



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)

26 June 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 Division 1 of Part 5 of, and Schedule 4 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
LA (Des)
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Schedule

Division 1 of Part 5

The heading of clause 40

1. Given that clause 40 provides for the interpretation of both Part 5 and Schedule 4, should the heading of clause 40 be changed from **"Interpretation of Part 5"** to **"Interpretation of Part 5 and Schedule 4"**?

Clause 41(2)(b)

2. Clause 11(3) provides that the validity period of a licence must not exceed the shorter of (a) if the columbarium premises are occupied under a tenancy, lease or other instrument, the remainder of the term of the tenancy, lease or other instrument, and (b) 10 years. Clause 41(2)(b) only makes provision in respect of columbarium premises that are occupied under a tenancy or lease, but not under other instrument. Please explain the reason(s) for making such provision.

3. In the Chinese text, "骨灰安置所" should be "骨灰安置所處所" as the Chinese rendition of "columbarium premises" in the English text.

Clause 41(3)(h)

4. In the Chinese text, there is no Chinese rendition in respect of "at the time the purchaser signed it" in the English text.

Clause 41(3)(j)

5. Please clarify whether "any other requirements prescribed by the Licensing Board" include any requirements which are not relating to the sale of an interment right. Will the Licensing Board prescribe these requirements by making subsidiary legislation?

Clause 43(3)

6. In the Chinese text, "就該骨灰安置所備存的協議及登記冊的複本" should be "就該骨灰安置所備存的協議的複本及登記冊", as the relevant English text is "the copies of agreements, and the register, kept in respect of the columbarium".

Schedule 4

Section 1(a) of Schedule 4

7. Please clarify whether or not the licence number and the validity period of the seller's licence are the only information required under this provision.

Section 1(b) of Schedule 4

8. It is noted that "ownership" in the English text is rendered as "業權" in the Chinese text. Should the Chinese rendition be "擁有權" instead?

9. This provision requires that an agreement for the sale of an interment right must set out information about ownership, tenancy, encumbrances and restrictions on use and disposition. No reference, however, has been made to "lease or any other capacity" as stated in section 1(b)(ii) of Schedule 4. Please consider to make appropriate amendment(s).

Section 1(b)(i) of Schedule 4

10. Please clarify the meaning of "whether the seller is the only owner, one or 2 or more joint owners or co-owners of the columbarium premises" in the English text. The relevant Chinese text is "賣方是否骨灰安置所處所的唯一擁有人、其中1名、2名或多於2名的聯權共有人或分權共有人".

Section 1(b)(ii) of Schedule 4

11. In the English text, please consider to add "in" before "any other capacity". Please also consider to make corresponding amendment(s) to the Chinese text.

Section 1(b)(iii) of Schedule 4

12. In the Chinese text, should "任何" where it first appears be deleted?

13. This provision only requires an agreement for the sale of an interment right to set out whether mortgage or any other encumbrance subsists in the columbarium premises that may jeopardize the purchaser's interest, without further requiring the particulars of the mortgage and other encumbrance to be set out, as in sections 1(b)(i), (ii) and (iv) of Schedule 4. Please explain.

The meaning of "particulars" under sections 1(b)(i), (ii) and (iv) of Schedule 4

14. These provisions respectively require particulars of the seller's interest in the columbarium premises, particulars of the tenancy, lease or right to occupy and particulars of the instrument in question to be set out in an agreement for the sale of an interment right. Please consider to provide expressly in each of these provisions each item of the particulars so required in order to assist the seller in complying with these requirements.

Section 1(e) of Schedule 4

15. In this provision, "the purchaser should carefully consider" in the English text is rendered as "買方須小心考慮" in the Chinese text. However, under section 1(f) of Schedule 4, "should seek legal advice" in the English text is rendered as "應尋求法律意見" in the Chinese text. Please explain the reason(s) for rendering "should" in the English text differently in the Chinese text.

16. Please clarify whether or not "the financial risks" under this provision mean the risks referred to in section 1(d) of Schedule 4. In the Chinese text of this provision, "the financial risks" in the English text is rendered as "財政風險".

Section 2(a) of Schedule 4

17. Strictly speaking, the names of the parties to the agreement are not "rights and obligations of the seller and the purchaser under the agreement" referred to in clause 41(3)(c)(ii). Should appropriate amendment(s) be made?

Section 2(b)(i) of Schedule 4

18. Apart from the serial number, location and dimensions of the niche, what other particulars of the niche the Administration intended to be covered under this provision?

Section 2(b)(iii) of Schedule 4

19. Particulars of any other services to be provided under the agreement do not seem to fall within the description of the matter required under section 2(b) of Schedule 4, namely, a full description of the interment right sold. Please consider to amend.

20. In the Chinese text, please consider, for the sake of consistency, to replace "協議" with "該協議" as the Chinese rendition of "the agreement" in the English text.

Section 2(b)(iv) of Schedule 4

21. Please clarify whether "or" after "particulars of the duration of the interment right;" should be replaced by "and".