

Traditional Chinese Medicine Practitioners (Amendment) Bill

Bill No. 2/2019.

Read the first time on 14 January 2019.

A BILL

intituled

An Act to amend the Traditional Chinese Medicine Practitioners Act
(Chapter 333A of the 2001 Revised Edition).

Be it enacted by the President with the advice and consent of the
Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Traditional Chinese Medicine Practitioners (Amendment) Act 2019 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **Amendment of section 2**

2. Section 2 of the Traditional Chinese Medicine Practitioners Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the definition of “herbal medicine”, the following definition:

10 ““Inquiry Committee” means a committee appointed under section 26I(1);”;

(b) by inserting, immediately after the definition of “institution of higher learning”, the following definitions:

15 ““interim order” means an order made under section 26H(1);

“investigator” means a person appointed under section 28;”;

(c) by inserting, immediately after the definition of “member”, the following definition:

20 ““modify”, in relation to any condition of registration, means —

(a) delete or replace such a condition; or

(b) add a condition of registration;”.

Amendment of section 3

25 3. Section 3(2) of the principal Act is amended by deleting the words “9 members” and substituting the words “11 members”.

Amendment of section 8

4. Section 8 of the principal Act is amended by inserting, immediately after subsection (3), the following subsection:

“(3A) However, a member who is or was a member of an Inquiry Committee inquiring into a matter relating to a registered person under this Act —

- (a) must not vote or take part in any discussion or decision of the Board relating to the matter, or otherwise participate in any activity of the Board that relates to the matter; 5
- (b) must withdraw from any meeting or part of any meeting of the Board considering or discussing the matter if the Chairman or other member presiding at the meeting so requests; and 10
- (c) must be disregarded for the purpose of forming a quorum for any meeting or part of any meeting of the Board during which a discussion or decision relating to the matter occurs or is made.”. 15

Amendment of section 17

5. Section 17 of the principal Act is amended —

(a) by inserting, immediately after subsection (5), the following subsection:

“(5A) The Board may refuse to grant or renew a practising certificate to a registered person if the registered person fails to comply with any prescribed requirements relating to — 20

- (a) continuing professional education for the practice of traditional Chinese medicine; or 25
- (b) any other aspect of the practice of traditional Chinese medicine.”;

(b) by deleting subsection (6) and substituting the following subsections:

“(6) A practising certificate issued to a registered person is deemed to be cancelled when — 30

(a) the registration of the registered person is cancelled or suspended under section 19 or 26A; or

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(b) an interim order against the registered person is confirmed by the Board under section 26H(8)(a).

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(6A) A person whose practising certificate is deemed to be cancelled under subsection (6) must surrender the practising certificate to the Board no later than the 14th day after the cancellation of the practising certificate.”; and

(c) by deleting the words “subsection (6)” in subsection (7) and substituting the words “subsection (6A)”.

Repeal and re-enactment of section 18

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6. Section 18 of the principal Act is repealed and the following section substituted therefor:

“List of registered traditional Chinese medicine practitioners with practising certificates

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18. The Registrar must publish, in such manner as the Board considers will secure adequate publicity to members of the public, a list of the names, practice addresses, qualifications, classes of registration and dates of qualifications and registration of all registered persons who have in force a practising certificate.”.

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Amendment of section 19

7. Section 19 of the principal Act is amended —

(a) by inserting, immediately after paragraph (i) of subsection (1), the following paragraph:

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“(ia) has failed to comply with any order of the Board under subsection (2)(ab), (b) or (ca);”;

- (b) by deleting the word “disability” in subsection (1)(k) and substituting the word “condition”;
- (c) by deleting the words “to (k)” in subsection (2) and substituting the words “to (j)”;
- (d) by deleting paragraphs (b) and (c) of subsection (2) and substituting the following paragraphs:
 - “(aa) issue a letter of advice to the registered person;
 - (ab) order the registered person to give an undertaking, on such terms as the Board thinks fit, to abstain from the conduct that is the subject of a complaint against, or information about, the registered person under section 26B;
 - (b) order the registered person to pay —
 - (i) a penalty not exceeding \$10,000; or
 - (ii) a penalty not exceeding \$50,000, if the act or omission that is the subject of the complaint or information occurred on or after the date of commencement of section 7(d) of the Traditional Chinese Medicine Practitioners (Amendment) Act 2019;
 - (ba) alter the registered person’s class of registration;
 - (c) modify the conditions of the registration of the registered person for a period not exceeding 3 years;
 - (ca) order that the complaint against, or information about, the registered person under section 26B be referred for mediation between the registered person and the person who made the complaint or

provided the information (called the complainant), including ordering —

(i) the personal attendance of the registered person and the complainant before a mediator specified by the Board; and

(ii) the registered person to supply a report of the outcome of that mediation by the mediator mentioned in sub-paragraph (i) to the Board;”;

(e) by inserting, immediately after subsection (2), the following subsection:

“(2A) Where a registered person is liable to have his registration cancelled on the ground in subsection (1)(k), the Board may, instead of cancelling the registration of the registered person, take one or more of the following measures:

(a) suspend the registration of the registered person for a period not exceeding 12 months;

(b) alter the registered person’s class of registration;

(c) modify the conditions of the registration of the registered person for a period not exceeding 3 years.”;

(f) by deleting the words “or (2)” in subsection (3) and substituting the words “, (2) or (2A)”;

(g) by deleting paragraph (b) of subsection (3) and substituting the following paragraph:

“(b) consider the findings and recommendation of the relevant Inquiry Committee as reported to the Board under section 26E(2).”;

(h) by deleting subsection (5) and substituting the following subsections:

“(5) Subject to subsection (5A) and section 21(3), a decision of the Board made under subsection (1), (2) or (2A) does not take effect until the 31st day after the date of the decision.

