



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

來函檔號 YOUR REF : FH CR 2/3751/07
本函檔號 OUR REF : LS/B/27/13-14
電話 TELEPHONE : 3919 3509

傳真 FAX : 2877 5029
電郵 E-MAIL : wkan@legco.gov.hk

By Fax (2136 3282)

4 September 2014

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

I am scrutinizing the Bill with a view to advising Members on its legal and drafting aspects.

Please find attached a schedule listing my observations on Parts 1 to 4 of 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
SALA3

Schedule

Clause 2(1) of the Bill

Definition of "ashes"

1. In the Chinese text of paragraph (c) of the definition, should "任何" appear before "其他物料" instead of before "由人類骨灰", as the English text is "excludes synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes"?

Definition of "columbarium"

2. Pursuant to section 3 the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (the Director) may not always be "the Authority" for the purposes of section 118(1) of Cap. 132. Accordingly, please consider to amend the reference to the Director in paragraph (c) of the definition.

Definition of "dedicated person"

3. In paragraph (b) of the definition, "(whether in respect of a niche or otherwise in a columbarium)" in the English text is rendered as "(不論是否關乎骨灰安置所的龕位或其他地方)" in the Chinese text. Should "否" be deleted?

Definition of "inter"

4. In paragraph (a)(ii) of the definition, "container of ashes" in the English text is rendered as "裝載該等骨灰的容器" in the Chinese text. Please clarify.
5. Please note Question 2 in respect of the reference to the Director in paragraph (b) of the definition.

Clause 2(8) of the Bill

6. In the English text, "means non-compliant structures that are structures necessary for, or ancillary to, the operation of the columbarium within the meaning of subsection (7)" is rendered as "指屬符合第(7)款所指的對營辦該骨灰安置所屬必需(或與之配套)的違規構築物". Subsection (7) does not contain any reference to non-compliant

structures. Please amend in order to avoid any ambiguities. What about changing the Chinese rendition as "指屬符合第(7)款所指的對營辦該骨灰安置所屬必需(或與之配套) 的構築物的違規構築物"?

Clause 11 of the Bill

7. In sub-clause (2), please add "specified" before "instrument" in the English text. Corresponding amendment to the Chinese text is also required.
8. In the English text of sub-clauses (3)(a), (4) and (5)(a), "term" is rendered as "租期" in the Chinese text. Should the appropriate Chinese rendition be "年期"?

Clause 13(2) of the Bill

9. Should "該骨灰安置所" in the Chinese text rather be "某骨灰安置所" as the Chinese rendition of "a columbarium" in the English text?

Clause 15 of the Bill

10. With respect to the heading of the clause, please add ", **etc.**" after "**right to occupation**" in the English text and make corresponding amendment to the Chinese text so as to reflect the content of the clause.
11. In the Chinese text of sub-clause (1), please add "某" after "該委員會可拒絕要求就".
12. In the Chinese text of sub-clause (1)(c), please add "該" before "骨灰安置所" as the Chinese rendition of "the columbarium" in the English text.

Clause 16 of the Bill

13. In the Chinese text of sub-clause 2(a), please consider to add "事宜" after "一項或多於一項".
14. In the Chinese text of sub-clause (2)(a)(iv), please note Question 12 in respect of the Chinese rendition of "the columbarium" in the English text.

15. In sub-clause 2(b)(ii), "before, on or after the date of application" in the English text is rendered as "在申請日期之前或之後" in the Chinese text. Should the Chinese rendition rather be "在申請日期之前、當日或之後"?

Clause 17(1) of the Bill

16. Under clause 2(2) of the Bill, "an application for a specified instrument" in the English text is rendered as "指明文書申請" in the Chinese text. The Chinese text of clause 17(1) of the Bill should therefore be amended in view of such Chinese rendition.

Clause 18(b)(iii) of the Bill

17. Please clarify whether the application form as referred to in the provision means the specified form as mentioned in clause 18(a) of the Bill.

