

立法會
Legislative Council

LC Paper No. CB(2)1990/15-16
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the nineteenth meeting
held on Friday, 6 November 2015, at 8:30 am
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 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 Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
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
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Dr Hon Helena WONG Pik-wan
Hon Tony TSE Wai-chuen, BBS

Public Officers attending : Item I

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

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 Doris CHOW
Assistant Director (Estate Management)
(Lands Administration Office/Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning (Special Duties)
Planning Department

Clerk in attendance : Ms Catherina YU
Chief Council Secretary (2) 4 (Acting)

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Kay CHU
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), CB(2)1905/14-15(01), CB(2)20/15-16(01) and CB(2)220/15-16(01)]

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

2. The Bills Committee requested the Administration to:

- (a) consider specifying clearly in the Bill that notices referred to in section 8(1)(a), (b), (c) and (d) of Schedule 5 should be published, posted or served on the same day;
- (b) consider requiring to publish notices stating a person's intention regarding disposal of ashes through the online versions of registered newspapers;
- (c) consider requiring the person carrying out the prescribed ash disposal procedures to serve the commencement of ash disposal notice through the email addresses of the specified addressees, if available;
- (d) consider stating clearly in section 8(1)(a), (b), (c) and (d) of Schedule 5 that the notices referred therein should contain all the information stipulated in section 8(4) of Schedule 5;

Action

- (e) address the concern about the handling of ashes under situation where the operator of a private columbarium which had ceased operation was the authorized representative and had a higher priority over the relatives of the deceased person to claim for the return of ashes;
- (f) consider stating expressly in the Bill that in relation to Part 7 and Schedule 5 on ash disposal, the terms in the contracts signed between consumers and private columbarium operators could not override the provisions in the Bill; and
- (g) provide a response on whether the Judiciary Administrator would draw up procedures for applications for court orders with respect to the return of ashes and items.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on Tuesday, 24 November 2015 at 4:30 pm.

III. Any other business

- 4. There being no other business, the meeting ended at 10:05 am.

Council Business Division 2
Legislative Council Secretariat
22 August 2016

**Proceedings of the nineteenth meeting of the
Bills Committee on Private Columbaria Bill
on Friday, 6 November 2015, at 8:30 am
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>			
000643 - 000756	Chairman	Opening remarks	
Clause-by-clause examination			
000757 - 000838	Chairman	Examination of Schedule 5 – Part 2 Section 8	
000839 - 001010	Chairman ALA6 Admin	In response to ALA6's enquiry, the Administration advised that the notices specified in section 8(1)(a), (b), (c) and (d) of Schedule 5 were all "commencement of ash disposal notice". At ALA6's request, the Administration undertook to consider specifying clearly in the Bill that these notices should be published, posted or served on the same day.	Admin (paragraph 2(a) of the minutes)
001011 - 001114	Chairman Mr WONG Kwok-hing Admin	Mr WONG Kwok-hing's enquiry and the Administration's response concerning publishing notices stating a person's intention regarding disposal of ashes in newspapers under section 8(1)(a) of Schedule 5.	
001115 - 001357	Chairman Mr James TO Admin	Mr James TO's suggestion of also publishing the aforesaid notices through the Internet. The Administration undertook to provide a response to the suggestion.	Admin (paragraph 2(b) of the minutes)
001358 - 002158	Chairman Mr LEUNG Kwok-hung Mr James TO Admin	<p>The Administration's response to Mr LEUNG Kwok-hung's suggestion of requiring the above-mentioned notices to be published in a newspaper in South Asian languages.</p> <p>Mr LEUNG's concern that as Internet media was not required to be registered as in the case of newspapers, it might be difficult for a person to locate the aforesaid notices published through an Internet media. If publishing the notices through the Internet was a requirement under the Bill, the Administration should be explicit about the Internet media which could be considered for such purpose. The Administration's response that it would be up to the person carrying out the prescribed ash disposal procedures to do more than what was required by the law.</p> <p>Mr James TO's clarification that the notices should not be published through any Internet</p>	Admin (paragraph

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		media but in the online versions of registered newspapers.	2(b) of the minutes)
002159 - 002437	Chairman Mr James TO Admin	Mr James TO's suggestion and the Administration's response regarding requiring the person carrying out the prescribed ash disposal procedures to serve the commencement of ash disposal notice through the email addresses of the specified addressees, if available. The Chairman asked the Administration to provide a response to the suggestion.	Admin (paragraph 2(c) of the minutes)
002438 - 002717	Chairman ALA6 Mr James TO Admin	<p>ALA6's enquiry and the Administration's response regarding the reasons for using "a like notice (類似的通告)" instead of "the same notice (同一份通告)" in section 8(1)(b), (c) and (d) of Schedule 5.</p> <p>Mr James TO's view that it should be stated clearly in section 8(1)(a), (b) (c) and (d) of Schedule 5 that the notices referred therein should contain all the information stipulated in section 8(4) of that Schedule. The Administration undertook to review section 8(1) of Schedule 5.</p>	Admin (paragraph 2(d) of the minutes)
002718 - 004154	Chairman Admin	Examination of Schedule 5 – Part 2 Section 9(1) to (6)	
004155 - 004533	Chairman Mr WU Chi-wai Admin Chairman ALA6	<p>Mr WU Chi-wai's enquiry and the Administration's response regarding the rights of purchasers of interment rights to claim for the return of ashes. The Administration's explanation of the meaning of ash handler under the Bill.</p> <p>ALA6's remarks that section 9 of Schedule 5 was also applicable to disposal of ashes in the case of abandonment of private columbaria.</p>	
004534 - 004915	Chairman Mr CHAN Han-pan Admin	Mr CHAN Han-pan's view that some operators of private columbaria ("operators") might impose a condition in the agreements for sale of interment rights to require purchasers to appoint them as the authorized representatives. His concern regarding the handling of ashes under situation where the operator of a private columbarium which had ceased operation was the authorized representative and had a higher priority over the relatives of the deceased person to claim for the return of ashes. The Administration's response that there would be a conflict in the role of the operator concerned under such circumstances. It undertook to	Admin (paragraph 2(e) of the

