

立法會
Legislative Council

LC Paper No. CB(2)2069/15-16
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the thirtieth meeting
held on Monday, 16 May 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin, BBS
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon WU Chi-wai, MH
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan

Public Officers : Item I
attending

Mr Christopher WONG, JP
Deputy Secretary for Food and Health (Food)1
Food and Health Bureau

Miss Diane WONG
Principal Assistant Secretary for Food and Health
(Food)2
Food and Health Bureau

Ms Phyllis KO
Senior Assistant Law Draftsman
Department of Justice

Miss Cindy CHEUK
Government Counsel
Department of Justice

Mr CHIU Yu-chow
Assistant Director (Grade Management and
Development)
Food and Environmental Hygiene Department

Mr HUI Fai-wing
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr Thomas LEUNG
Assistant Director/New Buildings 1
Buildings Department

Ms Doris CHOW
Assistant Director (Estate Management)
(Lands Administration Office/Headquarters)
Lands Department

Ms Lily YAM
Chief Town Planner/Town Planning Board 1
Planning Department

Clerk in attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with the Administration

[File Ref.: FH CR 2/3751/07, LC Paper Nos. CB(3)740/13-14, CB(2)2141/13-14(01), CB(2)2338/13-14(08), CB(2)431/14-15(01), CB(2)630/14-15(01), CB(2)367/15-16(01) to (04), CB(2)486/15-16(02)(Revised), CB(2)548/15-16(02)(Revised), CB(2)548/15-16(03) to (05), CB(2)721/15-16(02) and CB(2)1399/15-16(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to:

- (a) discuss with the Home Affairs Bureau the need to include the reference to the proposed clause 46C(9) in the proposed clause 46C(13);
- (b) consider amending clause 49(1); and
- (c) provide examples of provisions in other legislation which were similar to clause 49(1)(e).

II. Date of next meeting

3. Members noted that the next meeting would be held on Tuesday, 17 May 2016 at 4:30 pm.

Action

III. Any other business

4. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
22 September 2016

**Proceedings of the thirtieth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 16 May 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000344 - 000509	Chairman	Opening remarks	
000510 - 002529	Chairman Mr Albert CHAN ALA6 Admin	<p>Discussion of the full set of draft Committee stage amendments ("CSAs") to the Bill proposed by the Administration (updated version) (LC Paper No. CB(2)1399/15-16(01)).</p> <p><u>Clause 42 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding the consequences for not complying with clause 42(2). The Administration's explanation that the consumers could bring an action in a court under clause 41(4) to recover the amounts paid together with costs.</p> <p>The Administration's response to the enquiries of the Chairman and Mr Albert CHAN regarding the application of clause 54 in cases of non-compliance with conditions imposed on a licence pursuant to clause 25(b) (read together with clause 41).</p> <p>Mr CHAN's enquiry and the Administration's response regarding whether clause 54 would be invoked in the event that clause 42(2) was violated and whether the requirement under clause 42(2) was a licensing condition. Mr CHAN's view that the Administration should consider making known the provisions in the Bill to which clause 54 would apply. The Administration's advice that clause 41 had been referred to in clause 25(b) which concerned licensing conditions.</p> <p>Mr CHAN's view that purchasers need not necessarily bring an action in court to recover the amounts of money which should be refunded to them under clause 42(2). A purchaser should be allowed to lodge a complaint with the future Private Columbaria Licensing Board ("the Licensing Board"). Serving an enforcement notice under clause 54 against an instrument holder who was the seller would also help. The Administration's advice that</p>	

