

**立法會**  
**Legislative Council**

LC Paper No. CB(2)695/14-15  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/9/13

**Bills Committee on Private Columbaria Bill**

**Minutes of the fourth meeting**  
**held on Monday, 15 December 2014, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon IP Kwok-him, GBS, JP (Chairman)  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon CHAN Hak-kan, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Albert CHAN Wai-yip  
Hon Steven HO Chun-yin  
Hon WU Chi-wai, MH  
Hon CHAN Han-pan, JP  
Hon CHAN Yuen-han, SBS, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP  
Hon Tony TSE Wai-chuen, BBS

**Members absent** : Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)  
Hon Cyd HO Sau-lan, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon CHEUNG Kwok-che  
Hon WONG Yuk-man  
Hon Alice MAK Mei-kuen, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public Officers attending** : Item I

Miss Diane WONG  
Acting Deputy Secretary for Food and Health (Food) 1 /  
Principal Assistant Secretary for Food and Health (Food)2  
Food and Health Bureau

Ms Phyllis KO  
Senior Assistant Law Draftsman (II)1  
Department of Justice

Mr YU Tak-cheung  
Assistant Director/New Buildings 1  
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

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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), CB(2)389/14-15(01) and CB(2)431/14-15(01) to (04)]

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

2. The Bills Committee requested the Administration to provide information on the planning-related and land-related issues raised at the meeting in respect of columbarium operation prior to the expiry of their land leases.

**II. Any other business**

3. There being no other business, the meeting ended at 6:30pm.

Council Business Division 2  
Legislative Council Secretariat  
21 January 2015

**Proceedings of the fourth meeting of the  
Bills Committee on Private Columbaria Bill  
on Monday, 15 December 2014, at 4:30 pm  
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000519 - 000824	Chairman	Opening remarks	
000825 - 001433	Admin	Briefing by the Administration on its response to members' views on the validity period of a licence raised at the meeting on 25 November 2014 as set out in paragraphs 2 to 7 of LC Paper No. CB(2)431/14-15(01).	
001434 - 002157	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's views and concerns that –</p> <ul style="list-style-type: none"> <li>(a) in view of consumers' expectation of long-term interment of ashes in private columbaria and to protect consumer rights, the validity period of licences for private columbaria run on self-owned premises should at least be coterminous with the term of their land leases;</li> <li>(b) an operator should be required to stipulate, in an agreement for the sale of an interment right, the related details including the fees to be payable by a purchaser; and</li> <li>(c) consumer interest could not be protected after the commencement of the Private Columbaria Ordinance ("the Ordinance") if the term of an agreement for the sale of an interment right was the same as the validity period of a licence.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) setting the maximum validity period of a licence at 10 years struck a reasonable balance between the long-term nature of transactions on sale or rental of niches and public expectations favouring rigorous control of columbarium operations;</li> <li>(b) under the Private Columbaria Bill ("the Bill"), there were various provisions for protecting consumer interest, e.g. clause 41(2)(c) of and Schedule 4 to the Bill. There were clear requirements that a licensee must meet, in terms of what</li> </ul>	

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		<p>prescribed information, recommendations and essential terms should go into an agreement for sale of an interment right ("contract"). This included a comprehensive list of all fees, charges or other sums payable by the purchaser (whether recurrent or non-recurrent). The Administration would consider drawing up sample templates for contracts for easy reference by consumers and operators. Part 7 of and Schedule 5 to the Bill provided that an operator must not improperly dispose of the ashes interred in the columbarium (together with the detailed arrangements for complying with such requirements); and</p> <p>(c) the contract duration did not necessarily have to be limited by the validity period of the licence, and was a matter for agreement between the parties to the contract. Where the contract duration was longer than the validity period of the licence, consumers should pay attention and ascertain if contract terms were in place to protect their interests.</p>	
002158 - 003734	<p>Chairman Mr Albert CHAN Mr CHAN Hak-kan Admin</p>	<p>Mr Albert CHAN's views and concerns that –</p> <p>(a) the licensing scheme should seek to resolve all problems caused by unauthorized columbaria, including resolving conflicts between private columbarium operators and consumers;</p> <p>(b) some private columbarium operators might not have the drive to continue to operate their columbaria after they had sold out all the niches. A mechanism should be put in place to safeguard consumer interest as the interment of ashes in private columbaria should be long-term; and</p> <p>(c) to facilitate the long-term operation of a private columbarium, the licence, land grant and town planning for operating a private columbarium should be handled in tandem. The licence should be of long-term nature. Modifications to land use and town planning for the columbarium site concerned should not be allowed during the term of the land lease.</p> <p>Mr CHAN Hak-kan's views and concerns that, given the Administration's provision of temporary storage for displaced ashes interred in private columbaria upon cessation of their</p>	