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(5A) The Board’s decision to cancel the registration of a registered person under subsection (1) takes immediate effect when the Board certifies that there are reasonable grounds to believe that —

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(a) there is a serious and imminent risk to the public if the cancellation of the registration does not take immediate effect; or

(b) it is appropriate or requisite that the cancellation takes immediate effect in order to avoid any actual incident that endangers the public.

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(5B) Where the Board so certifies under subsection (5A), the Registrar must immediately serve a notice of the Board’s decision on the registered person concerned.”.

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Amendment of section 20

8. Section 20 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

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“(1) The Board may order a registered person to pay such sums as the Board thinks fit in respect of the costs and expenses of or incidental to any inquiry or investigation conducted or action taken against the registered person where the Board —

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(a) cancels the registration of the registered person under section 19(1);

(b) takes any action against the registered person under section 19(2) or (2A); or

(c) confirms an interim order made against the registered person under section 26H(8)(a).”; and

(b) by inserting, immediately after subsection (3), the following subsection:

“(4) The costs and expenses mentioned in subsection (1) include —

(a) the costs and expenses of any assessor or advocate and solicitor appointed by the Board for any proceedings before an Inquiry Committee;

(b) such reasonable expenses as the Board may pay to witnesses; and

(c) such other reasonable expenses as are necessary for the conduct of the proceedings before the Inquiry Committee.”.

Amendment of section 21

9. Section 21 of the principal Act is amended —

(a) by deleting the words “section 19(1) or (2)” in subsection (1) and substituting the words “section 19(1), (2) or (2A)”; and

(b) by inserting, immediately after subsection (2), the following subsection:

“(3) Where a person appeals to the High Court against the Board’s decision mentioned in subsection (1), the decision, if not certified under section 19(5A), takes effect only when —

(a) the decision is confirmed by the High Court;

- (b) the appeal is for any reason dismissed by the High Court; or
- (c) the appeal is withdrawn.”.

Amendment of section 23

10. Section 23(1) of the principal Act is amended by inserting, immediately after the words “section 19”, the words “or 26A”. 5

New Part IVA

11. The principal Act is amended by inserting, immediately after section 26, the following Part:

“PART IVA 10

DISCIPLINARY PROCEEDINGS AND INQUIRIES

Division 1 — Voluntary cancellation, suspension, etc.

Voluntary cancellation, suspension, etc.

26A.—(1) A registered person may request the Board in writing to take one or more of the actions in subsection (2) if the registered person believes that — 15

(a) the registered person’s fitness to practise the prescribed practice of traditional Chinese medicine that he is registered to carry out is impaired by reason of his mental or physical condition; or 20

(b) the quality of the professional services provided by the registered person does not meet the standard which is reasonable to expect of a traditional Chinese medicine practitioner carrying out the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out. 25

(2) Upon receiving a request under subsection (1), the Board may, with the agreement of the registered person, do one or more of the following:

(a) cancel the registration of the registered person; 30

- (b) suspend the registration of the registered person for a period not exceeding 3 years;
- (c) alter the registered person's class of registration;
- (d) modify the conditions of the registration of the registered person for a period not exceeding 3 years.

(3) However, the Board must not take any action under subsection (2) in relation to a registered person if —

- (a) the Board believes that there is evidence of any matter in section 19(1)(g), (h), (i) or (j); or
- (b) any inquiry under Division 2 has started and is pending against the registered person.

Division 2 — Inquiries into complaints against and information on registered persons

Complaints against registered persons

26B.—(1) A person (whether or not a member or an employee of the Board) may make a complaint against, or provide information about, any registered person to the Board touching on any matter mentioned in section 19(1).

(2) Every complaint against, or information about, any registered person mentioned in subsection (1) must —

- (a) be in writing; and
- (b) if the complaint or information relates to a matter in section 19(1)(e), (f), (i), (j) or (k), be supported by a statutory declaration unless the complaint or information is made or provided by a public officer or a member or an employee of the Board in his capacity as a public officer or such a member or an employee.

Review of complaints and information

26C.—(1) Subject to section 26H, the Board must —

- (a) within 2 weeks after receiving any complaint against, or information about, a registered person under section 26B, start to review the complaint or information; and 5
- (b) complete its review of the complaint or information within 3 months after starting the review.

(2) The Board may, in the course of a review under subsection (1), require any of the following persons to answer any inquiry or provide any record that the Board considers relevant for the purpose of the review: 10

- (a) the person who made the complaint against, or provided the information about, the registered person;
- (b) the registered person. 15

(3) The Board may dismiss any complaint or information where the Board is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance.

(4) Where a complaint against, or information about, a registered person is not dismissed under subsection (3), the Board must refer the complaint or information to an Inquiry Committee. 20

Withdrawal of complaints and information

26D.—(1) Where a complaint against, or information about, a registered person is withdrawn, the Board or an Inquiry Committee (as the case may be) must proceed under this Part as if the complaint had been made, or the information had been provided, by a member of the Board. 25

(2) The Board may, despite the withdrawal — 30

- (a) take any action mentioned in section 26C;

(b) where the withdrawal takes place before the conclusion of an inquiry under section 26E into the complaint or information — order that the inquiry into the complaint or information continue;

5 (c) where the withdrawal takes place before the Board makes any decision under section 19 — make such decision under section 19(1), (2) or (2A) as the Board thinks fit; or

10 (d) where the withdrawal takes place before the Board makes an interim order under section 26H(1) — make the interim order if the Board thinks fit.

Inquiries by Inquiry Committees

15 **26E.**—(1) An Inquiry Committee must, within 2 weeks starting on the date the Board refers any complaint against, or information about, a registered person to the Inquiry Committee, start its inquiry into the complaint or information.

20 (2) An Inquiry Committee must complete its inquiry into the complaint or information, and report its findings and recommendation to the Board, no later than 6 months starting on the date the complaint or information is referred to the Inquiry Committee, or within any extension of time under subsection (3) if granted.

