

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1013/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/4/14

**Bills Committee on  
Chinese Permanent Cemeteries (Amendment) Bill 2015**

**Minutes of the 4<sup>th</sup> meeting  
held on Tuesday, 12 January 2016, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon Steven HO Chun-yin, BBS (Chairman)  
Hon WONG Kwok-hing, BBS, MH  
Hon Cyd HO Sau-lan, JP  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Chi-chuen  
Dr Hon Kenneth CHAN Ka-lok  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Members absent** : Hon IP Kwok-him, GBS, JP  
Dr Hon Helena WONG Pik-wan

**Public Officers attending** : Item I

The Administration

Mr Laurie LO, JP  
Deputy Secretary for Home Affairs (1)

Miss Gloria LO  
Principal Assistant Secretary for Home Affairs (Civic Affairs) 3

Mr Jonathan LUK  
Government Counsel, Law Drafting Division  
Department of Justice

The Board of Management of the Chinese Permanent Cemeteries

Ms Brenda LO  
Executive Director

**Clerk in attendance** : Miss Josephine SO  
Chief Council Secretary (2) 2

**Staff in attendance** : Ms Vanessa CHENG  
Assistant Legal Adviser 5

Ms Wendy LO  
Senior Council Secretary (2) 2

Mr Roger CHUNG  
Council Secretary (2) 2

Miss Emma CHEUNG  
Legislative Assistant (2) 2

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**I. Meeting with the Administration**

(LC Paper Nos. CB(2)595/15-16(01) to (03), CB(3)802/14-15, CB(2)110/15-16(02) to (06) and CB(2)608/15-16(01))

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

2. The Bills Committee received the Administration's briefing on its response to issues raised by members at the Bills Committee meeting held on 22 December 2015 (LC Paper Nos. CB(2)595/15-16(01) & (02)).

3. The Bills Committee noted that taking into account members' views expressed at the meeting on 22 December 2015, the Administration would consider moving Committee stage amendments ("CSAs") to the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") as follows -

- (a) to specify in the proposed amended rule 14(2)(b) and the new rule 14A(b) of the Chinese Permanent Cemeteries Rules (Cap. 1112A) ("the Rules") that the Board of Management of the Chinese Permanent Cemeteries ("the

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Board") should publish a notice in the Gazette and in at least two local Chinese newspapers and at least one local English newspaper stating the Board's intention to disinter and remove human remains and ashes from an exhumable lot, or to cremate human remains removed from an exhumable lot; and

- (b) to set out in item 5 of Schedule 3 to the Rules the fees for multiple interments or burials in the same grave space or urn lot as follows -
  - (i) for an interment of encoffined human remains, the fee for each set of human remains was HK\$3,600; and
  - (ii) for a burial or reburial of skeletal remains or ashes in containers, the fee for each set of skeletal remains or ashes was HK\$1,800.

4. The Bills Committee continued and finished clause-by-clause examination of the Bill (LC Paper No. CB(3)802/14-15), and completed consideration of the draft CSAs proposed by the Administration in response to members' suggestions raised at previous Bills Committee meetings (LC Paper No. CB(2)595/15-16(03)).

Follow-up actions required of the Administration

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5. The Administration was requested to provide written responses to issues/concerns raised by members and the Legal Adviser to the Bills Committee as set out in **Annex B**.

**II. Any other business**

Date of next meeting

6. Members agreed that the Administration's response to issues raised at the meeting would be circulated to members for reference and the next meeting scheduled for 22 February 2016 at 8:30 am would not be held if members had no specific comments on the Administration's response and raised no other issue for discussion.

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7. There being no other business, the meeting ended at 9:52 am.