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		<p>operation, some operators might transfer the ownership of their columbaria upon the expiry of the licences and sell the niches afresh under the names of new operators. To avoid such a malicious act, the validity period of a licence should tie in with the term of the land lease concerned.</p> <p>The Administration's response that –</p> <p>(a) it was recognized by all that this was a long-standing, big and complex problem. The introduction of the Bill was already a big step forward compared to the present situation, although it could not offer a panacea for each and every problem inherited from the past nor perfect solutions to some of the unwieldy situations that might eventually come about. With the foundation laid for the necessary fabrics to be built up and refined, the Administration could make improvements to the arrangements as it moved with times;</p> <p>(b) a private columbarium operator applying for a licence was required, amongst others, to comply with the planning-related requirements under the Town Planning Ordinance (Cap. 131) ("TPO") and land-related requirements. The Administration could not guarantee that the land use zoning of a piece of land would remain unchanged during the term of the licence or the land lease, or permanently. While the operation of private columbaria would inevitably be subject to the prevailing town planning-related requirements, the columbarium site should be used in compliance with the conditions in the land lease which could not be modified without the agreement of both parties, i.e. the Government and the lessee;</p> <p>(c) in considering the validity period of a licence for operating a private columbarium, a balance had to be struck between consumers' preference for long-term interment of ashes in private columbaria and public expectations favouring rigorous control of columbarium operation; and</p> <p>(d) with the introduction of the licensing scheme, consumers would be better protected. With the clear requirements in the Bill that a licensee must meet, in terms</p>	

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		<p>of the prescribed information, recommendations and essential terms to be set out in the contract, consumers should be in a better position, as compared with the present situation, to watch out for appropriate contract terms to protect their interests. After the commencement of the Ordinance, an operator must properly dispose of ashes interred in the private columbarium (including in the case of cessation of operation) in accordance with the requirements provided for under the Ordinance. Failure to do so constituted a criminal offence and the offender was liable, on summary conviction, to a fine of \$2 million and to imprisonment for three years; and, on conviction on indictment, to a fine of \$5 million and to imprisonment for seven years. Such provisions covered the interred ashes of any private columbaria to which the Ordinance applied, irrespective of when the interment of ashes took place (i.e. before or after the commencement of the Ordinance).</p> <p>The Administration explained the actions a consumer could take in getting remedies for breach of contract on the part of the columbarium operator or in the event of frustration of contract as set out in paragraphs 20 and 21 of LC Paper No. CB(2)431/14-15(01).</p> <p>In response to Mr CHAN Hak-kan's enquiry about the reason for setting the validity period of a licence at a maximum of 10 years, the Administration advised that it considered 10 years an appropriate interval for reviewing the performance of a private columbarium operator before considering his/her application for renewal of the licence, including where appropriate the updating of the licensing requirements and conditions for compliance upon renewal of the licence.</p>	
003735 - 004528	Chairman Mr Tony TSE Admin	<p>Mr Tony TSE's views and enquiries that –</p> <p>(a) the Bill did not provide for sufficient consumer protection;</p> <p>(b) the operation of a private columbarium should be subject to monitoring during the licence period. The licence should be revoked if an operator failed to comply with the licensing requirements and conditions;</p>	

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		<p>(c) the arrangements for the seven private columbaria on the "Information on Private Columbaria" published by the Development Bureau which were not covered by land leases;</p> <p>(d) the disposal of interred ashes in the event of cessation of operation of a columbarium; and</p> <p>(e) as a deterrent to malicious operators, whether the Administration would consider re-entering the land when an operator ceased the columbarium operation unscrupulously.</p> <p>The Administration reiterated the consumer protection measures in the Bill. It also stressed that it was the responsibility of operators to dispose of ashes properly and comply with the ash disposal procedures prescribed in the Bill. It advised that –</p> <p>(a) a mechanism would be put in place to monitor the operation of private columbaria during the licence period. Operators who failed to comply with the licensing requirements and conditions would be subject to various sanctions (with relevant penalty levels) as set out in the Bill. Revocation of licence was one such sanction. In the case where the licence had been revoked, the operator would also have to follow the prescribed ash disposal procedures in handling the displaced ashes properly. As transpired from the feedback from consultation, a pragmatic approach was warranted, so as not to give rise to ash displacement of a massive scale. Indiscriminate use of revocation of licence also ran counter to some members' call for continuous interment of ashes on a long-term basis;</p> <p>(b) private columbaria with unlawful occupation of Government land would not be considered as having fulfilled the land-related requirements specified under the Bill. If their operators wished to apply for a licence or an exemption, they would have to apply for regularization of the occupation of such land with the Lands Department ("LandsD"); and</p> <p>(c) re-entry of private land was the ultimate sanction that would be taken for breach of</p>	



