



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



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

來函檔號 YOUR REF : HHB CR 1/3261/21 Pt.6
本函檔號 OUR REF : LS/B/13/2025
電話 TELEPHONE : 3919 3512
電郵 EMAIL : dcywan@legco.gov.hk

By Email (dereklee@healthbureau.gov.hk)

22 April 2025

Mr LEE Tung-yan, Derek
Principal Assistant Secretary for Health 3
Health Bureau
Team 3
19/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr LEE,

Supplementary Medical Professions (Amendment) Bill 2025

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 matters set out in the **Appendix**.

Please let us have your response in both Chinese and English before the second meeting of the Bills Committee.

Yours sincerely,

(Doreen WAN)

Assistant Legal Adviser

Encl.

c.c. Department of Justice
(Attn: Ms Natalie LAM, Senior Government Counsel
(By email: natalielam@doj.gov.hk)
Miss Natalie WONG, Government Counsel
(By email: nataliewong@doj.gov.hk))
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to Bills Committee

Commencement (clause 1(2) to (4) of the Bill)

1. According to clause 1(2) of the Bill, the Bill (if passed) would come into operation on the day on which it is published in the Gazette, except those clauses set out in clause 1(3) and (4) of the Bill. Under clause 1(3) and (4), those excepted clauses are:
 - (a) clauses 5(2), 7, 8(1) to (6) and (8), 10(1) to (11), 35 (in so far as it relates to Division 1 of Part 3 of the proposed new Schedule 3 to the Supplementary Medical Professions Ordinance (Cap. 359)), 36(1), 65(1), 94(1), 123(1), 155(1) and 200 of the Bill, which would come into operation on 1 January 2026 (mainly relating to the composition of the Supplementary Medical Professions Council (proposed to be renamed to “Allied Health Professions Council” under the Bill) (“Council”) and the boards and related matters); and
 - (b) clause 153(1) of the Bill, which would come into operation on the day on which section 82 of the Dentists Registration (Amendment) Ordinance 2024 (Ord. No. 22 of 2024) (in so far as it relates to the service specified in paragraph (c) in column 3 of Part 1 of Schedule 3 to the Dentists Registration Ordinance (Cap. 156) in respect of the dental hygienist and dental therapist respectively) comes into operation (relating to certain exemptions for a registered dental hygienist or dental therapist).

Please advise Members, in respect of those excepted clauses as referred to in paragraph 1(a) above, reason(s) for the proposed commencement plan, and in respect of clause 153(1) as referred to in paragraph 1(b) above, the proposed commencement plan of the relevant part of section 82 of Ord. No. 22 of 2024 and reason(s) for the plan.

Composition of Allied Health Professions Council (clause 8(3) of the Bill)

2. Under the proposed amended section 3(1) of Cap. 359, the Council would consist of, among others, one person appointed by the Chief Executive (“CE”) from each profession (totalling five members) (proposed amended section 3(1)(e) of Cap. 359). Please clarify why the Bill does not propose that each of such professional members of the Council would be required to hold a valid practising certificate of his or her own profession for being eligible for the appointment or reappointment under the proposed amended section 3 of Cap. 359. In this connection, reference is drawn to section 4AAD(e) of Cap. 156 (i.e. any dentist member must hold a valid practising certificate for appointment or reappointment as a member of the Dental Council of Hong Kong), and section 3(4B)(e) and (ea) of the Nurses Registration Ordinance (Cap. 164) (i.e. CE may revoke a nurse

member's appointment to the Nursing Council of Hong Kong if he or she no longer holds a valid practising certificate under Cap. 164).

