

立法會
Legislative Council

LC Paper No. CB(2)2020/15-16
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the twenty-second meeting
held on Monday, 21 December 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 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
Hon Alan LEONG Kah-kit, SC
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 Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Elizabeth QUAT, JP

Public Officers : Item I
attending

Miss Diane WONG
Acting Deputy Secretary for Food and Health (Food)1
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 HUI Fai-wing
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr Tommy TAM
Chief Building Surveyor/Legal Services
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 : Mr Colin CHUI
attendance 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)431/14-15(01), CB(2)630/14-15(01), CB(2)1286/14-15(01), CB(2)1535/14-15(01), CB(2)1813/14-15(01), CB(2)20/15-16(01), CB(2)220/15-16(01), CB(2)309/15-16(01), CB(2)367/15-16(01) to (05) and CB(2)486/15-16(01) to (02)]

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

2. The Bills Committee requested the Administration to:

- (a) provide information on the types of legal entity of private columbaria on the list of the Development Bureau;
- (b) revert to the Bills Committee on members' view on whether unincorporated associations as well as monasteries and ancestral halls with long history would have practical difficulties in making applications to which Schedule 3 applied in the capacity of a natural person or partner or by forming a company;
- (c) consider making amendments to Schedule 7 and other relevant provisions such that the provisions on grace period would apply to a columbarium which, though operated by an unincorporated association before the enactment date, became a legal entity and applied in that capacity for a specified instrument in the post-enactment stage;

Action

- (d) consider spelling out the requirements prescribed by the future Private Columbaria Licensing Board referred to in clause 41(3)(j) in the Bill or subsidiary legislation;
- (e) consider reviewing its proposed Committee stage amendment ("CSA") to section 1(a) of Schedule 4;
- (f) consider proposing CSAs to section 1(b)(i), (ii) and (iv) and section 2(b)(i) of Schedule 4; and
- (g) consider pegging clause 57 to clause 67 or 68.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on Tuesday, 5 January 2016 at 5:00 pm.

