

Bills Committee on Private Columbaria Bill**Government's Response to the Issues Raised by Members of the Bills Committee
during Previous Meetings**

	Information requested / follow-up action required	Response from the Government
(A) Matters arising from the meeting on 6 July 2015		
1	To review the use of the English term “rely on” and the Chinese term “倚據” in clause 72(3)(a) and (b).	We consider the use of “rely on” and “倚據” in clause 72(3)(a) and (b) appropriate.
2	To illustrate in the guidelines the circumstances under which a person might or would be considered to have a direct or indirect interest in an appeal for the purposes of clause 73(3) to (6).	<p>Many other bodies or organisations, be they statutory or not, require their members to declare their direct or indirect interest. For instance, the Rules of Procedure of the Legislative Council (“LegCo”) requires its Members to declare his / her pecuniary interest in a matter that is before LegCo or a committee, be it direct or indirect. The practice in LegCo is that it is for individual Members to judge whether they have a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting. The basic principles adopted by its Committee on Members’ Interests (“CMI”) of the previous term in determining whether a pecuniary interest should be disclosed is whether the interest might reasonably be thought by others to influence the Member’s actions or speech in the matter being considered. It has been the view of CMI that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. As regards “indirect pecuniary interest”, it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member.</p> <p>We will consider making reference to the above principles in drawing up the guidelines of the Appeal Board.</p>

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3	To include in clause 73(7) that a panel member selected by the Secretary for Food and Health to act as presiding officer under clause 73(5) might continue to hear the appeal if his or her term of appointment expired during the hearing of the appeal	Please see page 98 of our English CSAs to clause 73(7). The relevant CSA allows a panel member selected by the Secretary for Food and Health to act as presiding officer under clause 73(5) to continue to hear the appeal even if the member's term of appointment expires during the course of hearing the appeal.
4	Reasons for not to include provisions on award of costs for appeals in the Bill.	<p>There are no hard and fast rules on providing, under statute, the power to award costs by an Appeal Board. Take some of the licensing regimes serviced by the Food and Environmental Hygiene Department (FEHD) as examples: the Licensing Appeals Board (responsible for hearing decisions relating to licensing / registration under the Public Health and Municipal Services Ordinance (Cap. 132)) and the Municipal Services Appeals Board (responsible for hearing decisions relating to liquor licences under the Dutiable Commodities (Liquor) Regulations (Cap. 109, sub. leg. B)) do not have the power to award costs.</p> <p>During the Bills Committee deliberations, a Member has raised concern about providing, under the Bill, the arrangements on award of costs by the Private Columbaria Appeal Board, given the possible impact on the trade. It should be noted that apart from the trade, we also need to assess the impact on the Private Columbaria Licensing Board and FEHD etc., who could be the other party to the appeal. We need to take into account the resources and manpower requirements imposed on the Appeal Board for assessing and administering the award of costs as well.</p> <p>On balance, we do not propose providing, under the Bill, the power to award costs by the Private Columbaria Appeal Board.</p>
5	To review the Chinese text of clause 74(4)(a) and revise clause 74(11) to better reflect the policy intent.	<p>Please see page 85 of our Chinese CSAs. The relevant CSA replaces, in clause 74(4)(a), “着手” with “逕行” as the Chinese equivalent to “proceed to”.</p> <p>Please see page 100 of our English CSAs. The relevant CSA inserts “or” at the end of clause 74(11)(b) to reflect more clearly that paragraphs (a), (b) and (c) of clause 74(11) operate as alternatives.</p>

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6	To consider exploring whether there was a more suitable Chinese equivalent to “findings” and replacing “裁斷” by “判斷” in clause 74(7).	“裁斷” has been adopted as the Chinese equivalent to “findings” in legislation, for example, in section 59(2) of the Evidence Ordinance (Cap. 8), section 43 of the Coroners Ordinance (Cap. 504), section 23(1) of the Housing Managers Registration Ordinance (Cap. 550) and section 267(1) of the Securities and Futures Ordinance (Cap. 571). We consider the use of “裁斷” in clause 74(7) appropriate.
7	To amend clause 74(14) to make clear the notification to be served by the Appeal Board on the parties to an appeal under clause 74(13).	Please see page 100 of our English CSAs. The relevant CSA replaces, in clause 74(14), “Appeal Board’s decision and reasons” with “the notification under subsection (13)” (to be served on the parties to the appeal).
8	Information on how other statutory appeal boards handled materials in relation to appeals.	Clause 75(2) provides that “Subsection (1)(a) does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made.”
9	To review clause 75(1) and (2) to take into account Members’ views that the Appeal Board should allow an appellant, on reasonable ground, to produce materials that had not been made available to the Licensing Board before to support the appellant’s case.	<p>Clause 75(2) provides legal backing for the Appeal Board not to receive and consider any materials that had not been made available to the Licensing Board before the decision under appeal was made. That said, in clause 75(1)(a), there is still discretion for the Appeal Board to receive and consider such materials.</p> <p>Other statutory appeal boards are armed with similar provisions (put in to prevent the abuse of process by unscrupulous applicants). Examples include section 51(2) of the Unsolicited Electronic Messages Ordinance (Cap. 593) and section 32O(2) of the Telecommunications Ordinance (Cap. 106).</p>
10	To consider revising clause 75(1)(e) if it was not intended to prohibit a person from publishing or disclosing all materials received by the Appeal Board.	<p>The term “any material” under clause 75(1)(e) is wide enough to cover any, part of the, or all of the, materials the Appeal Board receives. No amendment is considered necessary.</p> <p>At the Bills Committee meeting, we have explained that procedurally, the Appeal Board would avail an opportunity for the parties to the appeal to give their views, before the Appeal Board takes a decision under clause 75(1)(e).</p>

