

立法會
Legislative Council

LC Paper No. CB(2)2052/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the twenty-seventh meeting
held on Friday, 1 April 2016, at 8:30 am
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 Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WU Chi-wai, MH
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon James TO Kun-sun
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon WONG Yuk-man
Hon Steven HO Chun-yin, BBS
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, 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

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 Thomas LEUNG
Assistant Director/New Buildings 1
Buildings Department

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

Ms Lily YAM
Chief Town Planner/Town Planning Board 1
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(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), CB(2)721/15-16(01)(Revised) to (02) and CB(2)1177/15-16(01)]

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

II. Any other business

2. There being no other business, the meeting ended at 10:32 am.

Council Business Division 2
Legislative Council Secretariat
15 September 2016

**Proceedings of the twenty-seventh meeting of the
Bills Committee on Private Columbaria Bill
on Friday, 1 April 2016, at 8:30 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>			
000757 - 001126	Chairman	Opening remarks	
001127 - 002457	Chairman Admin Mr WU Chi-wai Mr WONG Kwok-hing	<p>Discussion of the Administration's responses to issues raised at the meetings of the Bills Committee on 27 April, 12 May and 22 June 2015 (LC Paper No. CB(2)721/15-16(02)).</p> <p><u>Items 11 to 13 of LC Paper No. CB(2)721/15-16(02)</u></p> <p>Mr WU Chi-wai's concern and the Administration's response regarding whether the Committee stage amendments ("CSAs") being considered by the Administration could deal with interment rights in respect of niches which had already been sold but ashes had yet to be interred in the niches as at the Bill announcement time ("BAT"). The Administration advised that the CSA under consideration intended to handle interment of ashes in the aforesaid niches, with safeguards against abuse. The Administration explained the effect of that CSA.</p> <p>Mr WU's enquiry and the Administration's response regarding whether the future Private Columbaria Licensing Board ("the Licensing Board"), in considering applications for exemption, would accept all types of contracts of sale of interment rights in respect of niches which were signed before BAT. The Administration explained the legal consequences for a person who, with intent to deceive the Administration, falsely claimed that the interment right in respect of a niche in which ashes were being interred after BAT was sold before the BAT.</p>	
002458 - 003117	Chairman Mr WONG Kwok-hing Admin	The Administration's response to Mr WONG Kwok-hing's enquiry regarding the reasons for not being able to disclose the exact number of niches the interment rights in respect of which had already been sold but ashes had yet to be interred therein. The Administration's advice that the information collected was composed of ball-park figures in some cases;	

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		<p>part of the information reported by operators of private columbaria ("operators") did not match that collected by the Administration in all respects; and some such information was not covered by statutory declaration.</p> <p>Mr WONG's enquiry and the Administration's response regarding how the Administration would determine whether a consumer had falsely claimed that the interment right in respect of a niche in which ashes were being interred after BAT was sold before BAT.</p> <p>Mr WONG cited a case in which a company had applied to the Town Planning Board for using a warehouse building in Chai Wan to operate a private columbarium. Given that the application was submitted before the passage of the Bill, he asked whether the Administration considered that the company concerned openly challenged the law or had broken the law.</p> <p>The Administration's advice that the objective of the Private Columbaria Ordinance ("the Ordinance") was to ensure compliance by private columbaria with statutory and Government requirements. Following commencement of the Ordinance, operators of private columbaria which were not exempted or given temporary suspension of liability must obtain a licence for continuing their operation. Without a licence, no operator could offer the interment rights in respect of niches for sale. For cases in which the applicant took steps to meet the land-related, planning-related and building-related requirements for using their premises for columbarium operation and did not sell any interment right prior to obtaining the requisite approval, such conduct was not against the spirit of the Ordinance.</p>	
003118 - 005344	Chairman Mr LEUNG Kwok-hung Admin	<p>The Administration's response regarding Mr LEUNG Kwok-hung's concern that some consumers might not be able to exercise their interment rights if they had difficulties in proving that they had purchased interment rights in respect of the niches before BAT. Mr LEUNG's view that the Bill had affected the interment rights of these consumers. The Administration's advice that the Ordinance would allow bona fide consumers and operators to inter ashes into niches the interment rights in respect of which were sold before BAT but yet to be filled.</p>	

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		<p>Mr LEUNG's enquiry and the Administration's response regarding whether steps would be taken to assist consumers who were unable to exercise their interment rights due to breaches of contracts by operators. The Administration's advice that the CSA under consideration would not affect the obligations and rights of operators and purchasers under the agreements for the sale of interment rights ("agreements") entered into before BAT, and the Ordinance would not in any way give operators an excuse to breach a contract. With or without the CSA under consideration, breach of private contracts would have to be resolved through civil proceedings.</p> <p>Mr LEUNG's view that an operator should be required to provide a register of agreements ("the Register"). The Administration's advice that under the Bill, a person holding a licence in respect of a columbarium must keep the Register.</p>	
005345 - 005908	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's view that it was important that the CSA being considered by the Administration would ensure that consumers could inter ashes into niches the interment rights in respect of which were purchased before BAT. The Administration should take into account consumers' interest in preparing the relevant CSA. Publicity about the effect of the relevant CSA and about the legal consequences to be borne by unscrupulous operators was supported.</p> <p>The Chairman's view that the CSA under consideration and the enforcement of contracts by consumers were separate matters.</p>	
005909 - 010343	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry and the Administration's response regarding the handling of ashes which could not be interred, due to breach of contract by operators, into those niches the interment rights in respect of which were sold before BAT.</p> <p>The Chairman's view that unauthorized columbaria should be regulated. A balance should be struck between accommodating the needs to inter ashes into niches the interment rights in respect of which were sold before BAT but yet to be filled and minimizing nuisance caused to residents by private columbaria.</p>	
010344 - 011149	Chairman Mr WU Chi-wai Admin	Mr WU Chi-wai's enquiry and the Administration's response regarding the types of information collected through the Notification Scheme.	

