

立法會
Legislative Council

LC Paper No. CB(2)1957/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the thirty-fifth meeting
held on Monday, 13 June 2016, at 4:30 pm
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 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 CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, BBS, 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

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

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), CB(2)1641/15-16(02), CB(2)1678/15-16(01), CB(2)1711/15-16(01) to (02) and CB(2)1745/15-16(01)]

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

2. The Bills Committee requested the Administration to:

- (a) include members' concerns and the Administration's response in relation to the land premium in the speech of the Secretary for Food and Health for the resumption of Second Reading debate on the Bill;
- (b) review and propose amendments, in a timely manner, to clause 49(2) as and when necessary after the implementation of the Private Columbaria Ordinance;
- (c) amend section 3 of Schedule 5 in the light of the proposed Committee stage amendments to clause 65(3); and
- (d) consider amending the proposed clause 94A(3).

Action

II. Any other business

3. There being no other business, the meeting ended at 6:37 pm.

Council Business Division 2
Legislative Council Secretariat
4 August 2016

**Proceedings of the thirty-fifth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 13 June 2016, at 4:30 pm
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>			
000956 - 001029	Chairman	Opening remarks	
001030 - 001812	Chairman Mr Albert CHAN	Mr Albert CHAN requested the Administration to explain its response to issues relating to land premium for columbaria premises raised by members at the meeting on 6 June 2016 (LC Paper No. CB(2)1711/15-16(02)). The Chairman's advice that the subject matter would be discussed by the Bills Committee after it had gone through 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)1711/15-16(01)).	
001813 - 002000	Chairman Admin	<p>Discussion of the final version of the full set of draft CSAs to the Bill proposed by the Administration (LC Paper No. CB(2)1711/15-16(01)).</p> <p><u>Clauses 4A and 19 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
002001 - 003243	Chairman Mr Albert CHAN ALA6 Admin	<p><u>The proposed clause 31A (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding the definition of "additional fees".</p> <p>ALA6's response to Mr CHAN's enquiry that whether the fees imposed by operators of private columbaria ("operators") were additional fees would depend on the terms of the agreements signed between the operators and consumers.</p> <p>Mr Albert CHAN's view that the proposed clause 31A could not preclude operators from charging consumers additional fees, charges or other sums if the terms of the relevant agreements allowed them to do so. He suggested that a mechanism should be put in place to require operators to provide samples of their agreements with consumers when applying for land premium exemption. In considering</p>	

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		<p>their applications, the Administration should examine these samples to ensure that the objectives of the proposed clause 31A could be met.</p> <p>The Administration's response that given the large number of agreements between operators and consumers, it was impossible to require operators to provide all agreements. That said, it would endeavour to obtain as much information as practicable.</p> <p>The Administration undertook to include Mr CHAN's concerns and the Administration's response in relation to land premium in the speech of the Secretary for Food and Health for the resumption of Second Reading debate on the Bill.</p>	Admin (paragraph 2(a) of the minutes)
003244 - 003332	Chairman Admin	<p><u>Clauses 34 and 45 and the proposed clause 46C (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
003333 - 005842	Chairman ALA6 Miss CHAN Yuen-han Mr LEUNG Kwok-hung Mr Albert CHAN Mr Alan LEONG Admin	<p><u>Clause 52(1)(b) (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>ALA6 invited members to consider whether it was acceptable not to impose criminal sanction for non-compliance with clause 49(2).</p> <p>Miss CHAN Yuen-han's enquiry and the Administration's response regarding the reasons for deleting clause 52(1)(b)(ii) but not amending clause 49(2). At Miss CHAN's request, ALA6 explained that the holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) or his/her employees, servants or agents who failed to provide the required assistance and information under clause 49(2) would not be subject to criminal sanction if clause 52(1)(b)(ii) was deleted.</p> <p>Miss CHAN's concern that as employees were required to provide assistance and information to the Director of Food and Environmental Hygiene ("DFEH") under clause 49(2), blames would still be put on the employees for failing to comply with clause 49(2). She suggested amending clause 49(2) to the effect that employees would not be required to provide the required assistance or information.</p>	

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		<p>Mr LEUNG Kwok-hung's enquiry and the Administration's response regarding whether a person who contravened clause 49(2) would incur civil liability.</p> <p>Mr Albert CHAN's view that no change should be made to clause 49(2) in order to balance the interests of the parties concerned.</p> <p>Mr Alan LEONG's view that as neither civil liability nor criminal liability would be incurred for non-compliance with clause 49(2), there was no harm to leave the provision as presently drafted.</p> <p>Members agreed and requested the Administration to review and propose amendments, in a timely manner, to clause 49(2) as and when necessary.</p>	Admin (paragraph 2(b) of the minutes)
005843 - 010152	Chairman Admin	<p><u>Clauses 58, 64 and 65(Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p> <p>The Administration's advice that amendments would be made to section 3 of Schedule 5 in the light of the proposed CSAs to clause 65(3).</p> <p>The Chairman's enquiry and the Administration's response regarding the numbering of the clauses in the Private Columbaria Ordinance ("the Ordinance").</p>	Admin (paragraph 2(c) of the minutes)
010153 - 010331	Chairman Mr Albert CHAN Admin	<p><u>Clause 92 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's response to Mr Albert CHAN's enquiry that, under the proposed clause 92(2)(ca), amendments concerning the restriction on imposition of additional fees, etc., if necessary, would be made by subsidiary legislation subject to negative vetting.</p>	
010332 - 011219	Chairman Admin	<p><u>Clauses 97 and 99, Schedule 4 – section 1, Schedule 5 - sections 8 and 15 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	

