

立法會
Legislative Council

LC Paper No. CB(2)1956/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the thirty-fourth meeting
held on Monday, 6 June 2016, at 2:30 pm
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 Paul TSE Wai-chun, 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 Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Elizabeth QUAT, JP
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon CHAN Han-pan, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
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
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 : 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(02)(Revised), CB(2)548/15-16(02)(Revised), CB(2)548/15-16(03) to (05), CB(2)721/15-16(02), CB(2)1589/15-16(01) and CB(2)1641/15-16(01) to (02)]

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

2. The Bills Committee requested the Administration to:

- (a) undertake to (i) review and propose amendments, in a timely manner, to the provisions of the Private Columbaria Ordinance ("the Ordinance") where the licensing authority or enforcement authorities had encountered difficulties after enactment of the Ordinance; and (ii) conduct a review of the Ordinance after its enactment for a period of time, say, three years. The Administration's undertaking to do so should be included in the speech of the Secretary for Food and Health for the resumption of Second Reading debate on the Bill ("the SFH's speech");
- (b) consider amending clause 52(1)(b)(ii) to the effect that a holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) (as opposed to his/her employees, servants or agents) who failed to provide the assistance and information required to be provided under clause 49(2) was liable for the offence under clause 52(1)(b)(ii);
- (c) consider including in clause 65(4)(b) the reference to the proposed clause 64(4C) and (4D);

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- (d) propose Committee stage amendments ("CSAs") to clause 99(6);
- (e) consider whether to take over Hon Cyd HO's proposed CSA to the definition of "relative" in section 5(2) of Schedule 5;
- (f) provide information on the policies for land premium for private columbaria which applied for specified instruments as well as the conditions and criteria for waiving land premium for the eligible columbaria under different situations;
- (g) consider imposing conditions to forbid private columbarium operators who were exempted from paying land premium to charge consumers extortionate fees or to resell niches;
- (h) include the information under items (f) and (g) above and members' concern about land premium in the SFH's speech;
- (i) consider amending clause 65(3)(a) to specify that a specified officer might occupy the entire columbarium premises or part of them under an occupation order; and
- (j) consider whether to take over Hon LEE Cheuk-yan's proposed CSAs to clause 17 which sought to empower the future Private Columbaria Licensing Board to have regard to past records of non-compliance with statutory and government requirements related to planning, land and building by private columbaria in determining an application for a specified instrument.

II. Date of next meeting

3. Members noted that the next meeting would be held on Monday, 13 June 2016 at 4:30 pm.

III. Any other business

4. There being no other business, the meeting ended at 6:22 pm.

**Proceedings of the thirty-fourth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 6 June 2016, at 2:30 pm
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>			
000412 - 000658	Chairman	Opening remarks	
000659 - 001131	Chairman Admin	<p>Discussion of the final version of the full set of draft Committee stage amendments ("CSAs") to the Bill proposed by the Administration (LC Paper No. CB(2)1641/15-16(01)).</p> <p><u>Clauses 2, 3, 4, 4A and 4B (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
001132 - 003828	Chairman ALA6 Mr Albert CHAN Mr Alan LEONG Ms Cyd HO Admin	<p><u>Clause 5 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>ALA6's concern that a person who kept synthetic materials at domestic premises without a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) might be subject to criminal sanction under clause 9.</p> <p>The Administration's response that it had proposed increasing the number of containers of ashes that could be kept in domestic premises from five to 10. It did not envisage strong views against domestic keeping of synthetic materials from members of the public and considered keeping of a large volume of synthetic materials in domestic premises was unlikely. The Administration's advice that it would be difficult to carve out synthetic materials from ashes in the context of the provision relating to domestic premises, and it did not see the need to do so. The Administration would guard against abuse of domestic keeping of synthetic materials through acting on complaints.</p> <p>Mr Albert CHAN's view that it was difficult to define "container" as far as the keeping of synthetic materials was concerned. As transforming ashes into synthetic materials would become more common, restricting the quantity of synthetic materials to be kept in domestic premises might not be necessary.</p>	

