

立法會
Legislative Council

LC Paper No. CB(2)495/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

Minutes of the third meeting
held on Tuesday, 25 November 2014, at 2:30 pm
in Conference Room 3 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, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon CHAN Han-pan, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : Item I

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

Miss Cindy CHEUK
Government Counsel
Department of Justice

Mr Thomas LEUNG
Assistant Director/Existing Buildings 2
Buildings Department

Ms CHU Lan-ying, JP
Assistant Director (Grade Management &
Development)
Food and Environmental Hygiene Department

Ms Olga LAM, JP
Assistant Director (Estate Management) (Lands
Administration Office/Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning (Special Duties)
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, LS66/13-14, CB(2)2121/13-14(01), CB(2)2141/13-14(01), CB(2)2338/13-14(07) to (08) and CB(2)305/14-15(01)]

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

2. The Bills Committee requested the Administration to provide information on the types of buildings or building works that could be covered under a licence or an exemption by virtue of the Bill, despite there being some non-compliant structures.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)431/14-15(01) on 9 December 2014).

II. Date of next meeting

3. Members noted that the next meeting of the Bills Committee would be held on Monday, 15 December 2014 at 4:30 pm. Members also noted that at the next meeting, the Administration intended to put forward a work plan to take forward the Bill. At that meeting, it would also give a general introduction of the framework and provisions of the Bill and brief members on the licensing scheme, including the specified instruments (i.e. a licence, an exemption and a temporary suspension of liability) for operating private columbaria.

III. Any other business

4. There being no other business, the meeting ended at 4:05pm.

Council Business Division 2
Legislative Council Secretariat
18 December 2014

**Proceedings of the third meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 25 November 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000511 - 000814	Chairman	Opening remarks	
000815 - 001451	Chairman Admin	Briefing by the Administration on its response to deputations' views received by the Bills Committee as detailed in LC Paper No. CB(2)305/14-15(01).	
001452 - 003700	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing expressed concern about the protection for consumers and the proper handling of ashes if an operator was unsuccessful in renewing his or her licence for columbarium operation. He considered the validity period of a licence (i.e. a maximum of 10 years) too short.</p> <p>The Administration responded that –</p> <p>(a) the validity period of a licence would either be 10 years or the same as the remainder of the term of the tenancy, lease or other instrument of the columbarium premises, whichever was the shorter;</p> <p>(b) upon expiry of the licence term, columbarium operators might apply for renewal of licences. The Administration considered 10 years an appropriate interval for reviewing whether the operation of the columbaria met the requirements and whether the operators complied with the licensing conditions, for the renewal of licences;</p> <p>(c) in applying for a licence, a columbarium operator should satisfy a number of requirements. Among these, the operator must hold the columbarium premises directly from the Government ("self-owned premises"), except where for a pre-Bill columbarium which was not run on self-owned premises. This requirement was modified to the extent that the applicant must prove that he or she had the right to continue to use the premises for at least five years from the date on which the licence was to take effect. This approach was called</p>	

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		<p>for to resolve the problems inherited from the past, lest it might result in ash displacement of a large scale;</p> <p>(d) under Schedule 4 of the Bill, an agreement for the sale of an interment right must set out the term of the lease, licence or any other instrument, the particulars of the duration of the interment right and the particulars about any right of the purchaser to renew the interment right for another term, on the expiry of the term under the agreement; and</p> <p>(e) after the commencement of the Private Columbaria Ordinance ("the Ordinance"), an operator must properly dispose of the ashes interred in the columbarium (including in the case of cessation of operation), in accordance with the requirements provided under the Ordinance. Failure to do so constituted a criminal offence and the offender was liable to heavy fine and imprisonment on conviction.</p> <p>In response to the Chairman's enquiry about the validity period of a licence for a columbarium run on self-owned premises, the Administration advised that the proposed Private Licensing Columbaria Board ("Licensing Board") had the discretion to grant a licence with a validity period of 10 years, if the term of the relevant land lease was beyond 10 years.</p>	
003701 - 004328	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's view that –</p> <p>(a) in view of consumers' expectation of permanent storage of ashes in private columbaria, the validity period of licences for columbaria run on self-owned premises should tie in with the terms of their land leases; and</p> <p>(b) imposing sanctions on operators who failed to comply with the provisions in the Bill on the handling of interred ashes upon cessation of the operation of their columbaria could not resolve the displacement problem of the ashes.</p> <p>The Administration's response that the term of a land lease was not perpetual either. In considering the validity period of a licence for operating a columbarium, the Administration</p>	

