

立法會
Legislative Council

LC Paper No. CB(2)2085/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

Minutes of the eighth meeting
held on Friday, 17 April 2015, at 10:45 am
in Conference Room 2A 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 Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon CHEUNG Kwok-che
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 LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon James TO Kun-sun
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Yuk-man
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP
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

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

Mr Tommy TAM Wing-cheung
Chief Building Surveyor/Legal Services
Buildings Department

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

Mr YEUNG Chun-hoi
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
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

[LC Paper Nos. CB(3)740/13-14, CB(2)2141/13-14(01) CB(2)2338/13-14(07) to (08), CB(2)305/14-15 (01), CB(2)431/14-15 (01), (02) and (04), CB(2)630/14-15(01), CB(2)825/14-15(01) and CB(2)1063/14-15(01)]

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

2. The Bills Committee requested the Administration to –

- (a) provide a list of documents required for an application for a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) and advise the estimated time required for an applicant to provide the relevant documents;
- (b) advise the time allowed for private columbarium operators to apply for specified instruments;
- (c) provide information on the enforcement actions the relevant government departments would take under their purview against non-complaint columbaria, as provided for under the relevant legislation;
- (d) provide information on the land-related, planning-related and building-related requirements a private columbarium operator must meet in order to obtain a licence;
- (e) provide information on policies on land premium for columbarium premises;

Action

- (f) provide a formula for calculating land premium equitably for niches that had been sold;
- (g) consider deleting the term "關於" from clause 22(2)(a)(i);
- (h) review the drafting of clause 22(2) and 22(9)(a); and
- (i) consider revising the wording of clause 22(8).

II. Date of next meeting

- 3. Members noted that the next meeting of the Bills Committee would be held on Monday, 27 April 2015 at 10:45 am.

III. Any other business

- 4. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2015

**Proceedings of the eighth meeting of the
Bills Committee on Private Columbaria Bill
on Friday, 17 April 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000506 - 000627	Chairman	Opening remarks	
Clause-by-clause examination			
000628 - 001332	Chairman Admin	Examination of Part 4 - Division 3 clause 21(1) to (3)	
001333 - 002024	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concern and the Administration's response regarding whether an applicant for a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) would be able to provide evidence of the eligibility-related particulars stipulated under clause 21(3) within the time limit set out in clause 21(1).</p> <p>Ms Cyd HO's view that pre-Bill columbarium operators should be informed in advance of the eligibility-related particulars required to be proven for specified instrument applications to allow for their early preparation.</p> <p>The Administration was requested to provide a list of documents required for an application for a specified instrument and the estimated time required for an applicant to provide the relevant documents.</p> <p>The Chairman's enquiry and the Administration's response regarding the handling of applications for specified instruments which were made out of time.</p>	Admin
002025 - 002922	Chairman The Deputy Chairman Admin	<p>The Deputy Chairman's enquiry and the Administration's response regarding what constituted a reasonable excuse for failing to make an application for a specified instrument within time under clause 21(2)(a).</p> <p>The Administration's explanation of Schedule 7 – Section 1 (i.e. Transitionals) and its advice that private columbaria could continue their operation during the six-month grace period (counting from the enactment date of the Private Columbaria Ordinance ("the Ordinance")) or, if an application for TSOL was made, until an application for TSOL was finally disposed of or withdrawn, provided that there was no sale or letting out of any niche. Private columbarium</p>	

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		<p>operators should seek the necessary regularization as early as possible.</p> <p>The Deputy Chairman's view that publicity on the prohibition for sale and for letting out of niches by private columbaria during the grace period should be strengthened for the benefit of consumers.</p> <p>Views of the Chairman and the Deputy Chairman that a timeframe should be set for the applicants to give reasons for their late application for the issue of a specified instrument so as to deter unscrupulous operators from abusing the system for the purpose of prolonging its existence.</p> <p>The Administration's explanation of the timeframe for submission of an application for a specified instrument and its advice that under clause 21(2)(b), the Licensing Board would consider whether it was just and equitable to consider applications which were made out of time. Also, the Administration's observation that it would not be in the interest of the applicant to prolong the application process, as they were not allowed to sell or let out any new or unoccupied niches, until licences had been obtained.</p>	
002923 - 004500	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN's enquiry and the Administration's response regarding –</p> <p>(a) the consequences for private columbarium operators who had contravened clause 8 of the Bill (including the sanction) and the corresponding enforcement actions to be taken by the Administration; and</p> <p>(b) policies on land premium for a lease modification.</p> <p>Grave concerns of the Chairman and Mr Albert CHAN about whether the Ordinance would be practically enforceable if many private columbarium operators were unable to pay the land premium for their lease modifications which could be substantial. Their views that the Administration should address issues in relation to land premium for columbarium premises to facilitate members' consideration of the Bill.</p> <p>The Administration's response that to address consumers' concern about the possible</p>	

