

# **立法會**

## ***Legislative Council***

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### **Report of the Bills Committee on The Chinese Medicine Hospital of Hong Kong Bill**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on The Chinese Medicine Hospital of Hong Kong Bill (“the Bills Committee”).

#### **Background**

2. The Chief Executive’s 2014 Policy Address announced the setting up of a Chinese medicine (“CM”) hospital at a site reserved in Tseung Kwan O. The 2018 Policy Address further announced that CM would be incorporated into the healthcare system in Hong Kong through government subsidizing defined CM services, including a combination of inpatient and outpatient services offered by the future CM hospital. In line with this policy objective, the Government has, through an open tendering exercise, appointed the Hong Kong Baptist University (“HKBU”) as the contractor to incorporate a company limited by guarantee as the operator (i.e. “HKBU Chinese Medicine Hospital Company Limited”) to manage, operate and maintain the CM hospital titled “The Chinese Medicine Hospital of Hong Kong” (“CMHHK”), pursuant to a service deed.

3. The Government funds the construction of CMHHK, which adopts a public-private partnership model to provide government-subsidized inpatient and outpatient services (accounting for around 50% to 65% of the total service volume of the hospital). The operator may also offer add-on market-oriented CM Services upon the Government’s agreement. CMHHK is targeted to commence hospital services by phases on 11 December 2025. As a flagship CM institution in Hong Kong, CMHHK will undertake five key missions of development, including provision of government-subsidized and market-oriented healthcare services, training and education, research, collaboration and creation of health values. CMHHK will also serve as a change-driver in close collaboration with the

CM industry and stakeholders to drive the overall development of CM in Hong Kong, the Guangdong-Hong Kong-Macao Greater Bay Area and the international community.

### **The Chinese Medicine Hospital of Hong Kong Bill**

4. The date of First Reading of The Chinese Medicine Hospital of Hong Kong Bill (“the Bill”) is 19 February 2025. The Bill seeks to provide on the following matters:

- (a) prohibit the unauthorized use of the title of, and the unauthorized association by certain other means with, CMHHK;
- (b) amend certain provisions in various enactments so that those provisions applicable to private healthcare institutions or public hospitals also cover CMHHK; and
- (c) make a related amendment.

### **Commencement**

5. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

### **The Bills Committee**

6. At the House Committee meeting on 21 February 2025, Members agreed to form a bills committee to scrutinize the Bill. The Bills Committee was chaired by Prof Hon CHAN Wing-kwong, and its membership list is in [Appendix 1](#). The Bills Committee has held one meeting with the Administration and invited members of the public to provide written submissions on the Bill. A list of organization and individual that have provided written submissions to the Bills Committee is in [Appendix 2](#). The Administration’s consolidated response to the submissions is in [LC Paper No. CB\(3\)450/2025\(02\)](#).

### **Declaration of interest**

7. The Chairman of the Bills Committee, Prof Hon CHAN Wing-kwong, has declared that he is a member of the Board of Directors of HKBU Chinese Medicine Hospital Company Limited.

## **Deliberations of the Bills Committee**

8. The Bills Committee expresses support for the Bill, and the major views and concerns on the Bill raised by members are summarized in the ensuing paragraphs.

### Protection of exclusive use of the title of CMHHK

9. Members note that one of the objectives of the Bill is to protect the exclusive use of the title of CMHHK to prevent misappropriation of the title by others and misleading of the public. In this connection, some members enquire about the reasons for enacting legislation specifically for CMHHK to protect the exclusive use of the title, and whether a similar arrangement has been previously made by the Government to enact legislation for other public hospitals or clinics. Members also suggest that the Administration should review whether the names of other public healthcare institutions should also be subject to the same protection.

