

立法會
Legislative Council

LC Paper No. CB(2)2181/14-15

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seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the fifteenth meeting
held on Monday, 20 July 2015, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
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 Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon LEE Cheuk-yan
Hon CHAN Hak-kan, JP
Hon Alan LEONG Kah-kit, SC
Hon CHAN Han-pan, JP
Dr Hon Helena WONG Pik-wan
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

Ms Viola YIM
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr YU Tak-cheung
Assistant Director/New Buildings 1
Buildings Department

Ms Trevina KUNG
Chief Estate Surveyor (Estate Management Section)
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), CB(2)1813/14-15(01) and CB(2)1905/14-15(01)]

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

2. The Bills Committee requested the Administration to –

- (a) give a response to the suggestion of changing the heading of clause 40 from "Interpretation of Part 5" to "Interpretation of Part 5 and Schedule 4";
- (b) explore if there was any way to enhance consumer protection for agreements for sale of interment rights ("agreements") which were signed before the enactment of the Private Columbaria Ordinance;
- (c) review the requirements set out in clauses 41(3) and 42 and Schedule 4;

Action

- (d) consider amending clause 41(2)(b) to the effect that columbarium premises that were occupied under other instrument were also covered;
- (e) seek members' views on how issues relating to niches which had been sold but not yet occupied should be handled, taking into account the possible impact on consumers and other relevant factors;
- (f) consider pegging clause 41(3)(j) to clause 91;
- (g) review whether it was necessary to set out all the information required under section 1(b) of Schedule 4 in agreements;
- (h) consider providing expressly in section 1(b)(i), (ii) and (iv) of Schedule 4 the particulars required in order to assist the sellers in complying with these requirements; and
- (i) review section 1(d) of Schedule 4.

II. Any other business

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

Council Business Division 2
Legislative Council Secretariat
5 October 2015

**Proceedings of the fifteenth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 20 July 2015, at 10:45 am
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>			
000644 - 000823	Chairman	Opening remarks	
000824 - 000903	Admin	<p>In response to Members' request for a copy of the English-Chinese Glossary of Legal Terms ("Glossary") published by the Department of Justice to all Legislative Council Members at the Bills Committee meeting on 6 July 2015, the Administration exhibited a copy of the Glossary.</p> <p><i>(Post-meeting note: The Administration advised that the information could be accessed via http://www.legislation.gov.hk/eng/glossary/hom eglos.htm)</i></p>	
Clause-by-clause examination			
000904 - 000955	Chairman Admin	<p>Examination of Part 5 – clause 40</p> <p>The Administration's advice that as suggested by ALA6 in her letter to the Administration on 26 June 2015 (LC Paper No. CB(2)1813/14-15(01)), it would give a response to the suggestion relating to the heading of clause 40 (Interpretation of Part 5).</p>	Admin
000956 - 001829	Chairman Admin Mr Albert CHAN ALA6	<p>Examination of Part 5 – clause 41(1)</p> <p>The Administration's response to Mr Albert CHAN's enquiry that a consumer's interment right was covered by the Private Columbaria Bill ("the Bill"), even if his or her agreement for sale of an interment right ("agreement") signed with a private columbarium operator ("operator") only concerned management of ashes kept in the columbarium concerned. The Administration's explanation of the interpretation of "interment right" (i.e. clause 2) and the meaning of "sale of an interment right" (i.e. clause 3). It also added that an agreement must set out the right or interest that the interment right comprised (section 2(b)(ii) of Schedule 4).</p> <p>Mr CHAN's enquiry and ALA6's response regarding the meaning of interment right.</p> <p>Mr CHAN's concern about whether the proposed</p>	

