



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)

21 May 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 on Part 8 of, and Schedule 1 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

Encl.

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

Schedule

Part 8

Clause 71(2)(a) and (4)

1. Please explain the need to provide for clause 71(4) in the Bill. Please clarify the meaning of "public officer" as referred to in clause 71(2)(a) and whether or not the term includes a Justice of Appeal or other judicial officers as defined in the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

Clause 71(3)(b)

2. How many Deputy Chairpersons that the Administration intends to have at a time?

Clause 71(5)

3. In view of the Chinese text of clause 71(2) and (3), "第(2)或(3)款所指的委任" should be "第(2)或(3)款所指的委出或委任" instead.

4. What is the term of an appointment made under clause 71(2) or (3)? Could a panel member resign at any time by giving a written notice to the Chief Executive? Could the Chairperson or a Deputy Chairperson resign from such position and yet remain as a panel member? Should these matters be provided expressly in the Bill?

Clause 71(6)

5. In the English text, please consider to replace "secretary of the Appeal Board" with "secretary to the Appeal Board" as in clause 74(14).

Clause 72(1)

6. Please clarify whether the Licensing Board's decision to revoke or suspend the authorization under a licence to sell interment rights in respect of the columbarium concerned pursuant to clause 33(1)(a)(ii) is appealable under clause 72.

7. It seems that a refusal of an application made pursuant to clause 35(1)(a) to suspend the operation of the Licensing Board's decision made under clause 33(1) is not subject to appeal under clause 72. Please clarify.

Clause 73(3), (4), (5) and (6)

8. Please advise whether guidelines will be issued to illustrate the circumstances under which a person may or will be considered to have a direct or indirect interest in an appeal for the purposes of this clause.

Clause 73(7)

9. This clause provides that if the term of appointment of the Chairperson or a Deputy Chairperson who is the presiding officer at an appeal or a panel member selected under clause 73(1)(b) for the purposes of an appeal expires during the hearing of the appeal, the Chairperson, Deputy Chairperson or panel member may continue to hear the appeal until the appeal is determined. What if the term of appointment of a panel member selected by the Secretary to act as presiding officer under clause 73(5) expires during the hearing of the appeal?

Clause 74(11)

10. Please clarify whether paragraphs (a) to (c) of this clause are intended to operate cumulatively or as alternatives.

Clause 74(14)

11. Clause 74(13) states that the Appeal Board is required to notify the parties to an appeal of its decision, in writing, setting out the decision, the reasons for the decision, and the date on which the decision is to take effect. No express reference, however, has been made to "the date on which the decision is to take effect" in clause 74(14). Please advise whether it is intended that the copy of the Appeal Board's decision to be served by the secretary to the Appeal Board should state the date on which the decision is to take effect. If so, should clause 74(14) be refined to reflect such requirement?

Clause 75(1)(b)

12. Given that any notice or order of an Appeal Board hearing an appeal is to be issued by the presiding officer of the Appeal Board under clause 75(3), please explain the need to require under clause 75(1)(b) the notice referred to therein to be signed by the presiding officer.

Clause 78(1)(a)(iv)

13. In the Chinese text, "任何" appears twice and one of them should be deleted.

Clause 78(2)

14. In view of the Chinese rendition of "material" in clause 75(1)(e), "資料" in the Chinese text of clause 78(2) should be "材料" as the Chinese rendition of "material" in the English text of the clause.

Clause 78(3)

15. Please delete "summary" in the English text and "循簡易程序" in the Chinese text for the sake of consistency with the drafting of other relevant provisions of the Bill.

Heading of clause 79 and clause 79(1)

16. As "Chairperson" is defined in clause 70 to mean the Chairperson of the Appeal Board appointed under clause 71(3), it is not necessary to add "**of Appeal Board**" in the heading of clause 79 and "of the Appeal Board" after "The Chairperson" in clause 79(1).

Clause 79(2)

17. Should "this section" in this clause rather be "subsection (1)", as in clause 79(3)?

18. Please give the justification for providing that the rules so made are not subsidiary legislation.

Clause 80(1)

19. In the English text, should "Deputy Chairpersons" be "a Deputy Chairperson" instead?

20. In view of the definitions of "Chairperson", "Deputy Chairperson" and "panel member" in clause 70, "of the Appeal Board" in this clause should be deleted.

Clause 80(2)

21. In the English text, "privileges or immunities" should instead be "privileges and immunities" as reflected in the Chinese text.

Schedule 1

Section 4(2) of Schedule 1

22. Under section 4(2) of Schedule 1, a quorum at a meeting of the Licensing Board is formed by four members of the Licensing Board, one of whom must be the Chairperson of the Licensing Board or if the Chairperson is absent or is otherwise unable to act, the Deputy Chairperson of the Licensing Board. It seems that no provision has been made to deal with the situation where the Chairperson is absent and the Deputy Chairperson has to be disregarded for the purposes of constituting the quorum pursuant to section 4(7) of Schedule 1, or where both the Chairperson and Deputy Chairperson have to be so disregarded for the purposes of constituting the quorum. Please clarify.

Section 4(3) of Schedule 1

23. Section 4(3) of Schedule 1 provides that one-third of the members of a committee, one of whom must be the Chairperson of the committee, are to form a quorum at a meeting of the committee. Similar to Question 22, what if the Chairperson of the committee has to be disregarded for the purposes of constituting the quorum pursuant to section 4(7) of Schedule 1?

24. In the Chinese text, it seems unclear whether "其委員會三分之一的委員" 和 "其委員會主席" mean one-third of the members of the committee in question and the Chairperson of the committee in question as reflected in the English text. Please consider whether refinement should be made.

Section 4(4) of Schedule 1

25. This section appears to provide that, in case where the Chairperson of the Licensing Board is absent or is otherwise unable to act at a Licensing Board's meeting but the Deputy Chairperson of the Licensing Board is present at that meeting so as to form a quorum, the Deputy Chairperson does not have a casting vote in case of an equality of votes for and against a motion at that meeting. Please clarify.

Section 5 of Schedule 1

26. It is noted that in paragraph (a) of section 5 of Schedule 1, "disclose to the Licensing Board or committee (as the case requires)" in the English text is rendered as "向發牌委員會或有關的委員會(視情況所需

而定)披露" in the Chinese text. Please consider whether in section 5 of Schedule 1, "at a meeting of the Licensing Board or committee" in the English text should be rendered as "在發牌委員會或有關的委員會的會議" in the Chinese text instead of as "在發牌委員會或其委員會的會議". Similarly, with respect to paragraph (b) of section 5 of Schedule 1, please consider whether "在發牌委員會或其委員會" in the Chinese text should be changed to "在發牌委員會或有關的委員會" as the Chinese rendition of "the Licensing Board or committee" in the English text.

27. Section 5 of Schedule 1 applies where a member of the Licensing Board or a committee has a direct or indirect pecuniary interest in a matter under consideration at a meeting of the Licensing Board or committee. Please clarify the reason(s) for setting the threshold at a direct or indirect pecuniary interest, instead of at a direct or indirect interest as in clause 73.

28. Please advise whether guidelines will be issued to illustrate the circumstances under which a person may or will be considered to have a direct or indirect pecuniary interest for the purposes of section 5 of Schedule 1.