



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2136 3282)

17 April 2015

Miss Diane WONG
Prin AS for Food & Health (Food)2
Food and Health Bureau
17/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Miss WONG,

Re: Private Columbaria Bill

Please find attached a schedule listing my observations in relation to Division 2 of Part 5 and Part 10 of, and Schedule 3 to, the Bill for your consideration. I would be grateful if you could let me have the Administration's reply in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)
Assistant Legal Adviser

cc. DoJ (Attn: Ms Phyllis KO (By Fax: 2845 2215) & Miss Cindy CHEUK (By Fax: 2869 1302))
Clerk to Bills Committee
LA
SALA2

Schedule

Division 2 of Part 5

Clause 44(2)

1. The clause imposes a duty on a person who holds an exemption or temporary suspension of liability (TSOL) in respect of a columbarium to exhibit a notice as required to the effect that any sale of an interment right in respect of the columbarium is an offence under clause 8. The offence in question is provided for in clause 9 instead of clause 8.

The heading of clause 46

2. In the Chinese text, should "**Number of sets of ashes interred restricted**" in the English text be rendered as "**限制安放的骨灰的份數**" instead of "**限制安放的骨灰的數量**"?

Clause 47(2)

3. Please explain the policy reason(s) for imposing criminal sanction on a person holding a specified instrument in respect of a columbarium for failure to keep the columbarium clean and in good repair. Should the meaning of "clean" and "in good repair" be spelt out expressly in the provision?

Part 10

Clause 97(1) and (4)(b)

4. It is noted that section 6(3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) contains provision regarding section 6(2A)(iii) of Cap. 28. Please clarify whether clause 97(1) and (4)(b) intends, by virtue of including section 6(3) of Cap. 28 therein, to cover such matters as provided for in section 6(2A)(iii) of Cap. 28.

Clause 97(3)(b)

5. Clause 97(3)(b) refers to a suspension of the Licensing Board's decision pursuant to clause 35. It is noted that the scope of clause 35 only confines to those decisions made by the Licensing Board under clause 33(1), which does not include the application referred to in clause 97(3).

Clause 97(5)

6. "The instrument-related condition is met" in the English text has not been rendered in the Chinese text.

7. For the sake of consistency (for example in clauses 2(2)(c) and 11(1)(c)), please consider to replace in the Chinese text "延期" with "延展" as the Chinese rendition of "extension" in the English text.

8. It is noted that clause 97(3) does not apply if the matters provided for in clause 97(4) arise. No such arrangement, however, has been provided for in respect of clause 97(5). Please confirm whether an application for an extension of TSOL must be made before the expiry of the term of TSOL issued.

Clause 97(6)(b)

9. For the sake of consistency (for example, in clause 8), please consider to replace in the Chinese text "營運該骨灰安置所" with "營辦該骨灰安置所" as the Chinese rendition of "the operation of the columbarium" in the English text.

Clause 98(1)(a) and (4)

10. Please consider to replace in the Chinese text "作出或繼續的違例發展" with "進行或持續的違例發展" as the Chinese rendition of "an authorized development undertaken or continued" in the English text in view of clause 2(6).

Clause 98(3)(b)

11. Please note Question 5 in respect of the application referred to in clause 98(3).

Clause 98(4)(b)

12. In the Chinese text, "一份通知" should be "一份通知書" pursuant to section 23(1) or (2) of the Town Planning Ordinance (Cap. 131).

Clause 98(5)

13. Similar to Question 8, please confirm whether an application for the renewal of an exemption must be made before the expiry of the term of the exemption issued.

Clause 99(3)(b)

14. Please note Question 5 in respect of the application referred to in clause 99(3).

Clause 99(4)

15. It is noted that the clause has referred to a notice served under section 24C(1) of the Buildings Ordinance (Cap. 123). No such reference has been made in clause 12(3)(b). Please explain.

Clause 99(5)

16. Similar to Question 8, please confirm whether an application for the renewal of a licence must be made before the expiry of the term of the licence issued.

17. In the Chinese text, "有人提出申請" should be "如有人提出申請" as the Chinese rendition of "if an application" in the English text. Further, "文書相關申請" should be "文書相關條件" as the Chinese rendition of "The instrument-related condition" in the English text.

Schedule 3

The heading of Schedule 3

18. We note in your letter of 9 October 2014 that you will consider amending "指明文書的申請的進一步規定" to "指明文書申請的進一步條文" in the Chinese text. As the relevant English text is "**Applications Relating to Specified Instruments**" which refer to those applications set out in section 1 of Schedule 3 but not "an application for a specified instrument" as referred to in clause 2(2), we suggest that "指明文書的申請的進一步規定" be changed to "指明文書的申請的進一步條文" in the Chinese text. Please consider. Adjustment to clause 37 should also be made.

Section 2(2) of Schedule 3

19. Please confirm whether an unincorporated association not being a partnership can make applications to which Schedule 3 applies. If its members include a body corporate and not just natural persons, who should sign the application?

Section 2(2)(c) of Schedule 3

20. It is noted that this section uses the term "body corporate" whereas clause 33(2)(f) uses the term "company". Please explain the reason(s) for using different terms. Should the same term be used instead?

Heading of section 4 of Schedule 3

21. Should "**and consideration of public views**" be stated in the heading of the section in view of its content?

Section 4 of Schedule 3

22. This section only covers an application for the issue of a licence but not an application for a specified instrument or an application under clause 32 or 34. Please explain.

Section 4(1)(c) of Schedule 3

23. In the Chinese text, for consistency with section 4(1)(a) and (b) of Schedule 3, please consider to replace "有關申請的通告" with "該申請的通告" as the Chinese rendition of "a notice of the application" in the English text.

Section 4(2) of Schedule 3

24. Please clarify whether it is the policy intention that this section should cover all the notices referred to section 4(1)(a), (b) and (c) of Schedule 3. If so, in order to avoid any ambiguities, please consider whether "published" in the English text and "發布" in the Chinese text of this section should be changed, as in the English text of section 4(1)(c) of Schedule 3, the word "posting" is used and in the Chinese text of section 4(1)(b) and (c) of Schedule 3, the words "刊登" and "張貼" are used respectively. Please also consider whether "publication" in the English text and "發布" in the Chinese text of the heading of this section should be amended.

Section 5 of Schedule 3

25. It seems that this section duplicates part of the matters provided for in clause 33(3) as to the Licensing Board's duty to notify upon a refusal of an application to renew a licence or exemption or to extend TSOL. Please clarify.