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		<p>penalties under the Bill in relation to non-compliance of requirements, e.g. land-related requirements, for operating columbaria had sufficient deterrent effect.</p> <p>Mr CHAN's enquiry and the Administration response regarding who would be charged for an offence under the Bill. The Administration's explanation of clause 9(1) and (2) (i.e. offences relating to restriction on operating columbarium).</p>	
001830 - 002345	Chairman Mr WONG Yuk-man Admin	<p>Mr WONG Yuk-man's enquiry and the Administration's response regarding the drafting of the Chinese text of clause 41(2)(a) and, in particular, the use of the punctuation "、" therein.</p> <p>Mr WONG's enquiry and the Administration's response regarding the reasons for using a bracket in the Chinese text of clause 41(2)(c).</p> <p>Mr WONG's view that the syntax of the Chinese text of clause 41(2), with the phrase "則賣方不得針對買方強制執行該協議" appearing at the end, was different from that of the English text. The Administration explained the drafting of the Chinese text of clause 41(2).</p>	
002346 - 003246	Chairman Admin	Examination of Part 5 – clause 41(2) to (4)	
003247 - 004010	Chairman Mr James TO Admin	<p>Mr James TO's enquiry and the Administration's response regarding whether the Bill covered containers of ashes which were not placed at fixed locations within the columbarium premises. The Administration's explanation of the interpretation of "interment right" in clause 2.</p> <p>Mr TO's enquiry and the Administration's response regarding whether the locations of niches should be specified in an agreement.</p> <p>Mr TO's view that, to protect consumers, operators should be required to make their best efforts to comply with the licence requirements in operating their columbaria in order to obtain renewal of licences.</p> <p>The Administration's advice that the Bill had provided for ash disposal procedures, transfer of the specified instruments and penalties for offences.</p> <p>Mr TO's enquiry and the Administration's</p>	

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		<p>response regarding whether the Bill had provided for the protection of purchasers of interment rights ("purchasers") in case relocation of niches was needed.</p> <p>Mr TO's view that information such as locations of niches, operators' undertaking to respect the religious faith and to maintain the environment of the columbaria should be spelt out in an agreement.</p>	
004011 - 004716	Chairman Mr LEUNG Che-cheung Admin	<p>The Administration's response to Mr LEUNG Che-cheung's enquiry that it would be difficult, if not impossible, to align the agreements which were signed before the commencement of the Private Columbaria Ordinance ("Ordinance") ("pre-Ordinance agreements") with those signed after the commencement of the Ordinance, as the Bill did not have retrospective effect.</p> <p>Mr LEUNG's concern that the Ordinance could not protect consumers with pre-Ordinance agreements. The Administration explained the actions a purchaser could take in getting remedies for breach of contract on the part of the columbarium operator or in the event of frustration of contract.</p> <p>Mr LEUNG's enquiry and the Administration's response regarding whether licences of non-compliant operators would be renewed.</p> <p>Mr LEUNG's view that provisions on protecting consumers with pre-Ordinance agreements should be included in the Bill. The Administration's response that the Bill sought to strike a balance between various interests. Relevant government bureaux/departments including the Department of Justice had discussed this subject previously. With the introduction of the Ordinance, consumers would be better protected. However, it would not be able to deal with pre-Ordinance agreements as it would be controversial for the Ordinance to take retrospective effect.</p>	
004717 - 005501	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's enquiry and the Administration's response regarding whether operators were required to spell out the purpose of fees and charges payable by purchasers in the agreements and whether sale of niches in private columbaria the construction of which had not yet been completed was regulated under the Bill. The Administration's explanation of clause 3(2)</p>	

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		<p>(i.e. meaning of sale of an interment right) and section 2(c) of Schedule 4 (i.e. a comprehensive list of all fees, charges or other sums payable by the purchaser).</p> <p>Mr WONG's enquiry and the Administration's response regarding whether there were provisions in an agreement specifying that the purchaser could put additional sets of ashes in a niche in future. The Administration's explanation of clause 46 (i.e. number of sets of ashes interred restricted) read together with clause 10 (on definitions of "ash interment capacity", "ash interment layout" and "ash interment quantity").</p> <p>The Administration's response to Mr WONG's enquiry that the Bill did not provide for regulation of agents of operators ("agents"). The regulation of agents should be dealt with at a later stage if required. Practically speaking and in the interest of sellers of interment rights ("sellers"), the agreements would have to be entered into by the sellers (rather than their agents) with the purchasers, if the various requirements in the Ordinance were to be complied with (see Schedule 4 on what was to be contained in the agreements). This would also apply to resale, which was covered in the meaning of sale of an interment right (see clause 3(3)(a)(iii)).</p>	
005502 - 010229	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's view that the Administration should consider providing in the Bill the conversion of pre-Ordinance agreements into agreements the terms of which would match up to those requirements stipulated in the Bill ("new agreements").</p> <p>The Administration's response that it would be difficult to make it a mandatory requirement in the Bill but the parties to the agreements had the liberty to do so voluntarily if they could so agree. The Administration's explanation of the requirements for keeping record of agreements under the Bill (i.e. clause 43).</p> <p>Mr WU's reiteration of the need to convert pre-Ordinance agreements into new agreements to protect consumers.</p> <p>The Administration's response that it envisaged many fundamental issues and technical difficulties and it would not be feasible to convert all the pre-Ordinance agreements into</p>	

