



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

28 November 2015

Ms Wendy KAN
Assistant Legal Adviser
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 21 May 2015 which seeks the Government's responses to your observations on Part 8 of, and Schedule 1 to, the Private Columbaria Bill. Our responses to your observations and our other suggestion are set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Diane W.", with a long, sweeping vertical stroke extending downwards from the end of the signature.

(Miss Diane WONG)
for Secretary for Food and Health

**The Government's Response to ALA's Observations
on Part 8 of, and Schedule 1 to, the Private Columbaria Bill (the Bill)**

Item	Response from the Government
1	<p>Issue: Re: clause 71(2) –</p> <ul style="list-style-type: none"> • “行政長官可委出一個委員團，委員團每名成員須 — <ul style="list-style-type: none"> (a) 並非發牌委員會成員，亦非公職人員；並 (b) 獲行政長官認為適合擔任上訴委員會成員，以聆訊上訴。” • “The Chief Executive may appoint a panel of persons each of whom— <ul style="list-style-type: none"> (a) is neither a member of the Licensing Board nor a public officer; and (b) is considered by the Chief Executive to be suitable to serve on an Appeal Board to hear an appeal.” <p>Re: clause 71(4) –</p> <ul style="list-style-type: none"> • “為免生疑問，在第(2)(a)款中 — 公職人員 (public officer) 不包括 — <ul style="list-style-type: none"> (a) 原訟法庭法官； (b) 原訟法庭特委法官； (c) 原訟法庭暫委法官；或 (d) 區域法院法官。 • “To avoid doubt, in subsection (2)(a)— <i>public officer</i> (公職人員) does not include— <ul style="list-style-type: none"> (a) a judge of the Court of First Instance; (b) a recorder of the Court of First Instance; (c) a deputy judge of the Court of First Instance; or (d) a District Judge.” <p>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).</p> <p>Response:</p> <p>According to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), a “public officer” is defined to mean “any person holding an office of emolument under the Government, whether such office be permanent or temporary”. In <i>Mutual Luck Investment Ltd v Attorney General & Another</i> [1997] HKLRD 1097, the High Court</p>

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	<p>held that a Justice of Appeal is clearly a public officer within the meaning of section 3 of Cap. 1.</p> <p>Unless expressly provided for in the legislation to be otherwise, the judicial offices (which include “a Justice of Appeal”) listed in schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92)) may not be appointed as a panel member of the Private Columbaria Appeal Board as they are public officers.</p> <p>Clause 71(4) provides that to avoid doubt, “public officer” in clause 71(2)(a) does not include—</p> <ul style="list-style-type: none"> (a) a judge of the Court of First Instance; (b) a recorder of the Court of First Instance; (c) a deputy judge of the Court of First Instance; or (d) a District Judge. <p>In other words, the aforesaid judge or recorder may be appointed as a panel member of the Private Columbaria Appeal Board.</p> <p>There are similar provisions in respect of the Appeal Board panel (town planning) and the Appeal Board panel (urban renewal) (see section 17A(2A) of the Town Planning Ordinance (Cap. 131) and section 27(3) of the Urban Renewal Authority (Cap. 563) respectively). In addition, for the Appeal Board panel (town planning), there is an express provision on not appointing a Justice of Appeal (see section 17A(2) of Cap. 131).</p> <p>Upon receipt of ALA’s letter in May 2015, FHB consulted the Judiciary Administrator’s Office in June 2015. We will consider repealing clause 71(4). In other words, the aforesaid judge or recorder may not be appointed as a panel member of the Private Columbaria Appeal Board as well.</p>
2	<p>Issue: Re: clause 71(3)(b) –</p> <ul style="list-style-type: none"> • “行政長官可 — <ul style="list-style-type: none"> (a) 委任一名具所需法律資格的委員團成員，擔任上訴委員會主席；及 (b) 委任具所需法律資格的其他委員團成員，擔任上訴委員會副主席。” • “The Chief Executive may— <ul style="list-style-type: none"> (a) appoint a panel member who is legally qualified to be the Chairperson of the Appeal Board; and (b) appoint other panel members who are legally qualified to be Deputy Chairpersons of the Appeal Board.” <p>How many Deputy Chairpersons that the Administration intends to have at a time?</p> <p>Response: We intend to appoint two (or more) Deputy Chairpersons for the Appeal Board. We will determine the exact number of Deputy Chairpersons, having regard to</p>

