

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2068/15-16  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/9/13

**Bills Committee on Private Columbaria Bill**

**Minutes of the twenty-ninth meeting  
held on Wednesday, 11 May 2016, at 8:45 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 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 Paul TSE Wai-chun, 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 Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon LEE Cheuk-yan  
Hon CHEUNG Kwok-che  
Hon WONG Yuk-man  
Hon Tony TSE Wai-chuen, BBS

**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 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** : 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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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(02)(Revised), CB(2)548/15-16(02)(Revised), CB(2)548/15-16(03) to (05), CB(2)721/15-16(02) and CB(2)1399/15-16(01)]

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

*(At 9:52 am, the Chairman suspended the meeting to allow members of the Bills Committee who were also members of the Public Works Subcommittee ("the Subcommittee") to proceed to the meeting venue of the Subcommittee for voting on a motion. The meeting resumed at 9:59 am).*

2. The Bills Committee requested the Administration to:

- (a) delete the reference to subclause "(4A)" from clause 32(2);
- (b) consider incorporating into clause 33(2)(ea) the scenario under which a partner in a partnership was a body corporate; and
- (c) consider reviewing the drafting of clause 41(2)(a).

Action

**II. Date of next meeting**

3. Members noted that the next meeting would be held on Monday, 16 May 2016 at 4:30 pm.

**III. Any other business**

4. There being no other business, the meeting ended at 10:33 am.

Council Business Division 2  
Legislative Council Secretariat  
22 September 2016

**Proceedings of the twenty-ninth meeting of the  
Bills Committee on Private Columbaria Bill  
on Wednesday, 11 May 2016, at 8:45 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>			
000505 - 000602	Chairman	Opening remarks	
000603 - 001851	Chairman Mr WONG Kwok-hing ALA6 Admin	<p>Discussion of the full set of draft Committee stage amendments ("CSAs") to the Bill proposed by the Administration (updated version) (LC Paper No. CB(2)1399/15-16(01)).</p> <p><u>Clause 32 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>Mr WONG Kwok-hing's enquiry and the Administration's response regarding the obligations and liabilities of transferees in subsequent transfers of specified instruments (i.e. licences, exemptions or temporary suspension of liability).</p> <p>The Administration's advice that as there was no subclause (4A) under clause 32 in the latest marked-up version, the reference to subclause "(4A)" would be deleted from clause 32(2).</p> <p>ALA6 advised that transferees and holders of specific instruments could agree on issues regarding indemnity for transferees.</p> <p>ALA6 invited members to consider whether it was acceptable not to bring transfer of shares in an instrument holder being a company under the ambit of clause 32. No members raised objection in this regard.</p>	Admin (paragraph 2(a) of the minutes)
001852 - 003004	Chairman ALA6 Mr WONG Kwok-hing Admin	<p><u>Clause 33 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>ALA6 invited members to consider whether the scenario under which a partner in a partnership was a body corporate should be included in the proposed clause 33(2)(ea).</p> <p>Mr WONG Kwok-hing's view that the aforesaid scenario should be included. The Administration's advice that it would consider incorporating the scenario into clause 33(2)(ea).</p> <p>ALA6 invited members to consider whether it was acceptable to only allow a natural person,</p>	Admin (paragraph 2(b) of the minutes)

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		<p>partnership or body corporate but not an unincorporated association to apply for a specified instrument.</p> <p>The Administration explained the reasons for only allowing a natural person, partnership or body corporate to apply for a specified instrument.</p> <p>The Administration's advice that it was known that the vast majority of the cases under the notification scheme would have no problem in setting up a company as the party seeking a specified instrument or applying in their capacity as natural persons or partners, and that with the amendments to the transitional provisions in Schedule 7, the grace period could cover the case where an unincorporated association ran a columbarium that was in operation immediately before the enactment date and turned into a legal entity (a natural person, partner or company) in seeking a specified instrument after the enactment date.</p> <p>Mr WONG Kwok-hing's view that it was acceptable to only allow a natural person, partnership or body corporate to apply for a specified instrument.</p>	
003005 - 003545	<p>Chairman Mr Albert CHAN Mr Alan LEONG Admin</p>	<p>Mr Albert CHAN's enquiry and the Administration's response in relation to communicating with concern groups about major amendments proposed to the Bill.</p> <p>Mr CHAN's view that the Administration should convey the strong views, if any, of concern groups on the Bill to the Bills Committee.</p> <p>Responses of ALA6 and the Administration to Mr Alan LEONG's enquiry regarding the meaning of "a body corporate (other than a company)" in the proposed clause 33(2)(ea).</p> <p>The Administration's response to Mr LEONG's enquiry regarding the interpretation of "body corporate" in the Bill.</p> <p>ALA6's response to Mr LEONG's enquiry that the meaning of "a body corporate (other than a company)" in the Bill was clear.</p>	