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		<p>lease conditions. Re-entry would be instituted in accordance with the law/land lease in light of the circumstances of each case.</p>	
004529 - 005233	<p>Chairman Admin</p>	<p>In response to the Chairman's enquiry, the Administration explained the meaning of "self-owned premises" and the right to use the columbarium premises, for the purpose of the Ordinance.</p> <p>The Chairman's view that consumers' ownership of niches and their right to use the columbarium facilities should be respected, and consumers should not be made to bear the brunt for the poor management of private columbaria.</p>	
005234 - 010541	<p>Chairman Mr LEUNG Che-cheung Mr Albert CHAN Admin</p>	<p>Views of Mr LEUNG Che-cheung and Mr Albert CHAN that to meet consumers' expectation of long-term interment of ashes at private columbaria, there should be a linkage between the validity period of a licence and the term of the land lease.</p> <p>Views of the Chairman and Mr LEUNG Che-cheung that to protect consumer interest and ensure the continuous operation of private columbaria, the Bill should not allow change of use of columbarium premises for purposes other than columbarium operation within the term of the land lease. Otherwise, the Administration would have to handle the aftermath of "fly-by-night" cases.</p> <p>Mr Albert CHAN's views that –</p> <p>(a) in granting a licence for operating a private columbarium, the relevant land lease should restrict the use of the premises to columbarium operation. Otherwise, the licence applicant could use the columbarium site for other purposes, without sanction from LandsD. To restrict the use of the premises for private columbarium operation, the premises concerned should be placed under outline zoning plans ("OZPs") Column 1; and</p> <p>(b) an operator could be allowed to sell niches as a share of his/her ownership of the land lot where the private columbarium was located.</p> <p>The Administration advised that it would caution against the sale of niches in the form of</p>	

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		<p>a share of the land interest, as each individual niche owner might be made subject to the requirement of seeking a licence.</p> <p>In response to Mr Albert CHAN's suggestion of setting up a compensation fund to safeguard consumer interest, the Administration advised that it had considered such a suggestion but did not consider it appropriate to adopt levy collection schemes (similar to the Travel Industry Compensation Fund or the Protection of Wages on Insolvency Fund) for the columbarium sector. It was not equitable to have law-abiding operators shouldering the burden on behalf of those operators who chose to shirk their responsibility to maintain interred ashes. Furthermore, consumers might become less alert to the risks associated with niche transactions involving heavy pre-payment upfront, choosing instead to rely on the compensation fund to bail them out when the operators flew by night in future.</p>	
010542 - 010711	Chairman Mr CHAN Hak-kan	<p>Sharing the view that there should be a linkage between the validity period of a licence and the term of the land lease, Mr CHAN Hak-han expressed concern that –</p> <p>(a) some operators might take advantage of licence renewal and required consumers to sign new agreement for the sale of interment right to make profits; and</p> <p>(b) as the sale of niches in some private columbaria could generate an overall income of billions of dollars, it was doubtful whether imposing a fine would have sufficient deterrent effect to unscrupulous operators.</p>	
010712 - 011014	Chairman	<p>The Chairman reiterated his view that consumers should not be deprived of the right to use private columbarium facilities because of operators' malpractices. He called on the Administration to consider how to avoid having the consumers to bear the brunt for the mismanagement of private columbaria.</p>	
011015 - 011249	Chairman Mr Tony TSE	<p>Mr Tony TSE reiterated his concern that consumers were inadequately protected under the Bill. He took the view that –</p> <p>(a) the Administration should plug the loopholes from the outset to avoid possible disputes between consumers and operators;</p>	