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		<p>Mr Alan LEONG's view that it was difficult to come up with a perfect solution on this issue at present. His suggestion of keeping the Administration's proposal in the Bill. The Administration should, however, undertake to conduct a review of the Private Columbaria Ordinance ("the Ordinance") after its enactment for, say, three years, and propose amendments as necessary. The Administration's undertaking to do so should be covered in the speech of the Secretary for Food and Health for the resumption of Second Reading debate on the Bill ("the SFH's speech"). Ms Cyd HO's view that the Administration should also review and propose amendments, in a timely manner, to provisions where the licensing authority or enforcement authorities had encountered difficulties after the enactment of the Ordinance.</p> <p>Mr Albert CHAN's concern that as the keeping of synthetic materials comprising ashes of more than one person in one container in domestic premises did not fall within clause 5(1), there would be a lot of disputes in this regard in future.</p> <p>The Administration's response that it would undertake to keep in view the implementation of the Ordinance, propose amendments to the Ordinance as and when necessary and conduct a review of the Ordinance in any event around three years after its enactment. The above undertaking would be included in the SFH's speech.</p>	Admin (paragraph 2(a) of the minutes)
003829 - 003900	Chairman Admin	<p><u>Clause 9 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
003901 - 004408	Chairman ALA6 Admin	<p><u>The proposed clauses 11A and 11B (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>At ALA'6s request, the Administration explained applications for specified instruments in respect of columbarium premises which were acquired through adverse possession as confirmed by the court and how the owners of such premises could obtain a lease.</p>	
004409 - 005049	Chairman Admin	<p><u>Clauses 13 to 16, 18 to 20 and 22 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	

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005050 - 005523	Chairman Mr LEE Cheuk-yan Miss CHAN Yuen-han Admin	<p><u>Clause 17 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's response to Mr LEE Cheuk-yan's view in relation to empowering the future Private Columbaria Licensing Board ("the Licensing Board") to have regard to past records of non-compliance with land-related, planning-related or building-related requirements by private columbaria in determining an application for a specified instrument. Mr LEE's indication of proposing CSAs to clause 17 to include such a factor.</p> <p>Miss CHAN Yuen-han's view that the Administration should consider Mr LEE's view.</p>	
005524 - 010123	Chairman Admin	<p><u>Clauses 30, 32, 33, 35, 36 and 38 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
010124 - 010316	Chairman ALA6 Admin	<p><u>Clause 41 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>At ALA6's request, the Administration explained the rationale of the CSA proposed to the Chinese text of clause 41(2)(a).</p>	
010317 - 010635	Chairman Admin	<p><u>Clauses 42 to 45, 46A to 46C (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
010636 - 011134	Chairman ALA6 Admin	<p><u>Clauses 49 and 50 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>In response to ALA6's suggestion of including provisions set out in section 35A(10) to (11) of the Telecommunications Ordinance (Cap. 106) in clause 49, the Administration advised that it was not feasible. Members raised no objection to the Administration's response.</p>	
011135 - 011835	Chairman ALA6 Ms Cyd HO Miss CHAN Yuen-han Admin	<p><u>Clause 52 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>ALA6's enquiry and the Administration's response regarding the reasons for proposing to impose criminal sanction for contravening clause 49(2). ALA6 invited members to consider whether the Administration's proposal was acceptable.</p>	

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		Views of Ms Cyd HO and Miss CHAN Yuen-han that employees, servants, or agents of a holder of a specified instrument should not be held liable for failing to provide the assistance and information required to be provided under clause 49(2). The Administration was requested to consider amending clause 52(1)(b)(ii) to the effect that a holder of a specified instrument (as opposed to his/her employees, servants or agents) who failed to provide the required assistance and information under clause 49(2) was liable for the offence under clause 52(1)(b)(ii). The Administration undertook to consider members' views.	Admin (paragraph 2(b) of the minutes)
011836 - 012400	Chairman Admin	<u>Clauses 53 to 54, 58 to 60, 62 and 64 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSAs.	
012401 - 013026	Chairman ALA6 Miss CHAN Yuen-han Admin	<u>The proposed clause 64(5B) (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> ALA6 drew members' attention that no criminal sanction was imposed for a failure by a person who had operated, kept, managed or in any other way had control of a columbarium to produce information for facilitating a person in possession to carry out the prescribed ash disposal procedures under the proposed clause 64(5B). Miss CHAN Yuen-han's enquiry and the Administration's response regarding the rationale of the proposed clause 64(5B) and how cases involving withholding of information by a person would be handled.	
013027 - 013650	Chairman ALA6 Admin	<u>Clauses 65 and 68 and the proposed clause 65A (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> At ALA6's request, the Administration undertook to consider including the reference to the proposed clause 64(4C) and (4D) in clause 65(4)(b).	Admin (paragraph 2(c) of the minutes)
013651 - 014303	Chairman Admin	<u>Clauses 70 to 72, 74, 78, 92 and 94 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSAs.	

