

立法會
Legislative Council

LC Paper No. CB(2)2040/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the twenty-fourth meeting
held on Tuesday, 26 January 2016, at 08:30 am
in Conference Room 2B 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 Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin, BBS
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** : 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 WONG Yuk-man
Hon WU Chi-wai, MH
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 HUI Fai-wing
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr TAM Wing-cheung
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 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

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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)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), CB(2)486/15-16(01) to (02), CB(2)548/15-16(01) to (05) and CB(2)721/15-16(01) to (02)]

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

2. The Bills Committee requested the Administration to:

- (a) consider whether amendments to clause 33(2) were necessary to cater for the scenario of dissolution of a body corporate;
- (b) consider including a provision in the Bill to empower the Secretary for Food and Health or the Director of Food and Environmental Hygiene ("DFEH") to appoint a person or an organization to manage a private columbarium during the period where the columbarium operation had ceased but an occupation order had not yet been made;
- (c) consider including a provision in the Bill to empower the future Private Columbaria Licensing Board to deal with an application to which Schedule 3 applied by a pre-Bill columbarium which was not a natural person, a partner in a partnership or a body

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corporate;

- (d) consider including a new provision under clause 33 to provide for the scenario where one of the partners in a partnership was a company;
- (e) consider stipulating in the Bill the levels of courts which would handle applications for occupation orders and the arrangements for making appeals on decisions made by the court;
- (f) consider moving Committee Stage Amendments ("CSAs") to section 6 of Schedule 5 to specify the time for delivery of unreturned ashes to DFEH by a person who was required to carry out the prescribed ash disposal procedures;
- (g) consider moving CSAs to section 9 of Schedule 5 to specify the time for returning ashes by ash handlers; and
- (h) consider moving CSAs to clause 43 to stipulate a time frame for holders of specified instruments to record the specified particulars in relation to agreements for the sale of interment rights.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on Friday, 5 February 2016 at 8:30 am.

(Post meeting note: Members were informed vide LC Paper No. CB(2)763/15-16 on 2 February 2016 that the next meeting of the Bills Committee had been rescheduled to Monday, 15 February 2016 at 8:30 am.)

III. Any other business

- 4. There being no other business, the meeting ended at 10:28 am.

**Proceedings of the twenty-fourth meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 26 January 2016, at 08:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
001130 - 001208	Chairman	Opening remarks	
001209 - 003508	Chairman Admin ALA6 Mr LEE Cheuk-yan Mr Alan LEONG Mr Tony TSE	<p>Discussion of the Administration's responses to issues raised at the meetings of the Bills Committee on 12 May, 26 May, 22 June and 29 June 2015 (LC Paper No. CB(2)548/15-16(02)(revised)).</p> <p><u>Items 5 and 6 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>ALA6 recapped her views expressed at the meeting of the Bills Committee on 5 January 2016 that as the future Private Columbaria Licensing Board ("the Licensing Board")'s approval was not required for a change of the shareholders of a company holding a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability), a columbarium might, in substance, be operated by a different party (parties) through the purchase of the shares of the company concerned. Her advice that members might wish to consider whether operators of private columbaria ("operators") should be required to obtain the Licensing Board's approval of changing the shareholders of the company concerned.</p> <p>The Administration explained its response to items 5 and 6 as set out in LC Paper No. CB(2)548/15-16(02) (revised) and advised that it would consider including an express provision in the Bill to require a holder of a specified instrument to notify the Licensing Board of the change of the proprietor, partner or officer/director in writing within a period, say 14 days, after the change had taken place.</p> <p>Mr LEE Cheuk-yan's enquiry and the Administration's response regarding whether the Licensing Board would take into account factors such as the background of proprietor, partner or officer/director of the applicant(s) concerned and past record of the columbarium concerned on unauthorized acts in considering applications for specified instruments.</p>	