Specified particulars or forms (clauses 14, 16, 18, 24, 27, 52, 56, 81, 85, 111, 114, 141, 145, 171 and 175 of the Bill)

3. It is noted that:

- (a) under the existing section 10(1) and (2) of Cap. 359, each board shall cause a register for the relevant profession to be kept in the "form prescribed", and the secretary of the board shall insert in the register any alteration or addition which may come to his knowledge to "the name, addresses, or qualifications" of any person registered; clause 14(1) and (2) of the Bill proposes to change those parts in quotes to "specified form" and "the particulars, as specified by the Council" respectively;¹
- (b) under the existing section 13(1) of Cap. 359, a person may apply for registration "in the manner prescribed", and clause 16(3) of the Bill proposes that the application must be made in the "specified form";
- (c) under the existing section 14(1) of Cap. 359, a certificate of registration is in the "prescribed form", and clause 18(2) of the Bill proposes that any such certificate would be in the "specified form";
- (d) under the existing section 20(3) of Cap. 359, a company carrying on the business of practising a profession shall each year transmit to the secretary of the relevant board a statement in the "prescribed form" containing certain particulars; clause 24(4) of the Bill proposes that such statement should be made in the "specified form";
- (e) under existing provisions in various items of the subsidiary legislation of Cap. 359,² where a matter is referred to the relevant board for inquiry, the notice of inquiry to be served on the respondent shall be in the prescribed form; clauses 52, 81, 111, 141 and 171 of the Bill propose that such notice of inquiry would be in the "specified form"; and

¹ Please see also the existing regulation 3(1) of the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359A), regulation 3(1) of the Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap. 359B), section 3(1) of the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359F), section 3(1) of the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359H) and section 3(1) of the Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap. 359J); these provisions are proposed to be correspondingly amended by clauses 37, 66, 95, 124 and 156 of the Bill.

² Please refer to the existing regulation 23(1) of Cap. 359A, regulation 23(1) of Cap. 359B, section 23(1)(a) of Cap. 359F, section 26(2)(a) of Cap. 359H and section 23(2)(a) of Cap. 359J.

- (f) under the existing section 23(2) of Cap. 359 and existing provisions in various items of the subsidiary legislation of Cap. 359,³ a summons requiring a person to attend an inquiry e.g. to give evidence shall be in the prescribed form; clauses 27, 56, 85, 114, 145 and 175 of the Bill propose that such summons must be in the “specified form”.

Please clarify whether the above specified forms and specified particulars (as referred to in paragraph 4(a) above) would not be made by way of subsidiary legislation and thus not subject to the negative vetting procedure of the Legislative Council (“LegCo”) under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) (“negative vetting”) (i.e. LegCo would no longer have the power to amend such forms and particulars). If so, please clarify why such an approach is considered appropriate.

Removal from register of relevant board and application for restoration (clause 14(8) and (11) of the Bill)

4. Regarding the existing section 10(4) of Cap. 359 concerning the power of the relevant board to remove the name of any person from its register, please clarify why the situation under the existing section 10(4)(d) would not be retained under the proposed amended section 10(4) (i.e. in respect of a person who is not practising his profession in Hong Kong).
5. Under the proposed amended section 10(5) of Cap. 359, a person with full registration or provisional registration whose name is subsequently removed from a register under the proposed amended section 10(4) or the proposed amended section 22 (disciplinary powers of the board) may apply to the relevant board for restoration of his name to the register. As it does not appear that the proposed amended section 10(5) would apply to a person with limited registration (whose registration would be in force until, among others, the removal of the person’s name from the register under a direction made under the proposed amended section 10(4) or under an order made under the proposed amended section 22 (see proposed new section 13A(8)(c) and (d) of Cap. 359)), please clarify whether a person with limited registration would not have a similar right to apply for restoration under the Bill, and if so, the reason(s) for it.

Inspection of register (clause 14(13) of the Bill)

6. Under the proposed amended section 10(6) of Cap. 359, a register other than the part in relation to temporary registration may be inspected without payment of any fee, during usual business hours upon application to the secretary of the board. Please clarify why the Bill proposes that the part in relation to temporary

³ Please refer to the existing regulation 42(2) of Cap. 359A, regulation 42(2) of Cap. 359B, section 42(2) of Cap. 359F, section 45(2) of Cap. 359H and section 42(2) of Cap. 359J.

registration of a register could not be so inspected. Please also clarify whether such part may nevertheless in any way be inspected, and if not, the reason(s) for it.

