



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

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/19/14-15
電話 TELEPHONE : 3919 3508

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

By Fax (2591 6002)

17 September 2015

Mrs WONG HO Wing Sze, Susanne
Prin AS for Civic Affairs Division (3)
Home Affairs Bureau
13/F, West Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mrs WONG

Chinese Permanent Cemeteries (Amendment) Bill 2015

We are scrutinising the legal and drafting aspects of the captioned Bill and should be grateful if you could clarify the following matters:

Clause 5 – section 2 (definition of *Chinese Permanent Cemetery*) of and Preamble to the Chinese Permanent Cemeteries Ordinance (Cap. 1112)

- (a) Please clarify whether there is still any burial ground in the Chinese Permanent Cemeteries as "burial ground" is proposed to be deleted from the definition of "*Chinese Permanent Cemetery*" under section 2 and from section 6 of the Chinese Permanent Cemeteries Ordinance (Cap. 1112).
- (b) Please consider if it is necessary to delete "burial grounds" from paragraphs (e) and (f) of the Preamble to Cap. 1112 for the sake of consistency if there are no more burial grounds in the Chinese Permanent Cemeteries.

Section 2 of Cap. 1112 and Rule 3 of the Chinese Permanent Cemeteries Rules (Cap. 1112A) (definition of *permanently resident in Hong Kong*)

Whilst six categories of persons are specified as permanent residents of the Hong Kong Special Administrative Region under Article 24 of the Basic Law and paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115), "*permanently resident in Hong Kong*" under section 2 of Cap. 1112 and rule 3 of Cap. 1112A refers to the continuous residency requirement for a total of not less than 7 years or the right to land and to remain free of conditions of stay in Hong Kong.

- (a) Would those persons who have acquired the permanent resident status under Article 24 of the Basic Law and paragraph 2 of Schedule 1 to Cap. 115 be regarded as "*permanently resident in Hong Kong*" under section 2 of Cap. 1112 and rule 3 of Cap. 1112A?
- (b) Please clarify whether the definition of "*permanently resident in Hong Kong*" under section 2 of Cap. 1112 and rule 3 of Cap. 1112A reflects your policy intent and needs to be amended having regard to Article 24 of the Basic Law and paragraph 2 of Schedule 1 to Cap. 115.

Clause 10(8) – Rule 3 of Cap. 1112A (definition of *relative*)

- (a) Please clarify who is a "relevant person" under the definition of "*relative*".
- (b) In deducing any relationship for the purpose of paragraphs (b), (c) and (e) of the definition of *relative*, please clarify the following:-
 - (i) whether an adopted child would be treated as the child of a person or persons by whom he was adopted;
 - (ii) whether any relationship of the half-blood would be treated as a relationship of the whole blood; and
 - (iii) whether a step-child of a person would be treated as the child of a person, and an illegitimate child would be treated as a legitimate child of his mother and reputed father.

Rule 11 of Cap. 1112A – Voluntary surrender of subscriber lots

Under the proviso of rule 11(2) of Cap. 1112A, the donor may specify that the net fees arising from the allocation of a number of such ordinary lots not exceeding the number of subscriber lots surrendered shall be applied to a charity other than the General Chinese Charities Fund so long as such nominated charity is operating for the benefit of persons of the Chinese race in Hong Kong.

- (a) Please clarify who is the "donor" under the proviso of rule 11(2) of Cap. 1112A.
- (b) Please consider if it is necessary to remove the restriction on the application of the net fees to nominated charity which is operating for the benefit of "persons of the Chinese race in Hong Kong" only given that similar restriction is proposed to be removed under section 7(2) of Cap. 1112 (clause 7 of the Bill) in relation to the donation by the Board of Management of the Chinese Permanent Cemeteries (Board). Please consider making similar amendment to the effect that the donor may donate to any charity operating for the benefit of "the community of Hong Kong or a particular sector of that community".

Clause 10(11) – Rule 3 of Cap. 1112A (definition of *ashes*)

Please clarify whether *ashes* will exclude synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes, and if so, please spell it out clearly in the Bill. Reference can be made to clause 2(1) of the Private Columbaria Bill gazetted on 20 June 2014.

Clause 11 – Proposed rule 4 of Cap. 1112A (Eligibility)

- (a) Please clarify whether a child under the proposed rule 4(2)(c) will include a step-child, adopted child and an illegitimate child.
- (b) Please clarify whether an eligible deceased as referred to in the proposed rule 4(2)(b) and (c) should be a person permanently resident in Hong Kong.

Clause 15 – Proposed rule 14 of Cap. 1112A (Disinterment and removal of human remains and ashes from exhumable lot on expiry of the term)

- (a) Please clarify whether the Board will also remove any coffin, urn or other container in which such human remains or ashes are contained and any monument, headstone, tablet, railing, fence, enclosure and every commemorative article which is placed at the grave space, urn lot or niche after the Board has disinterred the human remains and ashes and removed them from the lot. If so, please consider spelling it out. Please refer to section 120 of the Public Health and Municipal Services Ordinance (Cap. 132) for reference.
- (b) Please consider if it is necessary to provide in the proposed rule 14(2) that the Board is required to serve a notice on the permittee at his or her last known address to the effect that the Board intends to disinter human remains and ashes and remove them from the exhumable lot.

Clause 16 – Proposed rule 14A of Cap. 1112A (Cremation of human remains removed from exhumable lot)

Similar to the issue raised in clause 15 above, please consider if it is necessary to provide that the Board is required to serve a notice on the permittee to the effect that the Board intends to cremate the human remains removed from an exhumable lot.

I should appreciate your reply in both English and Chinese **by 30 September 2015.**

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

c.c. DoJ (Attn.: Mr Jonathan LUK (SGC(Atg)) (By Fax: 3918 4613)
Legal Adviser
Senior Assistant Legal Adviser 1