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		<p>displacement of ashes arising from the cessation of private columbaria, the Lands Department would consider exercising discretion to waive the rental/waiver fee for dated private columbaria (i.e. those which had commenced operation before 1 January 1990) that had successfully fulfilled the eligibility criteria for exemption in all respects (including no sale or letting out of niches after the Bill announcement time), except the payment of the rental/waiver fee under the land-related requirements.</p> <p>The Administration was requested to provide information on –</p> <ul style="list-style-type: none"> (a) the time allowed for private columbarium operators to apply for specified instruments; (b) the enforcement actions the relevant government departments would take under their purview against non-complaint columbaria, as provided for under the relevant legislation; (c) the land-related, planning-related and building-related requirements a private columbarium operator must meet in order to obtain a licence; and (d) policies on land premium for columbarium premises. 	Admin
004501 - 005136	Chairman Mr LEUNG Che-cheung Admin	<p>The Administration's response to Mr LEUNG Che-cheung's enquiry that private columbaria would have to cease operation if they were unsuccessful in applying for specified instruments.</p> <p>The Administration's explanation of the obligations of private columbarium operators in respect of handling ashes in accordance with the prescribed ash disposal procedures provided for under the Bill upon cessation of a columbarium operation.</p> <p>Mr LEUNG's suggestion of issuing a provisional licence to private columbarium operators who had submitted licence applications. The Administration explained TSOL which allowed the operators to continue their columbarium operation while their licence applications were being processed.</p> <p>The Administration's advice on provisions in other legislation which were similar to</p>	

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		clause 9(1)(b).	
005137 - 005857	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's enquiry and the Administration's response regarding the enforcement provisions in the Bill.</p> <p>In response to Dr WONG's enquiry about whether private columbaria in multi-storey residential buildings could continue their operation after the licensing regime had come in force, the Administration advised that whether these columbaria could continue their operation would depend on whether they were able to fulfil the host of stringent criteria for a licence or an exemption under the Bill.</p>	
005858 - 010659	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's view that the Administration should take enforcement actions against unauthorised private columbaria as early as possible.</p> <p>Ms Cyd HO's concern and the Administration's response regarding the sale of interment rights.</p> <p>The Administration's response to Ms HO's concern that dated private columbaria would still have to pay land premium if they intended to apply for a licence for operating the columbarium.</p> <p>Ms HO's view that the Administration should provide a formula for calculating land premium equitably, given that the sale of niches had taken place or would take place over a period of time. The Administration was requested to provide members with such a formula.</p>	Admin
010700 - 010836	Chairman Mr Albert CHAN Admin	Mr Albert CHAN's reiteration of his view that the issue of land premium should be addressed, having regard to the different types of operators (e.g. religious vs commercial, non-profit-making vs profit-making). Otherwise, the rigidity of land premium policies might render the Ordinance ineffective in regulating private columbaria.	
010837 - 011227	Chairman Admin	Examination of Part 4 - Division 3 clause 21(4) to (5)	
011228 - 012229	Chairman Admin	Examination of Part 4 - Division 3 clause 22(1) to (4)	
012230 - 013715	Chairman Ms Cyd HO Admin	Ms Cyd HO's view that it was inappropriate for the Bill to require private columbarium operators to, under clause 22(2), provide	

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		<p>information to the Administration under the administrative notification scheme ("Notification Scheme"), which was rolled out before the enactment of the Ordinance.</p> <p>The Administration's explanation of the objectives of the Notification Scheme and the reasons for including clause 22(2) in the Bill.</p> <p>The Administration advised that private columbarium operators were informed that participation in the Notification Scheme was on a voluntary basis. An application for a specified instrument in respect of a pre-Bill columbarium which had not participated in the Notification Scheme would be dealt with according to clause 22(9).</p> <p>Ms HO's concern that it would not be possible for private columbarium operators to take retrospective actions in order to participate in the Notification Scheme.</p> <p>The Chairman's suggestion that the term "關於" be deleted from clause 22(2)(a)(i) as the term appeared to be redundant. The Administration undertook to consider the suggestion.</p>	Admin
013716 - 013924	Chairman Mr Tony TSE Admin	Mr Tony TSE's enquiry and the Administration's response regarding inspection of information on applications for specified instruments by members of the public.	
013925 - 014402	Chairman Admin	Examination of Part 4 - Division 3 clause 22(4) to (9)	
014403 - 014724	Chairman Mr Paul TSE Admin	<p>The Chairman's enquiry and the Administration's response regarding the use of "sole and absolute discretion" in clause 22(9).</p> <p>Mr Paul TSE's concern and the Administration's response regarding whether it would be more difficult for applicants for specified instruments who had not participated in the Notification Scheme to prove to the satisfaction of the Licensing Board as far as provision of notifiable particulars was concerned.</p> <p>Mr Paul TSE's enquiry and the Administration's response regarding the policy intent of using the word "may" in clause 22(8).</p>	
014725 - 015052	Chairman Ms Cyd HO Admin	Ms Cyd HO's view that clause 22(9)(a) should be removed from the Bill.	

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		The Administration's explanation of the basis for drafting clause 22(9)(a). The Administration undertook to review the drafting of clause 22(9)(a).	Admin
015053 - 015529	Chairman Mr Paul TSE Admin	Mr Paul TSE's concern and the Administration's response regarding the underlying meaning of clause 22(8). The Administration undertook to consider revising the wording of clause 22(8).	Admin
015530 - 020148	Chairman The Deputy Chairman Ms Cyd HO Admin	Extension of meeting for 15 minutes. The Deputy Chairman's enquiry and the Administration's response regarding the number of responses to and the verification of information collected under the Notification Scheme. At Ms Cyd HO's request, the Administration undertook to review the drafting of clause 22(2).	Admin
020149 - 020220	Chairman	Date of next meeting	