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		<p>clause 42 concerned civil matters while clause 25, when read in conjunction with clause 54, concerned contravention of licensing conditions. Purchasers could take legal actions to claim recovery of the money paid and at the same time lodge complaints with the Licensing Board.</p> <p>The Administration's response to Mr CHAN's enquiry that contraventions in relation to clause 25 (read together with clause 41) could be dealt with by clause 54, irrespective of whether there was civil litigation or not. Mr CHAN's view that the Administration should make available necessary manpower to handle a large number of enforcement notices. He anticipated that contravention of clause 42(2) would be highly prevalent.</p> <p>Mr CHAN's enquiry regarding whether complaints about non-compliance with clause 42(2) might be lodged with the Director of Food and Environmental Hygiene ("DFEH") under clause 54. At the Chairman's request, ALA6 explained the purposes of clause 54. The Administration's explanation of the Licensing Board's function in relation to complaint handling under clause 7(1)(a)(iii).</p> <p>Mr CHAN's view that enforcement actions should be taken against violation of licensing conditions rather than civil litigation between consumers and operators as far as practicable.</p>	
002530 - 003200	Chairman Deputy Chairman ALA6 Admin	<p>The Administration's response to the Deputy Chairman's suggestion of moving the reference to clause 41(3)(j) in the proposed clause 42(1A) to clause 42(1) so that consumer protection could be enhanced, as consumers could cancel the agreement at any time, rather than within 6 months.</p> <p>ALA6's explanation of the effect of the Administration's proposal to replace "prescribed" by "specified" in clause 41(3)(j). Her advice that the proposed amendments had been discussed and accepted by members at the last meeting of the Bills Committee.</p> <p>The Chairman's view that the Deputy Chairman's suggestion might give rise to other problems. He invited members to give some thoughts to the Deputy Chairman's suggestion.</p>	

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003201 - 003657	Chairman ALA6 Admin	<p><u>Clause 43 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>ALA6's advice that the Administration's proposal to replace "prescribed" by "specified" in clause 43(2)(b) would empower the Licensing Board to determine the particulars of agreements for the sale of interment rights ("the agreements") to be entered into the register of agreements and the period within which such particulars should be entered into the register of agreements. The particulars and period would not be made by way of subsidiary legislation and hence not subject to scrutiny and amendment by the Legislative Council ("LegCo"). Given that a person who contravened clause 43(2)(b) committed an offence and was liable on conviction to a fine at level 3 and to imprisonment for six months, she invited members to consider whether the amendment proposed by the Administration was acceptable. Members raised no objection to the proposed amendment to clause 43(2)(b).</p>	
003658 - 003949	Chairman Admin	<p><u>Clauses 44 and 46 and the proposed clause 46A (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
003950 - 004736	Chairman ALA6 Admin	<p><u>The proposed clause 46B (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Chairman's enquiry and the Administration's response regarding the relationship between "as soon as practicable" in the proposed clause 46B(2)(a) and "within 10 working days" in the proposed clause 46B(2)(b).</p> <p>At ALA6's request, the Administration explained the amendments it intended to make to fine-tune the presentation of the sanctions under the proposed clause 46B(3) and (4) to reflect the policy intent more clearly.</p> <p>The Administration's response to the Chairman's enquiry that the Administration would propose to amend the proposed clause 46B(3) and (4) to the effect that a person contravening the proposed clause 46B(1), (4)(a) or (4)(b) was liable on conviction to a fine of \$500,000 and to imprisonment for two years whereas a person contravening the proposed clause 46B(2) was liable on conviction to a fine at level 3 and to imprisonment for six months.</p>	

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		<p>ALA6's advice that the Administration had revised the proposed clauses 46A and 46B in response to the concerns of members and deputations.</p>	
004737 - 010128	<p>Chairman Deputy Chairman Admin</p>	<p><u>The proposed clause 46C (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Deputy Chairman's enquiry and the Administration's response regarding the roles of the Licensing Board and those of the Secretary for Home Affairs ("SHA") in relation to columbaria in Chinese temples, the basis on which SHA would impose requirements or conditions under the proposed clause 46C(6), and the meaning of "public officer" in the proposed clause 46C(10). The Deputy Chairman's view that it might be necessary to establish a communication channel between the Licensing Board and SHA in relation to interment of ashes in religious ash pagodas of Chinese temples.</p> <p>The Deputy Chairman's concern that there might be confusion given that Chinese temples were allowed to charge fees for their operation under the Chinese Temples Ordinance (Cap. 153), while columbaria of Chinese temples were prohibited from charging fees for interment of ashes of religious practitioners of the temple concerned in religious ash pagodas under the Bill. The Administration explained the proposed clause 46C(5) which provided for such prohibition and the consequences of contravening that subclause.</p> <p>The Deputy Chairman's view and the Administration's response in relation to maintaining a register of religious practitioners.</p>	
010129 - 010813	<p>Chairman ALA6 Mr LEUNG Che-cheung Deputy Chairman Mr Albert CHAN Admin</p>	<p>ALA6 invited members to consider whether it was acceptable that the proposed clause 46C(8) under which a notice containing the information and decision referred to in the proposed clause 46C(2) and (7) respectively was not subsidiary legislation and hence not subject to scrutiny and amendment by LegCo.</p> <p>Mr LEUNG Che-cheung's enquiry and the Administration's response regarding future changes to the aforesaid information and decision.</p> <p>The Administration's response to Mr LEUNG's enquiry that the Home Affairs Bureau ("HAB")</p>	