Item	Response from the Government
	the caseload of appeals.
3	<p>Issue: Re: clause 71(5) –</p> <ul style="list-style-type: none"> • “第(2)或(3)款所指的委任，須在憲報公布。” • “An appointment under subsection (2) or (3) must be notified in the Gazette.” <p>In view of the Chinese text of clause 71(2) and (3), “第(2)或(3)款所指的<u>委任</u>” should be “第(2)或(3)款所指的<u>委出或委任</u>” instead.</p> <p>Response: We will consider amending clause 71(5) to “第(2)或(3)款所指的<u>委出或委任</u>”.</p>
4	<p>Issue: Re: clause 71(5), please see the provision as stated in item 3.</p> <p>Re: clause 71(2) –</p> <ul style="list-style-type: none"> • “行政長官可委出一個委員會，委員會每名成員須 — <ul style="list-style-type: none"> (a) 並非發牌委員會成員，亦非公職人員；並 (b) 獲行政長官認為適合擔任上訴委員會成員，以聆訊上訴。” • “The Chief Executive may appoint a panel of persons each of whom— <ul style="list-style-type: none"> (a) is neither a member of the Licensing Board nor a public officer; and (b) is considered by the Chief Executive to be suitable to serve on an Appeal Board to hear an appeal.” <p>clause 71(3) –</p> <ul style="list-style-type: none"> • “行政長官可— <ul style="list-style-type: none"> (a) 委任一名具所需法律資格的委員會成員，擔任上訴委員會主席；及 (b) 委任具所需法律資格的其他委員會成員，擔任上訴委員會副主席。” • “The Chief Executive may— <ul style="list-style-type: none"> (a) appoint a panel member who is legally qualified to be the Chairperson of the Appeal Board; and (b) appoint other panel members who are legally qualified to be Deputy Chairpersons of the Appeal Board.” <p>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?</p>

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	<p>Response:</p> <p>We note that some Ordinances expressly provide for the term of appointment¹ while some Ordinances do not². Where there is no express provision for the term of appointment, reference may be made to section 42(c) of Cap. 1, “where any Ordinance confers a power or imposes a duty upon any person to make any appointment or to constitute or establish any board, tribunal, commission, committee or similar body, then the person having such power or duty shall also have the power ... to specify the period for which any person appointed in exercise of such power or duty shall hold such appointment ...”. The usual practice is to stipulate the term in the appointment letter.</p> <p>We note that some Ordinances expressly provide for resignation³ while some Ordinances do not⁴. We will consider amending clause 71(4) to provide that “a person appointed under subsection (2) or (3) may, at any time, resign as the Chairman, a Deputy Chairman or a panel member by giving a notice in writing to the Chief Executive”.</p> <p>If the Chairperson (or Deputy Chairperson as the case may be) intends to resign from that capacity, he or she should submit a capacity-specific resignation notice pursuant to the aforesaid provision. In this way, he may resign from that capacity and yet remain as a panel member of the Private Columbaria Appeal Board.</p> <p>Separately, we should similarly consider amending section 1 of Schedule 1 (on the appointment of the Licensing Board) to provide that “a person appointed under subsection (1), (2) or (3) may, at any time, resign as the Chairman, the Deputy</p>

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- (a) section 128D of the Public Health and Municipal Services Ordinance (Cap. 132);
 - (b) section 45 of the Buildings Ordinance (Cap. 123);
 - (c) section 27 of the Urban Renewal Authority (Cap. 563);
 - (d) section 5 of the Chinese Medicine Ordinance (Cap. 549);
 - (e) section 47 of the Unsolicited Electronic Messages ordinance (Cap. 593); and
 - (f) section 14 of the Product Eco-Responsibility Ordinance (Cap. 603).

