

立法會
Legislative Council

LC Paper No. CB(2)2043/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the twenty-fifth meeting
held on Monday, 15 February 2016, at 08:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (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
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 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 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** : Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
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

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

Mr YU Kwok-hung
Chief Building Surveyor/New Territories East (1) &
Licensing
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

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(08), CB(2)431/14-15(01), CB(2)630/14-15(01), CB(2)367/15-16(01) to (04), CB(2)486/15-16(01)(Further revised) to (02)(Revised), CB(2)548/15-16(01)(Revised) to (02)(Revised), CB(2)548/15-16(03) to (05) and CB(2)721/15-16(01)(Revised) to (02)]

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

2. The Bills Committee requested the Administration to:

- (a) use a standardized Chinese text for the term "commencement of ash disposal notice" in the Bill;
- (b) consider making it clear in the proposed clause 11A that clause 11A(3) dealt with both pre-Bill columbaria and non-pre-Bill columbaria;
- (c) review the proposed clause 11A(5) and consider amending the validity period of temporary suspension of liability mentioned under that clause;
- (d) consider amending the proposed clause 11A to indicate that a person who had missed the deadline for making an application as referred to in the proposed clause 11A(3) to (5) could make an application afresh;

Action

- (e) reflect to relevant authorities that applicants for specified instruments should be alerted of their legal liabilities other than those under the Private Columbaria Ordinance as far as practicable;
- (f) consider adding the words "if any" after "authorized representative" in clause 46A to cater for the situation where no such persons had been appointed;
- (g) consider providing the time allowed for holders of specified instruments to meet the requirements under the proposed clause 46A(1);
- (h) consider reviewing whether the proposed clause 48(2)(a) should be placed under Part 6 which concerned enforcement; and
- (i) consider reviewing the proposed clause 54(6) as to how a recipient of an enforcement notice would be notified of a decision of the Director of Food and Environmental Hygiene under that clause on suspension of enforcement notice or otherwise pending the determination of an appeal.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on Tuesday, 23 February 2016 at 4:30 pm.

III. Any other business

- 4. There being no other business, the meeting ended at 10:31 am.

Council Business Division 2
Legislative Council Secretariat
12 September 2016

**Proceedings of the twenty-fifth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 15 February 2016, at 08:30 am
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>			
000846 - 001046	Chairman	Opening remarks	
001047 - 001547	Chairman Admin ALA6 Mr LEUNG Kwok-hung	<p>Discussion of the third batch of Committee stage amendments ("CSAs") to be proposed by the Administration (LC Paper No. CB(2)721/15-16(01)(Revised)).</p> <p><u>Clause 2 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>The Administration's briefing on its proposed CSAs.</p> <p>ALA6's enquiry and the Administration's response regarding whether "展開骨灰處置通告" in the heading of section 8 of Schedule 5 and other provisions of the Bill would be changed to "展開骨灰處置通知".</p> <p>The Administration's response to Mr LEUNG Kwok-hung's enquiry that the Administration would standardize the Chinese text for the term "commencement of ash disposal notice" in the Bill.</p>	Admin (paragraph 2(a) of the minutes)
001548 - 002223	Chairman Admin	<p><u>Clauses 4, 7, 9 and 11 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
002224 - 002621	Chairman Admin	<p><u>The proposed clauses 11A and 11B (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>The Administration's briefing on the background of adding the proposed clauses 11A and 11B.</p>	
002622 - 003203	Chairman ALA6 Mr WU Chi-wai Admin	<p><u>The proposed clause 11A (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>ALA6's enquiry and the Administration's response regarding whether the proposed clause 11A(1) applied to pre-Bill columbaria.</p> <p>The Administration's response to Mr WU Chi-wai's enquiry as to whether a</p>	

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		<p>provision similar to clause 11A(2) would be allowed for the future Private Columbaria Licensing Board ("the Licensing Board") to consider an application in respect of a specified instrument (i.e. a licence, an exemption or temporary suspension of liability ("TSOL")) which was made beyond the prescribed time limit as referred to in the proposed clause 11A(3) to (5).</p> <p>Given that the proposed clause 11A(3) referred to both pre-Bill columbaria and non-pre-Bill columbaria, ALA6's view that the Administration should consider making it clear in the proposed clause 11A. The Administration undertook to consider ALA6's view.</p> <p>The Administration's response to ALA6's enquiry that a person who had missed the deadline for making an application as referred to in the proposed clause 11A(3) to (5) could make an application for the issue of a specified instrument afresh, but the person concerned might have contravened clause 8 for operating a columbarium without holding a specified instrument and would be subject to criminal sanction.</p>	<p>Admin (paragraph 2(b) of the minutes)</p>
003204 - 004405	<p>Chairman Mr LEUNG Kwok-hung Admin ALA6 Mr WU Chi-wai Mr Albert CHAN</p>	<p>Mr LEUNG Kwok-hung's enquiry and the Administration's response regarding setting a time limit for making applications under the proposed clause 11A(5) for the extension of TSOLs the validity period of which was shorter than two years.</p> <p>Mr LEUNG's concern that the time specified by the Licensing Board for making the aforesaid applications might be unreasonable. The Administration's response that being a statutory body, the Licensing Board would ensure that its decisions were reasonable and justifiable. Its advice that applicants had the right to make representation.</p> <p>Mr LEUNG's view that a time limit for making applications for extension of TSOLs should be set along the same line as the time limit set under the proposed clause 11A(3) and (4) and such time limit should be in proportion to the validity period of TSOLs. The Administration's response that the Licensing Board should be given the flexibility to cater for individual circumstances.</p>	