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11	Regarding clause 76, to consider – (a) improving the readability of the Chinese text; (b) replacing “for the purposes of an appeal” by “in relation to an appeal”; and (c) replacing “為上訴的目的” by “就上訴而言”.	Please see page 102 of our English CSAs and page 88 of our Chinese CSAs. In clause 76, we have replaced “For the purposes of an appeal” with “In relation to an appeal” and “為上訴的目的” with “就上訴而言”.
12	Regarding clause 78(5)(b), to consider replacing “證明情況相反” by “證明相反情況”.	We consider the use of “證明情況相反” in clause 78(5)(b) in order.
13	To consider stipulating that those rules of the Appeal Board which would give rise to criminal liability in the event of non-compliance were subsidiary legislation.	We wish to clarify that a person would be held criminally liable if he/she performed the acts stipulated in clause 78(1) or (2), but would not be held criminally liable by reason of non-compliance with the rules to be made by the Appeal Board under clause 79(1). No amendment is considered necessary.
(B) Matters arising from the meeting on 20 July 2015		
14	Response to the suggestion of changing the heading of clause 40 from “Interpretation of Part 5” to “Interpretation of Part 5 and Schedule 4”.	Please see page 154 of our English CSAs for the interpretative provision added in Schedule 4 to define the terms used in that Schedule. With the addition, it is not necessary to change the heading of clause 40 from “Interpretation of Part 5” to “Interpretation of Part 5 and Schedule 4”.
15	To explore if there was any way to enhance consumer protection for agreements for sale of interment rights (“agreements”) which were signed before the enactment of the Ordinance.	As explained in our response to item 51 under a previous BC paper, we do not intend to override the agreements for the sale of interment rights signed before the enactment of the Ordinance. That said, under Part 7 of and Schedule 5 to the Bill, operators of private columbaria to which the Bill applies are required to dispose of interred ashes properly in accordance with the applicable ash disposal procedures. These provisions apply to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date of the Ordinance, whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that date.

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16	To consider amending clause 41(2)(b) to the effect that columbarium premises that were occupied under other instrument were also covered.	Please see page 57 of our English CSAs. In the amended clause 41(2)(b), the ambiguity in relation to the term “a tenancy or lease” has been removed.
17	To seek members’ views on how issues relating to niches which had been sold but not yet occupied should be handled, taking into account the possible impact on consumers and other relevant factors.	Please see the sets of CSAs relating to an interment right in respect of a pre-Bill columbarium that had been sold but had not yet been occupied in full before the Bill announcement time.
18	To consider pegging clause 41(3)(j) to clause 91.	<p>We do not consider it appropriate to peg clause 41(3)(j) to clause 91. Instead, please see pages 57 to 58 of our English CSAs. The relevant CSA –</p> <p>(a) amends clause 41(3)(j), replacing “prescribed” with “specified”; and</p> <p>(b) inserts clause 42(1A), under which a purchaser under an agreement that is not enforceable against the purchaser under clause 41(3)(j), amongst others, may cancel the agreement within 6 months (rather than at any time) after the date of the agreement.</p>
19	To review the requirements set out in clauses 41(3) and 42 and Schedule 4.	In order to enhance consumer protection, it is necessary to regulate the terms in the agreements to a reasonable extent.
20	To review whether it was necessary to set out all the information required under section 1(b) to Schedule 4 in agreements.	<p>Please see our English CSAs for the amendments introduced to clauses 41(3) and 42 and Schedule 4.</p> <p>To facilitate the industry in complying with the relevant requirements in Schedule 4, we will spell out, in more concrete terms, the particulars required to be covered in an agreement for sale of an interment right.</p>
21	To consider providing expressly in section 1(b)(i), (ii) and (iv) to Schedule 4 the particulars required in order to assist the sellers in complying with these requirements.	
22	To review section 1(d) to Schedule 4.	