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- (a) regulation 2A of the Dutiable Commodities (Liquor) Regulations (Cap. 109B);
 - (b) section 125A of the Public Health and Municipal Services Ordinance (Cap. 132);
 - (c) section 17A of the Town Planning Ordinance (Cap. 131); and
 - (d) section 170 of the Copyright Ordinance (Cap. 528).

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- (a) sections 125A and 128D of the Public Health and Municipal Services Ordinance (Cap. 132);
 - (b) section 45 of the Buildings Ordinance (Cap. 123);
 - (c) section 27 of the Urban Renewal Authority (Cap. 563);
 - (d) section 170 of the Copyright Ordinance (Cap. 528)
 - (e) section 5 of the Chinese Medicine Ordinance (Cap. 549); and
 - (f) section 47 of the Unsolicited Electronic Messages ordinance (Cap. 593).

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- (a) regulation 2A of the Dutiable Commodities (Liquor) Regulations (Cap. 109B);
 - (b) section 17A of the Town Planning Ordinance (Cap. 131); and
 - (c) section 14 of the Product Eco-Responsibility Ordinance (Cap. 603).

Item	Response from the Government
	Chairman or a member of the Licensing Board by giving a notice in writing to the Chief Executive”.
5	<p>Issue: Re: clause 71(6) –</p> <ul style="list-style-type: none"> • “局長可委任一名公職人員，擔任上訴委員會秘書。” • “The Secretary may appoint a public officer to be the secretary of the Appeal Board.” <p>In the English text, please consider replacing “secretary <u>of</u> the Appeal Board” with “secretary <u>to</u> the Appeal Board” as in clause 74(14).</p> <p>Response: We will consider changing “secretary of the Appeal Board” to “secretary to the Appeal Board”.</p>
6	<p>Issue: Re: clause 72(1) –</p> <ul style="list-style-type: none"> • “任何人如因本條例之下的以下決定而感到受屈，可向上訴委員會提出上訴 — <ul style="list-style-type: none"> (a) 拒絕指明文書申請； (b) 拒絕以下申請 — <ul style="list-style-type: none"> (i) 將牌照或豁免書轉讓；或 (ii) 將暫免法律責任書連同以下一項或兩項轉讓 — <ul style="list-style-type: none"> (A) 要求發出牌照的相關申請； (B) 要求發出豁免書的相關申請； (c) 撤銷或暫時吊銷指明文書的決定； (d) 更改規限指明文書的條件的決定，或對指明文書施加新條件的決定； (e) 拒絕更改規限指明文書的條件； (f) 署長根據第 54 條，決定送達執法通知。” • “A person aggrieved by any of the following decisions under this Ordinance may appeal to the Appeal Board— <ul style="list-style-type: none"> (a) a refusal of an application for a specified instrument; (b) a refusal of an application for— <ul style="list-style-type: none"> (i) the transfer of a licence or exemption; or (ii) the transfer of a temporary suspension of liability together with one or both of the following— <ul style="list-style-type: none"> (A) the related application for the issue of a licence; (B) the related application for the issue of an exemption; (c) a decision to revoke or suspend a specified instrument; (d) a decision to vary the conditions to which a specified instrument is subject or a decision to impose new conditions;