25 (3) The Chairman may grant in writing an extension of time to any Inquiry Committee which is unable to complete its inquiry into, and report its findings in respect of, any complaint against, or information about, any registered person within the 6-month period specified in subsection (2).

(4) For the purposes of an inquiry under this Part, an Inquiry Committee —

30 (a) must direct one or more investigators to investigate into the facts and circumstances of the complaint or information in accordance with section 26F; and

(b) must afford the registered person an opportunity of appearing before the Inquiry Committee (whether in

person or represented by counsel) to be heard on the complaint against, or information about, that registered person.

(5) Where, in the course of an inquiry on a matter other than that in section 19(1)(k), it appears to the Inquiry Committee that a registered person's fitness to practise the prescribed practice of traditional Chinese medicine that he is registered to carry out may be impaired by reason of his mental or physical condition —

- (a) the Inquiry Committee must immediately refer the matter to the Board;
- (b) the Board must refer the matter to a different Inquiry Committee; and
- (c) the Inquiry Committee mentioned in paragraph (b) must conduct an inquiry into the registered person's fitness to practise in accordance with this Part.

Duties of investigator in inquiries

26F.—(1) An investigator directed by an Inquiry Committee under section 26E(4)(a) to investigate into the facts and circumstances of any complaint against, or information about, a registered person must give written notice of the complaint or information to that registered person.

(2) A notice under subsection (1) must include copies of the complaint or information, and of any statutory declaration that has been made in support of the complaint or information.

(3) An investigator mentioned in subsection (1) must, upon completing the investigation, submit a report on the findings of the investigation (called in this section the investigation report) to the Inquiry Committee that directed the investigator to carry out the investigation.

(4) The investigation report must include any written explanation given by the registered person after receiving a notice under subsection (1).

(5) Where an investigator, in the course of an investigation in respect of a registered person, receives any information touching on the conduct, mental or physical condition or professional performance —

5 (a) of the same registered person (whether or not the information also relates to another registered person), which is outside the subject matter of the complaint or information the investigator is directed under section 26E(4)(a) to investigate; or

10 (b) of another registered person,

which may give rise to proceedings under this Part, the investigator must prepare and submit to the Board a report of the information received.

15 (6) Upon the Board receiving the report mentioned in subsection (5), section 26C applies as if the report is information received by the Board about a registered person.

Post-inquiry

26G.—(1) A report which is required by section 26E(2) must contain —

20 (a) the findings of the Inquiry Committee in respect of the complaint against, or information about, the registered person concerned; and

 (b) a recommendation to the Board —

25 (i) to take any action mentioned in section 19(1), (2) or (2A); or

 (ii) to dismiss the complaint or information.

(2) The Board may, after considering the report of the Inquiry Committee required by section 26E(2) —

30 (a) take any action mentioned in section 19(1), (2) or (2A) as the Board thinks fit;

 (b) dismiss the complaint against, or information about, the registered person concerned; or

(c) refer the complaint or information back to the Inquiry Committee for reconsideration or a further report on such matters as the Board may specify.

(3) Where the Board refers a complaint or information back to the Inquiry Committee under subsection (2)(c), the Inquiry Committee — 5

(a) must submit its response or further report to the Board within 8 weeks, or such longer period as the Chairman may allow in writing, starting on the date of the Board's referral under subsection (2)(c); and 10

(b) for the purpose of paragraph (a), may direct an investigator to conduct such further investigations into the matter as may be necessary in accordance with section 26F.

(4) Upon receiving the Inquiry Committee's response or further report under subsection (3), the Board must proceed in accordance with subsection (2)(a) or (b). 15

(5) Where, in the course of its inquiry, an Inquiry Committee receives any information touching on the conduct of the registered person concerned which discloses an offence under this Act or its subsidiary legislation or any other written law, the Inquiry Committee must record the information and report it to the Board. 20

Division 3 — Interim orders

Interim orders

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26H.—(1) Where it appears to the Board that a registered person must without delay stop carrying out any prescribed practice of traditional Chinese medicine because there are reasonable grounds to believe that —

(a) there is a serious and imminent risk to the public if there is no such stoppage; or 30

- (b) it is appropriate or requisite that an interim order be made in order to avoid any actual incident that endangers the public,

the Board may, instead of proceeding under Division 2, make an interim order.

(2) An interim order —

- (a) must require the registered person to whom it relates to stop carrying out the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out;
- (b) takes effect at such time, being the earliest practicable time, as specified in the interim order; and
- (c) may be revoked at any time by the Board.

(3) In determining whether it is appropriate or requisite that an interim order be made against a registered person, the Board must have regard, in particular, to —

- (a) the extent to which the registered person or any other person is likely to sustain harm or damage; and
- (b) the nature and likely consequences of any such harm or damage,

if the registered person continues to carry out the prescribed practice of traditional Chinese medicine the registered person is registered to carry out before a decision under section 26G(2)(a) or (b) is made.

(4) Subject to subsections (5) to (8), the Board may confirm an interim order made against a registered person, with or without modifications, if the Board is satisfied that it continues to be necessary to prevent the registered person from carrying out the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out.

(5) Before the Board confirms an interim order, the Board must —

- (a) refer the interim order to an Inquiry Committee; and

(b) give written notice to the registered person concerned —

(i) stating that the Board proposes to confirm the interim order and setting out its effect;

(ii) setting out the facts which, in the Board's opinion, justifies the confirmation of the interim order; and

(iii) specifying the period (being not less than 30 days starting on the date of service of the notice) within which the registered person may make representations or objections with respect to the proposed confirmation and modifications (if any) to the Inquiry Committee.

(6) Where the Board refers an interim order to an Inquiry Committee under subsection (5)(a) —

(a) the Inquiry Committee must afford the registered person an opportunity of appearing before the Inquiry Committee (whether in person or represented by counsel) to be heard on the proposed confirmation and modifications (if any) of the interim order; and

(b) sections 26E (except subsection (4)(b)), 26F and 26G(1)(a) apply with the necessary modifications.