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(C) Matters arising from the meeting on 29 September 2015		
23	To review the arrangement for the appointment of authorized representatives under an agreement for the sale of an interment right.	Please see page 2 of our English CSAs for the amended definition of “authorized representative”. This has addressed Members’ concerns about the possibility of a seller coercing the purchaser to nominate the former as the latter’s authorized representative in relation to an agreement for the sale of an interment right.
24	To replace the word “or (或)” by “and (及)” in section 2(b)(iv) to Schedule 4.	Please see page 152 of our English CSAs. The relevant CSA replaces “or” in section 2(b)(iv) of Schedule 4 with “and”.
25	To consider the feasibility of articulating some important principles for drawing up agreements for the sale of an interment right.	To enhance consumer protection, the Bill contains detailed provisions for regulating the sale of interment right, including rendering certain agreements for the sale of interment rights unenforceable against the purchaser. Schedule 4 to the Bill also sets out the information, recommendations and essential terms that should be included in an agreement for the sale of an interment right.
26	To study whether unfair or unreasonable practice of operators of private columbaria would constitute a factor to be taken into consideration by the Licensing Board in the context of licence renewal.	Clause 17 of the Bill stipulates that the Licensing Board must have regard to the public interest and may have regard to any other relevant considerations in determining the merits of an application for a specified instrument (which covers renewal of licence).
27	To replace “就該骨灰安置所備存的協議及登記冊的複本” by “就該骨灰安置所備存的協議的複本，以及根據第(2)款就該骨灰安置所備存的登記冊” in the Chinese text of clause 43(3).	Please see page 53 of our Chinese CSAs. The relevant CSA has incorporated the amendments accordingly.
(D) Matters arising from the meeting on 13 October 2015		
28	To provide provisions setting out general principles for disposing of human remains in the Public Health and Municipal Services Ordinance (Cap. 132) and examples on how non-compliance with these provisions were	Various provisions (sections 118(4), 119(1) and 119A) in the Public Health and Municipal Services Ordinance (Cap. 132) set out the general principle of disposing of human remains in a decent manner. There was no record of non-compliance.

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	handled.	
29	To consider strengthening publicity to enhance public awareness of the obligations of relevant parties in the disposal of ashes.	Noted for action.
30	To provide a time limit for a person to give a specified response under clauses 59(1) and 60(1).	Please see pages 78 and 80 of our English CSAs for the time limit stipulated in clauses 59(3) and 60(2A).
31	To consider stipulating in the Bill that a relevant person might not be regarded as having abandoned a columbarium if he or she could provide reasonable excuses for not being able to give a specified response.	An operator would be required to give a specified response only if the Director suspected that a columbarium was abandoned and gave a notice of suspected abandonment. The notice of suspected abandonment would be given to the operator through various means to ensure that he/she would know about the notice and the obligation to provide a specified response. According to clause 61, an operator would be considered to have provided a specified response by applying for the renewal or extension of the specified instrument, informing the Director in writing that the person continues to operate the columbarium, or giving the Director a written undertaking to carry out the prescribed ash disposal procedures. Such acts were neither complex nor complicated, and an operator should be able to comply with the requirements without substantive difficulty. We therefore consider it not necessary to provide for a defence of reasonable excuse in the Bill.
32	To consider revising clause 61 to specify that giving written undertaking to carry out the prescribed ash disposal procedures was not necessary in the event of temporary suspension of a specified instrument.	Please see page 83 of our English CSAs. The relevant CSA deletes “or suspended” in clause 60(1).
33	To replace “section 59” by “section 59(1)”, and “section 60” by “section 60(1)” in clause 63.	Please see page 85 of our English CSAs. The relevant CSA replaces section “59, 60” with “59(1A), 60(1)”.
34	To replace “an offence under section 8” by “an offence under section 9” in clause 64(1).	Please see page 85 of our English CSAs. The relevant CSA has incorporated the amendments accordingly.

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35	To consider spelling out the time of acquisition of the columbarium premises by different categories of persons in possession.	As the time of acquisition for different types of interests would be different, it would not be practicable to list out exhaustively the possible interests and the relevant time of acquisition in the Bill. The time of acquisition would be construed in accordance with the applicable law prevailing at the material time. In addition to the new clause 64(5A) spelling out the time of acquisition by an owner or mortgagee, we will consider including a catch-all provision to deal with other scenarios.
36	To consider clarifying whether a specified officer could only take steps necessary for carrying out ash disposal under clause 65(2) pursuant to a court order.	Please see page 89 of our English CSAs. As set out in the heading of clause 65, the provision covers “power to carry out steps necessary for ash disposal; occupation order”. Clause 65(2) is a general provision on what a specified officer may do. It should cover both the scenarios of “pursuant to a court order” or otherwise (such as the scenario where consent is given voluntarily by the owner of the premises for the specified officer to do so).
37	To consider stipulating in the Bill a time limit for keeping ashes in the temporary storage facilities provided by the Administration.	This issue should be dealt with administratively instead of through the Bill. We will separately consider Members’ suggestion of introducing a time limit for keeping ashes in the temporary storage facilities of the Government. In any event clause 65(2) and Schedule 5 have provided for the power of the Director or a specified officer to take steps he may consider necessary for the disposal of ashes.

Food and Health Bureau
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