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	<p>(e) a refusal to vary the conditions to which a specified instrument is subject; (f) a decision of the Director under section 54 to serve an enforcement notice.”</p> <p>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.</p> <p>Response: We will consider amending clause 72(1)(c) to put it beyond doubt that a decision to revoke or suspend the authorization under a licence to sell interment rights in respect of the columbarium concerned under clause 33(1)(a)(ii) is appealable under clause 72.</p>
7	<p>Issue: 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.</p> <p>Response: We will consider amending clause 72(1) to provide that a refusal of an application made pursuant to clause 35(1)(a) for suspending the operation of the Licensing Board’s decision made under clause 33(1) is appealable under clause 72.</p>
8	<p>Issue: Re: clause 73(3) –</p> <ul style="list-style-type: none"> • “主席如在有關上訴中，有直接或間接的利害關係，則不得擔任審裁官。” • “The Chairperson must not act as presiding officer if the Chairperson has a direct or indirect interest in the appeal.” <p>Re: clause 73(4) –</p> <ul style="list-style-type: none"> • “某副主席如在有關上訴中，有直接或間接的利害關係，則不得擔任審裁官。” • “A Deputy Chairperson must not act as presiding officer if the Deputy Chairperson has a direct or indirect interest in the appeal.” <p>Re: clause 73(5) –</p> <ul style="list-style-type: none"> • “如主席及各副主席在有關上訴中，均有直接或間接的利害關係，則局長可挑選一名具所需法律資格的、在該宗上訴中沒有直接或間接的利害關係的委員團成員，擔任審裁官。” • “If the Chairperson and each Deputy Chairperson has a direct or indirect interest in an appeal, the Secretary may select a panel member who is legally qualified, and who does not have a direct or indirect interest in the appeal, to act as presiding officer.” <p>Re: clause 73(6) –</p> <ul style="list-style-type: none"> • “如某委員團成員在有關上訴中，有直接或間接的利害關係，則審裁官不得挑選該成員聆訊該上訴。” • “The presiding officer must not select a panel member to hear an appeal if the panel member has a direct or indirect interest in the appeal.”

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	<p>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.</p> <p>Response: Clause 79 of the Bill empowers the Chairperson of the Appeal Board to make rules for regulating the practice and procedure of the Appeal Board. We will relay the request to the Chairperson of the Appeal Board for setting out in the rules the circumstances under which a member may or will be considered to have a direct or indirect interest in an appeal for the purposes of this clause.</p>
9	<p>Issue: Re: clause 73(7) –</p> <ul style="list-style-type: none"> “如在聆訊上訴期間，在該宗上訴擔任審裁官的主席或副主席的任期屆滿，或根據第(1)(b)款為該宗上訴而獲挑選的委員會成員的任期屆滿，則該主席、該副主席或該成員可繼續聆訊該宗上訴，直至該宗上訴獲裁決為止。” “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 subsection (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.” <p>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?</p> <p>Response:</p> <p>In case the Secretary has selected a panel member to act as presiding officer under clause 73(5) and the term of appointment of this panel member who is the presiding officer at an appeal expires during the hearing of the appeal, it is our policy intention that he/she should continue to hear the appeal until the appeal is determined.</p> <p>We will consider amending clause 73(7) by replacing “the Chairperson or a Deputy Chairperson who is the presiding officer at an appeal ...” with “the Chairperson, a Deputy Chairperson <i>or a panel member selected under clause 73(5)</i> who is the presiding officer at an appeal ...”.</p>
10	<p>Issue: Re: clause 74(11) –</p> <ul style="list-style-type: none"> “在對上訴作出裁決時，上訴委員會可 — <ul style="list-style-type: none"> (a) 維持、推翻或更改上訴所針對的決定； (b) 以其本身的決定，取代上訴所針對的決定；