(7) The Inquiry Committee mentioned in subsection (5)(a) may recommend that the Board confirm or not confirm the interim order, with or without modifications, after considering —

(a) the facts which, in the Board's opinion, justifies the confirmation of the interim order; and

(b) any representations or objections made by the registered person concerned with respect to the proposed confirmation and modifications (if any) of the interim order.

(8) The Board may, after considering the recommendation of the Inquiry Committee under subsection (7) —

(a) confirm the interim order, with or without modifications; or

5 (b) not confirm the interim order.

(9) In this section, “interim order” means an order which, if not confirmed in accordance with subsection (8), ceases to have effect at the end of such period (not exceeding 18 months) as the order may specify.

10 *Division 4 — Inquiry Committees*

Appointment of Inquiry Committees

26I.—(1) Subject to this section, the Board may appoint from any persons one or more Inquiry Committees to inquire under section 26E into any complaint against, or information about, any registered person.

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(2) An investigator directed by an Inquiry Committee under section 26E(4)(a) to investigate into the facts and circumstances of any complaint against, or information about, a registered person must not be appointed a member of an Inquiry Committee inquiring into the same complaint or information.

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(3) To avoid doubt, a public officer in the Ministry of Health is not disqualified from being appointed a member of an Inquiry Committee by reason only that the person is such a public officer.

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(4) An Inquiry Committee may be appointed in connection with one or more matters or for a fixed period of time set by the Board.

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(5) The production of any written instrument purporting to be signed by the Board and making an appointment under this section is evidence that such appointment has been duly made.

Revoking appointment of Inquiry Committees, etc.

26J.—(1) Subject to this section, the Board may —

- (a) dissolve an Inquiry Committee, where the Board is satisfied that more than half of the members of the Inquiry Committee are unable to carry out their duties properly and effectively because of any conflict of interest or potential conflict of interest on the part of each member concerned; or
- (b) remove a member of an Inquiry Committee, and appoint another person in place of that member, where the Board is satisfied that the member concerned is unable to carry out his duties properly and effectively because of any conflict of interest or potential conflict of interest.

(2) Where any vacancy occurs in any Inquiry Committee because of the death or illness of, or other cause preventing, a member of the Inquiry Committee from continuing his duties on that Inquiry Committee, the Board may fill that vacancy by making an appointment in accordance with section 26I.

(3) The production of any written instrument purporting to be signed by the Board and —

- (a) dissolving an Inquiry Committee mentioned in subsection (1)(a); or
- (b) removing or replacing a member of an Inquiry Committee mentioned in subsection (1)(b),

is evidence that such dissolution, removal or replacement (as the case may be) has been duly made.

Confidentiality of information

26K.—(1) A person to whom this section applies must not disclose any information contained in any document as may have come to the person's knowledge in the course of any inquiry under this Part unless the disclosure is made —

(a) under or for the purpose of administering this Act or its subsidiary legislation or the Infectious Diseases Act (Cap. 137); or

(b) for any other purpose with the consent of the person to whom the information relates.

(2) A person to whom this section applies who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) This section applies to —

(a) an investigator directed by any Inquiry Committee under section 26E(4)(a) to investigate any complaint against, or information about, a registered person;

(b) a member of any Inquiry Committee; and

(c) a member.”.

Repeal and re-enactment of sections 28, 29 and 30 and new section 30A

12. Sections 28, 29 and 30 of the principal Act are repealed and the following sections substituted therefor:

“Investigators

28. The Board may, in writing, appoint a member or an employee of the Board, a public officer or any other person as an investigator, subject to such conditions and limitations as the Board may specify.

Powers for enforcement purposes

29.—(1) This section provides for the enforcement powers which an investigator may exercise for any of the following purposes:

(a) investigating into an offence under this Act or its subsidiary legislation;

(b) investigating into any complaint or information under Part IVA;

- (c) determining whether any information provided to the Board under this Act or its subsidiary legislation is correct.

(2) Subject to subsection (4), the following are the enforcement powers that an investigator may exercise in relation to a place for a purpose in subsection (1):

- (a) to enter the place;
- (b) to search the place and any thing in or on the place;
- (c) to examine or observe any activity conducted in or on the place;
- (d) to inspect and examine any thing in or on the place;
- (e) to make any still or moving image or any recording of the place or any thing in or on the place;
- (f) to inspect any document or record in the place and to take extracts from, or make copies of, any such document or record;
- (g) to take into or onto the place such equipment and materials as the investigator requires for the purpose of exercising enforcement powers in relation to the place;
- (h) to operate electronic equipment in or on the place;
- (i) to secure a thing for a period not exceeding 24 hours if the thing is found in or on the place during the exercise of enforcement powers and the investigator believes on reasonable grounds that —
 - (i) the thing is evidential material, or is intended to be used for the purpose of contravening any provision of this Act or its subsidiary legislation or any condition of the registration of any registered person; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or

destroyed before a warrant to seize the thing is obtained;

(j) to seize any document, record or thing which is found in or on the place during the exercise of enforcement powers that the investigator reasonably suspects is evidential material;

(k) to require any person found in or on the place to answer any question (to the best of that person's knowledge, information and belief) and to provide any document, record or information.

(3) In addition, an investigator may —

(a) for any purpose in subsection (1), require any person in Singapore whom the investigator has reason to believe to be acquainted with any facts or circumstances relevant to that purpose to attend before the investigator to answer any question (to the best of that person's knowledge, information and belief) and to provide any document, record or information; or

(b) for the purpose in subsection (1)(b), invite the registered person, within the period specified in the written notice mentioned in section 26F(1) (which must not be less than 21 days starting on the date of the notice), to give to the investigator any written explanation the registered person wishes to provide.