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		<p>had taken into account consumers' preference for long-term storage of ashes in private columbaria, but had to balance this against public's expectations favouring vigorous control of columbarium operation. It might not appropriate to set an inordinately long licence term, without any breakpoint for review. The Administration considered 10 years an appropriate period for reviewing the circumstances of the columbarium concerned for the renewal of a licence.</p> <p>The Administration explained that according to the prescribed ash disposal procedures in the Bill, the operator would have to arrange for the return of the ashes to an eligible claimant in accordance with prescribed steps with stipulated timeframe. For example, the publication of notice in the newspaper etc. would be required. Where the ashes could not be returned to the eligible claimant after the stipulated timeframe, the operator would have to deliver the ashes to the Director of Food and Environmental Hygiene Department ("FEHD") who would, in the same vein, try to reach out to the eligible claimant of the ashes before proceeding with the disposal of ashes.</p>	
004329 - 005109	Chairman Mr Steven HO Admin	<p>Mr Steven HO's view that the Administration should consider pegging the validity period of licence to the term of land lease and review the operations of private columbaria every 10 years. The Administration could revoke the licence if an operator failed to comply with the licensing requirements and conditions.</p> <p>Mr HO sought information on –</p> <p>(a) the specific measures the Administration would adopt to address the residents' concerns about the nuisance caused to their neighbourhood by columbaria; and</p> <p>(b) the number of responses to the administrative notification scheme ("Notification Scheme").</p> <p>The Administration's response that –</p> <p>(a) the land leases of most of the private columbaria on the Information on Private Columbaria maintained by the Development Bureau ("DEVB's List") would expire in 2047. With reference to such land leases, the earliest expiry date and the latest expiry</p>	

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		<p>date were 2038 and 2886 respectively;</p> <p>(b) A suitable balance had to be struck between consumer preference for long-term interment and the monitoring of operators' compliance with the licensing requirements and conditions;</p> <p>(c) a licence for operating a columbarium would normally be renewed if an operator fulfilled the requirements and conditions in all aspects throughout the licence term;</p> <p>(d) a columbarium operator applying for a licence was required, amongst others, to comply with the planning-related requirements under the Town Planning Ordinance (Cap. 131) and submit a management plan to the Licensing Board for approval. Submission of a planning application to the Town Planning Board ("TPB") might be required, if it was not a permitted/approved/existing use under Cap. 131. Members of the public could provide their views on the planning application to TPB for consideration. Furthermore, should the Licensing Board consider it appropriate, it might consider the views of residents in the community. The Licensing Board might impose conditions on measures to minimize nuisance caused by the operation of the columbarium to the neighbourhood as appropriate; and</p> <p>(e) as at early November 2014, a total of 140 operators had responded to the notice served by FEHD under the Notification Scheme. Among them, 124 were from private columbaria listed on the DEVB's List (i.e. over 97.6% of the cases on the DEVB's List) and 16 were from those outside the DEVB's List.</p> <p>Mr HO was of the view that the Administration should facilitate operators of licensed columbaria to fulfil the requirements for handling ashes as provided under the Bill upon cessation of the operation of their columbaria.</p> <p>The Administration explained the ash disposal procedures to be undertaken by the operators concerned as proposed under the Bill.</p>	

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005110 - 005834	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's view that allowing unauthorized columbaria to apply for exemption was in a way encouraging breach/contravention of statutory and Government requirements. He sought the Administration's response to the views that unauthorized columbaria should not be allowed to apply for any licence or exemption.</p> <p>The Administration's response that –</p> <p>(a) upon commencement of the Ordinance, all operators of private columbaria must obtain a licence before they could sell or let out niches;</p> <p>(b) operators of pre-Bill columbaria who wished to apply for a licence must fulfil the following requirements –</p> <p>(i) the planning-related requirement;</p> <p>(ii) the land-related requirement (including payment required under the regularization exercise); and</p> <p>(iii) the building-related requirement (except where this could not be complied with, this requirement was modified to the extent that the non-compliant structures necessary for or ancillary to the operation of the columbarium were structures certifiable for a pre-Bill columbarium and the requirements of certification by an authorized person ("AP")/a registered structural engineer ("RSE") were complied with).</p> <p>On the other hand, pre-Bill columbaria intending to apply for exemption would have to fulfil a set of stringent criteria as set out in the Bill, including, inter alia, their having commenced operation before 1 January 1990; their having ceased the sale or letting out of new or unoccupied niches as from the Bill announcement time (i.e. 8:00 a.m. on 18 June 2014); and compliance with the following requirements –</p> <p>(i) the land-related requirement; and</p> <p>(ii) the building-related requirement or the non-compliant structures necessary for or ancillary to the operation of the</p>	