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		<p>was considering establishing a mechanism for handling appeals in relation to matters stipulated in the proposed clause 46C(2) and (7).</p> <p>The Deputy Chairman's view that it was undesirable to rely solely on publishing a notice in the Gazette as a means for making known to the public the aforesaid information and decisions. Subsidiary legislation and consultation with the Licensing Board should also be considered.</p> <p>The Administration's response to Mr Albert CHAN's enquiry that there was no contradiction between the Bill and other legislation.</p>	
010814 - 013209	<p>Chairman ALA6 Deputy Chairman Mr Alan LEONG Ms Cyd HO Admin</p>	<p>ALA6 invited members to consider whether it was acceptable to impose criminal sanction (which was set out in the proposed clause 46C(13)) for failing to keep the register required under the proposed clause 46C(9).</p> <p>Views of the Deputy Chairman and the Chairman on SHA's powers under the proposed clause 46C(6) and (9).</p> <p>At the Chairman's request, the Administration provided examples of conditions which might be imposed under the proposed clause 46C(6). The Administration's explanation of the purposes of the proposed clause 46C(9).</p> <p>Mr Albert CHAN's view that the punishment of imprisonment for contravening the proposed clause 46C(9) was too severe if the Chinese temples concerned were non-profit making organizations. The Administration's advice that the holder of an exemption of the columbarium of the Chinese temple concerned would be held liable.</p> <p>ALA6 drew members' attention to clause 88 which concerned liability of directors, partners, etc. for offences under the Bill. The Administration's explanation of clause 88. The Administration advised that section 2 of Schedule 3 had stipulated who might apply for specified instruments and the responsible parties could be identified.</p> <p>Mr Alan LEONG's view that the proposed clause 46C(9) could not address the problem of entering false information in the register of religious practitioners. The Administration's</p>	

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		<p>advice that a person who furnished DFEH, an authorized officer or a public officer (which included those in HAB) with false or misleading information under the Bill was subject to the criminal sanction provided under clause 87(2).</p> <p>Mr LEONG's view that as clause 87(2) already provided for the punishment of provision of false information, imposing a criminal sanction under the proposed clause 46C(13) for contravening the proposed clause 46C(9) was futile. The Administration cited the examples provided by HAB previously (not relating to the provision of false information) and undertook to discuss with HAB the need to include the reference to the proposed clause 46C(9) in the proposed clause 46C(13).</p> <p><i>(Post-meeting note: The Administration considered that retaining the reference to the proposed clause 46C(9) in the proposed clause 46C(13) was necessary. Otherwise, the holder of an exemption might not even keep the register or make it available for inspection, thus frustrating enforcement actions.)</i></p> <p>Ms Cyd HO's enquiry and the Administration's response regarding whether Chinese temples (including temples, Buddhist monasteries, Taoist monasteries and nunneries as defined under Cap. 153) located in private multi-storey buildings were allowed to inter ashes of religious practitioners under the Bill. The Administration's observation that according to information obtained under the Notification Scheme, none of the operators who claimed to be eligible for exemption status and reported the existence of religious ash pagodas came from private columbaria accommodated in private multi-storey buildings.</p>	Admin (paragraph 2(a) of the minutes)
013210 - 013233	Chairman Admin	<p><u>Clause 48 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed repeal of clause 48.</p>	
013234 - 014333	Chairman ALA6 Mr Albert CHAN Admin	<p><u>Clause 49 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>Expressing concern that clause 49(1) which empowered DFEH or an authorized officer to enter and inspect a columbarium might contravene Article 29 of the Basic Law (which provided that the homes and other premises of</p>	