(4) However, an investigator is not authorised by this section —

(a) to enter a place;

(b) to search a place or any thing in or on a place; or

(c) to seize any thing in or on a place,

for the purpose mentioned in subsection (1)(b) unless —

(d) the occupier of the place consents to the entry, search or seizure, as the case may be;

(e) the investigator believes on reasonable grounds that there is an imminent or immediate danger of serious bodily injury or death to any individual who is receiving or is about to receive any treatment at the place; or

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(f) the entry, search or seizure (as the case may be) is made under a warrant of a court.

(5) The power under subsection (2)(h) to operate electronic equipment in or on any place includes the power —

(a) to use a disc, tape or other storage device that is in or on the place and can be used with the equipment or in association with the equipment;

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(b) to operate electronic equipment in or on the place to put the relevant data in documentary form and remove the documents so produced from the place; and

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(c) to operate electronic equipment in or on the place to transfer the relevant data to a disc, tape or other storage device that —

(i) is brought to the place for the exercise of the power; or

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(ii) is in or on the place and the use of which for that purpose has been agreed in writing by the occupier of the place,

and to remove the disc, tape or other storage device from that place.

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(6) The power under subsection (2)(i) to secure any thing which is found during the exercise of enforcement powers in or on any place includes the power —

(a) to secure the thing by locking it up, placing a guard or any other means; or

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(b) to prohibit any person from dealing with the thing.

(7) The power under subsection (2)(j) to seize any document, record or thing under warrant includes the power to seize any document, record or thing which is similarly so found that is not evidential material of the kind specified in the warrant if —

- 5 (a) in the course of searching for the kind of evidential material specified in the warrant, the investigator finds the document, record or thing; and
- (b) the document, record or thing is evidential material for another offence under this Act or its subsidiary
- 10 legislation.

(8) However, a person is not subject to a requirement under subsection (2)(k) or (3)(a) if the person —

- (a) does not possess the document, record or information required; or
- 15 (b) has taken all reasonable steps available to the person to obtain the document, record or information required and has been unable to obtain it.

(9) A statement made by a person in answer to a question under subsection (2)(k) or (3)(a) must —

- 20 (a) be reduced to writing;
- (b) be read over to the person;
- (c) if the person does not understand English, be interpreted in a language that the person understands; and
- 25 (d) after correction (if necessary), be signed by the person.

(10) An investigator may be assisted by other individuals in exercising enforcement powers under this section if that assistance is necessary and reasonable.

- 30 (11) In this section, “place” means any premises which are used, or in respect of which there are reasonable grounds to believe are being or have been used, by any person —

- (a) to carry out any prescribed practice of traditional Chinese medicine; or
- (b) to keep any document, record or thing used in connection with the carrying out of any prescribed practice of traditional Chinese medicine.

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False information and obstruction of performance of official duties

30.—(1) If —

- (a) a person provides a document or record or gives information (whether orally or in writing) to an investigator;
- (b) the document or record is provided, or the statement is made or the information is given, for or in connection with any purpose under this Act or its subsidiary legislation;
- (c) the document, record, statement or information is false or misleading, or the statement or information omits any matter or thing without which the statement or information (as the case may be) is misleading; and
- (d) the person knows, or ought reasonably to know, that the document or record is false or misleading, or that the statement or information is as described in paragraph (c),

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the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

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(2) Subsection (1) does not apply if the document, record, statement or information is not false or misleading in a material particular, or if the statement or information does not omit any matter or thing without which the statement or information (as the case may be) is misleading in a material particular.

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(3) A person who knowingly obstructs or prevents, or attempts to obstruct or prevent, an investigator in the discharge of the investigator's powers or duties under this Act or its subsidiary

legislation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(4) A person —

5 (a) who intentionally alters, suppresses or destroys any document, record or information which the person has been required by or under section 29(2)(k) or (3)(a) to provide; or

10 (b) who, in providing any document, record or information required by or under section 29(2)(k) or (3)(a), makes any statement which the person knows or ought reasonably to know that, or is reckless as to whether, it is false or misleading in a material particular,

15 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

20 (5) A person who, without reasonable excuse, fails to do anything required of the person under section 29(2)(k) or (3)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

25 (6) To avoid doubt, for the purposes of subsection (5), it is a reasonable excuse for a person to refuse or fail to produce any document or record, provide any information or answer any question if doing so might tend to incriminate that person.

Disposal and forfeiture of seized documents, records and things

30 **30A.**—(1) Any document, record or thing seized under section 29(2)(j) must —

(a) where the document, record or thing is produced in any criminal trial, be dealt with in accordance with section 364 of the Criminal Procedure Code (Cap. 68);

(b) where the owner of the document, record or thing consents to its disposal, be deemed to be forfeited; or

(c) in any other case —

(i) be returned to the owner; or

(ii) be reported to a Magistrate’s Court.

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(2) Where the seizure of any document, record or thing under section 29(2)(j) is reported to a Magistrate’s Court under subsection (1)(c)(ii), the Magistrate’s Court may order the document, record or thing —

(a) to be forfeited; or

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(b) to be disposed of in such manner as the Magistrate’s Court thinks fit.

(3) Subject to any order to the contrary by the Magistrate’s Court, any document, record or thing forfeited or deemed to be forfeited under this section must be delivered to the Board and must be disposed of in such manner as the Registrar thinks fit.

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(4) This section does not affect any right to retain or dispose of any property which may exist in law apart from this section.”.

Amendment of section 31

13. Section 31 of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

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“(1) All fees, penalties and other moneys payable under this Act that are not paid are recoverable as a debt due to the Board.

(1A) Subject to subsection (1B), all fees and other moneys collected or recovered by the Board under this Act must be paid to the Board.

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(1B) All penalties and composition sums collected by the Board under this Act must be paid into the Consolidated Fund.”.

New section 34A

14. The principal Act is amended by inserting, immediately after section 34, the following section:

“Composition of offences

5 **34A.**—(1) The Board may compound any offence under this Act that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

10 (a) one half of the amount of the maximum fine that is prescribed for the offence;

 (b) \$2,000.