Allied Health Professions Council to specify qualifications and experience required for full registration (clauses 15 and 31(6) of the Bill)

7. Under the proposed amended section 12(1)(a) of Cap. 359, a person would be qualified for full registration if (a) the person holds the qualification, and (as the case requires) has the experience, specified by the Council in accordance with the regulations (proposed amended section 12(1)(a)(i)), or (b) holds a certificate from the relevant board stating that the person has passed the relevant examination conducted by the board (proposed amended section 12(1)(a)(ii)).
8. Under the proposed new section 29(1C)(a) of Cap. 359, subject to the approval of the Secretary for Health (“SH”), regulations may be made by the Council to provide for its specifying, by notice published in the Gazette, the qualification and (as the case requires) experience required for full registration in a profession for the purposes of the proposed amended section 12(1)(a)(i) of Cap. 359. Under the proposed amended provisions in various items of the subsidiary legislation of Cap. 359,⁴ any such notice would not be subsidiary legislation and thus not subject to negative vetting. Please clarify why such an approach is considered appropriate.

Limited or temporary registration (clauses 6, 17, 33 and 35 of the Bill)

“Designated institution”

9. Under the proposed new section 13A of Cap. 359, a person may apply to the Council for limited registration if, among others, the person has been selected for full-time employment as a person with limited registration in a “designated institution”. A list of categories of institutions that would be regarded as designated institutions is contained in the proposed new section 2B of Cap. 359.
10. It is noted that certain categories of institutions are already specified in Part 1 and item 1 of Part 2 of the proposed new Schedule 2 to Cap. 359, and SH may, pursuant to the proposed new section 35 of Cap. 359, by notice published in the Gazette amend those categories of institutions. Any such notice would be subsidiary legislation subject to negative vetting.
11. It is however noted that for the categories of designated institutions that would be (i) designated as such by SH by notice published in the Gazette (under the proposed new section 2B(1)(c) of Cap. 359), or (ii) providing the types of employment for

⁴ Please refer to the proposed amended regulation 4 of Cap. 359A, regulation 4 of Cap. 359B, section 4 of Cap. 359F, section 6 of Cap. 359H and section 4 of Cap. 359J in clauses 38, 67, 96, 126 and 157 of the Bill.

which limited registration is appropriate or necessary as determined and promulgated by the Council by notice published in the Gazette (under item 2 of Part 2 of the proposed new Schedule 2 to Cap. 359), the proposed new section 2B(2) of, and Part 3 of the proposed new Schedule 2 to, Cap. 359 respectively provide that any such notice(s) would not be subsidiary legislation and therefore not subject to negative vetting. Please clarify why such an approach is considered appropriate.

“Relevant institution”

12. Under the proposed new section 13B of Cap. 359, a “relevant institution” may apply to the Council for temporary registration of a person exclusively for conducting clinical demonstration for, or academic exchanges with, the relevant institution. An institution would be a relevant institution if it is specified as such by the Council by notice published in the Gazette. Similarly, any such notice would not be subsidiary legislation and therefore not subject to negative vetting (proposed new section 13B(11)). Please clarify why such an approach is considered appropriate.

Recognizing non-Hong Kong qualifications by Allied Health Professions Council

13. For the purposes of limited registration under the proposed new section 13A(3) of Cap. 359, it is proposed that the Council must approve the application if, among others, the applicant has obtained a non-Hong Kong qualification and the Council is satisfied that the qualification is **sufficient** for the applicant to perform the scope of work of the employment, and possesses a valid certificate, issued by a certifying body recognized by the Council, to practise the relevant profession constituting **sufficient evidence** of the applicant’s competency to practise the relevant profession (subject to certain exceptions). Please clarify the criteria that would be adopted for considering any qualification as sufficient, or as sufficient evidence, for the purposes of the proposed new section 13A(3), and why they are not provided for in the Bill. It is noted that under the Medical Registration Ordinance (Cap. 161), its section 14F(3) contains the criteria in relation to the recognition of a medical qualification. Please also clarify whether a list of recognized non-Hong Kong qualifications would be published, and if so, where it would be.