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014304 - 014657	Chairman Admin	<p><u>Clauses 94A and 97 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Chairman's view and the Administration's response regarding the need of using "將它" in the Chinese text of the proposed clause 94A.</p>	
014658 - 015031	Chairman ALA6 Admin	<p><u>Clause 99 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's advice that it would move CSAs to clause 99(6) so as to better align the provision with its policy intent, i.e. to allow time for seeking compliance with the building-related requirements during the validity period of TSOL.</p>	Admin (paragraph 2(d) of the minutes)
015032 - 015725	Chairman Admin	<p><u>Clauses 118 and 120 and Schedules 1 to 3 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
015726 - 021456	Chairman ALA6 Ms Cyd HO Deputy Chairman Admin	<p><u>Schedule 4 - sections 1 and 2 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>ALA6 invited members to consider the need to include as essential terms (section 2 of Schedule 4) any other services to be provided under an agreement for the sale of an interment right ("agreement") (i.e. the proposed section 2(ba) of Schedule 4), given that failure to do so would render an agreement not enforceable.</p> <p>The Chairman's enquiry and the Administration's response regarding the types of other services to be provided under an agreement.</p> <p>In the interest of better protection for consumers, Ms Cyd HO and the Deputy Chairman expressed support for the inclusion of any other services to be provided under an agreement in section 2 of Schedule 4.</p>	
021457 - 021933	Chairman Ms Cyd HO Admin	<p><u>Schedule 5 - section 5 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p>Ms Cyd HO's briefing on the CSA she intended to move to include the same-sex partner of a deceased person in the definition of "relative" in section 5(2) of Schedule 5. The Administration's advice on the avenues that were available for a partner of a deceased person to lay claim on the ashes of the deceased person</p>	

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		<p>(i.e. that person might claim for the return of ashes through his/her capacity as authorized representative or purchaser (as applicable), claim for the return of items through his/her capacity as eligible claimant and for the return of ashes coming into possession of the Director of Food and Environmental Hygiene ultimately.)</p> <p>The Administration was requested to consider whether to take over Hon Cyd HO's proposed CSA.</p>	Admin (paragraph 2(e) of the minutes)
021934 - 022208	Chairman Mr Albert CHAN Admin	Mr Albert CHAN's enquiry and the Administration's response in relation to the handling of land premium for private columbaria seeking specified instruments.	
022209 - 023316	Chairman	Break	
023317 - 025851	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN's view that the Administration should provide information on policies for land premium for private columbaria as well as the conditions and criteria for waiving land premium for these columbaria under different situations, e.g. unlawful occupation of government land, of private land or of government land abutting private land. Mr CHAN expressed concern about whether there would be on-the-ground difficulties, if many private columbarium operators were unable to pay the land premium (to cover occupied niches and new niches) which could be substantial. The Administration's explanation of the arrangements in relation to land premium for columbaria premises eligible for exemption.</p> <p>The Administration's response to the Chairman's enquiry that the Administration would consider, on a case-by-case basis, whether to waive waiver fees, short term tenancy rentals and administrative fees for a columbarium which had met the requirements for obtaining exemption in all other respects.</p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding whether the aforesaid arrangements would cover niches which had already been sold before the Bill announcement time, but ashes had not yet been interred; and niches which were covered by management contracts rather than by agreements. Mr CHAN expressed concern that the aforesaid arrangements for dated columbaria could be subject to abuse and took the view that operators whose waiver fees, short term tenancy</p>	Admin (paragraph 2(f) of the minute)