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		<p>The Chairman's suggestion that the Licensing Board should be allowed to specify a date for making applications for extension of TSOLs the validity period of which was shorter than 18 months instead of shorter than two years. Mr WU Chi-wai's view that the validity period of such TSOLs should be shorter than 12 months so as to be commensurate with the time limit for making applications for extension of TSOLs stipulated in the proposed clause 11A(4). The Administration undertook to review the proposed clause 11A(5) taking into account members' views.</p> <p>Mr Albert CHAN's view that standardized wording should be used for describing the time limit for applications as referred to in the proposed clause 11A(3) to (5).</p> <p>At ALA6's request, the Administration undertook to consider amending the proposed clause 11A to indicate that a person who had missed the deadline for making an application as referred to in the proposed clause 11A(3) to (5) could make an application for the issue of a specified instrument afresh.</p>	<p>Admin (paragraph 2(c) of the minutes)</p> <p>Admin (paragraph 2(d) of the minutes)</p>
004406 - 005018	Chairman Admin Mr WU Chi-wai	<p><u>The proposed clause 11B (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>Mr WU Chi-wai's enquiry and the Administration's response regarding the validity period of a licence where the tenancy/lease of the columbarium premises concerned would expire shortly before 30 June 2047.</p>	
005019 - 005442	Chairman Mr Albert CHAN ALA6 Admin	Responses of ALA6 and the Administration to Mr Albert CHAN's enquiries that upon enactment of the Private Columbaria Ordinance ("the Ordinance"), a person who continued to operate a columbarium without a valid specified instrument committed an offence and was liable to criminal sanction.	
005443 - 005632	Chairman Mr WU Chi-wai Admin	Mr WU Chi-wai's enquiry and the Administration's response regarding the reasons for its proposal to delete clause 11(5)(a) from the Bill and the implications on a TSOL following the removal of clause 11(5)(a).	
005633 - 010746	Chairman Mr Albert CHAN Admin ALA6	Mr Albert CHAN's enquiry and the Administration's response regarding whether the Licensing Board, in considering an application for a specified instrument, would take into account whether or not an operator of a private	

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		<p>columbarium ("operator") had taken out insurance policies for employees and third party risks. The Administration's advice that as stipulated in clause 96, the requirements under the Ordinance were in addition to and did not derogate from any requirement under any other ordinance or law.</p> <p>Mr CHAN's concern that some operators might not be able to take out insurance policies for third party risks for their columbarium premises. Remarks of the Administration and the Chairman that insurance-related requirements were covered by other relevant ordinances.</p> <p>ALA6's response to Mr Albert CHAN's enquiry that the Bill did not expressly provide for obligations of operators to take out insurance policies for employees and third party risks. ALA6's advice that unless conditions were imposed, the specified instruments concerned would not be affected if the operators did not take out any such insurance policies. Certainly, the operators were also required to comply with other laws as applicable.</p> <p>Mr CHAN's view that the Licensing Board or relevant authorities should take administrative measures to alert applicants for specified instruments of their legal liabilities, e.g. obligations to take out insurance policies, other than those under the Ordinance. The Administration's response that given the large number of legislative provisions that might be applicable, it would not be possible for it to provide an exhaustive list to applicants for specified instruments. The Administration could try to highlight important issues as far as practicable. The Administration undertook to reflect Mr CHAN's views to the relevant authorities.</p>	<p>Admin (paragraph 2(e) of the minutes)</p>
010747 - 011815	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's enquiry and the Administration response regarding how the proposed deletion of clause 11(5)(a) would expedite applications for TSOLs. The Administration's advice that retaining clause 11(5)(a) would result in longer processing time of TSOLs. Under the design, these operators would be allowed time during the validity period of TSOL to secure compliance with the requirements for procuring a licence or exemption (as the case required, which included the requirement relating to the right to use the premises). In any event, the problems inherited</p>	