Approval of applications by Allied Health Professions Council

14. Besides, as aforesaid, the Council **must approve** an application for limited registration under the proposed new section 13A(3) of Cap. 359, if it is satisfied that certain criteria are met (and upon compliance with other application requirements under the proposed new section 13A(2) of Cap. 359). In comparison, it is provided under the proposed new section 13B of Cap. 359 that the Council **may approve or reject** an application for temporary registration and must not approve it unless the Council is satisfied that it is appropriate and necessary for the person to be granted the temporary registration. Please clarify

the difference as to what the Council must or may do in respect of the applications in the above proposed provisions.

Conditions imposed on registration

15. It is proposed under the new section 13A(4) or 13B(5)(b) of Cap. 359 that on approving an application for limited or temporary registration, the Council may impose any condition that the Council considers appropriate. Please clarify (a) what kind of conditions may be imposed; (b) what factors would be taken into account in determining whether the conditions imposed are appropriate; and (c) whether it is necessary to specify those factors in the Bill for the sake of clarity and certainty. Please also clarify whether the conditions imposed may be cancelled, amended or added, and in the case of limited registration, whether such conditions (as initially imposed, or subsequently amended or added) would be included in the relevant certificate of registration (see for instance, the existing section 15(4) and (5) of Cap. 359 regarding provisional registration). If so, please consider expressly providing for the same in the Bill; if not, please clarify the reason(s).

Validity period of registration

16. As regards the period during which limited or temporary registration of a person would be in force, should “until the earlier of the following” in the proposed new section 13B(9) of Cap. 359 rather be “until the earliest of the following”, as in the proposed new section 13A(8) of Cap. 359.

Applicability of offence under existing section 12(2) of the Supplementary Medical Professions Ordinance (Cap. 359)

17. It is provided under the existing section 12(2) of Cap. 359 that a person who wilfully procures himself or any other person to be registered e.g. by making or producing any false or fraudulent representation or declaration (whether in writing or otherwise) commits an offence. The relevant penalty is set out in the existing section 27(a) of Cap. 359, i.e. a fine at level 2 (HK\$5,000) and imprisonment for two years. It is noted that under the proposed amended section 2 of Cap. 359, “registered” would mean “entered in a register in accordance with section 13, 13A, 13B or 15” (or restored to the register in accordance with section 10 of Cap. 359). In the premises, please clarify whether the offence under section 12(2) would already apply to persons with full registration, limited registration, temporary registration or provisional registration. If the answer is in the affirmative, please consider, for the sake of clarity and certainty, whether section 12(2) should be set out in a separate section and the reference to section 12(2) in the proposed amended section 15(7) of Cap. 359 (concerning provisional registration) should be deleted.

Appeals (clause 29)

18. The proposed amended section 25(1) of Cap. 359 seeks to set out the kinds of decisions or order of the Council or the relevant board that might be appealed against under Cap. 359. Please clarify why the proposed amended section 25(1) of Cap. 359 would not include the relevant board's decision to reject an application for restoration of a person's name to the relevant register made under the proposed amended section 10(5) of Cap. 359.

Savings and transitional provisions relating to Supplementary Medical Professions (Amendment) Ordinance 2025 (if passed) (clause 35)

Complaints to Preliminary Investigation Committee

19. Regarding Division 2 of Part 3 of the proposed new Schedule 3 to Cap. 359 concerning complaints to Preliminary Investigation Committee ("PIC"), please clarify why only a complaint or information submitted to a former PIC under the pre-amended Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359F) or the pre-amended Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap. 359J) is catered for in the transitional provisions (but not also a complaint or information submitted to a former PIC under the pre-amended Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359A), the pre-amended Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap. 359B) or the pre-amended Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359H)).