Council Business Division 2  
Legislative Council Secretariat  
3 March 2016

**Proceedings of the 4<sup>th</sup> meeting of the  
Bills Committee on Chinese Permanent Cemeteries (Amendment) Bill 2015  
on Tuesday, 12 January 2016, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000329 - 000339	Chairman	The Chairman's opening remarks	
000340 - 001333	Chairman Admin	<p>Briefing by the Administration on its response to issues raised at the Bills Committee meeting held on 22 December 2015 [LC Paper Nos. CB(2)595/15-16(01) &amp; (02)].</p> <p>The Administration's advice that taking into account members' views expressed at the meeting on 22 December 2015, it would consider moving Committee stage amendments ("CSAs") to the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") as follows -</p> <p>(a) to specify in the proposed amended rule 14(2)(b) and the new rule 14A(b) of the Chinese Permanent Cemeteries Rules (Cap. 1112A) ("the Rules") that the Board of Management of the Chinese Permanent Cemeteries ("the Board") should publish a notice in the Gazette and in at least two local Chinese newspapers and at least one local English newspaper stating the Board's intention to disinter and remove human remains and ashes from an exhumable lot, or to cremate human remains removed from an exhumable lot; and</p> <p>(b) to set out in item 5 of Schedule 3 to the Rules the fees for multiple interments or burials in the same grave space or urn lot as follows -</p> <p>(i) for an interment of encoffined human remains, the fee for each set of human remains was HK\$3,600; and</p> <p>(ii) for a burial or reburial of skeletal remains or ashes in containers, the fee for each set of skeletal remains or ashes was HK\$1,800.</p>	
<i>Clause-by-clause examination of the Bill</i>			
001334 -	Chairman	The Bills Committee continued clause-by-clause	

Time marker	Speaker	Subject(s)	Action Required
002503	Admin Ms Cyd HO Mr CHAN Chi-chuen	<p>examination of the Bill, with the aid of the Blue Bill and the marked-up copy of the relevant provisions to be amended by the Bill prepared by the Legal Service Division [LC Paper Nos. CB(3)802/14-15 and CB(2)110/15-16(02)].</p> <p><u>Part 3 - Amendments to Chinese Permanent Cemeteries Rules</u></p> <p><i>Clause 28 which introduced technical amendments to rule 22 of the Rules</i></p> <p>Noting that the Bill introduced a number of amendments relating to the drafting aspect of the English text of the Rules with a view to replacing/ updating outdated terms and old-style expressions, Ms Cyd HO sought information on the Department of Justice ("DoJ")'s existing policy and practice on modernization of legislation and enquired whether such policy/practice continued to apply in DoJ's drafting of Hong Kong laws including the Bill under scrutiny notwithstanding the appointment of the new Law Draftsman last year and whether relevant guidelines laid down in "Drafting Legislation in Hong Kong: A Guide to Styles and Practices" issued by DoJ were followed.</p> <p>The Administration's advice that by retiring archaic expressions, the Bill under scrutiny had followed the guidelines laid down in "Drafting Legislation in Hong Kong: A Guide to Styles and Practices", so as to improve the readability and comprehensibility of the Rules. It undertook to provide a written response to address Ms HO's concern.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the proposed amendments to rule 22(3) of the Rules.</p>	<p><b>Admin (para. 3 of Annex B refers)</b></p>
002504 - 003729	Chairman ALA5 Mr YIU Si-wing Admin Ms Cyd HO Dr Kenneth CHAN The Board	<p><i>Clause 29 concerning the liability of the Board against damage to any part of a cemetery</i></p> <p>Noting that the term "terrorist attack" was not defined in any Ordinance of Hong Kong and the use of such a term (which hinged on the liability of the Board) in the proposed amended rule 23 of the Rules might in future trigger arguments between the Board and permittees, the Chairman and the Legal Adviser to the Bills Committee expressed</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>concern on whether the Administration would, for the sake of clarity, consider spelling out its meaning in the Bill or draw reference to the definition of "terrorist act" under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) which were adopted in other Ordinances and consider proposing CSAs to the Bill to clarify the meaning of "terrorist attack" therein.</p> <p>The Administration's response that given that the term "terrorist act" as defined under the United Nations (Anti-Terrorism Measures) Ordinance had a broader definition, the adoption of "terrorist attack" (which normally involved an act causing damage to something) in the proposed amended rule 23 seemed to be more appropriate. Ms Cyd HO and Dr Kenneth CHAN both considered the proposal of using the term "terrorist attack" appropriate and straightforward, as "terrorist act" could suggest activities that might not cause any physical damage to a cemetery, e.g. money laundering or provision of financial relief.</p> <p>Mr YIU Si-wing's suggestion that as an alternative, the Administration could consider spelling out in the Bill that the Board would not be liable for any damage to any part of a cemetery due to "force majeure" reasons or cases which were beyond control such as theft and criminal damage. The Administration considered it sufficient and clear enough to exempt the Board's damage liability under the circumstances as set out in the proposed amended rule 23. The scope of exemption would be cast too wide if the Board was not liable for any damage due to various force majeure reasons. The Board's view that adopting the term "force majeure" might cause ambiguities in future about the Board's liability against damage. The present drafting of the proposed new rule 23 could achieve the purposes.</p> <p>The Administration was requested to provide a response to the concerns and observations of members/the Legal Adviser to the Bills Committee regarding the term "terrorist attack" in the proposed amended rule 23.</p>	<p><b>Admin (para. 1(a) of Annex B refers)</b></p>