(2) On payment of such sum of money, no further proceedings are to be taken against that person in respect of the offence.”.

Amendment of section 36

15 **15.** Section 36(2) of the principal Act is amended —

(a) by inserting, immediately after paragraph (d), the following paragraphs:

 “(da) provide for the appointment of members to and composition of an Inquiry Committee;

20 (db) prescribe the procedures to be followed by, and regulate the conduct of, any inquiry by an Inquiry Committee, including, for the purposes of any hearing before the Inquiry Committee —

25 (i) enabling the Inquiry Committee to order and give discovery and inspection of documents; and

30 (ii) enabling any party to the inquiry to issue subpoenas to testify or subpoenas to produce documents;”; and

(b) by inserting, immediately after paragraph (e), the following paragraphs:

“(ea) provide for the grant and renewal of practising certificates, including prescribing requirements relating to continuing professional education for, and any other aspect of, the practice of traditional Chinese medicine for such grant and renewal;

(eb) regulate the professional practice, etiquette, conduct and discipline of registered persons;”.

Saving and transitional provisions

16.—(1) Despite sections 7 and 12, sections 19, 28 and 29 of the principal Act as in force before the date of commencement of sections 7 and 12 continue to apply to and in relation to any complaint or matter in respect of which the Board may take action against a registered person where —

(a) an Investigation Committee has been appointed under section 28(1) of the principal Act before the date of commencement of those sections; and

(b) the Investigation Committee has not completed its investigation of the complaint or matter and has not reported its findings to the Board before the date of commencement of those sections.

(2) Despite section 9, section 21 of the principal Act as in force before the date of commencement of section 9 continues to apply to and in relation to a decision of the Board under section 19(1) or (2) of the principal Act made before that date.

(3) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on

the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Traditional Chinese Medicine Practitioners Act (Cap. 333A) for the following main purposes:

- (a) to enhance the disciplinary framework for persons registered under the Act to carry out any prescribed practice of traditional Chinese medicine (registered persons). This includes the conduct of inquiries relating to the mental or physical condition of registered persons to practise;
- (b) to require registered persons to undergo continuing professional education in order to further raise practice standards of traditional Chinese medicine;
- (c) to expand the investigation powers of investigators;
- (d) to raise the maximum financial penalty that may be imposed on registered persons who commit disciplinary offences, align the penalties that may be imposed under the Act with those for similar contraventions under the Acts governing other healthcare professions and provide the Traditional Chinese Medicine Practitioners Board (the Board) with greater flexibility in determining the appropriate penalties in disciplinary matters.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to introduce new definitions to support amendments elsewhere in the Bill.

Clause 3 amends section 3(2) to increase the maximum size of the Board from 9 to 11 members.

Clause 4 amends section 8 to provide that a member of the Board who is or was a member of an Inquiry Committee formed under the new Part IVA inquiring into a disciplinary matter relating to a registered person —

- (a) must not vote or take part in any discussion or decision of the Board relating to the matter, or otherwise participate in any activity of the Board that relates to the matter;
- (b) must withdraw from any meeting or part of any meeting of the Board considering or discussing the matter if the Chairman or other member of the Board presiding at the meeting so requests; and

- (c) must be disregarded for the purpose of forming a quorum for any meeting or part of any meeting of the Board during which a discussion or decision relating to the matter occurs or is made.

Clause 5 amends section 17 —

- (a) to provide that the Board may refuse to grant a practising certificate to, or renew the practising certificate of, a registered person, if the registered person fails to comply with any requirements relating to continuing professional education requirements for, or any other aspect of, the practice of traditional Chinese medicine that are prescribed in regulations; and
- (b) to amend subsection (6) and insert a new subsection (6A) to make clear that a practising certificate issued to a registered person is deemed to be cancelled when the registration of the registered person is cancelled or suspended under section 19 or 26A, or an interim order made against the registered person by the Board under the new section 26H(1) is confirmed by the Board under the new section 26H(8)(a). The person concerned must surrender any such practising certificate to the Board no later than the 14th day after the cancellation of the practising certificate.

Clause 6 repeals and re-enacts section 18 so that the Registrar of the Board (the Registrar) is not constrained to publishing in the *Gazette* a list of all registered persons who have in force a practising certificate, as well as their practice addresses, qualifications, classes of registration and the dates of qualifications and registration. The amendment will allow the list to be published in any way that will secure adequate publicity for the list, such as on the Board's website. The power of the Board to direct the Registrar to prepare and publish for sale listings of registered persons is repealed as well.

Clause 7 amends section 19 —

- (a) to amend subsection (1) to make clear, as a consequence of amendments elsewhere in the Bill, the grounds on which the Board may cancel the registration of a registered person;
- (b) to substitute the reference in subsection (1)(k) to mental or physical condition for the existing reference to mental or physical disability, in line with amendments elsewhere in the Bill;
- (c) to amend subsection (2) —
 - (i) to make clear, as a consequence of amendments elsewhere in the Bill, the grounds on which the Board may take the measures mentioned in subsection (2) against a registered person instead of cancelling that person's registration;