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		rentals and administrative fees had been waived should be forbidden to charge consumers extortionate fee or to resell niches to make profit. The Administration was requested to consider imposing the aforesaid prohibitions. The Administration's response that there were restrictions on any changes of ashes interred or to be interred in such niches. At Mr CHAN's request, the Administration undertook to address his concern about the need to place, as exemption conditions, restrictions on imposition of additional charges beyond what had been agreed in the pre-Bill announcement time agreements and the Administration's response in relation to land premium for columbarium premises in the SFH's speech.	Admin (paragraph 2(g) of the minutes) Admin (paragraph 2(h) of the minutes)
025852 - 030118	Chairman Admin	<u>Schedule 5 – section 2 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSAs.	
030119 - 030656	Chairman ALA6 Admin	<u>Schedule 5 - section 3 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> ALA6 drew members' attention to the Administration's proposed deletion of section 3(3) of Schedule 5, which had been discussed at the meeting of the Bills Committee on 30 May 2016. The Administration's explanation of the rationale of its proposal. Members raised no objection to the proposed deletion.	
030657 - 030721	Chairman Admin	<u>Schedule 5 - section 4 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSA.	
030722 - 031048	Chairman Admin	<u>Schedule 5 - sections 5 and 6 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSAs.	
031049 - 032236	Chairman ALA6 Admin	<u>Schedule 5 - sections 8 to 10 and 12 to 17 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> Responses of the Administration and ALA6 to the Chairman's enquiry in relation to reimbursing ash handlers for expenses incurred in disposal of ashes following the deletion of	

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		section 10 of Schedule 5 (half share of expenses of ash disposal procedures to be reimbursed). Members raised no objection to the proposed deletion.	
032237 - 032841	Chairman Admin	<u>Schedule 6 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on the fee proposals under the Ordinance upon its commencement.	
032842 - 032943	Chairman Admin	<u>Schedule 7 - section 1 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> The Administration's briefing on its proposed CSAs.	
032944 - 033847	Chairman Mr Alan LEONG ALA6 Admin	<u>Schedule 5- section 3(3) (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u> Mr Alan LEONG's enquiry and the Administration's response regarding the reasons for not adopting his suggestion made at the meeting of the Bills Committee on 30 May 2016 in relation to adding to clause 65(3)(a) the conditions set out in section 3(3) of Schedule 5 in the form of a proviso. Mr LEONG's view that the Administration should consider amending clause 65(3)(a) to specify that a specified officer might occupy the entire columbarium premises or part of them under an occupation order. Sharing Mr LEONG's view, ALA6 advised that clause 65(3) should be amended to empower a magistrate to exclude the residential part of a columbarium under an occupation order. The Administration undertook to consider Mr LEONG's view.	Admin (paragraph 2(i) of the minutes)
033848 - 034315	Chairman Mr Alan LEONG Ms Cyd HO Clerk	Members raised no objection to Ms Cyd HO's suggestion of the resumption of the Second Reading debate on the Bill at the Council meeting of 6 July 2016, subject to the completion of scrutiny of the Bill at the next meeting to be held on 13 June 2016. Members also agreed that a verbal report on the deliberations of the Bills Committee should be made at the House Committee meeting on 17 June 2016.	

Time marker	Speaker(s)	Subject(s)	Action required
034316 - 035044	Chairman Mr LEE Cheuk-yan Ms Cyd HO Deputy Chairman Admin	<p data-bbox="715 271 1295 331"><u>Clause 17 (Annex 2 to LC Paper No. CB(2)1641/15-16(01))</u></p> <p data-bbox="715 371 1295 533">Mr LEE Cheuk-yan's briefing on the CSAs he intended to move to clause 17 as mentioned earlier (time marker: 005050 – 005523). The Administration was requested to consider whether to take over Mr LEE's proposed CSAs.</p> <p data-bbox="715 573 1295 801">The Deputy Chairman's view that in determining an application for a specified instrument, the Licensing Board should have regard to non-compliance of private columbaria which was listed on Part B of the "Information on Private Columbaria" published by the Development Bureau.</p>	Admin (paragraph 2(j) of the minutes)
035045 - 035321	Chairman	Members were reminded that at the meeting on 30 May 2016, the Bills Committee had agreed that it would not go through the Administration's response to issues raised by members at previous meetings item-by-item and would look at individual items only upon request by members. Members were also reminded to forward to the Clerk to the Bills Committee the CSAs they intended to propose to the Bill before 13 June 2016.	
035322 - 035333	Chairman	Date of next meeting	