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		new agreements. The Administration would explore if there was any way to enhance consumer protection for pre-Ordinance agreements.	Admin
010230 - 010904	Chairman Dr Priscilla LEUNG Admin	<p>Dr Priscilla LEUNG expressed reservations about converting pre-Ordinance agreements into new agreements as legislation should not have retrospective effect.</p> <p>Dr LEUNG's view that the Administration should handle ashes of the deceased persons who had no descendants and provide assistance for the purchasers during the transition period, if necessary. The Administration's explanation of the ash disposal procedures prescribed in the Bill.</p> <p>Dr LEUNG's enquiry and the Administration's response regarding the availability of a register of agreements for inspection by the Director of Food and Environmental Hygiene. The Administration's explanation of clause 43 (i.e. record keeping of agreements).</p>	
010905 - 011647	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's view that certain conditions for an agreement to be enforceable as provided for under the Bill were more than required. His concern that sellers might have difficulties in satisfying or might unknowingly fail to comply with these conditions, rendering an agreement unenforceable and causing a lot of disputes.</p> <p>The Administration's response that it was necessary to regulate the terms in the agreements to a certain extent and sample templates for agreements would be drawn up for easy reference by consumers and operators.</p> <p>Mr TSE's view that an agreement should only be unenforceable when there were breaches of fundamental terms.</p> <p>The Administration undertook to consider reviewing the requirements set out in clauses 41(3) and 42 and Schedule 4 to the effect that an agreement would not become unenforceable when there were only breaches of immaterial requirements under the Bill.</p> <p>The Chairman said that while there might not be many cases of cancellation of unenforceable agreements by purchasers, he shared the view that the Administration should review the relevant clauses.</p>	Admin

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011648 - 011821	Chairman ALA6 Admin	<p>In response to ALA6's enquiry, the Administration undertook to add "other instrument" to clause 41(2)(b) to the effect that columbarium premises that were occupied under other instrument were also covered.</p> <p>ALA6's enquiry and the Administration's response regarding whether "any other requirements prescribed by the Licensing Board" in clause 41(3)(j) included any requirements which were not related to the sale of an interment right, and whether the Licensing Board would prescribe these requirements by making subsidiary legislation. The Administration's advice that under clause 91, the Licensing Board might, with the approval of the Secretary for Food and Health, by notice published in Gazette, amend Schedule 4 which prescribed the terms in an agreement.</p>	Admin
011822 - 012226	Chairman Admin	<p>The Chairman was concerned about the issue of niches which had been sold but not yet occupied, as the pecuniary interests involved were substantial. Some operators might expand their operation in large scale to make profit. He enquired about how this issue was to be addressed in the Bill.</p> <p>The Administration's response that it had adopted a prudent approach in the Bill with regard to interment of ashes in niches which had been sold but not yet occupied. It had also gained an understanding of the scale of the problem under the notification scheme. It would seek members' views later on how issues relating to these niches should be handled, taking into account the possible impact on consumers and other relevant factors.</p>	Admin
012227 - 012539	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry and the Administration's response regarding whether there were private columbarium premises under mortgage and whether speculative activities involving niches were observed.</p> <p>Ms HO's view that purchasers' interests should be protected in the event of transfer of interment rights.</p>	
012540 - 012937	Chairman Miss CHAN Yuen-han Admin	Miss CHAN Yuen-han's enquiry and the Administration's response regarding the handling of niches in case an operator was unable to repay his or her mortgage loan in respect of the columbarium premises concerned.	