Clauses 19(4) and 20(1)(a) of the Bill

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

Clause 21 of the Bill

19. With respect to the heading of the clause, please add "**, etc.**" after "**Bill announcement time**" in the English text in order to reflect the content of the provision. Corresponding amendment to the Chinese text is also required.
20. In sub-clause (2)(b), should "just and equitable" in the English text be rendered as "公正與公平的" instead of as "公正和符合公義的" in the Chinese text?
21. In sub-clause (3), "(each is called an *eligibility-related provision*)" in the English text is rendered as "(以上條文稱為資格相關條文)" in the Chinese text. The word "each" in English text has not been rendered in the Chinese text. Please note the Chinese rendition of "(each is called an *eligibility-related particular*)" in the same sub-clause.

Clause 22 of the Bill

22. In the Chinese text of sub-clause (3), please add "該" before "骨灰安置所" as the Chinese rendition of "the columbarium" in the English text.
23. In the Chinese text of sub-clause (9), "sole and absolute discretion" in the English text is rendered as "獨有的絕對酌情權". Should the Chinese rendition be "獨有及絕對酌情權" instead?

Clauses 25 and 28 of the Bill

24. In the English text, please consider to replace "as it thinks fit" with "₁ as it thinks fit₁".

Clause 29(2) of the Bill

25. In the English text, "A temporary suspension of liability" should be "The temporary suspension of liability".

Clause 30 of the Bill

26. With respect to the heading of the clause -
- (a) "conditions" in the English text has not been rendered in the Chinese text; and
 - (b) the conditions set out in sub-clauses (1) and (2) have not been reflected in both the English text and the Chinese text.
27. In sub-clause (3), please add "in respect of a pre-Bill columbarium" after "liability" in the English text. Corresponding amendment to the Chinese text is also required.

Clause 31 of the Bill

28. Please note Question 24 in respect of "as it thinks fit" in the English text.
29. In the English text, "in respect of a columbarium" should be "in respect of a pre-Bill columbarium". Please also make corresponding amendment to the Chinese text.

30. In paragraph (a), please replace "and" with "," after "fire safety" in the English text for consistency with the Chinese text and clauses 25(c) and 28(a).

Clause 32 of the Bill

31. In the English text of sub-clause (1)(b), please add "an" before "exemption".
32. In the Chinese text of sub-clause 3(a), please replace "該委員會" with "發牌委員會".
33. Similar to Question 17, please clarify whether the application form as referred to in sub-clause (3)(b)(i) means the specified form as mentioned in sub-clause (3)(a).

Clause 34 of the Bill

34. In sub-clause (2)(a), please consider to delete ", in writing, to the Licensing Board" in the English text and make corresponding amendment to the Chinese text. Sub-clause (1) has already provided that the application should be made in writing to the Licensing Board.
35. Similar to Question 17, please clarify whether the application form as referred to in sub-clause (2)(b)(ii)(A) means the specified form as mentioned in sub-clause (2)(a).

Clause 35(2)(a) of the Bill

36. In the Chinese text, "上訴通知" should be "上訴通知書" as "notice of appeal" in the English text is rendered as "上訴通知書" in the Chinese text of clause 72(2) of the Bill.

Clause 36(1)(a) of the Bill

37. In the Chinese text, "申請，要求發出指明文書" should be "指明文書申請" in view of the Chinese rendition of "an application for a specified instrument" under clause 2(2) of the Bill.

Clause 37 of the Bill

38. Please make necessary amendment to the heading of the clause in the Chinese text, as it should be consistent with the title of Schedule 3 in the Chinese text.
39. Similarly, please amend "指明文書申請的進一步條文" in the Chinese text of the clause.

Clause 38 of the Bill

40. In the Chinese text of sub-clause (2)(a)(iii), "文書的持有人" should be "文書持有人" in view of the Chinese rendition of "instrument holder" under sub-clause (1).
41. In sub-clause (2)(b), "obligations" in the English text has not be rendered in the Chinese text. Further, should "的條文" after "申請佔用令的權力" in the Chinese text be deleted?
42. In sub-clause (3), "reasonably" in the English text has not been rendered in the Chinese text.