

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the fourteenth meeting
held on Monday, 6 July 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, GBS, 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 LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon James TO Kun-sun
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, 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 (03), CB(2)630/14-15(01), CB(2)825/14-15(01), CB(2)878/14-15(01), CB(2)1063/14-15(01), CB(2)1286/14-15(01), CB(2)1535/14-15(01) and CB(2)1813/14-15(01)]

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

2. The Bills Committee requested the Administration to –

- (a) review the use of the English term "rely on" and the Chinese term "倚據" in clause 72(3)(a) and (b);
- (b) address the provision of guidelines to illustrate the circumstances under which a person might or would be considered to have a direct or indirect interest in an appeal for the purposes of clause 73(3) to (6);
- (c) include in clause 73(7) that a panel member selected by the Secretary for Food and Health to act as presiding officer under clause 73(5) might continue to hear the appeal if his or her term of appointment expired during the hearing of the appeal;

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- (d) provide reasons for not to include provisions on award of costs for appeals in the Bill;
- (e) review the Chinese text of clause 74(4)(a) and revise clause 74(11) to better reflect the policy intent;
- (f) regarding clause 74(7), consider exploring whether there was a more suitable Chinese equivalent to "findings" and replacing "裁斷" by "判斷";
- (g) amend clause 74(14) to make clear the notification to be served by the Private Columbaria Appeal Board ("Appeal Board") on the parties to an appeal under clause 74(13);
- (h) provide Legislative Council Members with a copy of the English-Chinese Glossary of Legal Terms published by the Department of Justice

(Post-meeting note: The Administration advises that the information could be accessed via <http://www.legislation.gov.hk/eng/glossary/homeglos.htm>);

- (i) provide information on how other statutory appeal boards handled materials in relation to appeals;
- (j) review clause 75(1) and (2) to take into account Members' views that the Appeal Board should allow an appellant, on reasonable ground, to produce materials that had not been made available to the Licensing Board before to support the appellant's case;
- (k) consider revising clause 75(1)(e) if it was not intended to prohibit a person from publishing or disclosing all materials received by the Appeal Board;
- (l) regarding clause 76, consider –
 - (i) improving the readability of the Chinese text;
 - (ii) replacing "for the purposes of an appeal" by "in relation to an appeal"; and
 - (iii) replacing "為上訴的目的" by "就上訴而言".

Action

- (m) regarding clause 78(5)(b), consider replacing "證明情況相反" by "證明相反情況"; and
- (n) consider stipulating that those rules of the Appeal Board which would give rise to criminal liability in the event of non-compliance were subsidiary legislation.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on Monday, 20 July 2015 at 10:45 am.

III. Any other business

- 4. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 2
Legislative Council Secretariat
30 September 2015

**Proceedings of the fourteenth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 6 July 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>			
000602 - 000732	Chairman	Opening remarks	
Clause-by-clause examination			
000733 - 001224	Chairman Admin	Examination of Part 8 – clause 72(2)	
001225 - 001857	Chairman Mr Christopher CHUNG Admin	<p>The Chairman's enquiry and the Administration's response regarding the reasons for using "倚據" instead of "依據" in clause 72(3)(a) and (b).</p> <p>The Administration explained that the term "倚據" was appropriate and was used consistently in legislation as the equivalent for the term "rely on".</p> <p>Mr Christopher CHUNG's view that "倚據" was not standardized Chinese and should be replaced by "倚賴". The Administration's explanation that "倚據" had the meaning of "有所根據". It was a common term which was also used in other legislation such as the Arbitration (Amendment) Bill 2013. The Administration expressed its reservation about using a term other than "倚據" in the Private Columbaria Bill as the consistency of terminologies in the statute book should be preserved.</p> <p>The Chairman's view that "依據" instead of "倚據" should be adopted and the Administration should review the use of the English term "rely on" and the Chinese term "倚據" in clause 72(3)(a) and (b). The Administration undertook to review those terms taking into account Members' views.</p> <p>Mr Christopher CHUNG's enquiry and the Administration's response regarding the provisions governing situations where the Chairperson, Deputy Chairperson and members of the Private Columbaria Appeal Board ("Appeal Board") had a direct or indirect interest in an appeal (clause 73).</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
001858 - 002248	Chairman ALA6 Admin	Examination of Part 8 – clause 73 The Administration's response to ALA6's enquiry that– (a) guidelines would be provided to illustrate the circumstances under which a person might or would be considered to have a direct or indirect interest in an appeal for the purposes of clause 73(3) to (6); and (b) the Administration would include in clause 73(7) that a panel member selected by the Secretary for Food and Health to act as presiding officer at an appeal under clause 73(5) might continue to hear the appeal if his or her term of appointment expired during the hearing of the appeal.	Admin
002249 - 002908	Chairman Mr Albert CHAN Mr Tommy CHEUNG Admin	The Administration's response to Mr Albert CHAN's enquiry that after careful consideration and assessment, the Administration had decided not to include provisions on award of costs for appeals in the Bill. Mr Albert CHAN's concern that an appeal might incur substantial legal costs, especially in the case of judicial review. In response to the enquiries of Mr Albert CHAN and Mr Tommy CHEUNG regarding the consequences of lacking a provision on award of costs, the Administration advised that both the future Private Columbaria Licensing Board ("Licensing Board") and the appellant could not claim for costs incurred in an appeal if award of costs was not provided for in the Bill. It undertook to provide reasons for not to include provisions on award of costs for appeals in the Bill.	Admin
002909 - 003199	Chairman Ms Cyd HO Admin	Ms Cyd HO's enquiry and the Administration's response regarding the size of a panel and the mechanism for selecting panel members.	
003200 - 003304	Chairman Mr Albert CHAN Admin	Given the complexity and technicality of land-related, building-related and planning-related requirements for columbaria, Mr Albert CHAN's view that an appeal might involve a lot of legal arguments. The Bills Committee should discuss the provision of award of costs in the Bill again when it received relevant information from the Administration.	

