such information would then form the basis for due consideration by the Registrar (and the Medical Council where applicable) in order to assess whether the applicants have met the requirement specified in the proposed section 14C(3)(e) for the grant or renewal of a special registration, which is a lawful purpose for the collection and use of such information.

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.

Response

In the case of renewal of a special registration, the applicant is supposed to be practising in Hong Kong only since the grant of special registration and thus the Medical Council will have information about whether the applicant has good standing or not in Hong Kong and there is no need for the applicant to submit again a certificate of good standing for his/her past practice outside Hong Kong.

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