

立法會
Legislative Council

LC Paper No. CB(2)1724/15-16
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

Minutes of the sixteenth meeting
held on Tuesday, 29 September 2015, at 2:30 pm
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 James TO Kun-sun
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 CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon Albert CHAN Wai-yip
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

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 Thomas LEUNG
Assistant Director/New Buildings 1
Buildings Department

Ms Trevina KUNG
Assistant Director (Estate Management)
(Lands Administration Office/Headquarters) (Ag.)
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 Kay CHU
Council Secretary (2) 4

Ms Ada TANG
Clerical Assistant (2) 4

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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) review the arrangement for the appointment of authorized representatives under an agreement for the sale of an interment right;
- (b) replace the word "or (或)" by "and (及)" in section 2(b)(iv) of Schedule 4;
- (c) consider the feasibility of articulating some important principles for drawing up agreements for the sale of an interment right;
- (d) study whether unfair or unreasonable trade practice of operators of private columbaria would constitute a factor to be taken into

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consideration by the future Private Columbaria Licensing Board in the context of licence renewal; and

- (e) replace "就該骨灰安置所備存的協議及登記冊的複本" by "就該骨灰安置所備存的協議的複本，以及根據第(2)款就該骨灰安置所備存的登記冊" in the Chinese text of clause 43(3).

II. Date of next meeting

3. Members noted that the next meeting would be held on Tuesday, 13 October 2015 at 2:30 pm.

III. Any other business

4. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
13 June 2016

**Proceedings of the sixteenth meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 29 September 2015, at 2:30 pm
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>			
000730 - 000848	Chairman	Opening remarks	
Clause-by-clause examination			
000849 - 001538	Chairman Admin	Examination of Schedule 4 - Part 2	
001539 - 001657	Chairman ALA6 Admin	ALA6's enquiry and the Administration's response regarding what other particulars of the niche were intended to be covered under section 2(b)(i) of Schedule 4 apart from the serial number, location and dimensions of the niche.	
001658 - 002637	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's concern that ashes of a dedicated person would not be properly handled if his or her authorized representative had passed away and no arrangement was made for appointing a replacement.</p> <p>The Administration's advice that under section 2(e)(ii) of Schedule 4, an agreement for the sale of an interment right ("agreement") must set out arrangements for appointing and replacing authorized representatives. Purchasers of an interment right ("purchasers") should consider appointing more than one authorized representative and indicating in the agreement the authorized representatives' order of priority for handling ashes.</p> <p>Enquiries of the Chairman and Mr WONG Kwok-hing regarding how ashes of dedicated persons would be handled if no authorized representatives had been appointed. The Administration's response that under such circumstances, ash disposal procedures prescribed in Schedule 5 of the Bill would apply.</p>	
002638 - 003137	Chairman Deputy Chairman Admin	The Administration's response to the Deputy Chairman's enquiry that the Bill did not preclude a seller of an interment right in respect of a columbarium ("seller") from recommending any organization or anyone, including their legal representatives, to become authorized representatives of purchasers. The Administration's view that consumers as purchasers should exercise vigilance and protect their own interests.	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Deputy Chairman's concern that there might be possible conflict of interests or conflict of roles if sellers' representatives were allowed to act as authorized representatives of purchasers. His view that the Bill should provide for restrictions on appointment of authorized representatives.</p> <p>The Chairman's concern that some private columbarium operators ("operators") being appointed authorized representatives could make use of such capacity to dispose of the ashes and exploit such arrangements for making profits again.</p> <p>The Administration's response that it would review the arrangements for the appointment of authorized representative by, for instance, making reference to the principles adopted in the appointment of authorized representatives for conveyancing of residential properties, and would revert to the Bills Committee.</p>	Admin (paragraph 2(a) of the minutes)
003138 - 003654	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's view that to avoid disputes, section 2 (e)(iii) of Schedule 4 should be elaborated to specify the circumstances and the manner in which the operation of an agreement might be temporarily suspended or an agreement might be terminated otherwise than on the expiry of the term of the interment right. The Administration's advice that it would be difficult to specify all such circumstances exhaustively in the Bill.</p> <p>The Chairman's enquiry and the Administration's response that as set out in the lead-in sentence in section 2 of Schedule 4, the circumstances and the manner in which the operation of an agreement might be temporarily suspended or an agreement might be terminated must be set out in the agreement for the sale of an interment right. In other words, such terms were mutually agreed by both the seller and the purchaser at the stage of entering into the agreement.</p>	
003655 - 003737	Chairman ALA6 Admin	<p>The Administration's response to ALA6's enquiry that the word "or" after "particulars of the duration of the interment right;" (i.e. in the Chinese text "該安放權的有效期的詳情；"之後的"或"字) in section 2(b)(iv) of Schedule 4 should be replaced by the word "and" ("及" in the Chinese text). The Administration undertook to amend section 2(b)(iv) of Schedule 4 accordingly.</p>	Admin (paragraph 2(b) of the minutes)