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		<p>and</p> <p>(b) the Administration should consider using the land premium received from columbarium operators to strengthen the protection for consumers.</p> <p><i>[Post-meeting note: The Administration advised that under statute, any moneys received by the Government should be credited to the general revenue.]</i></p>	
011250 - 012932	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han expressed concern about the inadequate protection for consumers and requested the Administration to provide information on the planning-related and land-related issues raised by various members in respect of private columbarium operation prior to the expiry of their land leases.</p> <p>The Administration responded to the concerns of the Chairman, Mr LEUNG Che-cheung, Mr Albert CHAN, Mr CHAN Hak-kan, Mr Tony TSE and Miss CHAN Yuen-han as follows –</p> <p>(a) clause 38 of the Bill provided for the Licensing Board to issue a certificate of columbarium use on the issue of a specified instrument and register it in the Land Registry against the premises for which a land register had been kept. Any potential successor or assign acquiring such premises from the instrument holder would thus be made aware that the premises were being used for columbarium operation;</p> <p><i>[Post-meeting note: The Administration advised that the certificate must state, among others, the name of the instrument holder and that the provisions of Part 7 of and Schedule 5 to the Bill (relating to ash disposal) applied to the premises.];</i></p> <p>(b) it would consider members' views on the validity period of a licence and discuss with members further in due course;</p> <p>(c) in granting an application for a licence, consideration should be given to whether the columbarium premises complied with the planning-related requirements under the Bill, i.e. every requirement under TPO;</p> <p>(d) where applicable, submission of a planning</p>	Admin

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		<p>application to the Town Planning Board ("TPB") would be required, if the use of the premises was not a permitted/approved/existing use under TPO;</p> <p>(e) OZPs were statutory plans prepared under TPO. The Administration could not guarantee that changes to OZPs would not be made throughout the term of the licence as TPB might receive applications for changes to OZPs. However, any amendment to OZP would be subject to a statutory process under TPO whereby any person could make representation/comment to TPB. TPB had to consider all representations and comments before making a decision on the OZP amendment. Under such circumstances, views from different stakeholders, including private columbarium operators whose interest in the land and persons whose interest in the niches (consumers or descendants) would be affected by the OZP amendment, would be taken into account as appropriate;</p> <p>(f) the land use prescribed in a land lease could not be changed during its term as far as land lease administration was concerned, unless with the agreement of both parties, i.e. the Government and the lessee; and</p> <p>(g) given members' concerns, the Administration would provide, for the next Bills Committee meeting, a paper on the relevant planning-related and land-related issues.</p> <p>The Chairman's recapitulation of members' strong view against hinging consumer interest on the management of private columbarium and allowing modifications to permit land use for purposes other than columbarium operation during the term of the land lease.</p>	
012933 - 014120	Chairman Mr LEUNG Kwok-hung Mr Tony TSE Admin	<p>Mr LEUNG Kwok-hung and Mr Tony TSE were gravely concerned about the inadequate protection for consumers under the Bill. They expressed reservation on the Bill unless it could address consumers' expectation of long-term interment of ashes at private columbaria and provide adequate protection for consumer interest.</p> <p>Mr LEUNG's view that in drafting the Bill, due consideration should have been given to</p>	

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		<p>consumer protection. The Ordinance should provide a system to protect consumer interest, e.g. to require private columbarium operators to set up a fund for compensating consumers' loss arising from the cessation of columbarium operation.</p> <p>Mr TSE's view that the Administration should be responsible for disposing of ashes interred in private columbaria the operation of which was affected by changes in land use and town planning approved by LandsD and the TPB respectively.</p> <p>In response to the Chairman's enquiry, the Administration advised that a mechanism was in place to consider applications for modifications to land leases. The Government would agree to a lease modification only if it was appropriate and complied with all Government requirements.</p> <p>The Administration reiterated the policy objective of the licensing scheme and noted consumers' preference for long-term interment of ashes at private columbaria. It would consider concerns of members and stakeholders and discuss with members further in due course.</p>	
014121 - 020033	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han urged the Administration to make its best endeavours to address consumers' concerns.</p> <p>In response to the Chairman's enquiry, the Administration advised that land premium for a lease modification to permit private columbaria was assessed on the difference of the land value before and after the lease modification.</p>	
020034 - 020135	Chairman Admin	Briefing by the Administration on its response to members' question on building-related requirements raised at the meeting on 25 November 2014 as set out in paragraphs 8 to 17 in LC Paper No. CB(2)431/14-15(01).	