

立法會
Legislative Council

LC Paper No. CB(2)2086/14-15

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the ninth meeting
held on Monday, 27 April 2015, at 10:45 am
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 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 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 CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon CHEUNG Kwok-che
Hon WONG Yuk-man
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

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

Miss Cindy CHEUK
Government Counsel
Department of Justice

Mr YU Tak-cheung
Assistant Director/New Buildings 1
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 : Mr Colin CHUI
attendance : 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(07) to (08), CB(2)305/14-15(01), CB(2)431/14-15(01) to (02), CB(2)630/14-15(01), CB(2)1063/14-15(01) and CB(2)1286/14-15(01)]

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

2. The Bills Committee requested the Administration to –

- (a) provide information on the provisions in relation to the interpretations of owner of a columbarium premises, ash interment layout and ash interment capacity in the Bill;
- (b) provide a response to members' concerns raised at previous meetings of the Bills Committee regarding breaches of Deeds of Mutual Covenant by private columbarium operators;
- (c) consider moving a Committee Stage amendment to deal with niches which had already been sold but ashes were not yet interred as at the Bill announcement time;
- (d) assess the implications of relaxing the number of sets of ash in a niche in exempted columbaria and seriously consider making revision to the Bill, having regard to the policy consideration of increasing supply;
- (e) study whether there was room to relax the number of sets of ashes in a nich for exempted columbaria;

Action

- (f) provide a response to the suggestion of restricting the extension of a temporary suspension of liability to not more than once; and
- (g) provide information on the timeframe of appropriate enforcement actions to be taken by relevant government departments against non-compliant columbaria.

II. Any other business

- 3. There being no other business, the meeting ended at 12:48 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2015

**Proceedings of the ninth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 27 April 2015, at 10:45 am
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>			
000502 - 000559	Chairman	Opening remarks	
Clause-by-clause examination			
000600 - 000910	Chairman Admin	Examination of Part 4 - Division 4 clause 23	
000911 - 001313	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's enquiry and the Administration's response regarding ash interment layout, ash interment capacity and whether a person holding a licence for operating a columbarium must hold the columbarium premises directly from the Government. The Administration was requested to provide information on the provisions relating to the interpretations of owner of a columbarium premises, ash interment layout and ash interment capacity in the Bill.</p> <p>The Administration's response to Mr WONG's enquiry that for an operator of columbarium premises (for which a land register had been kept) issued with a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")), the future Private Columbaria Licensing Board ("Licensing Board") must register a certificate of columbarium use against the premises in the Land Registry. Such information would be made available for public inspection.</p>	Admin
001314 - 001446	Chairman Mr Albert CHAN Admin	Mr Albert CHAN's enquiry about whether the word "person" in clause 23(2)(a) also meant "persons" in law. The Administration's response that under section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions in the singular included the plural and vice versa.	
001447 - 001615	Chairman Admin	Examination of Part 4 - Division 4 clause 24	
001616 - 001715	Chairman Ms Cyd HO Admin	The Administration's response to Ms Cyd HO's concern that the Administration would provide a response to members' concerns about clause 22 raised at the Bills Committee meeting held on 17 April 2015.	

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001716 - 002232	Chairman Admin	Examination of Part 4 - Division 4 clause 25	
002233 - 002620	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry and the Administration's response regarding the reasons for including in clause 25(c) measures relating to drainage and sewage as a condition the Licensing Board might consider imposing on a licence.</p> <p>Ms HO's concern about whether private columbaria which caused nuisance to residents would succeed in applying for a licence.</p> <p>Ms HO's concern and the Administration's response regarding whether residents of a building where a private columbarium was located would be consulted on an application for a licence for columbarium operation.</p> <p>The Administration's explanation that with section 4 of Schedule 3 to the Bill, affected residents would have the opportunity to make known their views to the Licensing Board. The Administration also referred members to clause 17 of the Bill which provided for considerations relevant to determination by the Licensing Board of the application. As provided for under clause 25(d), the Licensing Board might impose conditions in a licence on measures for minimising the environmental nuisance caused to the neighbourhood by the operation of the columbarium. The Administration undertook to provide a response to members' concerns raised at previous meetings of the Bills Committee regarding breaches of Deeds of Mutual Covenant by private columbarium operators.</p> <p>Ms HO's view that a notice of an application for a licence for columbarium operation should be posted at the entrance of the building concerned. The Administration explained that it would be posted at a conspicuous place outside the columbarium as provided for under section 4(1)(c) of Schedule 3 to the Bill.</p>	Admin
002621 - 002817	Chairman Admin	Examination of Part 4 - Division 4 clause 26	
002818 - 003019	Chairman Admin	Examination of Part 4 - Division 4 clause 27	
003020 - 004334	Chairman Mr James TO Admin	Mr James TO's enquiry and the Administration's response regarding the definition of "ash interment quantity" provided for in	