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003738 - 004057	Chairman Admin	Examination of Part 5 – Division 1 clause 42	
004058 - 004657	Chairman ALA6 Admin	<p>ALA6's enquiry regarding whether clause 42(1) and (2) would still be applicable if the agreement contained terms governing the purchaser's cancellation rights after the interment right had been exercised. The Administration's advice that under clause 42(3), the terms governing the purchaser's cancellation rights in the agreement would have precedence over clause 42(1) and (2) if the interment right had been exercised.</p> <p>The Chairman's enquiry regarding the reasons why the terms in an agreement could override clause 42(1) and (2), pursuant to clause 42(3). The Administration's advice that if the interment right had been exercised, the re-sale value might possibly be lowered. If the agreement was silent on the purchaser's cancellation rights, the position of the seller and the purchaser would be governed by clause 42(1) and (2).</p> <p>The Chairman sought ALA6's views on whether there would be potential problems for the terms in an agreement to take precedence pursuant to clause 42(3). ALA6's response that according to clause 42(3), the seller and the purchaser should follow the terms in the agreement if the interment right had been exercised. Members might wish to consider whether such an arrangement was acceptable from a policy point of view.</p> <p>The Chairman's enquiry and the Administration's response regarding the reasons why under clause 42(3), the terms in an agreement would take precedence over the provisions in the Bill.</p>	
004658 - 005458	Chairman Mr LEUNG Che-cheung Admin	<p>The Administration's response to Mr LEUNG Che-cheung's view regarding ways to ensure that the terms in agreements would not be unfair to consumers. The Administration's advice that it had tapped the experience in other sectors on how an agreement could better protect consumers. It would consider the feasibility of articulating some principles for drawing up agreements and revert to the Bills Committee.</p> <p>Mr LEUNG's reiteration of his concern that some of the terms in an agreement might be disadvantageous to the consumers. His view that the future Private Columbaria Licensing</p>	Admin (paragraph 2(c) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		Board ("Licensing Board") should balance the interests of operators and consumers, and take into account the trade practice of operators when considering applications in the context of licence renewal. The Administration undertook to provide a response on whether unfair or unreasonable trade practice of operators would constitute a factor to be taken into consideration by the Licensing Board in the context of licence renewal and revert to the Bills Committee.	Admin (paragraph 2(d) of the minutes)
005459 - 005805	Chairman Deputy Chairman Admin	The Deputy Chairman's view that the terms in an agreement should be fair to both the consumer and the seller. The Administration should make an effort to ensure that the terms in different agreements would not vary greatly so that consumers patronizing different private columbaria could have about the same extent of protection.	
005806 - 010048	Chairman Admin	Examination of Part 5 – Division 1 clause 43	
010049 - 010244	Chairman ALA6 Admin	<p>The Administration's response to ALA6's enquiry that the Chinese text of clause 43(3) "就該骨灰安置所備存的協議及登記冊的複本" should be "就該骨灰安置所備存的協議的複本，以及根據第(2)款就該骨灰安置所備存的登記冊". The Administration undertook to amend clause 43(3) accordingly.</p> <p>The Chairman's enquiry and the Administration's response that the Bill did not prescribe a place for keeping records of private columbaria. The Administration's view that it would not be a cause of concern as licence holders of private columbaria were required to make available such records (i.e. copies of agreements for the sale of interment rights and the register of those agreements) for inspection, on request, by the Director of Food and Environmental Hygiene ("DFEH") or an authorized officer under section 43(3).</p>	Admin (paragraph 2(e) of the minutes)
010245 - 010357	Chairman Mr WONG Kwok-hing Admin	Mr WONG Kwok-hing's enquiry and the Administration's response regarding whether the agreements and the register of agreements would be made available for public inspection.	
010358 - 013544	Chairman Admin	<p>Powerpoint presentation on ash disposal procedures provided for in Part 7 of the Bill (LC Paper No. CB(2)878/14-15(01)).</p> <p>Examination of clause 55</p>	

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013545 - 014022	Chairman Mr WONG Kwok-hing Admin	In response to Mr WONG Kwok-hing's enquiry, the Administration explained the procedures for handling claims for items interred together with the ashes set out in section 9(7) of Schedule 5.	
014023 - 014755	Chairman Mr LEUNG Kwok-hung Admin	<p>Mr LEUNG Kwok-hung's enquiry and the Administration's response that challenges against DFEH's decisions made under section 17 of Schedule 5 on alternative ash disposal procedures ("DFEH's decisions") could be handled through judicial reviews.</p> <p>Mr LEUNG's view that the Administration should consider establishing a mechanism for handling appeals against DFEH's decisions as resolving the matter through judicial reviews might be costly. The Administration's explanation that an appeal mechanism in relation to DFEH's decisions had not been provided for in the Bill. The provision of an appeal mechanism in relation to DFEH's decisions would pose a heavy burden on DFEH.</p> <p>Mr LEUNG's view that since competing claims for specified items were subject to the court's ruling, DFEH should not dispose of specified items, when the court's ruling was still pending.</p> <p>The Chairman's enquiry and the Administration's response regarding the respective roles of the court and DFEH regarding claims for specified items.</p>	
014756 - 015447	Chairman Mr LEUNG Che-cheung Admin	<p>The Administration's response to Mr LEUNG Che-cheung's enquiry regarding the maximum fines that could be imposed on conviction of the offence for contravening clauses 58, 59, 60 or 62 and the meaning of "任何人" in the Chinese text of clause 63.</p> <p>Mr LEUNG Che-cheung's enquiry and the Administration's response regarding operators' obligations in disposing of ashes provided for in the Bill. The Administration's advice that operators who failed to handle ashes according to the relevant provisions committed an offence under clause 63.</p>	
015448 - 015535	Chairman	Closing remarks	