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011220 - 011554	Chairman ALA6 Admin	<p><u>Schedule 5 – the proposed section 8(1A)(d) (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>At ALA6's request, the Administration initially explained that it intended to move CSAs to section 8 of Schedule 5 to empower DFEH to specify the manner in which a commencement of ash disposal notice should be served on each specified addressee.</p> <p>ALA6's advice that the service requirements to be proposed by the Administration to the proposed section 8(1A)(d) of Schedule 5 were not provided for in subsidiary legislation and therefore would not be subject to amendment by the Legislative Council. Given that contravening the service requirement specified by DFEH would be subject to criminal sanction under clause 63, she invited members to consider whether the Administration's intended CSAs were acceptable. Taking into account ALA6's view, the Administration's advice that it would consider amending the proposed clause 94A(3) instead.</p>	Admin (paragraph 2(d) of the minutes)
011555 - 011921	Chairman ALA6 Mr Albert CHAN Admin	<p><u>Schedule 5 - sections 9(6), 9(8), and 11 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>ALA6's enquiry and the Administration's response regarding the reasons for not making corresponding amendments to section 11 of Schedule 5 in the light of the amendments made to section 9(6) and (8) of Schedule 5.</p> <p>The Administration's response to Mr Albert CHAN's enquiry that there would not be any lacuna in the period of keeping ashes or of the items interred together with the ashes in the event of competing claims pending the court's decision.</p>	
011922 - 011950	Chairman Admin	<p><u>Schedule 6 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
011951 - 012057	Chairman ALA6 Admin	<p><u>Clause 120 (Annex 2 to LC Paper No. CB(2)1711/15-16(01))</u></p> <p>ALA6's enquiry and the Administration's response regarding further CSAs it intended to move to clause 120.</p>	

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012058 - 015513	Chairman Mr Albert CHAN ALA6 Admin	<p>Discussion of the Administration's response to issues raised by members at the meeting on 6 June 2016 (LC Paper No. CB(2)1711/15-16(02)).</p> <p><u>Item 7 of LC Paper No. CB(2)1711/15-16(02)</u></p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding the handling of land premium for private columbaria under different situations, e.g. unlawful occupation of government land, of private land or of government land abutting private land and columbarium premises on short term tenancy. The Administration advised that in the event of on-the-ground difficulties encountered due to issues related to land premium, the Administration would seek new directives from the Executive Council for resolving the problem.</p> <p>Mr CHAN's enquiry and the Administration's response regarding the regularization of columbarium premises situated at private land which was unlawfully occupied.</p> <p>Mr CHAN's enquiry and ALA6's response in relation to the inclusion of a sunset clause in the Ordinance and the consequences of having the sunset clause.</p> <p>Mr Albert CHAN's enquiry and the Administration's response regarding the Administration's assessment of the number of applications for specified instruments, the number of such applications which could be processed during the first three years and the extension period of TSOL, the number of columbarium premises which would have to cease operation due to their failure to obtain specified instruments.</p> <p>Mr CHAN expressed grave concern about whether the Administration would be able to manage the situation in which a large number of columbaria ceased operation, and enquired about the Administration's contingency plan in this regard. The Administration responded that in case of cessation of columbaria operation, ashes interred in the columbaria concerned would be handled according to the ash disposal procedures prescribed in the Bill. The Administration's briefing on the measures to complement the licensing regime, e.g. provision of temporary storage facilities for aforesaid ashes, increasing the supply of public niches and allowing time</p>	

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		for regularization/rectification of columbarium premises. The Administration further advised that it had undertaken to keep in view the implementation of the Ordinance and propose amendments to the Ordinance as and when necessary. A review of the Ordinance would in any event be conducted around three years after its enactment.	
015514 - 020730	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's briefing on his proposed CSAs to clause 17 (LC Paper No. CB(2)1745/15-16(01)) as tabled at the meeting and the Administration's response to Mr LEE's proposed CSAs.</p> <p>Extension of the meeting for 15 minutes beyond the appointed ending time by the Chairman.</p> <p>The Administration indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 6 July 2016 and noted that the deadline for giving notice for the resumption of Second Reading debate on the Bill was 20 June 2016. Members supported the Administration's proposed date of resumption of the Second Reading debate and noted that the Bills Committee would make a verbal report on its deliberations to the House Committee on 17 June 2016. Members also noted that the deadline for giving notice to move CSAs to the Bill was 25 June 2016.</p>	
020731 - 020850	Chairman	Closing remarks	