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		from the past would be contained as pre-Bill columbaria which were granted with an exemption or TSOL were not permitted to sell or let out niches.	
011816 - 012713	Chairman Admin	<u>Clauses 21, 22, 24, 38, 40, 41 and 42 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u> The Administration's briefing on its proposed CSAs.	
012714 - 013440	Chairman Admin Mr WU Chi-wai	<u>Clause 43 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u> Mr WU Chi-wai's enquiry and the Administration's response regarding whether niches which had already been sold but the ashes had yet to be interred in the niches as at the Bill announcement time would be covered by the Ordinance. The Administration's advice that it would discuss with the Bills Committee the handling of such niches at a later stage. Mr WU's enquiry and the Administration's response regarding the keeping of records of agreements for sale of interment rights which were signed before the passage of the Bill, in the context of the provisions relating to inspection of the register of agreements for the sale of interment rights by members of the public.	
013441 - 013510	Chairman Admin	<u>Clause 44 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u> The Administration's briefing on its proposed CSAs.	
013511 - 014125	Chairman Admin ALA6	<u>The proposed clause 46A (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u> The Administration's briefing on the background of adding the proposed clause 46A after clause 46. The Administration's response to ALA6's enquiry regarding adding the words "if any" after "authorized representative" to cater for the situation where no such persons had been appointed. The Administration's advice that it would propose amendments to provisions in relation to consumer protection and the definition of "authorized representative" in the Bill.	Admin (paragraph 2(f) of the minutes)

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		<p>ALA6's enquiry and the Administration's response regarding allowing reasonable time for holders of specified instruments to comply with the requirements.</p> <p>The Chairman's view that the time allowed for holders of specified instruments to meet the requirements under the proposed clause 46A(1) should be specific. The Administration undertook to consider the Chairman's view.</p>	Admin (paragraph 2(g) of the minutes)
014126 - 014748	Chairman Admin ALA6	<p><u>Clause 48 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>Referring to the Administration's proposed clause 48(2)(a), ALA6 expressed concern about scenarios where the persons assisting an authorized officer to exercise a power or perform a function under the Ordinance were not public officers themselves. The Administration's response that there would indeed be circumstances under which an authorized officer would require assistance from persons who were not public officers in performing his or her duties. The Administration would consider moving the proposed clause 48(2)(a) which was currently under Part 6 and concerned enforcement to Part 9 which dealt with miscellaneous matters.</p> <p>ALA6's advice that she would further discuss with the Administration regarding the proposed clause 48(2)(a). At the Chairman's request, the Administration undertook to review whether the proposed clause 48(2)(a) should be placed under Part 6 which concerned enforcement.</p>	Admin (paragraph 2(h) of the minutes)
014749 - 015059	Chairman Admin	<p><u>Clauses 49, 50, 51 and 53 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
015060 - 020109	Chairman Admin ALA6 Miss CHAN Yuen-han	<p><u>Clause 54 (Annex 2 to LC Paper No. CB(2)721/15-16(01)(Revised))</u></p> <p>ALA6's advice that members might wish to consider whether the Administration's proposed clause 54(6), (under which an appeal against a decision to serve an enforcement notice did not suspend the operation of the decision pending the determination of the appeal, unless the Director of Food and Environmental Hygiene ("DFEH") decided otherwise) was acceptable from the policy perspective.</p>	

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		<p>The Administration's response to Miss CHAN Yuen-han's concern that a balance should be struck between availing opportunities for the appellants to appeal and the continuation of, say, nuisances to the neighbouring community through the delaying tactics.</p> <p>Miss CHAN's enquiry and ALA6's response regarding the feasibility and difficulties of specifying a timeframe in relation to processing appeals against enforcement notices.</p> <p>Views of Miss CHAN and the Chairman on striking a balance between safeguarding the appellants' interests and their taking timely remedy to end the contravention of conditions stipulated in specified instruments.</p> <p>ALA6's enquiry and the Administration's response regarding how recipients of enforcement notices would be made known of DFEH's decision under the proposed clause 54(6) whereby an appeal against DFEH's decision to serve an enforcement notice would suspend the operation of the decision pending the determination of the appeal.</p> <p>The Chairman's view that DFEH should have the power to decide whether to suspend such operation before or after appeals against enforcement notices were received.</p> <p>ALA6's enquiry and the Administration's response regarding whether DFEH's decision under the proposed clause 54(6) would be specified in the enforcement notices. At ALA6's request, the Administration undertook to review the proposed clause 54(6).</p> <p>Miss CHAN's view that the Administration's proposal was acceptable if appellants were informed of DFEH's decision under the proposed clause 54(6) in advance.</p>	<p>Admin (paragraph 2(i) of the minutes)</p>
020110 - 020227	Chairman	Date of next meeting.	