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		<p>Hong Kong residents shall be inviolable and that arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited), ALA6 suggested amending clause 49(1) and explained her suggestion to narrow down the scope of the powers under clause 49(1) by spelling out that the purpose of the powers were for ascertaining whether any or all of the following was being, or had been, complied with:</p> <ul style="list-style-type: none"> (i) the Private Columbaria Ordinance; (ii) the conditions of a specified instrument; or (iii) the management plan approved for the purposes of clause 13(2) in respect of the columbarium. <p>ALA6's concern that the book, document or any other articles a person was required to produce under clause 49(1)(b) might involve information which was protected under legal professional privilege or was confidential in nature and her suggestion for the Administration to make reference to section 35A(8) to (9) of the Telecommunications Ordinance (Cap. 106) in relation to such information.</p> <p>ALA6's view that as clause 50(3) empowered DFEH or an authorized officer to remove or impound the aforesaid book, document or articles, conferring power to remove or impound on DFEH or an authorized officer under clause 49(1)(c) should not be necessary.</p> <p>The Administration's view that clause 49(1) did not contravene Article 29 of the Basic Law and its explanation on the purposes of clause 49(1). Having regard to ALA6's view, the Administration undertook to consider reviewing clause 49(1).</p> <p>In response to ALA6's view that the powers under clause 49(1)(e) were too wide and should be narrowed down or deleted, the Administration explained the rationale for such provision. At the Chairman's request, the Administration undertook to provide examples of provisions in other legislation which were similar to clause 49(1)(e).</p> <p>Views of the Chairman and Mr Albert CHAN that the Administration should adopt ALA6's suggestion.</p>	<p>Admin (paragraph 2(b) of the minutes)</p> <p>Admin (paragraph 2(c) of the minutes)</p>

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014334 - 014545	Chairman Mr Albert CHAN Admin	<p><u>Clause 50 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding whether higher level of court might issue a search warrant in respect of columbaria.</p>	
014546 - 014558	Chairman Admin	<p><u>Clauses 51 to 52 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSA.</p>	
014559 - 015224	Chairman Mr Albert CHAN ALA6 Admin	<p><u>Clause 53 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding whether clause 53 covered ashes interred in columbaria. ALA6's enquiry and the Administration's response in relation to making corresponding amendments to clause 53 if amendments to clause 49(1) were to be made.</p> <p>Referring to clause 53(3), ALA6 invited members to consider whether the time allowed (i.e. within 60 days stated in the notice) for the owner to whom a notice was given to collect the thing seized, removed or impounded was too short. Members considered that the time allowed was sufficient.</p>	
015225 - 015358	Chairman ALA6 Admin	<p><u>Clause 54 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>ALA6 drew members' attention to the proposed clause 54(6) which stipulated that the operation of DFEH's decision to serve an enforcement notice would not be suspended pending the determination of the appeal against the decision, unless DFEH decided otherwise. The Administration's explanation of the purpose of the proposed clause 54(6).</p>	
015359 - 015526	Chairman Admin	<p><u>Clause 55 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSA.</p>	
015527 - 020506	Chairman ALA6 Mr Albert CHAN Admin	<p><u>Clause 57 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>ALA6 invited members to consider whether it</p>	

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		<p>was acceptable not to impose legal consequence(s) for a person failing to comply with clause 57. The Administration explained the reasons for not imposing criminal sanction for contravention of clause 57 and advised that there was similar provision in the Public Health and Municipal Services Ordinance (Cap. 132) (with the wording being "in a decent manner") as well as in the Burial and Cremation Act 2013 in South Australia (with the wording being "the intention of the Parliament that human remains be treated at all times with dignity and respect").</p> <p>Mr Albert CHAN's view that the Licensing Board could handle complaints about non-compliance with clause 57 and take actions against a person who had contravened clause 57, including revoking the specified instrument concerned. The Administration's advice that clause 57 was meant to serve as general guiding principles, and would help convey to the court the intent of the legislature.</p> <p><i>(Extension of the meeting for 15 minutes beyond the appointed ending time by the Chairman.)</i></p> <p>Mr CHAN's view in relation to the imposition of compliance with all provisions under the Bill (including clause 57) as a licensing condition. The Administration reiterated that this was a general guiding principle that was meant to apply not only to those holding a specified instrument but also to those not holding a specified instrument.</p>	
020507 - 020537	Chairman	Date of next meeting	