

立法會
Legislative Council

LC Paper No. CB(2)2087/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the tenth meeting
held on Tuesday, 12 May 2015, at 4:45 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
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 WU Chi-wai, MH
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Helena WONG Pik-wan
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon CHEUNG Kwok-che
Hon WONG Yuk-man
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, 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

Ms Phyllis KO
Senior Assistant Law Draftsman (II)1
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 YEUNG Chun-hoi
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr YU Tak-cheung
Assistant Director/New Buildings 1
Buildings 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, 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) consider providing more clearly in the Bill on whether a holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) in respect of a private columbarium ("instrument holder") had to apply for transfer of the specified instrument when a proprietor, partner or director was changed;
- (b) consider including a provision in the Bill to require instrument holders to make available to the public information on changes in proprietorship, partnership or directorship;
- (c) reflect in the relevant provisions in the Bill in relation to an instrument holder that was a body corporate;

Action

- (d) provide information on whether a licence would be granted if a partner in the partnership was a body corporate and whether unincorporated associations, e.g. charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), were covered and if so how the applicable circumstances were to be provided for under clause 33(2);
- (e) review the provisions of clauses 33(3) and 36(2);
- (f) consider providing in clause 35 a provision which was similar to clause 34(3);
- (g) seriously consider spelling out in the Bill what constituted "a change occurs that materially affects the accuracy of the information" referred to in clause 36(1)(b);
- (h) consider including in the Bill the requirement for publication of notices of applications for the issue of exemption and TSOL, applications for the renewal of licences and exemption, applications for the extension of TSOL and applications for transfer of specified instruments and variation of conditions of specified instruments;
- (i) consider requiring the future Private Columbaria Licensing Board ("Licensing Board") to inform the Land Registry of the latest position of specified instruments;
- (j) consider setting a timeframe for issuing a certificate of columbarium use by the Licensing Board;
- (k) consider replacing "section 8" by "section 9" in clause 44(2) ;
- (l) provide information on alterations or additions which would be considered as a material deviation from the approved plans in respect of the columbaria concerned;
- (m) consider replacing "顯著偏離" by "關鍵偏離" in the Chinese text of clause 45;
- (n) provide information on the provisions in other legislation which were similar to clause 47;

Action

- (o) provide information on whether clause 47(1) would be applicable to columbarium premises with cockroach problems;
- (p) provide information on whether the penalties under the relevant provisions in the Public Health and Municipal Services Ordinance (Cap. 132) were equivalent to those provided under clause 47(2); and
- (q) consider stating expressly in the Bill situations under which a columbarium would be regarded as not complying with the requirements under clause 47(1).