Time marker	Speaker(s)	Subject(s)	Action required
003305 - 003635	Chairman Admin	Examination of Part 8 – clause 74(1) to (5) The Chairman's enquiry and the Administration's response regarding whether each party to an appeal might authorize a lawyer to represent the party and make oral representations during the hearings.	
003636 - 003935	Chairman Mr WONG Yuk-man Admin	Mr WONG Yuk-man's enquiry and the Administration's response regarding the meaning of "着手" in clause 74(4)(a). Mr WONG's view that "着手" was redundant. The Administration undertook to review whether another Chinese term might be used for "proceed to" in clause 74(4)(a).	Admin
003936 - 004558	Chairman Admin	Examination of Part 8 – clause 74(6) to (14) The Chairman's enquiry and the Administration's response regarding the meaning of "裁斷" in clause 74(7).	
004559 - 004904	Chairman Ms Cyd HO Mr WONG Yuk-man Admin	Ms Cyd HO's view that "裁斷" connoted that a final decision had been made, which was not the case in clause 74(7), and did not bear the same meaning of its corresponding English term "findings". The Administration explained that the term adopted in the clause would not give the meaning that the decisions were final. Mr WONG Yuk-man's enquiry and the Administration's response regarding the reasons for using "裁斷" instead of "裁決" in clause 74(7).	
004905 - 005051	Chairman Mr Paul TSE Admin	Mr Paul TSE's view on the meaning of "findings" and his suggestion that "就事實的裁定" might better reflect the situation in clause 74(7). The Administration undertook to explore whether there was a more suitable Chinese equivalent to "findings" in clause 74(7).	Admin
005052 - 005305	Chairman Dr Priscilla LEUNG Ms Cyd HO Admin	Dr Priscilla LEUNG's view that "裁斷" had the meaning of "裁決" and would cause confusion. Her suggestion that the Administration should check the Chinese rendition of "findings" in other legislation for consistency. She suggested replacing "裁斷" by "判斷" in clause 74(7). The Administration undertook to consider the suggestion.	Admin

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		<p>Views of the Chairman and Mr TSE that the appellant should be allowed to request the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made and the Appeal Board should have the discretion to do so if an appellant could provide sound reasons.</p> <p>The Administrations explained the rationale to avoid abuse of process and noted Members' views to allow the Appeal Board to have discretion to admit the aforesaid material if there were good reasons. The Administration's advice that it would make reference to how other statutory appeal boards handled materials in relation to appeals and provide Members with relevant information.</p>	Admin
010448 - 012025	Chairman Mr WONG Yuk-man Mr LEUNG Kwok-hung Admin	<p>Mr WONG Yuk-man's enquiry and the Administration's response regarding the reason(s) for using a bracket in the Chinese text of clause 75(1)(a) but not in its corresponding English text.</p> <p>Mr WONG's view that the presentation of the Chinese text of clause 75(1)(a), by using "不論" therein, was difficult to understand and should be revised. The Administration explained that the existing Chinese text of clause 75(1)(a) had suitably reflected the policy intent and corresponded to the English text.</p> <p>Mr LEUNG Kwok-hung's view that the Appeal Board was granted too much power to decide what materials might be received and considered in the hearing of an appeal.</p> <p>The Administration undertook to review clause 75(1) and (2) to take into account Members' view that the Appeal Board should allow an appellant, on reasonable ground, to produce materials that had not been made available to the Licensing Board before to support the appellant's case.</p>	Admin
012026 - 012443	Chairman Mr WONG Kwok-hing Admin	<p>The Administration's response to Mr WONG Kwok-hing's suggestion of combining subclause (1)(c) with (1)(d) in clause 75. The Administration explained that the two subclauses should be kept separate, as they concerned empowering the Appeal Board to do different things, with subclause (1)(c) focusing on administering oaths and affirmations and subclause (1)(d) focusing on requiring evidence</p>	