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		<p>The Administration's advice that Part 7 of the Bill provided for obligations in disposal of ashes and purchasers had the right to claim compensation against sellers through legal channel.</p> <p>Miss CHAN's enquiry and the Administration's response regarding the priority of purchasers vis-à-vis other creditors in case a seller went into liquidation.</p>	
012938 - 013125	Chairman Mr Paul TSE Admin	Mr Paul TSE's view that the Administration should clearly define "any other requirements prescribed by the Licensing Board" in clause 41(3)(j). The Administration undertook to consider pegging clause 41(3)(j) to clause 91.	Admin
013126 - 013521	Chairman Admin	Examination of Schedule 4 – Part 1	
013522 - 014451	Chairman Mr WONG Kwok-hing ALA6 Admin	<p>Mr WONG Kwok-hing's view that provisions on regulating agents should be added to the Bill so that the introduction of a separate legislation in this regard would not be necessary in future. The Administration's response that purchasers' interests would be protected as the Bill would mandate the signing of agreements and the agreements must set out the essential terms. Speculative activities of agents could be dealt with at a later stage, as priority must be to get the Bill enacted and time did not permit covering the regulation of agents in the Bill at this stage.</p> <p>Mr WONG sought ALA6's view on providing provisions on regulating agents in the Bill. ALA6's response that it was a policy issue and the relevant provisions could be provided for in the Bill if Members considered it necessary.</p> <p>Mr WONG's reiteration of the need to add provisions into the Bill for the regulation of agents of sellers.</p> <p>The Administration advised that there were express provisions in the Bill on sale of an interment rights. It considered more appropriate to focus on making the first step in enacting the Bill, and regulating agreements between sellers and purchasers first. The subject on regulation of agents should be handled at a later stage.</p> <p>The Administration's response to Mr WONG's enquiry that it would study issues relating to</p>	

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		regulation of agents after the Ordinance had been implemented for some time.	
014452 - 015209	Chairman Mr Paul TSE Admin	<p>Regarding the regulation of agents, Mr Paul TSE agreed to the Administration's step-by-step approach.</p> <p>Mr TSE's view that requirements on the information required to be set out in agreements under the Bill were too detailed and excessive. His concern about the appropriateness of and the columbarium sector's adaptability to these requirements.</p> <p>Mr TSE's enquiry and the Administration's response regarding information about the seller's licence to be set out in an agreement under section 1(a) of Schedule 4.</p> <p>Mr TSE's view that the information required under section 1(b) of Schedule 4 was excessive and far beyond what was required for consumer protection. The Administration should critically look into whether it was practical to include such fine details in an agreement. The Administration undertook to do so but advised that information required under section 1(b)(ii) of Schedule 4 was necessary to ensure that the relevant provisions were not circumvented.</p> <p>Mr TSE's views that the provision would impose heavy burden on sellers and the meaning of "particulars" under section 1(b)(i), (ii) and (iv) of Schedule 4 was unclear. Sellers might need to provide a large amount of information which might not be necessary. He called on the Administration to review the information to be set out in an agreement.</p>	Admin Admin
015210 - 015316	Chairman ALA6 Admin	ALA6's suggestion that the Administration should consider providing expressly in section 1(b)(i), (ii) and (iv) of Schedule 4 the particulars required in order to assist the seller in complying with these requirements. The Administration undertook to consider the suggestion.	Admin
015317 - 015746	Chairman Miss CHAN Yuen-han Admin	The Administration's response to Miss CHAN Yuen-han's enquiry that in applying for a licence for columbarium operation, a columbarium operator was required to hold the columbarium premises directly from the Administration (i.e. self-owned premises), except for a pre-Bill columbarium where a columbarium operator not holding the columbarium premises from the Administration	

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		could still apply, if he or she had the right to continue to use the columbarium premises for at least five years (counting from when the licence was to take effect).	
015747 - 020254	Chairman Mr Paul TSE Admin	Mr Paul TSE's enquiry and the Administration's response regarding the meaning of "information about financial risks involved with lump sum prepayment for an interment right for a long period" in section 1(d) of Schedule 4 and the reasons for including such information in an agreement. Mr TSE's concern that it might be impracticable to set out in clear language such information in an agreement. His view that the Administration should strike an appropriate balance between protecting consumers and regulating columbarium operation. The Administration undertook to consider reviewing section 1(d) of Schedule 4.	Admin
020255 - 020335	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
 5 October 2015