10. The Administration has explained that the Bill is made upon the Government's decision following a risk assessment and having regard to actual needs. CMHHK is the first CM-led hospital in Hong Kong. With the unique status of CMHHK and its institutional identity, the Government expects that the public will have a better understanding of the role and services of the hospital only after the hospital has been in operation for some time. Currently, the Government has not enacted any legislation for other public hospitals or clinics to impose similar regulation. This is due to the fact that unlike other healthcare facilities that are already well-known to citizens and are operated by the Hospital Authority ("HA") or government departments (such as maternal and child health centres and elderly health centres), the risk of abuse or misappropriation of the title of CMHHK is relatively high. Some of the operators in the private market may, by certain means, mislead the public into believing that their clinical services are provided by CMHHK with endorsement from the Government, thereby confusing citizens and undermining public interest. As CMHHK has no historical background of its operation, the Administration considers it necessary to protect its title through the enactment of the Bill to safeguard public interest.

11. Under clause 2(2) of the Bill, a person must not, without the written consent of the Secretary for Health ("Secretary"), incorporate or otherwise form a body of persons that falls within the specified description. Under clause 2(3) of the Bill, a person must not, without the written consent of the Secretary, (a) hold the office of director or any other office of, be an organizer of, or otherwise work in connection with, a body of persons that falls within the specified description; or (b) be a member of such a body of

persons. Some members note that the titles of some existing private organizations are similar to that of CMHHK, and hence are concerned as to whether these organizations may commit the offence of contravening clauses 2(2) or 2(3) as stipulated under clause 2(4) of the Bill after its enactment. Some members enquire if there are mechanisms or criteria in place for the Administration to assess whether an organization has committed the relevant offences, and suggest that the Administration consider formulating administrative guidelines to specify the details of the implementation of the Bill.

12. The Administration has explained that the protection for the title of CMHHK will commence after The Chinese Medicine Hospital of Hong Kong Ordinance (if the Bill is passed) (“the Ordinance”) comes into operation. Clause 2(2) of the Bill targets criminal acts of “incorporating or otherwise forming a body of persons that falls within the specified description”. As the Ordinance does not have retrospective effect, clause 2(2) of the Bill will not be applicable to the bodies of persons that fall within the specified description and are established before its enactment (even if such bodies of persons continue to exist after the Ordinance comes into operation). On the other hand, if the criminal acts (including holding [certain offices] of such a body of persons) that clause 2(3) of the Bill targets occur or persist after the commencement of the Ordinance, the Administration will review each individual case based on its specific circumstances and consider if such acts contravene clause 2(3). The Administration will adopt a series of preventive measures, which include setting up a notification mechanism with the Companies Registry so that registration of company names with unauthorized association with CMHHK will be rejected under section 100(1) of the Companies Ordinance (Cap. 622).

13. To avoid misleading the public, members urge the Administration to formulate measures after the Ordinance comes into effect to help the public (including non-local persons) determine whether an organization is associated with CMHHK. The Administration has advised that the Health Bureau (“HKB”) and the operator would conduct a series of promotional activities before CMHHK commences hospital services by phases in December 2025. CMHHK will also upload information of its partner organizations to its official website for public access. If any suspicious case is found, HKB and CMHHK will immediately issue public announcements for clarification, and consider if enforcement action is required on a case-by-case basis.

14. A person who contravenes clause 2(2) or 2(3) would commit an offence and be liable on conviction to a fine at level 3 (HK\$10,000) under clause 2(4) of the Bill. In response to members’ enquiry on whether the

fine poses sufficient deterrence, the Administration has advised that, taking into account the gravity of the offence and the non-compliance, it is considered appropriate to pitch the fine for the offence of “unauthorized use of the title of CMHHK” at level 3 (HK\$10,000). In this regard, the Administration has referred to section 24(2) of The Hong Kong University of Science and Technology Ordinance (Cap. 1141), section 23(2) of City University of Hong Kong Ordinance (Cap. 1132), section 29(2) of Hong Kong Baptist University Ordinance (Cap. 1126), and section 26(2) of The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).

15. In response to the enquiry raised by the Legal Adviser to the Bills Committee regarding whether the proposed offences under clause 2(4) of the Bill constitute strict or absolute liability offences, the Administration has explained that, in the context of an offence under clause 2(2) or 2(3), there appears to be no indication in the language that the presumption of mens rea is to be displaced; and the proposed offence is unlikely to be one of absolute liability with no mens rea requirement or exculpatory defence (statutory or implied). This is because absolute liability is usually warranted under two categories of cases where the impugned conduct is not essential or even necessarily acceptable from a societal point of view or where the statutory duty which is imposed on a person is likely to be carried out by someone else in practice. The Administration will explain the criminal acts covered by the Ordinance after its enactment to the public through extensive publicity, and will review the penalties as appropriate.