- (ii) to give the Board additional options where a registered person is liable to have his or her registration cancelled on any ground mentioned in subsection (1)(*e*) to (*j*). The Board may issue a letter of advice to the registered person, order the registered person to give an undertaking to abstain from the conduct that is the subject of a complaint against, or information about, that registered person under the new section 26B, order the alteration of the registered person's class of registration, add, delete or replace (modify) the conditions of the registered person's registration for a period not exceeding 3 years, or order that the complaint or information be referred for mediation between the registered person and the person who made the complaint against, or provided the information about, the registered person; and
 - (iii) to increase the maximum penalty that the Board may order a registered person to pay, instead of cancelling that person's registration, from the existing \$10,000 to \$50,000. The increased penalty does not apply where the registered person's act or omission that is the subject of the complaint against, or information about, that person occurred before the date of commencement of section 7(*d*) of the Traditional Chinese Medicine Practitioners (Amendment) Act 2019;
- (*d*) to insert a new subsection (2A) to provide that where a registered person is liable to have his or her registration cancelled on the ground in subsection (1)(*k*), the Board may, instead of cancelling the registration, suspend the registered person's registration for a period not exceeding 12 months, alter the registered person's class of registration, or modify the conditions of the registered person's registration for a period not exceeding 3 years; and
- (*e*) to make changes in respect of when the Board's decision on disciplinary matters made under subsection (1) or (2) or the new subsection (2A) take effect. Subject to the new subsection (5A) and the new section 21(3), the Board's decision does not take effect until the 31st day after the date of the decision, rather than on the date the decision is communicated to the registered person. Where there is an appeal against the decision to the High Court, the decision takes effect on the date of the Court's decision on the appeal. However, under the new subsection (5A), the Board's decision to cancel the registered person's registration takes immediate effect when the Board certifies that there are reasonable grounds to believe that —
- (i) there is a serious and imminent risk to the public if the cancellation does not take immediate effect; or

- (ii) it is appropriate or requisite that the cancellation takes immediate effect in order to avoid any actual incident that endangers the public.

Clause 8 amends section 20 —

- (a) as a consequence of amendments elsewhere in the Bill; and
- (b) to clarify the types of costs and expenses that the Board may require a registered person who is the subject of disciplinary proceedings under the new Part IVA to pay.

Clause 9 amends section 21 —

- (a) as a consequence of amendments elsewhere in the Bill; and
- (b) to insert a new subsection (3) to clarify that, where the Board's decision made under section 19(1) or (2) or the new section 19(2A) is the subject of an appeal to the High Court, the decision does not take effect unless the High Court confirms the Board's decision or dismisses the appeal, or the appeal is withdrawn. However, where the Board's decision to cancel the registration of a registered person under section 19(1) has taken immediate effect by virtue of the Board's certification under the new section 19(5A), the cancellation continues to be in effect despite any appeal to the High Court.

Clause 10 amends section 23(1) to provide that a person whose registration is cancelled under section 19 or the new section 26A can apply to the Board for re-registration in accordance with section 23.

Clause 11 inserts a new Part IVA, which sets out the revised disciplinary framework for registered persons.

The new section 26A allows the Board, at the request and with the agreement of a registered person, to cancel or suspend the registered person's registration, alter the registered person's class of registration or modify the conditions of the registered person's registration for a period not exceeding 3 years. The registered person may make such a request in writing if the registered person believes that —

- (a) the registered person's fitness to practise the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out is impaired by reason of the registered person's mental or physical condition; or
- (b) the quality of the professional services the registered person provides does not meet the standard which is reasonable to expect of a traditional Chinese medicine practitioner carrying out the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out.

However, the Board must not take any action under the new section 26A(2) if —

- (a) the Board believes that there is evidence that the registered person —
 - (i) has been convicted of an offence, in Singapore or elsewhere, involving fraud or dishonesty or implying a defect in character which renders the registered person unfit to remain on the Register; or
 - (ii) has been guilty of any professional misconduct or negligence, or of any improper act or conduct which renders the registered person unfit to remain on the Register; or
- (b) an inquiry under the new Division 2 has started and is pending against the registered person.

The new section 26B provides that a person (complainant) may make a complaint against, or provide information about, any registered person to the Board touching on any matter mentioned in section 19(1). The complainant may include a member or an employee of the Board. The complaint or information must be in writing. The complaint or information also must, where it relates to a matter in section 19(1)(e), (f), (i), (j) or (k), be supported by a statutory declaration, unless the complainant is a public officer or a member or an employee of the Board acting in that person's capacity as a public officer or such a member or an employee.

The new section 26C provides that all complaints or information received under the new section 26B will be reviewed by the Board. The Board may require the complainant or registered person concerned to answer any inquiry or provide any record that the Board considers relevant for the purpose of the review. The Board may dismiss any complaint or information where the Board is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance. If the Board does not dismiss the complaint or information on such grounds, the Board must refer the complaint or information to an Inquiry Committee.

The new section 26D provides that a disciplinary matter may proceed even though the complainant subsequently withdraws the complaint or information.

The new section 26E sets out the process for the Inquiry Committee to carry out its inquiry into the complaint against, or information about, the registered person. For the purposes of the inquiry, the Inquiry Committee must —

- (a) direct one or more investigators appointed under the new section 28 to investigate into the facts and circumstances of the complaint or information; and

- (b) afford the registered person concerned an opportunity of appearing before the Inquiry Committee (whether in person or represented by counsel) to be heard on the complaint or information.

Where, in the course of its inquiry on a matter other than that in section 19(1)(k), it appears to the Inquiry Committee that the registered person's fitness to practise the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out may be impaired by his or her mental or physical condition, the Inquiry Committee must immediately refer the matter to the Board. The Board must then refer the matter to a different Inquiry Committee for a separate inquiry into the registered person's fitness to practise to be conducted in accordance with the new Part IVA.

The new section 26F deals with the investigator's conduct of the investigation into the facts and circumstances of the complaint against, or information about, the registered person. The investigator must give written notice to the registered person of the complaint or information, including copies of the complaint or information and any supporting statutory declaration. Upon completing the investigation, the investigator must submit to the Inquiry Committee an investigation report of the findings of the investigation, which must include any written explanation given by the registered person after receiving written notice of the complaint or information.

The new section 26F also sets out the steps to be taken where the investigator, in the course of the investigation, receives any information touching on the conduct, mental or physical condition or professional performance of —

- (a) the same registered person, which is outside the subject matter of the complaint or information the investigator is directed to investigate by the Inquiry Committee; or
- (b) another registered person.