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		<p>The Administration's response to Mr WU's view regarding requiring operators to submit the Register before the passage of the Bill. The Administration's advice that operators should have prepared the relevant records on interment of ashes when applying for an exemption.</p> <p>Mr WU's enquiry and the Administration's response regarding the penalties for consumers or operators who falsely claimed that the interment right in respect of a niche was sold before BAT.</p>	
011150 - 011437	Chairman ALA6 Admin	<p><u>Items 14 to 16 of LC Paper No. CB(2)721/15-16(02)</u></p> <p>ALA6's enquiry and the Administration's response regarding whether the Licensing Board would give permission for alteration or addition to columbarium premises that would result in material deviation from the plan already approved, if it was satisfied that the alteration or addition would not undermine, or would be at least as effective as the plan already approved, in delivering the express purpose for which the regulatory regime was formulated in the first place.</p>	
011438 - 012332	Chairman Mr LEE Cheuk-yan Admin	<p><u>Annex to LC Paper No. CB(2)721/15-16(02)</u></p> <p>Mr LEE Cheuk-yan's enquiry and the Administration's response regarding the latest compliance status of the 109 private columbaria in relation to planning-related requirements.</p> <p>The Administration's advice that as stipulated in Part 1 of Schedule 2 to the Bill, a columbarium complied with the planning-related requirements only if the columbarium complied with every requirement under the Town Planning Ordinance (Cap. 131).</p> <p>Mr LEE's view that the Licensing Board should also take into account past records of non-compliance by private columbaria in considering their applications for specified instruments. He said that the Labour Party was considering proposing a CSA to include such a factor in the Bill. The Chairman's remarks that the CSA under consideration by the Labour Party might give an impression of pinpointing certain operators.</p>	
012333 - 013540	Chairman Mr LEUNG Kwok-hung	Mr LEUNG Kwok-hung's view that to protect consumers' interests, operators should be	

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	Mr Albert CHAN Miss CHAN Yuen-han Admin	<p>required to provide the Registers. Mr Albert CHAN's suggestion of requiring operators to provide interim Registers before the passage of the Bill. The Administration's response that after the passage of the Bill, a person holding a licence in respect of a columbarium must keep the Register and make it available on request for inspection, by the Director of Food and Environmental Hygiene or an authorized officer. The Register which was a record of agreements while the agreement signed between an operator and a consumer made the transactions legally binding.</p> <p>Mr LEUNG's concern that some operators might not bother to prove that the sale of the interment right in respect of a niche had taken place before BAT if the number of niches the interment rights in respect of which they sold had exceeded the number of niches they could provide, thus shifting the burden of proof to the relevant consumer. Mr Albert CHAN's view that consumers could seek remedies through other legal means.</p> <p>In response to Mr CHAN Yuen-han's enquiry, ALA6 advised that legal proceedings could be initiated by consumers to claim for their losses.</p> <p>The Chairman's reiteration of his view on the need to maintain a balance between protecting consumers' interests and addressing the concerns about nuisance caused by the operation of private columbaria.</p>	
013541 - 014225	Chairman Admin	<p><u>Full set of draft CSAs to the Bill proposed by the Administration (LC Paper No. CB(2)1177/15-16(01))</u></p> <p>The Administration's briefing on the sources and justifications for the proposed CSAs in relation to the meanings of "ashes" and "deed of mutual covenant".</p>	
014226 - 014520	Chairman ALA6 Admin	ALA6's enquiry and the Administration's response regarding the reasons for adding the proposed clause 4B (i.e. Ordinance not applicable to premises where transient exhibition of ashes is held) to the Bill.	
014521 - 015027	Chairman Admin	The Administration's briefing on the sources and justifications for the proposed CSAs in relation to interment of ashes in religious ash pagodas.	

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015028 - 015253	Chairman Miss CHAN Yuen-han Admin	Miss CHAN Yuen-han's enquiry and the Administration's response regarding the applicable time for interment of ashes of religious practitioners in religious ash pagodas of exempted columbaria that were specified Chinese temples.	
015254 - 015400	Chairman Deputy Chairman Admin	The Administration's response to the Deputy Chairman's enquiry that the Home Affairs Bureau would determine whether a Chinese temple which kept ashes of religious practitioners was a bona fide religious body according to the Chinese Temples Ordinance (Cap. 153).	
015401 - 015451	Chairman ALA6 Miss CHAN Yuen-han Admin	The Administration's response to enquiries of ALA6 and Miss CHAN Yuen-han that a Chinese temple was required to apply for an exemption first before it (as a columbarium in respect which an exemption was granted) might use its religious ash pagoda for interment of ashes of its religious practitioners.	
015452 - 015902	Chairman Dr Elizabeth QUAT Admin	Dr Elizabeth QUAT's enquiry and the Administration's response regarding information on bona fide religious bodies which would be eligible for applying for an exemption.	
015903 - 020245	Chairman Mr Albert CHAN Miss CHAN Yuen-han	Mr Albert CHAN's suggestion of fixing the dates for future meetings of the Bills Committee and inviting deputations to a meeting of the Bills Committee to give views on the major proposals under the Bill supported by members. Miss CHAN Yuen-han's view on the pros and cons of inviting deputations to a meeting of the Bills Committee. The Chairman said that he would give due consideration to the suggestion of inviting deputations to attend a meeting of the Bills Committee.	
020246 - 020257	Chairman	Closing remarks	