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		<p>Mr LEE's concern that unscrupulous operators could control the operation of a private columbarium by becoming the shareholder of a company holding a specified instrument. His view that a mechanism should be put in place to address his concern.</p> <p>Mr Alan LEONG's enquiry and the Administration's response regarding how the aforesaid concern could be addressed.</p> <p>The Administration's response to Mr Tony TSE's concern about the inadequate protection for consumers if the Licensing Board would only be notified of a change of the proprietor, partner or officer/director of a holder of a specified instrument. Mr TSE's view that conditions should be imposed on change of shareholders of private columbaria so as to enhance the protection for consumers.</p> <p>The Administration referred to clause 17 which empowered the Licensing Board to have regard to the public interest and relevant considerations. This should go some way to addressing the concerns raised by members to the extent that the Licensing Board might have regard to acts of non-compliance with requirements in the Bill which transpired after the enactment of the Bill in considering one's application for a specified instrument of his/her columbarium in question. It was questionable though whether the Licensing Board should take into account acts which occurred prior to the enactment of the Bill.</p>	
003509 - 003751	Chairman Admin ALA6	<p><u>Item 7 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>ALA6's enquiry regarding whether the Administration would consider moving Committee stage amendments ("CSAs") to clause 33(2)(f) to reflect in the Bill in relation to an instrument holder that was a body corporate. The Administration's response that it would consider whether amendments to clause 33(2) were necessary to cater for the scenario of dissolution of a body corporate, thus allowing the Licensing Board to exercise the powers under clause 33(1) under such circumstances.</p>	Admin (paragraph 2(a) of the minutes)
003752 - 010701	Chairman Admin Mr Albert CHAN ALA6	<p><u>Item 8 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>The Administration's response to</p>	

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	Mr Alan LEONG	<p>Mr Albert CHAN's enquiry that the Bill did not provide for a mechanism for appointing a person/an organization to take over the operation of a private columbarium at the time when it ceased operation. Under Part 7 and Schedule 5, the court might make an occupation order to empower a specified officer to enter and occupy the columbarium premises if necessary. The Administration considered it more appropriate to compress the time gap between the cessation of columbarium operation and the making of an occupation order.</p> <p>Mr Albert CHAN's concern about the management of the aforesaid private columbarium during the period in which the columbarium operation had ceased and an occupation order had not yet been made. Views of Mr CHAN that the Administration should consider including a provision in the Bill to empower the Secretary for Food and Health or the Director of Food and Environmental Hygiene ("DFEH") to appoint a person or an organization to manage the private columbarium concerned during the transitional period. The Administration undertook to consider their views.</p> <p>The Administration's response to ALA6's enquiry regarding whether applications relating to specified instruments made by unincorporated associations would be allowed. The Administration's advice that the vast majority of pre-Bill columbaria had set up a company or could apply as natural persons or partners for operating private columbaria, and the Licensing Board might consider the applications of the remaining cases on a case-by-case basis. ALA6's advice that members might wish to consider whether such an arrangement was acceptable from the policy perspective.</p> <p>In response to Mr Alan LEONG's enquiry, the Administration explained the basis of its policy intention to allow only a natural person, a partner in a partnership or a body corporate to make an application to which Schedule 3 applied.</p> <p>The Administration's response to Mr LEONG's enquiry that it would consider whether to include a provision in the Bill to empower the Licensing Board to deal with an application to which Schedule 3 applied by a pre-Bill columbarium which was not a natural person, a</p>	<p>Admin (paragraph 2(b) of minutes)</p> <p>Admin (paragraph 2(c) of minutes)</p>

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		<p>partner in a partnership or a body corporate.</p> <p>ALA6's enquiry and the Administration's response regarding whether amendments should be made to clause 33(2)(g) to provide for the scenario where one of the partners in a partnership was a company.</p> <p>Mr Alan LEONG's view that the Licensing Board would not be able to execute its authority as provided for under clause 33 if the aforesaid scenario was not included in the Bill. The Administration undertook to consider including an appropriate provision under clause 33.</p>	Admin (paragraph 2(d) of minutes)
010702 - 011137	Chairman Admin	<p><u>Items 9 to 12 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>The Administration's briefing on items 9 to 12 of LC Paper No. CB(2)548/15-16(02)(revised).</p>	
011138 - 011309	Chairman Admin ALA6	<p><u>Item 13 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>ALA6's enquiry and the Administration's response regarding whether the Land Registry would have records of specified instruments which had been suspended.</p>	
011310 - 012921	Chairman Admin ALA6	<p><u>Items 14 to 35 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>The Administration's briefing on items 14 to 35 of LC Paper No. CB(2)548/15-16(02)(revised).</p>	
012922 - 013045	Chairman Admin	<p><u>Item 36 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>The Administration's response to the Chairman's enquiry that applicants for specified instruments whose interests were affected by the decisions of the Licensing Board would be given the opportunity to be heard before the Licensing Board.</p>	
013046 - 013726	Chairman Admin	<p><u>Items 37 to 46 of LC Paper No. CB(2)548/15-16(02)(revised)</u></p> <p>The Administration's briefing on items 37 to 46 of LC Paper No. CB(2)548/15-16(02)(revised).</p>	
013727 - 013811	Chairman Admin	<p><u>Annex 1 to LC Paper No. CB(2)548/15-16(02)(revised)</u></p>	