Under the new section 26G, the report of the Inquiry Committee to the Board required by the new section 26E(2) must contain the findings of the Inquiry Committee, and any of the following recommendations:

- (a) to take any action mentioned in section 19(1) or (2) or the new section 19(2A);
- (b) to dismiss the complaint or information.

The Board may, after considering the report of the Inquiry Committee —

- (a) take any action mentioned in section 19(1) or (2) or the new section 19(2A) as the Board thinks fit;
- (b) dismiss the complaint or information; or

- (c) refer the complaint or information back to the Inquiry Committee for its reconsideration or a further report. The Board may do so once only. Where the Board does so, the Inquiry Committee may direct an investigator to conduct such further investigations as may be necessary. The Board must take into account the Inquiry Committee's response or further report when deciding on the disciplinary action to be taken against the registered person.

The new section 26H provides that the Board may, in lieu of an inquiry under the new Division 2 of Part IVA, make an interim order against a registered person. However, an interim order may be made only where it appears to the Board that the registered person must without delay stop carrying out any prescribed practice of traditional Chinese medicine because there are reasonable grounds to believe that —

- (a) there is a serious and imminent risk to the public if there is no such stoppage; or
- (b) it is appropriate or requisite that an interim order be made in order to avoid any actual incident that endangers the public. In this respect, the Board must have regard, in particular, to the extent to which the registered person or any other person is likely to sustain harm or damage, and the nature and foreseeable consequences of any such harm or damage, if the registered person continues to practise before the Board makes a decision under the new section 26G(2)(a) or (b) following an inquiry under the new Division 2.

Under the interim order, the registered person concerned must stop carrying out the prescribed practice of traditional Chinese medicine that the person is registered to carry out. The interim order has effect for a period not exceeding 18 months as the order may specify, unless it is confirmed by the Board under the new section 26H(8)(a).

The Board may confirm the interim order, with or without modifications, if the Board is satisfied that it continues to be necessary to prevent the registered person from carrying on the prescribed practice of traditional Chinese medicine that the registered person is registered to carry out. Before the Board confirms the interim order, the Board must refer the interim order to an Inquiry Committee, and give written notice to the registered person of its proposal to confirm the interim order and the facts which, in the Board's opinion, justify the confirmation and modifications (if any) of the interim order.

The Inquiry Committee to which the interim order is referred must act in accordance with the new sections 26E (except subsection (4)(b)), 26F and 26G(1)(a) with the necessary modifications. The registered person may make representations or objections to the Inquiry Committee with respect to the proposed confirmation and modifications (if any) of the interim order. The Inquiry

Committee must also afford the registered person an opportunity of appearing before it (whether in person or represented by counsel) to be heard on the proposed confirmation and modifications (if any) of the interim order. After considering the facts cited by the Board and the registered person's representations or objections, the Inquiry Committee makes its recommendation to the Board on the proposed confirmation and modifications, if any. The Board, after considering the Inquiry Committee's recommendation, may confirm the interim order, with or without modifications, or not confirm the interim order.

The new section 26I provides for the appointment and composition of Inquiry Committees for the purposes of the new Part IVA.

The new section 26J provides that the Board may —

- (a) dissolve an Inquiry Committee if the Board is satisfied that more than half of the members of the Inquiry Committee are unable to carry out their duties properly and effectively because of any conflict of interest or potential conflict of interest on the part of each member concerned;
- (b) remove a member of an Inquiry Committee, and appoint another person in place of that member, where the Board is satisfied that that member is unable to carry out his or her duties properly and effectively because of any conflict of interest or potential conflict of interest; and
- (c) fill any vacancy in any Inquiry Committee that occurs because of the death or illness of, or other cause preventing, a member of the Inquiry Committee from continuing with his or her duties.

The new section 26K provides that a person to whom the section applies must not disclose any information contained in any document as may have come to the person's knowledge in the course of an inquiry under the new Part IVA except in the specified situations. It is an offence for a person to whom the section applies to contravene this prohibition.

Clause 12 repeals and re-enacts sections 28, 29 and 30, and inserts a new section 30A.

The new section 28 empowers the Board to appoint a member or an employee of the Board, a public officer or any other person as an investigator.

The new section 29 confers investigation powers on an investigator for the purpose of investigating into offences under the Act or its subsidiary legislation, investigating into any complaint or information under the new Part IVA or determining whether any information provided to the Board under the Act or its subsidiary legislation is correct.

The new section 30 makes it an offence for a person —

- (a) to provide a document or record or give information that is false or misleading in a material particular, or give a statement or information

which omits any matter or thing without which the statement or information (as the case may be) is misleading in a material particular, where the person knows, or ought reasonably to know, that this is the case;

- (b) to knowingly obstruct or prevent, or attempt to obstruct or prevent, an investigator in the discharge of the investigator's powers or duties under the Act or its subsidiary legislation;
- (c) to intentionally alter, suppress or destroy any document, record or information which the person is required by or under the new section 29(2)(k) or (3)(a) to provide, or who, in providing any such document, record or information, makes any statement which the person knows or ought reasonably to know, or is reckless as to whether, it is false or misleading in a material particular; or
- (d) to fail, without reasonable excuse, to provide any information as required under the new section 29(2)(k) or (3)(a).

The new section 30A provides for the disposal and forfeiture of any document, record or thing seized by an investigator under the new section 29(2)(j).

Clause 13 amends section 31 to provide that all penalties and composition sums collected under the Act must be paid into the Consolidated Fund.

Clause 14 inserts a new section 34A to provide that the Board may compound any offence under the Act that is prescribed as a compoundable offence, without having to rely on section 243 of the Criminal Procedure Code (Cap. 68). The maximum composition sum is the lower of one half of the amount of the maximum fine that is prescribed for the offence or \$2,000.

Clause 15 amends section 36(2) to clarify, in support of amendments elsewhere in the Bill, the matters in respect of which regulations may be made under section 36(1).

Clause 16 is a saving and transitional provision.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