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003546 - 003604	Chairman Admin	<p><u>Clauses 34 to 35 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
003605 - 004211	Chairman ALA6 Mr WONG Kwok-hing	<p><u>Clause 36 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>At ALA6's request, the Administration explained the reasons for proposing to delete the proprietor or partner from clause 36(2), as such changes already constituted a change of instrument holders.</p> <p>Mr WONG Kwok-hing's concern that the proposed deletion might create a loophole for proprietors or partners to shirk their obligations. The Administration explained that a transfer application was required if the proprietor or partner changed. Section 2 of Schedule 3 had stipulated who might apply or be authorized to apply for specified instruments and the responsible parties could be identified.</p>	
004212 - 010422	Chairman Mr WONG Kwok-hing Mr Alan LEONG Deputy Chairman Ms Cyd HO Admin	<p>Given that contravening the proposed clause 36(2A) might be punishable by imprisonment, ALA6 invited members to consider whether it was acceptable to empower the future Private Columbaria Licensing Board ("the Licensing Board") to decide the information it required and specify the time for furnishing it with such information under the proposed clause 36(2A)(b)(ii).</p> <p>The Chairman's view that the power conferred on the Licensing Board might be too wide. The Administration's explanation of the rationale underlying the proposed clause 36(2A)(b)(ii) and its advice that similar provisions and punishment existed in the Insurance Companies Ordinance (Cap. 41).</p> <p>The Chairman's enquiry and the Administration's response as to why it was considered not possible or advisable to spell out exhaustively in the Bill the required information and the time for submitting such information.</p> <p>Views of the Chairman and Mr Alan LEONG that the punishment of imprisonment for contravening the proposed clause 36(2A)(b)(ii) was too severe. The Licensing Board might consider revoking or declining applications for specified instruments if the proposed</p>	

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		<p>clause 36(2A)(b)(ii) was not complied with. The Administration's advice that revoking a specified instrument would render a private columbarium not able to continue to operate, thereby giving rise to the problem of displacing ashes interred in the columbarium concerned.</p> <p>Expressing concerns that contravention of the proposed clause 36(2A)(b)(ii) carried a punishment of imprisonment, the Chairman and Mr Alan LEONG took the view that the Administration should consider imposing a fine only. Mr LEONG's view that the severity of sanction might be disproportionate with the non-compliance. The Administration's advice that subject to members' views, it would consider re-visiting the propriety of imposing a punishment of imprisonment for contravention of the proposed clause 36(2A)(b)(ii).</p> <p>Views of Mr WONG Kwok-hing, the Deputy Chairman and Ms Cyd HO that the aforesaid punishment should be retained. Having regard to members' views, the Chairman said that no revision of the punishment proposed by the Administration in relation to the proposed clause 36(2A)(b)(ii) was required.</p> <p>Mr Alan LEONG's view that replacing the word "after" by "of" in the phrase "within 14 days after the date on which the change occurs" in the proposed clause 36(2A)(b)(i) might improve the clarity of the commencement date of the 14-day period mentioned therein. The Administration's explanation of the reasons for using "after" in the clause.</p>	
010423 - 010900	Chairman Admin	<p><u>Clauses 37, 38, 40 and 41 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
010901 - 011526	Chairman	Suspension of meeting	
011527 - 012844	Chairman Deputy Chairman Mr WONG Kwok-hing Admin	<p><u>Clause 41 (Annex 2 to LC Paper No. CB(2)1399/15-16(01))</u></p> <p>The Deputy Chairman's concern that clause 41(2)(a) connoted that a term of an interment right would tie in with the rent payment intervals for the short term tenancy of a columbarium. The Administration's response that an agreement for the sale of interment right ("agreement") was not enforceable against the</p>	