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	<p>(c) 作出其認為合適的任何其他命令。”</p> <ul style="list-style-type: none"> “In determining an appeal, an Appeal Board may— <ul style="list-style-type: none"> (a) confirm, reverse or vary the decision appealed against; (b) substitute its own decision for the decision appealed against; (c) make any other order that it thinks fit.” <p>Please clarify whether paragraphs (a) to (c) of this clause are intended to operate cumulatively or as alternatives.</p> <p>Response:</p> <p>Paragraphs (a) to (c) of clause 74(11) are intended to operate as alternatives. We will consider inserting “or” at the end of clause 74(11)(b). For reference, please see section 21(1)(j) of the Administrative Appeals Board Ordinance (Cap. 442).</p>
11	<p>Issue: Re: 74(14) –</p> <ul style="list-style-type: none"> “上訴委員會秘書須將上訴委員會的決定及理由的複本，送達上訴各方。” “The secretary to the Appeal Board is to serve a copy of the Appeal Board’s decision and reasons on the parties to the appeal.” <p>Clause 74(13) states that the Appeal Board is required to notify the parties to an appeal of its decision, in writing, setting out <u>the decision, the reasons for the decision, and the date on which the decision is to take effect</u>. 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?</p> <p>Response: We will consider amending clause 74(14) to provide that the presiding officer of the Appeal Board is to serve a copy of the written notification under clause 74(13) on the parties to the appeal.</p>
12	<p>Issue: Re: clause 75(1)(b) –</p> <ul style="list-style-type: none"> “在不抵觸第 76 及 80 條的條文下，在上訴聆訊中，上訴委員會可— [...] (b) 藉由審裁官簽署的書面通知，傳召任何人 — <ul style="list-style-type: none"> (i) 向上訴委員會交出由該人保管或控制的、攸關該宗上訴的任何文件 (包括第 82 條提述的材料及資料)；或 (ii) 出席上訴委員會的聆訊，並提供攸關該宗上訴的證據；” “Subject to section 76 and section 80, in the hearing of an appeal, the Appeal Board may— [...]

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	<p>(b) by notice in writing signed by the presiding officer, summon a person—</p> <ul style="list-style-type: none"> (i) to produce to the Appeal Board any document (including material and information referred to in section 82) that is relevant to the appeal and is in or under the custody or control of the person; or (ii) to appear before the Appeal Board and to give evidence relevant to the appeal;” <p>Re: clause 75(3) –</p> <ul style="list-style-type: none"> • “聆訊上訴的上訴委員會的任何通知或命令，須由該上訴委員會的審裁官發出。” • “Any notice or order of an Appeal Board hearing an appeal is to be issued by the presiding officer of the Appeal Board.” <p>Given that any notice or order of an Appeal Board hearing an appeal <u>is to be issued by the presiding officer of the Appeal Board</u> under clause 75(3), please explain the need to require under clause 75(1)(b) the notice referred to therein <u>to be signed by the presiding officer</u>.</p> <p>Response: We will consider deleting “由審裁官簽署的” in the Chinese text and “signed by the presiding officer” in the English text of clause 75(1)(b).</p>
13	<p>Issue: Re: clause 78(1)(a)(iv) –</p> <ul style="list-style-type: none"> • “遵從任何由上訴委員會或其審裁官作出或發出的任何其他合法命令、要求或指示” • “to comply with any other lawful order, requirement or direction made or given by the Appeal Board or the presiding officer of the Appeal Board” <p>In the Chinese text, “任何” appears twice and one of them should be deleted.</p> <p>Response: We will consider deleting (a) “任何” after “遵從” and (b) “of the Appeal Board” after “the presiding officer” under clause 78(1)(a)(iv).</p>
14	<p>Issue: Re: clause 78(2) –</p> <ul style="list-style-type: none"> • “任何人在違反第 75(1)(e)條所指的命令的情況下，發布或以其他方式披露任何資料，即屬犯罪。” • “A person commits an offence if the person publishes or otherwise discloses any material in contravention of an order under section 75(1)(e).” <p>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.</p> <p>Response: We will consider amending “資料” to “材料” under clause 78(2).</p>

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15	<p>Issue: Re: clause 78(3) –</p> <ul style="list-style-type: none"> • “任何人犯第(1)或(2)款所訂罪行，一經循簡易程序定罪，可處第 5 級罰款。” • “A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine at level 5.” <p>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.</p> <p>Response: We will consider deleting “summary” in the English text and “循簡易程序” in the Chinese text of both clauses 78(3) and 87(2).</p>
16	<p>Issue: Re: heading of clause 79 –</p> <ul style="list-style-type: none"> • “上訴委員會主席可訂立規則及決定實務或程序” • “Chairperson of Appeal Board may make rules and determine practice or procedure” <p>Re clause 79(1) –</p> <ul style="list-style-type: none"> • “上訴委員會主席可...” • “The Chairperson of the Appeal Board may...” <p>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).</p> <p>Response: We will consider deleting “of the Appeal Board” in clause 79(1) as well as making corresponding amendment to the Chinese text. As regards the heading of clause 79, it will be clearer to refer to “Chairperson of Appeal Board” in that heading.</p>
17	<p>Issue: Re: clause 79(2) –</p> <ul style="list-style-type: none"> • “根據本條訂立的規則，並非附屬法例。” • “Rules made under this section are not subsidiary legislation.” <p>Should “this section” in this clause rather be “subsection (1)”, as in clause 79(3)?</p> <p>Response: We will consider changing “this section” to “subsection (1)” and “本條” to “第(1)款” in the English text and the Chinese text of clause 79(2) respectively.</p>
18	<p>Issue: Re: clause 79(2) –</p> <p>Please give the justification for providing that the rules so made are not subsidiary legislation.</p>