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		<p>clause 10.</p> <p>Mr TO's view and the Administration's response regarding removing the reference to "the number of sets of ashes interred in a niche" from the definition of "ash interment quantity".</p> <p>The Administration's advice that it would brief members later on the handling of cases where niches were already sold but ashes had not yet been interred in these niches.</p> <p>The Administration's response to Mr TO's suggestion of allowing interment of ashes of deceased persons from the same family in a niche so as to relieve the shortage of supply for niches, thereby lowering the prices of niches.</p> <p>Mr TO's indication of proposing Committee Stage amendments ("CSAs") to relax the restrictions on number of sets of ashes to be interred in a niche if the Administration did not do so.</p>	
004335 - 004927	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's enquiry and the Administration's response regarding the definition of ash interment quantity and whether policies on the allowable number of sets of ashes interred in a public niche would also be applicable to private niches.</p> <p>The Administration's explanation that a fine balance had to be struck having regard to the views of different stakeholders. Therefore, the Bill provided for stringent restrictions on ash interment quantity to help contain the problem and avoid exacerbation.</p> <p>Dr WONG's enquiry and the Administration's response regarding whether the Bill could provide different definitions of ash interment quantity for pre-Bill columbaria and non-pre-Bill columbaria.</p> <p>The Administration's advice that the number of sets of ashes permitted to be interred in a niche, if stipulated in the land document, would be one of the factors in assessing land premium for the columbarium premises concerned.</p>	
004928 - 005947	Chairman Mr James TO Admin	Mr James TO's view and the Administration's response regarding whether ash interment quantity should be limited to the number of niches already sold, regardless of whether the niches were occupied or not, for private	

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		<p>columbaria applying for exemption.</p> <p>Mr TO's view that for private columbaria intending to seek exemption, if they had signed agreements with consumers for sale of interment rights before the Bill announcement time, they should be allowed to honour the interment of the number of sets of ashes as stated in the agreements, notwithstanding their being not yet occupied (as say the dedicated persons were still alive) at that stage.</p> <p>The Administration's advice that a prudent approach had been adopted, so as to guard against abuse. Now that it had through the administrative notification scheme collected information on niches which had already been sold but ashes were not yet interred as at the Bill announcement time, the Administration would consider, in consultation with the Bills Committee, moving a CSA for dealing with this issue.</p> <p>Mr TO's view that the Administration should assess the implications of relaxing the number of sets of ashes in a niche in exempted columbaria and seriously consider making revision to the Bill, having regard to the policy considerations of increasing supply.</p> <p>The Chairman's view that in the light of the shortage of supply of niches, the Administration should study whether there was room to relax the number of sets of ashes in a niche for exempted columbaria, taking into account possible implications on stakeholders' interests.</p>	<p>Admin</p> <p>Admin</p> <p>Admin</p>
005948 - 010216	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han echoed the view that the Administration should consider relaxing the number of sets of ashes interred in a niche.</p> <p>Miss CHAN's enquiry and the Administration's response regarding when the Administration would move CSAs for addressing this issue relating to exempted columbaria.</p>	
010217 - 010326	Chairman Admin	Examination of Part 4 - Division 4 clause 28	
010327 - 010512	Chairman Admin	Examination of Part 4 - Division 4 clause 29	
010513 - 010838	Chairman Admin	Examination of Part 4 - Division 4 clause 30	

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010839 - 011500	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han's enquiry and the Administration's response regarding the validity period of a TSOL and its advice that a TSOL might not be extended more than once (for a period of no more than three years) unless exceptional circumstances existed.</p> <p>The Administration's response to Miss CHAN's enquiry that certain provisions in other Ordinances did not apply to private columbaria in respect of which a TSOL had been issued during the period the conditions imposed on the TSOL were met, as provided for under Part 10 of the Bill.</p> <p>The Administration's explanation of the intent of TSOL and its advice that private columbarium operators should have an incentive to seek regularization and comply with the requirements for a licence as early as possible, as they were not allowed to sell interment rights without a licence.</p> <p>Miss CHAN's concern that some private columbaria might abuse the validity period of TSOL and delay regularization.</p> <p>The Administration's advice that an application for TSOL could not be submitted on a stand-alone basis, but must be accompanied by an application for a licence and/or an exemption. The Licensing Board would decide on the validity period of TSOL in respect of each columbarium after considering each application, but the period could be set at no more than three years for the first time (clause 11(5)). The Licensing Board might decide to revoke the TSOL of a private columbarium if they failed to take, with reasonable expedition, all necessary steps as provided for under clause 30 of the Bill.</p>	
011501 - 011858	Chairman Dr Priscilla LEUNG Admin	<p>Dr Priscilla LEUNG's enquiry and the Administration's response regarding whether the number of complaints about nuisance caused by a private columbarium would be a factor in considering applications for TSOL. The Administration's explanation that clause 17 provided that the Licensing Board "must have regard to the public interest and may have regard to other relevant considerations" in determining applications for specified instruments.</p> <p>Dr LEUNG's view that weight should be given to substantiated complaints about nuisance</p>	