III. Any other business

- 4. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2016

**Proceedings of the twenty-second meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 21 December 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>			
000855 - 001134	Chairman	Opening remarks	
001135 - 002704	Chairman ALA6 Mr Albert CHAN Admin	<p>Discussion of ALA6's views/advice on the Administration's written responses to issues raised in her letters dated 17 April, 21 May, 26 June and 13 October 2015.</p> <p><u>Item 19 of the Annex to the Administration's written response (LC Paper No. CB(2)367/15-16(01)) to ALA6's letter dated 17 April 2015.</u></p> <p>ALA6's advice that members should consider whether the Administration's policy intention was acceptable from the policy perspective.</p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding whether monasteries and ancestral halls which had not been registered as legal entities but had sold or let out niches were regarded as natural persons.</p> <p>The Administration's response to Mr CHAN's concern about the practical difficulties that monasteries and ancestral halls with a long history might have in setting up a company. For the purpose of making applications relating to specified instruments (i.e. a licence, an exemption or a temporary suspension of liability), they might apply in the capacity as a natural person or partner or by forming a company.</p> <p>The Chairman's view that the Administration should consider allowing flexibility for such monasteries and ancestral halls in making applications relating to specified instruments. To give members an idea of the status of private columbaria, the Administration undertook to provide information on the types of legal entity of private columbaria on the list of the Development Bureau.</p> <p>Mr CHAN's view that certain operators of private columbaria ("operators") might hold the licence through some intermediaries. The Administration should step up publicity on the</p>	Admin (paragraph 2(a) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		legal liabilities of holders of specified instruments.	
002705-003838	Chairman ALA6 Mr Alan LEONG Admin	<p>Mr Alan LEONG's enquiry and the Administration's response regarding the justifications for allowing partnership but not unincorporated associations to make applications relating to specified instruments.</p> <p>Mr LEONG's view that there should be provisions in the Bill requiring partnership to enter into partnership agreements and state expressly in those agreements the person(s) who would be liable or responsible under the Bill. His remark that unincorporated associations registered under the Societies Ordinance (Cap. 151) were required to inform the Hong Kong Police annually of any changes in their particulars. As such, there should not be any problems with ascertaining the responsible parties under the Bill.</p> <p>Mr LEONG's view that the essence of the relevant provisions was to ascertain the person (persons) who would be liable or responsible under the Bill. As such, whether a private columbarium was a legal entity should not be a factor in considering applications relating to specified instruments.</p> <p>The Administration's response to ALA6's enquiry that "a natural person" in section 2(2)(a) of Schedule 3 referred to a one person scenario.</p> <p>The Chairman's view that the Administration should consider allowing unincorporated associations which could assign a person to be liable or responsible under the Bill to make applications to which Schedule 3 applied. The Administration undertook to revert to members' views on the subject matter.</p> <p>Mr Albert CHAN's view that the Administration should, by making reference to the Official Receiver's Office's mechanism for dealing with bankruptcy/liquidation, establish a mechanism for handling ashes abandoned by operators which were unsuccessful in obtaining a licence.</p> <p>ALA6's remark that if the Bills Committee agreed with the Administration's policy intention of not allowing unincorporated association to make applications to which Schedule 3 applied, the Administration might need to consider making amendments to Schedule 7 and other</p>	Admin (paragraph 2(b) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		<p>relevant provisions. The Administration undertook to consider amending the relevant provisions such that the provisions on grace period would apply to a columbarium which, though operated by an unincorporated association before the enactment date, became a legal entity and applied in that capacity for a specified instrument in the post-enactment stage.</p>	<p>Admin (paragraph 2(c) of the minutes)</p>
003839 - 004125	<p>Chairman ALA6 Admin</p>	<p>The Administration's briefing on item 1 of the Annex to the Administration's written response (LC Paper No. CB(2)367/15-16(02)) to ALA6's letter dated 21 May 2015.</p>	
004126 - 004700	<p>Chairman ALA6 Ms Cyd HO Admin</p>	<p><u>Item 18 of the Annex to LC Paper No. CB(2)367/15-16(02)</u></p> <p>Views of ALA6 and Ms Cyd HO that the Administration should be specific about the matters the Chairperson of the Private Columbaria Appeal Board could determine under clause 79(3). The Administration's response that it would consider proposing Committee stage amendments ("CSAs") to clause 79(2) to spell out that rules made under clause 79(1) were subsidiary legislation. It would also consider adding a new clause 79(4) to the effect that matters referred to in clause 79(3) were not subsidiary legislation. If these were not subsidiary legislation, these would not have the force of law.</p>	
004701 - 005346	<p>Chairman ALA6 Admin</p>	<p><u>Item 5 of the Annex to the Administration's written response (LC Paper No. CB(2)367/15-16(03)) to ALA6's letter dated 26 June 2015.</u></p> <p>ALA6's view that given that non-compliance with the requirements stipulated in clause 41(3) would render agreements for sale of interment rights ("agreements") not enforceable by sellers of interment rights ("sellers"), the requirements prescribed by the future Private Columbaria Licensing Board referred to in clause 41(3)(j) should be spelt out in the Bill or subsidiary legislation, notwithstanding that such requirements might be imposed as licensing conditions. The Administration's advice that it would seek the views of the Civil Division of the Department of Justice.</p> <p>The Chairman's view that the Administration should consider ALA6's view.</p>	<p>Admin (paragraph 2(d) of the minutes)</p>