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		<p>(with elaboration that such evidence was given on oath or affirmation).</p> <p>Mr WONG's view that clause 75(1)(e), which prohibited a person from publishing or otherwise disclosing any material received by the Appeal Board, was too harsh.</p> <p>The Administration's response to Mr WONG's enquiry regarding whether a person could disclose certain information, e.g. the subject heading, contained in the material received by the Appeal Board. The Administration's advice that the Appeal Board would specify in the order which material or part thereof should not be disclosed. It was common practice that the body making an order would avail an opportunity for the relevant parties to be heard.</p> <p>Mr WONG's suggestion that clause 75(1)(e) should be revised if it was not intended to prohibit a person from publishing or disclosing all materials received by the Appeal Board. The Administration undertook to consider the suggestion.</p>	Admin
012444 - 012748	Chairman Mr Paul TSE	Mr Paul TSE's views on Mr WONG Kwok-hing's suggestion of combining subclause (1)(c) with (1)(d) in clause 75 and Mr WONG Yuk-man's view on the Chinese text of clause 75(1)(a). His expression of support for the existing Chinese text of clause 75(1)(a).	
012749 - 012851	Chairman Mr WONG Yuk-man	Mr WONG Yuk-man's reiteration of his view on the Chinese text of clause 75(1)(a), but respecting the collective view on adopting the Chinese text as it is.	
012852 - 012946	Chairman Admin	Examination of Part 8 – clause 75(3) and clause 76	
012947 - 013705	Chairman Mr WONG Yuk-man Miss CHAN Yuen-han Admin	<p>Mr WONG Yuk-man's view that the meaning of the Chinese text of clause 76 was difficult to comprehend. The Administration explained the basic principles for drafting provisions in Chinese.</p> <p>Miss CHAN Yuen-han's view that the Administration should improve the Chinese text of clause 76 to make it easier to understand.</p> <p>The Administration undertook to consider improving the readability of the Chinese text of clause 76.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
013706 - 014113	Chairman Mr Paul TSE Admin	Mr Paul TSE's comments on the drafting of clause 76. The Administration's explanation of the reasons for using the expression "為上訴的目的" in clause 76. The Administration's response to Mr TSE's enquiry that depending on the context, different Chinese terms would be used for "for the purposes of".	
014114 - 014401	Chairman Mr LEUNG Kwok-hung Admin	Mr LEUNG Kwok-hung's view on the Chinese text of clause 76. Mr LEUNG's enquiry and the Administration's response regarding the meaning of the Chinese expression "等同於假使上訴委員會的法律程序是在法院進行的法律程序的話" in clause 76. Mr LEUNG said that he would provide the Administration with his view on the drafting of the Chinese text of clause 76 in writing.	
014402 - 014817	Chairman Admin	Examination of Part 8 – clauses 77 to 78	
014818 - 014934	Chairman Mr Paul TSE Admin	The Administration's response to the Chairman's enquiry that the fine at level 5 was currently set at \$50,000. Mr Paul TSE's suggestion of – (a) regarding clause 76, replacing "for the purposes of an appeal" by "in relation to an appeal" and replacing "為上訴的目的" by "就上訴而言"; and (b) regarding clause 78(5)(b), replacing "證明情況相反" by "證明相反情況". The Administration undertook to consider the suggestion.	Admin
014935 - 015022	Chairman Admin	Examination of Part 8 – clause 79	
015023 - 015110	Chairman Miss CHAN Yuen-han Admin	In response to Miss CHAN Yuen-han's enquiry, the Administration pointed out that chairpersons of other statutory appeal boards, e.g. those formed under the Telecommunications Ordinance (Cap. 106) and the Public Health and Municipal Services Ordinance (Cap. 132), could make rules and determine practice or procedure.	

Time marker	Speaker(s)	Subject(s)	Action required
015111 - 015350	Chairman ALA6 Admin	ALA6's enquiry and the Administration's response regarding the justification for stipulating that rules made under clause 79(1) were not subsidiary legislation.	
015351 - 015710	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's concern that clause 78 provided for offences relating to appeals. It might give rise to concerns if the rules made under clause 79(1) were not subsidiary legislation as provided for under clause 79(2). The rules made thereunder relating to appeals were not required to go through the negative vetting process, but nonetheless a person might be held criminally liable if he or she failed to comply with certain rules of the Appeal Board.</p> <p>The Administration undertook to consider differentiating rules of the Appeal Board, so that –</p> <ul style="list-style-type: none"> (a) such rules that would give rise to criminal liability in the event of non-compliance would be subsidiary legislation; and (b) for other rules (e.g. dealing with administrative procedures), these would not be subsidiary legislation. Such flexibility was necessary to enhance the responsiveness of the Appeal Board in a timely manner in face of changing circumstances. <p>The Chairman and Mr TSE considered the Administration's proposal appropriate as it could strike a balance between handling rules which imposed criminal liability for non-compliance with care and providing the Chairperson of the Appeal Board with the flexibility to make rules.</p>	Admin
015711 - 015809	Chairman Admin	Examination of Part 8 – clause 80	
015810 - 015838	Chairman	Date of next meeting	