Item	Response from the Government
	<p>Response:</p> <p>“Subsidiary legislation” and “subordinate legislation” are defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean “any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance <i>and having legislative effect</i>.”</p> <p>“Legislative effect” is not defined in Cap. 1, but certain criteria can be discerned from local and other common law jurisprudence for determining if an instrument has legislative effect:</p> <ul style="list-style-type: none"> (a) where the instrument <i>extends</i> or amends existing legislation (or alters the common law); (b) where the instrument has general application to the public or a class of public as opposed to individuals. This is not conclusive, but if the instrument has general application to the public or to a class of the public, the instrument is more likely to be held to be subsidiary legislation; (c) where the instrument formulates a general rule of conduct without reference to particular cases. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; (d) whether the measure is legally binding, as opposed to providing guidance only; (e) whether the instrument is subject to parliamentary control; and (f) whether the legislative intent is to treat the instrument as subsidiary legislation. <p>There are examples in other legislation where rules are not subsidiary legislation⁵ or are subsidiary legislation⁶. Some legislation is silent on whether or not the procedures concerned are subsidiary legislation⁷.</p> <p>At the Bills Committee on 6 July 2015, Members pointed to the offence provision relating to appeals with sanctions in the form of fines (see clause 78). That said, Members also appreciated the need for flexibility to allow operational practices and procedures to be made or revised in a timely manner to cater for changing circumstances.</p> <p>The Private Columbaria Appeal Board is a quasi-judicial body. For the effective exercise of its jurisdiction, it would be within its implied ancillary power to devise an instrument prescribing its practice and procedure to facilitate the smooth operation of the Appeal Board. An instrument, which is not to be subsidiary legislation, would not</p>

⁵ (a) section 28(3) of the Veterinary Surgeons Registration Ordinance (Cap. 529); and
(b) section 9(2) of the Social Workers Registration Ordinance (Cap. 505).

⁶ (a) section 125G(2) of the Public Health and Municipal Services Ordinance (Cap. 132); and
(b) section 128D(20) of the Public Health and Municipal Services Ordinance (Cap. 132).

⁷ (a) section 17 of Schedule 1A of the Immigration Ordinance (Cap. 115); and
(b) section 26(7) of the District Cooling Services Ordinance (Cap. 624).