II. Any other business

3. There being no other business, the meeting ended at 6:46 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2015

**Proceedings of the tenth meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 12 May 2015, at 4:45 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>			
000200 - 000330	Chairman	Opening remarks	
Clause-by-clause examination			
000331 - 000425	Chairman	Examination of Part 4 - Division 4 clause 31	
000426 - 001216	Chairman ALA6 Admin	<p>Examination of Part 4 - Division 5 clause 32</p> <p>ALA6's enquiry and the Administration's response regarding circumstances under which the future Private Columbaria Licensing Board ("Licensing Board") would approve applications for transfer of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")).</p> <p>ALA6's enquiry and the Administration's response regarding whether clause 32(5)(a) also covered an authorization under a licence to sell interment rights.</p>	
001217 - 001910	Chairman Mr Tony TSE Admin	<p>Mr Tony TSE's enquiry and the Administration's response regarding whether an application for transfer of the specified instrument would be required when the proprietor, partner or director of a private columbarium was changed. The Administration's advice that an application for transfer of the specified instrument would be required for a change of the licensee, exemptee or holder of TSOL ("instrument holder"). If the specified instrument was held by a company, information on a change of directors of the company could be ascertained from the Registrar of Companies.</p> <p>Mr TSE's concern that a proprietor, partner or director of a private columbarium who was named as the instrument holder and was not aware of the requirement of seeking approval from the Licensing Board on the transfer of instrument for a change of instrument holder might inadvertently commit an offence. His view that a mechanism should be put in place to inform proprietors, partners or directors of private columbaria that it was a requirement under the Private Columbaria Ordinance to obtain the Licensing Board's approval of transfer</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>of specified instruments.</p> <p>The Chairman's enquiry and the Administration's response regarding the meaning of instrument holder.</p> <p>The Chairman's view that the Administration should consider providing more clearly in the Bill on whether an instrument holder had to apply for transfer of the specified instrument when a proprietor, a partner or a director was changed. The Administration undertook to consider the suggestion.</p>	Admin
001911 - 002123	Chairman Mr LEUNG Kwok-hung Admin	Mr LEUNG Kwok-hung's view that a provision should be included in the Bill to require instrument holders to make available to the public information on changes of their proprietors, partners or directors, e.g. by notifying the Licensing Board. The Administration undertook to give its response in the context of responding to the Chairman's suggestion above.	Admin
002124 - 003432	Chairman ALA6 Admin	<p>Examination of Part 4 - Division 5 clause 33</p> <p>ALA6's enquiry and the Administration's response regarding the reason(s) for using the term "company" instead of the term "body corporate" in clause 33(2)(f) although the term "body corporate" was used in section 2 of Schedule 3 (i.e. provision concerning who may make an application).</p> <p>ALA6's remark that "body corporate" had a wider coverage than "company".</p> <p>ALA6's enquiry and the Administration's response regarding whether clause 33(2)(f) was applicable to a non-Hong Kong company. The Administration's response that the intention was to cover all possible scenarios, including Hong Kong companies and non-Hong Kong companies.</p> <p>The Chairman's view that as it was stipulated in section 2 of Schedule 3 that a body corporate might make an application for a specified instrument, the Administration should reflect in the relevant provisions in the Bill in relation to an instrument holder that was a body corporate. The Administration undertook to consider the suggestion.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
003433 - 004308	Chairman ALA6 Admin	<p>ALA6's enquiry and the Administration's response regarding whether clause 33(2)(g) would become inapplicable if –</p> <p>(a) a body corporate was a partner in the partnership being the instrument holder; and</p> <p>(b) the instrument holder was an unincorporated association.</p> <p>The Administration's explanation that clause 33(1) covered all types of instrument holders and clause 33(2) stipulated the circumstances under which the Licensing Board would consider exercising the powers under clause 33(1). Clause 33(2)(f) would apply when an instrument holder was a company whilst clause 33(2)(g) would apply to instrument holders who were natural persons or partners in a partnership.</p> <p>The Administration undertook to provide information on whether a licence would be granted if a partner in the partnership was a body corporate and whether unincorporated associations, e.g. charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), were covered and if so how the applicable circumstances were to be provided for under clause 33(2).</p>	Admin
004309 - 004622	Chairman Mr Tony TSE Admin	<p>The Administration's response to the Chairman's enquiry that "the person" to be notified by the Licensing Board under clause 33(3) referred to the instrument holder.</p> <p>Mr Tony TSE's concern that the Licensing Board would not be able to execute its duties stipulated in clause 33(3) in relation to clause 33(2)(g)(i), as it would not be possible for the Licensing Board to notify an instrument holder who had passed away of its decision.</p> <p>The Administration undertook to review the provision of clause 33(3).</p>	Admin
004623 - 004817	Chairman Admin	Examination of Part 4 - Division 5 clause 34	
004818 - 005158	Chairman ALA6 Admin	<p>Examination of Part 4 - Division 5 clause 35</p> <p>ALA6's enquiry and the Administration's response regarding the reasons for not including in clause 35 a provision which was similar to</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>clause 34(3), i.e. requiring the Licensing Board to notify applicants of its decision to suspend the operation of the decision made under clause 33(1).</p> <p>The Administration undertook to consider the suggestion and give its response.</p>	Admin
005159 - 005821	Chairman Admin	<p>Examination of Part 4 - Division 5 clause 36</p> <p>The Chairman's concern that if a change mentioned in clause 36(1)(b) was, as stipulated in clause 36(2), not limited to a change of the proprietor, partner or director of the applicant for a specified instrument, it might give rise to different interpretations as to what constituted a change that materially affected the accuracy of the information provided in connection with the applications for specified instruments ("material changes"). Clarity about the applicable scope of clause 36 was important given the penalty provision stipulated in clause 36(4) which included imprisonment.</p> <p>The Administration's explanation of the intention underlying clause 36(2) and its undertaking to review the provision of clause 36(2).</p>	Admin
005822 - 010130	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry and the Administration's response regarding whether a significant reduction in the number of niches in a private columbarium would be regarded as material changes.</p> <p>Ms HO's concern that applicants for specified instruments might not be able to notify the Licensing Board of the change within 14 days as provided for under clause 36(1), in the event of reduction of niches by a large number in their columbaria.</p> <p>The Administration's response that it was in the interest of the applicants for specified instruments to notify the Licensing Board expeditiously.</p>	
010131 - 010415	Chairman Mr Tony TSE Admin	Views of the Chairman and Mr Tony TSE that as a person who contravened clause 36(1) or clause 36(3) was liable on conviction to imprisonment, the Administration should seriously consider spelling out in the Bill what constituted "a change occurs that materially affects the accuracy of the information" referred to in clause 36(1)(b). The Administration	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		undertook to consider the suggestion.	
010416 - 011546	Chairman ALA6 The Deputy Chairman Admin	<p>Examination of Part 4 - Division 5 clause 37 and Schedule 3</p> <p>ALA6's enquiry and the Administration's response regarding the reasons for excluding from section 4 of Schedule 3 the publication of notices of applications for the issue of exemption and TSOL, applications for the renewal of licences and exemption, applications for the extension of TSOL and applications for the transfer of specified instruments and variation of conditions of specified instruments.</p> <p>The Chairman appreciated the rationale behind the Administration's proposed arrangements, which were considered acceptable. The Deputy Chairman's suggestion that publication of notices of the aforesaid applications (i.e. those other than licence applications) should be considered.</p> <p>The Administration's response to the Chairman's enquiry regarding publishing notices of licence applications in newspapers.</p>	Admin
011547 - 013127	Chairman Mr Tony TSE Admin	<p>Examination of Part 4 - Division 6 clauses 38 and 39</p> <p>Mr Tony TSE's enquiry and the Administration's response regarding how the Land Registry would be informed of the revocation or suspension of a specified instrument if the instrument holder had passed away. The Administration's elaboration of clause 68 (i.e. certificate of cessation of columbarium use), Part 7 (i.e. ash disposal and cessation of columbaria) and Schedule 5 (i.e. occupation order and ash disposal procedures).</p> <p>As it might take years to deal with succession of the deceased's estates, Mr TSE's concern that changes of the status of specified instruments might not be reflected to the Land Registry in a timely manner.</p> <p>Mr TSE's suggestion that the Licensing Board should consider informing the Land Registry of the latest position of specified instruments.</p> <p>The Chairman's view that a timeframe should be set for issuing a certificate of columbarium use by the Licensing Board.</p>	