#### Technical amendments to various enactments

16. The Bills Committee notes that the Bill makes technical amendments to various enactments because CMHHK is neither a public hospital managed by HA under the Hospital Authority Ordinance (Cap. 113) nor a private healthcare facility (“PHF”) specified under the Private Healthcare Facilities Ordinance (Cap. 633). References to “hospitals” in some of the existing legal provisions only include public hospitals/PHFs, and therefore are not applicable to CMHHK. The Bill therefore makes technical amendments to 17 existing pieces of enactments relating to the operation of CMHHK to make them applicable to CMHHK in the same circumstances, so as to meet the actual operational needs of CMHHK.

#### Drafting issues

17. The Legal Adviser to the Bills Committee has pointed out that in formulating clause 2 of the Bill, the concept of “a body of persons that falls within the specified description” is employed, covering a body of persons (whether corporate or unincorporate) that, among others, purports or holds itself out to be CMHHK or any part of it, or to be in any way associated with it.

In the existing enactments in Hong Kong (e.g. section 21 of The Education University of Hong Kong Ordinance (Cap. 444) (“Cap. 444”) relating to unauthorized use of titles, such concept is absent. In this connection, the Administration has explained that clause 2 of the Bill is drafted with reference to similar provisions in other legislation such as section 21 of Cap. 444. Clause 2 of the Bill and the reference provisions essentially prohibit the same acts. The reference provisions use a single provision to deal with all of the prohibited acts. This drafting approach results in the provisions being lengthy. Such lengthy provisions may not meet the current standard in terms of plain language drafting. Considering that the prohibited acts are not all the same in nature, clause 2 of the Bill groups acts that are of similar nature and divides them into two groups. Each group is dealt with by a separate subclause so as to enhance readability of the provisions. All of the prohibited acts under clause 2 of the Bill concern a body corporate that falls within the description set out in clause 2(1)(a), (b) or (c) of the Bill. Clauses 2(2) and (3) of the Bill would be unnecessarily repetitive and lengthy if those descriptions had been repeated in those clauses. A shorter expression “[falling] within the specified description” is thus created to serve as a defined expression, which can achieve the effect of shortening the sentences and enhancing conciseness.

### **Proposed amendments**

18. Both the Bills Committee and the Administration will not propose any amendments to the Bill.

### **Resumption of Second Reading debate**

19. The Bills Committee has completed scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 14 May 2025, to which the Bills Committee raises no objection.

### **Consultation with the House Committee**

20. The Bills Committee reported its deliberations to the House Committee on 11 April 2025.

**Bills Committee on The Chinese Medicine Hospital of Hong Kong Bill**

**Membership list**

**Chairman**            Prof Hon CHAN Wing-kwong

**Members**            Hon KWOK Wai-keung, BBS, JP  
                             Hon SHIU Ka-fai, BBS, JP  
                             Hon Stanley LI Sai-wing, MH, JP  
                             Dr Hon Hoey Simon LEE, MH, JP  
                             Ir Hon LEE Chun-keung, JP  
                             Dr Hon TIK Chi-yuen, SBS, JP  
                             Hon LAM So-wai  
                             Hon CHAN Pui-leung  
                             Ir Hon CHAN Siu-hung, JP  
                             Hon Benson LUK Hon-man  
                             Dr Hon Kennedy WONG Ying-ho, BBS, JP  
                             Revd Canon Hon Peter Douglas KOON Ho-ming, BBS, JP  
                             Hon TANG Fei, MH  
                             Hon YIM Kong, JP

(Total : 15 members)

**Clerk**                Ms Shirley CHAN

**Legal Adviser**    Ms Doreen WAN

**Bills Committee on The Chinese Medicine Hospital of  
Hong Kong Bill**

**List of organization and individual that have  
provided written submissions to the Bills Committee**

1. A member of the public
2. Chinese Dream Think Tank