Item	Response from the Government
	<p>have the force of law and its object may simply be increasing the efficiency and productivity of the Appeal Board.</p> <p>Against the above background, we will consider amending clause 79(2) to read as “Rules made under subsection (1) are subsidiary legislation.” and adding clause 79(4) to read as “Matters referred to in subsection (3) are not subsidiary legislation.”</p> <p>Under clause 79(3), the Chairperson may give practical guidance on the key steps of the appeal proceedings as well as their indicative timeframe and requirements, providing reference to potential parties so that the appeal cases can be dealt with in a fair and efficient manner. In this way, he may keep such guidance under constant review in a timely manner, in the light of the Appeal Board’s practical experience.</p>
19	<p>Issue: Re: clause 80(1) –</p> <ul style="list-style-type: none"> • “主席、副主席或上訴委員會委員團成員在根據本條例執行任何職能時所享有的特權及豁免權，等同於在原訟法庭的民事法律程序中，原訟法庭法官享有的特權及豁免權。” • “The Chairperson, Deputy Chairpersons or a panel member of the Appeal Board performing any functions under this Ordinance is to have the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.” <p>In the English text, “should Deputy Chairpersons” be “a Deputy Chairperson” instead?</p> <p>Response: We will consider amending “Deputy Chairpersons” to “a Deputy Chairperson” in clause 80(1).</p>
20	<p>Issue: Re clause 80(1), please see the provision as stated in item 19.</p> <p>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.</p> <p>Response: We will consider deleting “of the Appeal Board” in clause 80(1).</p>
21	<p>Issue: Re: clause 80(2) –</p> <ul style="list-style-type: none"> • “向上訴委員會作供的證人所享有的特權及豁免權，等同於在原訟法庭的民事法律程序中，證人享有的特權及豁免權。” • “A witness appearing before the Appeal Board is to have the same privileges or immunities of a witness in civil proceedings in the Court of First Instance.” <p>In the English text, “privileges <u>or</u> immunities” should instead be “privileges <u>and</u> immunities” as reflected in the Chinese text.</p> <p>Response: We will consider amending “privileges or immunities” to “privileges and immunities” in clause 80(2).</p>

Item	Response from the Government
22	<p>Issue: Re: section 4(2) of Schedule 1</p> <ul style="list-style-type: none"> • “發牌委員會的會議法定人數，是 4 名該委員會的成員，當中一名成員須是 — <ul style="list-style-type: none"> (a) 發牌委員會主席；或 (b) (如主席缺勤或因其他原因不能行事)發牌委員會副主席。” • “A quorum at a meeting of the Licensing Board is formed by 4 members of the Licensing Board, one of whom must be— <ul style="list-style-type: none"> (a) the Chairperson of the Licensing Board; or (b) if the Chairperson is absent or is otherwise unable to act, the Deputy Chairperson of the Licensing Board.” <p>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 <u>must be</u> 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.</p> <p>Consolidated Response to items 22 and 23:</p> <p>We will consider amending Schedule 1 to provide that –</p> <ul style="list-style-type: none"> (a) if the Chairperson of the Licensing Board or a committee is absent or is otherwise unable to act at a meeting, the Deputy Chairperson will serve as the Acting Chairman; and (b) if the Chairperson and the Deputy Chairperson of the Licensing Board is absent or is otherwise unable to act at a meeting, a member selected by the Secretary (for Food and Health) who does not have a direct or indirect interest will serve as the Acting Chairman; and (c) if the Chairperson and the Deputy Chairperson of a committee is absent or is otherwise unable to act at a meeting, a member selected by the Licensing Board who does not have a direct or indirect interest will serve as the Acting Chairman. <p>We will consider amending –</p> <ul style="list-style-type: none"> (a) section 4(2) of Schedule 1 by replacing “must be – (a)...; or (b) ...” with “must be the Chairperson or the Acting Chairperson of the Licensing Board”; (b) section 4(3) of Schedule 1 by replacing “the Chairperson of the committee” with “the Chairperson or the Acting Chairperson of the committee”

Item	Response from the Government
	<p>(c) section 4(4) of Schedule 1 by replacing “the Chairperson of the Licensing Board or a committee” with “the Chairperson or the Acting Chairperson of the Licensing Board or a committee”.</p> <p>By “or is otherwise unable to act” should include the scenario where the relevant office-bearer(s) is/are to be disregarded for the purposes of constituting the quorum pursuant to section 4(7) of Schedule 1.</p>
23	<p>Issue: Re: section 4(3) of Schedule 1 –</p> <ul style="list-style-type: none"> • “發牌委員會的委員會的會議法定人數，是其委員會三分之一的委員，當中一名委員須是其委員會主席。” • “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.” <p>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?</p> <p>Consolidated Response to items 22 and 23:</p> <p>The consolidated response to items 22 and 23 listed in item 22 above is relevant.</p>
24	<p>Issue: Re: section 4(3) of Schedule 1 –</p> <p>In the Chinese text, it seems unclear whether “其委員會三分之一的委員” and “其委員會主席” means 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.</p> <p>Response: For section 4(3) of Schedule 1, we consider the reference to “其委員會三分之一的委員” and “其委員會主席” is clear to mean members of the committee in question and the Chairperson of the committee in question, as it is preceded by “發牌委員會的委員會” at the start of that subsection.</p>
25	<p>Issue: Re: section 4(4) of Schedule 1 –</p> <ul style="list-style-type: none"> • “在發牌委員會或其委員會的會議上，如支持和反對某動議的票數均等，則發牌委員會主席或其委員會主席(視情況所需而定)有權投決定票。” • “The Chairperson of the Licensing Board or a committee (as the case requires) is to have a casting vote in case of an equality of votes for and against a motion at a meeting of the Licensing Board or committee.” <p>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</p>