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		study the matter and provide a response to the Bills Committee.	minutes)
004916 - 005845	Chairman Mr Albert CHAN Mr LEUNG Kwok-hung Admin	<p>Mr Albert CHAN's concern and the Administration's response regarding whether the Bill would cover contracts signed between consumers and operators which were intended for sale of interment rights but not for covering the disposal of ashes interred in the columbaria concerned. The Administration advised that section 9 of Schedule 5 was meant to cater for the claims for return of ashes, and applied to any disposal of ashes interred in a columbarium or abandonment of a columbarium by a person on or after the enactment date, whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by that person occurred before that day. The provisions in the Bill would not affect consumers' right to claim compensation against operators arising from breach of contracts.</p> <p>Suggestion of Mr Albert CHAN and Mr LEUNG Kwok-hung of including a provision in the Bill which had an overriding effect on the contracts that were not in conformity with the provisions in the Bill to protect consumers. The Administration's advice that the terms in the contracts signed between consumers and operators could not override the provisions in the Bill. The Administration would provide a response to the need for spelling out this principle in the Bill.</p>	Admin (paragraph 2(f) of the minutes)
005846 - 010232	Chairman Mr WU Chi-wai Admin	The Administration's response to Mr WU Chi-wai's enquiry that the arrangements for appointing and replacing authorized representatives was one of the essential terms to be set out in agreements for the sale of interment rights (section 2(e)(ii) in Part 2 of Schedule 4).	
010233 - 010600	Chairman ALA6 Admin	The Administration's response to ALA6's enquiry that the intent of section 2(e)(ii) in Part 2 of Schedule 4 was to remind consumers that they should consider appointing authorized representatives for their own good. The Administration's advice that the appointment of authorized representatives was not mandatory.	
010601 - 010855	Chairman Admin	Examination of Schedule 5 – Part 2 Section 9(7) and (8)	
010856 - 011028	Chairman ALA6	ALA6's enquiry and the Administration's response regarding whether subsidiary	

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	Admin	legislation would be made for providing the rules on the procedures relating to applications for court orders. The Administration's advice that to follow up members' enquiry raised at the last meeting of the Bills Committee, it had sought the views of the Judiciary Administrator on whether it would draw up procedures for handling applications for occupation orders. The Administration would provide a response in this regard.	Admin (paragraph 2(g) of the minutes)
011029 - 011241	Chairman Admin	Examination of Schedule 5 – Part 2 Section 10	
011242 - 011324	Chairman ALA6 Admin	ALA6's enquiry and the Administration's response regarding the reasons for requiring a person to whom a set of ashes was returned by the ash handler to pay to the ash handler half of the expenses attributable to that set of ashes.	
011325 - 011831	Chairman Admin	Examination of Schedule 5 – Part 2 Section 11	
011832 - 012230	Chairman ALA6 Admin	ALA6's enquiry in relation to the differences between section 11(3)(a) and (4)(a) of Schedule 5 even though competing claims for the return of ashes under section 9(6) of that Schedule and those for the return of specific item under section 9(8) of that Schedule were both subject to court orders. The Administration explained that section 11(3)(a) of Schedule 5 corresponded to section 9(6) of that Schedule, while section 11(4) of Schedule 5 corresponded to section 9(8)(b) of that Schedule.	
012231 - 012512	Chairman ALA6 Admin	Examination of Schedule 5 – Part 2 Section 12 ALA6's enquiry and the Administration's response regarding the legal consequences for failing to take the steps as required by the Director of Food and Environmental Hygiene ("DFEH") or an authorized officer under section 12 of Schedule 5.	
012513 - 012856	Chairman Admin	Examination of Schedule 5 – Part 2 Section 13	
012857 - 013057	Chairman ALA6 Admin	Examination of Schedule 5 – Part 2 Section 14 ALA6's enquiry and the Administration's response regarding whether scattering of ashes in gardens of remembrance would be one of the manners through which DFEH disposed of the ashes.	

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013058 - 013256	Chairman ALA6 Admin	ALA6's enquiry and the Administration's response regarding whether DFEH could still dispose of the ashes according to section 14(1) of Schedule 5 if DFEH actually knew that there were proceedings pending in the court in respect of the ashes in question although no person had, by written notice, informed DFEH. The Administration's explanation of the purpose of requiring a person to inform DFEH of the proceedings in writing and that DFEH would not act under section 14(1) during the period where proceedings were pending if she actually knew about that. However, if the parties concerned did not go through due diligence of informing DFEH and DFEH did not know about the legal proceedings, it was not fair for the parties concerned to hold DFEH accountable for not putting the disposal of ashes in abeyance. ALA6's advice that members should consider and decide whether such a provision should be included in the Bill.	
013257 - 013309	Deputy Chairman	The Deputy Chairman took the chair in the absence of the Chairman.	
013310 - 013352	Mr Albert CHAN Deputy Chairman	Closing remarks	