Restoration of name removed under pre-amended Ordinance for specified period

20. Regarding section 20 of Part 4 of the proposed new Schedule 3 to Cap. 359 concerning restoration of a name removed under the pre-amended Ordinance for a specified period, please consider whether the word "corresponding" should be added before "part of a new register" in the proposed new section 20(2), as read with the proposed new section 20(1). Please also refer to the relevant wording in section 19 (restoration of name removed from register under pre-amended Ordinance (other than one removed for specified period)) of Part 4 of the proposed new Schedule 3 to Cap. 359.

Submission of complaint to Preliminary Investigation Committee and proceedings at hearing of relevant board (clauses 36(3) and (6), 47, 48, 53 and 54, etc.)

21. It is noted that under the proposed amended Cap. 359A, a relevant complaint (including information) made to a PIC and any subsequent referral of such complaint to the board for due inquiry might only be made against (a) a registered medical laboratory technologist, or (b) an applicant for registration as a medical laboratory technologist with full registration or provisional registration (see the

proposed amended definitions of “complainant” and “respondent” in the proposed amended regulation 2, and the proposed amended regulations 18, 19, 38(b) and 40(b) of Cap. 359A). Please clarify why an applicant for registration as a medical laboratory technologist with limited or temporary registration would not be the subject of any such relevant complaint.

22. Similarly, please clarify why an applicant for registration in respect of any of the other four relevant professions (i.e. as an occupational therapist, an optometrist, a radiographer or a physiotherapist) with limited or temporary registration would not be the subject of a relevant complaint under the proposed amended Cap. 359B, Cap. 359F, Cap. 359H or Cap. 359J.⁵

Proposed restrictions of direct access to services of professions

Occupational therapists or physiotherapists (clauses 69(4) and 159 of the Bill)

23. Under the proposed amended regulation 6 of Cap. 359B, an occupational therapist may provide service of the occupational therapist’s profession to a person without referral by a registered medical practitioner (“RMP”) or a registered Chinese medicine practitioner (“CMP”) in certain specified circumstances, e.g. if (i) the condition of the person is of a kind that is recognized by any clinical protocol published by a referencing authority (i.e. the Department of Health, the Hospital Authority, the Primary Healthcare Commission (“PHC”) or The Chinese Medicine Hospital of Hong Kong) as not requiring such referral, upon compliance with the requirements set out in the clinical protocol (proposed new regulation 6(4)(b) and 6(5)); (ii) the person is enrolled in a cross-disciplinary collaboration arrangement of PHC under which no such referral would be required, upon compliance with the requirements set out in the guidelines published by PHC (proposed new regulation 6(4)(c) and 6(6)); or (iii) the situation falls within the circumstances set out in the Code of Practice as not requiring such referral, including an emergency situation. Similar provisions are proposed for Cap. 359J concerning physiotherapists (see proposed amended regulation 6 of Cap. 359J).
24. For items (i) and (ii) above, please clarify (a) what kinds of requirements would be set out in the clinical protocol or the guidelines published by PHC; and (b) whether it is necessary to expressly provide for the guiding principles underlying such requirements in the Bill for the sake of clarity and certainty.
25. For item (iii), please clarify what kinds of circumstances are contemplated to be included in the relevant Code of Practice.

⁵ Please refer to the relevant proposed amended provisions under clauses 65(3) and (6), 76, 77, 82, 83, 94(3) and (6), 106, 107, 112, 113, 123(3) and (7), 134, 136, 137, 142, 143, 155(3) and (7), 166, 167, 172 and 173 of the Bill.

Medical laboratory technologists or radiographers (clauses 40 and 133 of the Bill)

26. Under the proposed amended regulation 6 of Cap. 359A or section 15 of Cap. 359H, a medical laboratory technologist or a diagnostic radiographer may perform any specified tests or diagnostic imaging examination on a person on referral other than by an RMP in specified circumstances, including that if the performance of the test or examination falls within the circumstances specified in the relevant Code of Practice, then the test or examination may be performed on referral by (a) a registered CMP, (b) a registered dentist, or (c) a registered veterinary surgeon or a registered chiropractor. Please clarify what kinds of circumstances are contemplated to be included in the relevant Code of Practice.