Time marker	Speaker	Subject(s)	Action Required
003730 - 004706	Chairman Mr CHAN Chi-chuen Admin Ms Cyd HO	<p>Regarding the proposed amended rule 22(3) of the Rules which also related to damage liabilities of the Board, Mr CHAN Chi-chuen and Ms Cyd HO expressed concern as to whether the Board would be liable for any loss of mementos or damage to any grave space, urn lot or niche arising from any cause, including such as criminal damage or "tomb/grave raid (盜墓)", as a result of the Board's failure to discharge its operation and management responsibilities properly or negligence of/errors committed by the Board or its cemetery servants or agents in ensuring the security of Chinese Permanent Cemeteries ("CPCs").</p> <p>The Administration's advice that -</p> <p>(a) under the proposed amended rule 22(3), the Board would not be liable for any loss or damage to the items, whether movable or immovable, which were placed at any grave, urn lot or niche; and</p> <p>(b) criminal activities causing loss or damage to the items/other cemetery facilities would need to be handled according to existing laws. So far, there had never been any case of tomb or grave raid recorded in the four CPCs managed by the Board.</p> <p>The Administration was requested to clarify the Board's liability against loss or damage under the above circumstances as referred to by members and provide the scope of the Board's responsibilities in managing cemetery facilities for members' reference.</p>	<p><b>Admin (para. 2 of Annex B refers)</b></p>
004707 - 005226	Chairman Ms Cyd HO The Board Admin Mr YIU Si-wing	<p>Referring to the proposed amended rule 23 of the Rules, Ms Cyd HO asked whether the Board would be liable to pay compensation for damage to any grave space, urn lot or niche if subsidence was caused by excavation works as required by the Board or poor design and maintenance of facilities in CPCs or otherwise caused by the negligence of the Board or its servants or agents. Her view that the Board should be held liable if the subsidence was caused by the Board. The Chairman shared a similar view with Ms HO.</p> <p>Mr YIU Si-wing also sought clarification as to</p>	



Time marker	Speaker	Subject(s)	Action Required
		<p>whether the Board would hold a third party liable if the subsidence was caused by that third party.</p> <p>The Board's advice that according to records, there had never been any incidence of subsidence caused by negligence of the Board in its four cemeteries. Given members' concerns, the Administration undertook to provide a written response to the issues raised by members.</p>	<p><b>Admin (para. 1(b) of Annex B refers)</b></p>
005227 - 005759	<p>Chairman Admin Mr CHAN Chi-chuen The Board</p>	<p><i>Clauses 30 and 31</i></p> <p>In response to Mr CHAN Chi-chuen's enquiries, the Board advised that it would request the permittee concerned to carry out repair works to a grave space/an urn lot/a niche where necessary but no deadline would be set for such repairs. For the protection of public safety, the Board would carry out urgent repairs on behalf of the permittee and recover from him/her the expenses incurred for the repairs (except for temporary works). The Board would maintain close liaison with the permittee during the process.</p>	
005800 - 010114	<p>Chairman Ms Cyd HO Admin</p>	<p><i>Clause 32 which amended the First Schedule to the Rules</i></p> <p>Ms Cyd HO's enquiry and the Administration's response concerning subscribers' privileges with regard to free allotment and reservation of sites in CPCs for burial purposes.</p>	
010115 - 010543	<p>Chairman Admin</p>	<p><i>Clause 33 which amended the Third Schedule to the Rules</i></p>	
010544 - 010708	<p>Admin</p>	<p><u>Part 4 - Amendments relating to headings of provisions</u></p> <p><i>Clause 34 and the Schedule which added Part headings to the Rules.</i></p>	
010709 - 012017	<p>Admin Chairman</p>	<p>Briefing by the Administration on its proposed CSAs to the Bill in response to members' suggestions raised at previous meetings [LC Paper Nos. CB(2)595/15-16(03) and CB(2)608/15-16(01)].</p> <p>In response to the Chairman's enquiry, the Administration advised that the proposed CSAs to amend section 7 of the Chinese Permanent</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>Cemeteries Ordinance (Cap.1112) would stipulate more clearly the power of the Board to donate to any charity operating for the benefit of the community of Hong Kong or "any sector" of that community, instead of "a particular sector" of the community", so as to avoid ambiguity and better reflect the policy intent.</p> <p>The Legal Adviser to the Bills Committee confirmed that no difficulties relating to the legal and drafting aspects of the CSAs proposed by the Administration had been identified. The Bills Committee supported these CSAs.</p>	
012018 - 012330	Chairman Ms Cyd HO Dr Kenneth CHAN ALA5	The Chairman's closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
3 March 2016