Item	Response from the Government
	<p>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.</p> <p>Response:</p> <p>Please see the consolidated response to items 22 and 23 listed in item 22 above.</p> <p>We will also consider amending section 4(4) of Schedule 1 to provide that “the Chairperson or the Acting Chairperson of the Licensing Board or a committee (as the case requires) is to have a casting vote in addition to his or her original vote [...]”</p>
26	<p>Issue: Re: section 5 of Schedule 1 –</p> <ul style="list-style-type: none"> • 如發牌委員會的成員或其委員會的委員，在發牌委員會或其委員會的會議(視情況所需而定)考慮的任何事宜中，有直接或間接金錢利害關係，則該成員或委員 — <ul style="list-style-type: none"> (a) 須於該會議開始前，向發牌委員會或有關的委員會(視情況所需而定)披露其利害關係的性質，或在該會議開始後，在切實可行的範圍內，盡快作出該項披露； (b) (如該會議要求，該成員或委員在發牌委員會或其委員會(視情況所需而定)考慮該事宜時避席)須避席；及 (c) 不得就該事宜，參與任何商議或涉及任何決定。 • If a member of the Licensing Board or a committee has a pecuniary interest, whether direct or indirect, in any matter under consideration at a meeting of the Licensing Board or committee (as the case requires), the member— <ul style="list-style-type: none"> (a) must, before or as soon as practicable after the meeting begins, disclose to the Licensing Board or committee (as the case requires) the nature of the interest; (b) must withdraw from the meeting while the Licensing Board or committee (as the case requires) is considering the matter if so required by the meeting; and (c) must not participate in any deliberation or be involved in any decision regarding the matter. <p>It is noted that in paragraph (a) of section 5 of Schedule 1, “disclose to <u>the</u> 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 <u>the</u> Licensing Board or committee” in the English text should be rendered as “向發牌委員會或有關的委員會的會議” in the Chinese text instead of as “向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 “<u>the</u> Licensing Board or committee” in the English text.</p>

Item	Response from the Government
	<p>Response: For the reasons stated in item 24 above, we consider that “其委員會” is a more suitable Chinese equivalent to “committee”. Accordingly, we will consider amending “向發牌委員會或有關的委員會” in section 5(a) of Schedule 1 to “向發牌委員會或其委員會” instead.</p>
27	<p>Issue: Section 5 of Schedule 1 applies where a member of the Licensing Board or a committee has a direct or indirect <u>pecuniary interest</u> 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 <u>pecuniary interest</u> instead of a direct or indirect <u>interest</u> as in clause 73.</p> <p>Response: We will consider replacing “a pecuniary interest” with “an interest” in section 5 of Schedule 1, such that any member with a direct or indirect interest (any interest) will be required to disclose his interest to the Licensing Board or committee. This will ensure consistency between section 5 of Schedule 1 and clause 73.</p>
28	<p>Issue: 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.</p> <p>Response: Clause 83(1) empowers the Licensing Board to issue guidelines indicating the manner in which it proposes to perform its functions under the Bill and providing guidance on the operation of any provision of the Bill. We will relay the request to the Chairperson of the Licensing Board to issue guidelines setting out the circumstances under which a member may or will be considered to have a direct or indirect interest for the purposes of section 5 of Schedule 1.</p>