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		The Administration undertook to consider the suggestions.	Admin
013128 - 013205	Chairman Deputy Chairman Admin	The Deputy Chairman's enquiry and the Administration's response regarding whether the Licensing Board would provide a suitable venue for inspection of the register of private columbaria by the general public.	
013206 - 013635	Chairman ALA6 Admin	Examination of Part 5 - Division 2 clause 44 ALA6's remark that the offence referred to in clause 44(2) was provided for in "section 9" instead of "section 8". The Administration undertook to consider making the revision as appropriate.	Admin
013636 - 013845	Chairman Admin	Examination of Part 5 - Division 2 clause 45 The Chairman's enquiry and the Administration's response regarding alterations or additions to columbarium premises that would be considered as material deviation from the approved plans in respect of the columbarium concerned.	
013846 - 013409	Chairman Admin	Examination of Part 5 - Division 2 clause 46	
013410 - 014457	Chairman Dr Priscilla LEUNG Admin	Dr Priscilla LEUNG's concern and the Administration's explanation of the restriction of the number of containers of ashes kept in domestic premises provided under clause 5.	
014458 - 015208	Chairman Deputy Chairman Admin	The Deputy Chairman's view that it was important to be specific about what constituted "material deviation" referred to in clause 45. The Deputy Chairman's enquiry and the Administration's response regarding what alterations or additions would result in material deviation from the approved plans in respect of the columbaria concerned. In response to the Chairman's enquiry, the Administration provided examples of alterations or additions which would result in a material deviation. The Administration's advice that it would draw on the experience of other licensing regimes, e.g. restaurant licensing, and provide members with information on alterations or additions which would be considered as a material deviation.	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		The Deputy Chairman's view that members should revisit the issue after the Administration had provided its response.	
015209 - 015248	Chairman Dr Priscilla LEUNG Admin	Dr Priscilla LEUNG's view that "關鍵偏離" would better reflect the meaning of "material deviation" referred to in the English text of clause 45. Her suggestion that the Administration should so revise the Chinese text of clause 45. The Administration undertook to consider the suggestion.	Admin
015249 - 015431	Chairman ALA6 Admin	<p>Examination of Part 5 - Division 2 clause 47</p> <p>ALA6's view and the Administration's response regarding spelling out the meaning of "clean" and "in good repair" in clause 47(1).</p> <p>In response to ALA6's enquiry about the policy reasons for imposing criminal liability on a person who contravened clause 47(1), the Administration advised that there was similar provision in other legislation. The Administration would provide information in this regard.</p>	Admin
015432 - 015928	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's enquiry and the Administration's response regarding whether a person would be regarded as having contravened clause 47(1) if there were pest (e.g. mosquitoes, cockroaches, etc.) or rodent problems in the columbarium premises of that person.</p> <p>The Administration's advice that columbarium premises with an environment allowing the transmission of mosquito-borne diseases were not considered "clean".</p> <p>The Administration was requested to provide information on –</p> <p>(a) whether clause 47(1) would be applicable to columbarium premises with cockroach problems; and</p> <p>(b) whether the penalties under the relevant provisions in the Public Health and Municipal Services Ordinance (Cap. 132) were equivalent to those provided under clause 47(2).</p> <p>The Deputy Chairman's view that the Administration should state expressly in the Bill situations under which a columbarium would be</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		regarded as not complying with the requirements set out in clause 47(1). The Administration undertook to revert with its response.	Admin
015929 - 015956	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
9 September 2015