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		The Administration's briefing on Annex 1 to LC Paper No. CB(2)548/15-16(02)(revised).	
013812 - 014216	Chairman Admin ALA6	<p>Discussion of the Administration's response to ALA6's letter dated 5 November 2015 (LC Paper No. CB(2)548/15-16(03)).</p> <p><u>Item 6 of Annex to LC Paper No. CB(2)548/15-16(03)</u></p> <p>ALA6's enquiry regarding whether subsidiary legislation would be made for providing the rules on the procedures relating to applications for occupation orders and appeals on decisions made by the court (including the effect of an occupation order pending an appeal). The Administration's response that it was considering various amendments to fine-tune the arrangements as set out in Part 7 and Schedule 5. Express provisions in the principal Ordinance would obviate the need for making subsidiary legislation for this purpose.</p> <p>In response to the Chairman's enquiry, the Administration advised that it would stipulate in the Bill the levels of courts which would handle applications for occupation orders and the arrangements for making appeals on decisions made by the court.</p>	Admin (paragraph 2(e) of minutes)
014217 - 015100	Chairman Admin ALA6 Mr Christopher CHUNG Mr Albert CHAN Miss CHAN Yuen-han	<p><u>Item 18 of Annex to LC Paper No. CB(2)548/15-16(03)</u></p> <p>Given that operators who failed to carry out the prescribed ash disposal procedures were subject to sanction, ALA6 advised that members might wish to consider whether the Administration's proposal of not setting out expressly the meaning of "reasonable hours" in section 5(1)(a) and (b) of Schedule 5 was acceptable, taking into account the following:</p> <p>(a) the Administration's difficulties in enforcing the relevant provisions if reasonable hours were not defined; and</p> <p>(b) difficulties that operators might have if reasonable hours were defined.</p> <p>Mr Christopher CHUNG's view that the Administration could deal with the matter through administrative arrangements and consider agreeing with operators on the hours for the return of ashes.</p>	

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		<p>Mr Albert CHAN's view that the Administration could consider adopting a principle or direction for setting the hours for the return of ashes.</p> <p>Miss CHAN Yuen-han's concern that the hours for the return of ashes might not be convenient to affected consumers if the hours were determined by operators.</p> <p>The Administration's advice that the parties concerned might bring an action in a court when there were disputes on the meaning of "reasonable hours" for the return of ashes.</p>	
015101 - 015432	Chairman Admin ALA6	<p><u>Item 26 of Annex to LC Paper No. CB(2)548/15-16(03)</u></p> <p>The Administration's response to ALA6's enquiry that it would consider moving CSAs to section 6 of Schedule 5 to specify the time for delivery of unreturned ashes to DFEH by a person who was required to carry out the prescribed ash disposal procedures, rather than adopting section 70 of the Interpretation and General Clauses Ordinance (Cap. 1), i.e. "without unreasonable delay". At ALA6's request, the Administration undertook to consider specifying the time for returning ashes by ash handlers under section 9 of Schedule 5.</p>	Admin (paragraph 2(f) of the minutes) Admin (paragraph 2(g) of the minutes)
015433 - 015858	Chairman Admin ALA6	<p><u>Item 37 of Annex to LC Paper No. CB(2)548/15-16(03)</u></p> <p>ALA6's suggestion of allowing sufficient time for holders of specified instruments to record the specified particulars in relation to agreements for the sale of interment rights. The Administration undertook to consider moving CSAs to clause 43 to stipulate a time frame for recording such particulars having regard to ALA6's suggestion.</p>	Admin (paragraph 2(h) of the minutes)
015859 - 015944	Chairman	Date of next meeting	