**Bills Committee on  
Chinese Permanent Cemeteries (Amendment) Bill 2015**

**List of follow-up actions arising from the discussion  
at the meeting on 12 January 2016**

1. In relation to clause 29 of the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") which amended rule 23 of the Chinese Permanent Cemeteries Rules (Cap 1112A) ("the Rules") to provide that the Board of Management of the Chinese Permanent Cemeteries ("the Board") was not liable for any damage to any part of a cemetery in the event of subsidence, natural disaster, civil commotion, war or terrorist attack, the Administration was requested to provide a response to the following concerns and observations of members/the Legal Adviser to the Bills Committee -

- (a) given that the term "terrorist attack" was not defined in any Ordinance of Hong Kong and the use of such a term (which hinged on the liability of the Board) might in future trigger arguments between the Board and permittees, whether the Administration would, for the sake of clarity, consider spelling out its meaning in the Bill or draw reference to the definition of "terrorist act" under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) which were adopted in other Ordinances and consider proposing Committee stage amendments to the Bill to clarify the meaning of "terrorist attack" therein; and
- (b) if subsidence was caused by excavation works as required by the Board or poor design and maintenance of facilities in the Chinese Permanent Cemeteries ("CPCs") or otherwise caused by the negligence of the Board or its servants or agents, whether the Board would be liable to pay compensation for damage to any grave space, urn lot or niche; or if the subsidence was caused by a third party, whether the Board would hold that third party liable.

2. Members noted that apart from the proposed amended rule 23 which sought to update the general exemption clause, the proposed amended rule 22(3) of the Rules also related to damage liabilities of the Board, which stipulated that "every monument, headstone, tablet, railing, fence, enclosure and every other commemorative article, whether movable or immovable, which is placed at any grave space, urn lot or niche is to be placed there at the sole risk of the permittee, and the Board is not liable for any loss or damage to it". Concern was raised as to whether the Board would be liable for any loss of mementos or damage to any grave space, urn lot or niche arising from any cause, including such as

criminal damage or "tomb/grave raid (盜墓)", as a result of the Board's failure to discharge its operation and management responsibilities properly or negligence of/errors committed by the Board or its cemetery servants or agents in ensuring the security of CPCs. The Administration undertook to clarify the Board's liability against loss or damage under such circumstances and provide the scope of the Board's responsibilities in managing cemetery facilities for members' reference.

3. Members noted that the Bill introduced a number of amendments relating to the drafting aspect of the English text of the Rules with a view to replacing/ updating outdated terms and old-style expressions. The Administration was requested to (a) provide information on the Department of Justice ("DoJ")'s existing policy and practice on modernization of legislation and (b) advise on whether such policy/practice continued to apply in DoJ's drafting of Hong Kong laws including the Bill under scrutiny notwithstanding the appointment of the new Law Draftsman last year and whether relevant guidelines laid down in "Drafting Legislation in Hong Kong: A Guide to Styles and Practices" issued by DoJ were followed.

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3 March 2016