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		caused by a private columbarium in considering applications for TSOL.	
011859 - 013418	Chairman Mr Albert CHAN Dr Helena WONG Admin	<p>Mr Albert CHAN's enquiry and the Administration's response regarding the extension of TSOL provided for under clause 11(9).</p> <p>Mr CHAN's view that –</p> <p>(a) it should be spelt out in the Bill that enforcement actions would be taken against private columbaria which failed to complete the required regularization upon expiry of the validity period of TSOL; and</p> <p>(b) the Administration should draw up guidelines on when and what enforcement actions the relevant government departments should take.</p> <p>The Administration explained the transitional provisions in Schedule 7 to the Bill.</p> <p>Views of Mr Albert CHAN and Dr Helena WONG that a TSOL should only be extended once (for a period of no more than three years) under exceptional circumstances. Dr WONG's indication that she would propose CSAs in this regard if the Administration did not do so.</p> <p>The Administration undertook to –</p> <p>(a) give a response to the suggestion of restricting the extension of TSOL to not more than once; and</p> <p>(b) provide information on the timeframe of appropriate enforcement actions to be taken by relevant government departments against non-compliant columbaria.</p> <p>Dr Helena WONG's concerns and the Administration's response regarding –</p> <p>(a) monitoring of measures taken by a private columbarium operator to minimize the environmental nuisance caused to the neighbourhood by the operation of the columbarium concerned; and</p> <p>(b) deployment of additional manpower to the Food and Environmental Hygiene</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		<p>Department ("FEHD") for taking enforcement actions under the licensing regime.</p> <p>Dr WONG's suggestion and the Administration's response in relation to prescribing in the Bill a threshold for complaints against private columbaria for refusal of applications for specified instruments.</p> <p>The Administration's advice that as in some statutory licensing authorities, e.g. the Liquor Licensing Board, the Licensing Board might draw up guidelines on assessing applications for specified instruments.</p>	
013419 - 013828	Chairman Dr Priscilla LEUNG Admin	<p>Dr Priscilla LEUNG's view on the use of the term "may not" in clause 11(9). The Administration's response that "may not" in clause 11(9) had the same legal effect as "must not" or "shall not".</p> <p>Dr LEUNG's view that the exceptional circumstances, referred to in clause 11(9), under which a TSOL might be further extended should be clearly spelt out in the Bill, and guidelines on exercising discretion for granting an extension for a TSOL should be drawn up.</p> <p>Dr LEUNG's view and the Administration's response regarding the need to take account of substantiated complaints in considering applications for TSOL.</p>	
013829 - 014345	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han's enquiry and the Administration's response regarding the basis of setting the validity period and extension period of a TSOL.</p> <p>Miss CHAN's view that substantiated complaints about nuisance caused to the neighbourhood by the operation of a columbarium should be taken into account in considering the columbarium's application for a TSOL. Her concern that granting exemptions might exacerbate conflicts between residents and private columbarium operators.</p> <p>The Chairman's view that an extension of a TSOL should only be allowed when the regularization could not be completed within the validity period of TSOL. His view that private columbaria which were located in private multi-storey buildings that were not eligible for</p>	

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		seeking exemption status should be eradicated.	
014346 - 015305	Chairman Mr LEUNG Kwok-hung Admin	<p>Mr LEUNG Kwok-hung's views that –</p> <ul style="list-style-type: none"> (a) all private columbarium operators should be required to contribute to a fund for dealing with the disposal of ashes interred in non-compliant columbaria against which enforcement actions were taken; (b) the extension period of a TSOL should be changed from three years to one year each for three times instead to press private columbarium operators to seek regularization expeditiously; (c) the discretion for allowing an extension of a TSOL should be limited; and (d) the Bill should provide for the protection of interest of consumers and residents who were affected by the columbarium operation in private buildings. <p>The Administration's reiteration of the objectives of the licensing scheme and the intent of a TSOL.</p>	
015306 - 015714	Chairman Dr Priscilla LEUNG Admin	<p>Dr Priscilla LEUNG's view that the Administration should formulate policies and consider setting up a fund to assist consumers in dealing with ash disposal problems in the event of cessation of a columbarium operation.</p> <p>The Administration's advice that –</p> <ul style="list-style-type: none"> (a) the Bill contained provisions for protection of consumers' interest (Schedule 4) and proper handling of ashes by columbarium operators (Part 7 and Schedule 5); and (b) it had provided its views on setting up a compensation fund in its response to the Consumer Council's submission (LC Paper No. CB(2)1063/14-15(01)). 	
015715 - 020526	Chairman Mr LEUNG Kwok-hung Dr Priscilla LEUNG Admin	<p>Mr LEUNG Kwok-hung's enquiry and the Administration's response regarding the obligation of columbarium operators to properly dispose of ashes and their liabilities in the event of non-compliance.</p> <p>Mr LEUNG's concern and the Administration's response regarding whether the discretion</p>	

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		<p>provided for under the Bill would provide an excuse for non-compliance and whether consumers' interest could be safeguarded.</p> <p>The Administration's explanation on protection of consumer interest and the ash disposal procedures as provided for under the Bill.</p> <p>Strong views of Dr Priscilla LEUNG and Mr LEUNG Kwok-hung that FEHD should provide storage for ashes interred in the private columbaria in the event that the columbarium operators concerned failed to comply with the ash disposal requirements prescribed in the Bill.</p>	
020527 - 020603	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
9 September 2015