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		<p>purchaser if the term of the interment right extended beyond the term of the lease/tenancy of the columbarium concerned. The Administration noted members' concern about the correlation between the rent payment intervals for short term tenancies and the terms of interment rights.</p> <p>The Administration's response to the enquiries of the Deputy Chairman and Mr WONG Kwok-hing that under section 1(b)(i) and (ii) of Schedule 4, an agreement must set out the date on which the term of the lease/tenancy of the columbarium concerned was to end and the particulars of the tenancy; and under section 2(d) of Schedule 4, an agreement must set out if the interment right included a right to renew the interment right on the seller being granted a renewed term of the lease.</p> <p>The Deputy Chairman's concern that the way clause 41(2)(a) was drafted might result in purchasers' interment right being affected when the seller was unable to pay the rent for the short term tenancy. The Administration advised that clause 41 set out the situations under which an agreement was unenforceable against the purchaser and provided adequate protection for purchasers. The Administration explained that clause 41(2)(a) was drafted in such a way so as to complement the forms of land grant. The Administration advised that it would review clause 41(2)(a) having regard to the Deputy Chairman's concern.</p> <p>Mr WONG Kwok-hing's enquiry and the Administration's response that the Private Columbaria Ordinance ("the Ordinance") would not apply to agreements which were signed before the commencement of the Ordinance.</p>	<p>Admin (paragraph 2(c) of the minutes)</p>
012845 - 014152	<p>Chairman Mr WONG Kwok-hing ALA6 Admin</p>	<p>Mr WONG Kwok-hing's enquiry and the Administration's response in relation to signing of an agreement by a person/persons for and on behalf of a company. ALA6's advice that signing of agreements for and on behalf of a company should be in accordance with the company's constitutional document(s).</p> <p>The Administration's response to Mr WONG Kwok-hing's enquiry that an agreement was unenforceable against the purchaser if it was proven that the agreement was not signed according to the requirement stipulated in the certificate of incorporation and</p>	

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		articles of association of the company concerned and was invalid.	
014153 - 014837	<p>Chairman ALA6 Mr WONG Kwok-hing Deputy Chairman Admin</p>	<p>ALA6's advice that if "prescribed" was used in clause 41(3)(j), "any other requirements" mentioned therein should be made by way of subsidiary legislation which was subject to scrutiny and amendment by the Legislative Council ("the LegCo"). If "prescribed" was replaced by "specified" as proposed by the Administration, the Licensing Board would be empowered to impose any other requirements to be met for an agreement to be enforceable against a purchaser. Such requirements would not be subject to scrutiny and amendment by the LegCo. A purchaser under an agreement that was not enforceable under clause 41(3)(j) might cancel the agreement within six months after the date of the agreement by giving the seller a written notice of cancellation pursuant to the proposed clause 42(1A). She invited members to consider whether the amendment proposed by the Administration was acceptable and whether the parties concerned would know about the requirements under clause 41(3)(j) were drawn up by the Licensing Board.</p> <p>The Administration advised that the Licensing Board should be given the flexibility to impose requirements under clause 41(3)(j) according to different circumstances and the Licensing Board might be more specific about such requirements having regard to the experience gained. The Administration's view that imposing such requirements through subsidiary legislation would be liable to frustrate timely implementation of the relevant provisions.</p> <p>Mr WONG Kwok-hing's expression of support for the Administration's proposed amendment to clause 41(3)(j).</p> <p>The Deputy Chairman's enquiry and the Administration's response in relation to making known to and seeking views of stakeholders on the requirements to be drawn up by the Licensing Board. The Administration advised that the sector would be briefed on the Bill and the Licensing Board would consider stakeholders' views in preparing the relevant guidelines. In drawing up the requirements, the Licensing Board would balance the interests of both the sellers and the purchasers.</p>	

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014838 - 014855	Chairman Deputy Chairman	Further to his view on clause 41(2)(a) (time marker: 011527 - 012844), the Deputy Chairman took the view that there was a need to align the English text and the Chinese text of clause 41(2)(a).	
014856 - 014936	Chairman	Date of next meeting	

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Legislative Council Secretariat  
22 September 2016