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		<p>columbarium were structures certifiable for a pre-Bill columbarium and the requirements of certification by AP/RSE were complied with; and</p> <p>(c) during the public consultation exercises, the public generally supported that the Administration should be pragmatic in resolving the problems inherited from the past. The exemption mechanism proposed under the Bill would provide an opportunity for pre-Bill columbaria which fulfilled the exemption criteria to continue to operate.</p> <p>Mr LEE's view and enquiry as follows –</p> <p>(a) unauthorized columbaria which had expanded substantially between 1 January 1990 and 18 June 2014 should not be eligible for exemption; and</p> <p>(b) the number of unauthorized columbaria which had commenced operation before 1 January 1990 and expanded substantially afterwards.</p> <p>The Administration's response that –</p> <p>(a) exemption for pre-Bill columbaria was intended to be a pragmatic way to deal with dated private columbaria not in compliance with the statutory and Government requirements, so as to avoid upsetting the final resting place of the deceased and leading to social tension arising from the relocation of such ashes by their descendants;</p> <p>(b) applicants for exemption would be subject to the fulfilment of stringent criteria as set out in the Bill. The number of sets of ashes kept in the columbarium was limited to the total number of sets of ashes kept at the Bill announcement time. Exempted columbaria would lose their source of income but would still have to incur expenses for operating the columbarium; and</p> <p>(c) it had practical difficulties in collecting the information mentioned by Mr LEE in paragraph (b) above due to the passage of time.</p> <p>In response to the Chairman's enquiry, the</p>	

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		Administration advised that unlike licensed columbaria, columbaria which were granted exemption could not sell or let out niches after the Bill announcement time.	
005835 - 010558	Chairman Mr LEUNG Che-cheung Admin	<p>Mr LEUNG Che-cheung's view that provisions to protect consumers' interest should be added to the Bill. Operators should be required to make known to consumers the validity period of their licences explicitly to facilitate consumers to make informed decisions.</p> <p>The Administration's response that –</p> <p>(a) for protecting consumer interest, Schedule 4 of the Bill set out the requirements that a licensee must meet, in terms of what prescribed information should go into the agreement for sale of interment rights. Such information included price of niches, services to be provided, particulars of the duration of the interment right, particulars about any right of the purchaser to renew the interment right for another term on the expiry of the term under the agreement, etc. The agreement for sale of interment right would be unenforceable by the seller against the purchaser (i.e. consideration payable would cease to be payable or consideration paid would be recoverable), if the agreement entered into by the licensee with the consumers failed to comply with these requirements; and</p> <p>(b) under the Bill, licensees must conspicuously display in the columbaria their licences, which would clearly specify the validity period of the licences.</p> <p>In response to Mr LEUNG's enquiry about the types of buildings or building works that could be covered under a licence or an exemption despite there being some non-compliant structures, the Administration advised that the building-related requirements to be fulfilled for seeking a licence or an exemption was set out in clauses 13 to 15 of the Bill, and details of such building-related requirements, including those relating to different types of buildings, were set out in Schedule 2 to the Bill. Given the technicality of the subject matter, the Administration would provide written information for the next meeting, to facilitate layman's understanding of the legal framework and provisions involved.</p>	Admin

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		<p>Relevant guidelines would be promulgated in due course for the qualified professionals engaged by the operators. This might also be of useful reference for the sector, professional bodies, consumers and members of the public.</p>	
010559 - 011349	<p>Chairman Mr WU Chi-wai Admin</p>	<p>Mr WU Chi-wai's enquiries about –</p> <p>(a) the estimated number of niches already sold but ashes yet to be interred as at the Bill announcement time (長生祿位);</p> <p>(b) the mechanism under which a consumer could void a contract on a sale of an interment right, and the protection for consumers who had already bought niches but yet to inter ashes as at the Bill announcement time, but did not sign any contract with the operators concerned; and</p> <p>(c) the arrangements for niches already sold but ashes yet to be interred as at the Bill announcement time in private columbaria which were unable to rectify their irregularities as required under the licensing scheme.</p> <p>The Administration reiterated the provisions under the Bill in relation to agreements for sale of interment rights. Referring to the member's point about a consumer having patronized a private columbarium before the commencement of the Ordinance, and the columbarium operator failing to obtain a licence/an exemption after the commencement of the Ordinance, the Administration advised that –</p> <p>(a) it had been making efforts before and after the announcement of the Bill to enhance consumer education and warn the public of the risks of patronizing private columbaria prior to the commencement of the Ordinance. It advised consumers to pay attention and ascertain if contract terms were in place to protect their interests, and refrain from making rash decision. They should consider seeking independent legal advice where necessary;</p> <p>(b) consumers, who felt aggrieved by the arrangements of the operators might seek remedies through civil legal proceedings. Whether they could succeed in seeking remedies would depend on the facts and</p>	