Time marker	Speaker(s)	Subject(s)	Action required
005347 - 005949	Chairman ALA6 Mr WONG Yuk-man Admin	<p><u>Item 7 of the Annex to LC Paper No. CB(2)367/15-16(03)</u></p> <p>ALA6's view that the Administration's proposed amendment to section 1(a) of Schedule 4 would mean that an agreement should contain all the information as set out in the seller's licence. She advised members to consider the amount of information to be included in an agreement pursuant to section 1(a) of Schedule 4.</p> <p>The Administration provided information shown in a restaurant licence for members' reference. It included the serial number of the licence, the name of the licensee, the address of the licensed premises and the validity period.</p> <p>Given that failure to comply with section 1(a) of Schedule 4 would result in an agreement not enforceable by the seller, ALA6's suggestion that the Administration should consider limiting the information to be set out in an agreement to that as shown on a licence.</p> <p>Mr WONG Yuk-man's view that the drafting of section 1(a) of Schedule 4 should be improved.</p> <p>The Administration undertook to review its proposed CSA to section 1(a) of Schedule 4.</p>	Admin (paragraph 2(e) of the minutes)
005950 - 010350	Chairman ALA6 Dr Helena WONG Admin	<p><u>Items 14 and 18 of the Annex to LC Paper No. CB(2)367/15-16(03)</u></p> <p>The Administration's response to ALA6's view that the particulars to be provided under section 1(b)(i), (ii) and (iv) and section 2(b)(i) of Schedule 4 should be more specific, given that failure to comply with these provisions would render the agreements not enforceable by the sellers.</p> <p>The Chairman's view that the Administration should consider including only important information in the agreements.</p> <p>The Administration's response to Dr Helena WONG's enquiry that it would consider proposing CSAs to the aforesaid provisions taking into account the views of the Chairman and ALA6.</p>	Admin (paragraph 2(f) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
010351 - 010628	Chairman Mr WONG Yuk-man Admin	<p data-bbox="715 271 1299 331"><u>Item 10 of the Annex to LC Paper No. CB(2)367/15-16(03)</u></p> <p data-bbox="715 371 1299 465">In response to Mr WONG Yuk-man's view, the Administration advised that it would consider proposing CSAs to section 1(b)(i) of Schedule 4.</p>	
010629 - 012617	Chairman ALA6 Mr WONG Yuk-man Mr James TO Ms Cyd HO Admin	<p data-bbox="715 510 1299 636"><u>Item 2 of the Annex to the Administration's written response (LC Paper No. CB(2)367/15-16(04)) to ALA6's letter dated 13 October 2015</u></p> <p data-bbox="715 676 1299 801">ALA6's advice that members might consider whether it was necessary to impose legal consequence(s) for a person failing to comply with clause 57.</p> <p data-bbox="715 842 1299 936">Views of Mr WONG Yuk-man and Ms Cyd HO that consideration should be given to ALA's views on clause 57.</p> <p data-bbox="715 976 1299 1205">Ms Cyd HO's enquiry and the Administration's response regarding whether "person" in clause 57 included public officers. The Administration's explanation that the immunity from civil liability provided for in clause 94(1) did not affect any liability of the Government in respect of an act or omission of a public officer.</p> <p data-bbox="715 1245 1299 1339">Mr James TO's enquiry about whether a person's right to inherit a private niche as an estate would be affected under the Bill.</p> <p data-bbox="715 1379 1299 1608">Mr James TO's enquiry and the Administration's response regarding whether cessation of the entire or partial operation of a columbarium would be handled in the same manner under the Bill and whether the ash disposal procedures prescribed in the Bill also applied to relocation of niches within a columbarium.</p> <p data-bbox="715 1648 1299 1912">In response to Mr TO's suggestion of establishing a mediation/arbitration mechanism for handling disputes arising from relocation of niches within a columbarium, the Administration advised that the matter should be resolved between the operator and consumers according to the terms and condition set out in the agreements concerned.</p> <p data-bbox="715 1953 1299 2101">Mr TO's view that some operators might relocate niches within their columbaria to make profits and the relocation would give rise to many disputes. A mediation/arbitration mechanism would save the community time and cost in</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>handling the aforesaid disputes and the Administration should therefore consider his suggestion.</p> <p>ALA6's advice that members should consider whether clause 57 should be removed from the Bill, and, if not, whether criminal sanction should be imposed for contravention of clause 57 or whether clause 57 should be pegged to clause 67 or 68 so that non-compliance with clause 57 would be subject to consequence(s), though not criminal sanction. The Chairman's view that the Administration should consider pegging clause 57 to clause 67 or 68.</p>	<p>Admin (paragraph 2(g) of the minutes)</p>
012618 - 013254	<p>Chairman ALA6 Ms Cyd HO Admin</p>	<p><u>Item 25 of the Annex to LC Paper No. CB(2)367/15-16(04)</u></p> <p>ALA6's enquiry and the Administration's response regarding the status of the operation of a columbarium the specified instrument of which had been suspended.</p> <p>ALA6's view that the Bill should deal with the problem of whether an operator who continued to operate, keep, manage or in any other way have control of a columbarium would commit an offence if the relevant specified instrument had been suspended.</p> <p>The Administration's response to Ms Cyd HO's enquiry that under clause 33(1)(a)(ii), an operator should continue to operate the columbarium although the authorization under a licence to sell interment rights in respect of the columbarium concerned had been suspended.</p>	
013255 - 015826	<p>Chairman Admin</p>	<p>Discussion of the first batch of draft CSAs to be proposed by the Administration (the Annex to LC Paper No. CB(2)486/15-16(01)).</p> <p>Briefing by the Administration on items A0001 to A0037 of the Annex to LC Paper No. CB(2)486/15-16(01).</p>	
015827 - 020218	<p>Chairman Ms Cyd HO Admin</p>	<p><u>Item A0038 of the Annex to LC Paper No. CB(2)486/15-16(01)</u></p> <p>Ms Cyd HO's enquiry and the Administration's response regarding the impact of the proposed CSA to clause 22(9) on operators who had not participated in the administrative notification scheme.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
020219 - 020228	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
2 September 2016