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		<p>circumstances of their individual cases;</p> <p>(c) the provisions in the Bill on the ash disposal procedures (including in the case of cessation of operation) applied to the interred ashes of any private columbaria to which the Ordinance applied, irrespective of when the contracts were entered into (i.e. before or after the commencement of the Ordinance); and</p> <p>(d) a stringent approach was adopted in the Bill for handling sold (or let out) niches which were unoccupied as at the Bill announcement time to guard against abuse. The Administration had requested the operators to provide information on such niches under the Notification Scheme. As transpired from the information collected, the scale of this issue was not small, thus reinforcing our belief that adopting a prudent approach at the outset was appropriate. When the Administration had analysed the on-the-ground situation, it would consider a pragmatic way to handle such cases, provided that the pre-requisite of guarding against abuse would not be compromised.</p>	
011350 - 011932	Chairman Admin	<p>Noting that the provisions in the Bill governing the prescribed information, recommendations and essential terms to be included in agreements were prospective in nature, the Chairman expressed concern about how the interests of consumers could be protected where such agreements were entered into before the commencement of the Ordinance, if the operators failed to obtain a licence/an exemption in future. For example, the operators would not be able to honour their obligations, even if the terms of some agreements entered into before the commencement of the Ordinance were meant to last until 2047 when the respective land leases expired.</p> <p>Apart from reiterating its response in the preceding section, the Administration added that –</p> <p>(a) the Administration could not intervene in disputes arising from private agreements signed before the commencement of the Ordinance. Consumers had to seek remedies through civil legal proceedings if</p>	

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		<p>necessary; and</p> <p>(b) the Bill would require agreements for sale of interment right in a columbarium to be signed by a licensee and to include information on, among others, the term of the land instrument, the duration of the interment right, and particulars about renewal of the interment right for another term on the expiry of the term under the agreement, in such contracts.</p>	
011933 - 012408	Chairman Mr Steven HO Admin	<p>Mr Steven HO cast doubt on the legality of the contracts signed between consumers and unauthorized columbaria before the commencement of the Ordinance. He enquired about –</p> <p>(a) whether the temporary storage facilities for ashes provided by the Administration would be able to cater for the demand if a large number of private columbaria closed down after the passage of the Bill; and the number of such storage spaces; and</p> <p>(b) the measures the Administration would take to address the possible increase in the demand for public niches after the passage of the Bill.</p> <p>The Administration responded that –</p> <p>(a) consumers who chose to purchase or rent private niches before the commencement of the Ordinance should pay attention and ascertain if there were terms in the agreement for sale of interment right to protect their interests. They should seek independent legal advice where necessary;</p> <p>(b) it was for the Licensing Board to decide whether a private columbarium was eligible for a particular type of specified instrument, in the light of the circumstances of the private columbarium concerned. The Administration would not know at this stage the number of private columbaria which would not apply or be unsuccessful in applying for specified instruments, thereby leading to the cessation of operation of such columbaria;</p> <p>(c) in the coming few years, FEHD would increase the capacity of temporary storage facilities to provide about 47 000 storage</p>	

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		<p>spaces. The Administration would keep in view the situation and increase the capacity of temporary storage if necessary; and</p> <p>(d) the Administration would endeavour to seek support from District Councils and the Legislative Council for taking forward public columbarium projects under planning, so as to increase the supply of public niches.</p> <p>In response to Mr HO's concern about the inadequacy of existing contingency plan to deal with a sudden increase in the demand for temporary storage facilities for ashes, the Administration advised that it would plan ahead to gear itself up to rising above such challenges (should any arise).</p>	
012409 - 013235	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's views that –</p> <p>(a) to safeguard consumer interest and facilitate them to recover their loss, if any, the Administration should put in place a mechanism to save the agreements for sale of interment right signed before the commencement of the Ordinance; and</p> <p>(b) FEHD should consider using warehouse facilities, instead of public columbaria, for temporary storage of ashes interred in unauthorized private columbaria. Paying of respect to the deceased should not be allowed in the temporary storage places.</p> <p>The Administration responded that –</p> <p>(a) it had noted the limitations in protecting the interests of consumers, under some of the agreements for sale of interment right in the market. It had drafted the relevant part of the Bill, with a view to better protecting the interests of consumers in this regard. The Administration would consider drawing up sample agreement templates for the easy reference of consumers and operators; and</p> <p>(b) the temporary storage facilities for ashes previously mentioned by the Administration were to be differentiated from public columbaria in that the former were temporary in nature and no paying of respect to the deceased would be allowed in these storage spaces. Otherwise, the concern of moral hazard would arise.</p>	

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		The Administration reiterated the onus that had been placed on the operator to properly handle the ashes (including in the case of cessation of operation), as provided for under the Bill. It was the responsibility of the operators to return the ashes to the eligible claimants in accordance with the prescribed steps with stipulated timeframe.	
013236 - 013540	Chairman	Subjects to be discussed at the next meeting. Date of next meeting	

Council Business Division 2
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