

政府總部
民政事務局

香港添馬添美道二號
政府總部西翼十二樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU

12TH FLOOR, WEST WING,
CENTRAL GOVERNMENT OFFICES,
2 TIM MEI AVENUE,
TAMAR,
HONG KONG.

本局檔號 OUR REF. : HAB/CR 1/20/158
來函檔號 YOUR REF. : LS/B/19/14-15
電話 TEL NO. : 3509 8048
圖文傳真 FAXLINE : 2591 6002

7 October 2015

Ms Vanessa Cheng
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
1 Legislative Council Road,
Central, Hong Kong

Dear Ms Cheng,

Chinese Permanent Cemeteries (Amendment) Bill 2015 (the Bill)

Your letter dated 17 September 2015 ref LS/B/19/14-15 refers.
Please find our reply as follows:

1. Burial Ground	
<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
<i>Clauses 5 and 6</i>	<i>Preamble, Sections 5 and 6</i>
<p>A cemetery is simply a large burial ground in common language.</p> <p>In CPCO and the Rules, “burial ground” is expressed by corresponding terms such as “grave space” and “urn lot”. Against such background, the term “burial ground” is repealed in section 2 and section 6 to avoid repetition.</p> <p>Regarding the Preamble, its function to provide background information of this piece of legislation, and hence keeping the status quo of</p>	

the Preamble should not have the effect of influencing construction of the body of the legislation. As such, we intend to keep the status quo of the Preamble, so as to truly reflect and respect the history of the Ordinance being amended.

2. Permanently Resident in Hong Kong

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
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Under the established practice, the Board of Management of Chinese Permanent Cemeteries (BMCPCC) does make reference to Schedule 1 to the Immigration Ordinance (Cap. 115), which is the domestic legislation implementing Article 24 of the Basic Law, in determining “*permanent resident in Hong Kong*”.

You may wish to note that the current construction does not bar us from making such reference, at the same time provides a more relaxed definition of “*permanently resident in Hong Kong*”.

As the current exercise tends to broaden the scope of eligible deceased persons whose remains may be interred in the Chinese Permanent Cemeteries (CPCs), we do not intend to modify the definition of “*permanently resident in Hong Kong*” by direct reference to Schedule 1 to Cap. 115 or Article 24 of the Basic Law, which may provide a more rigid framework, and hence, in some circumstances involving non-Chinese (非中國籍) residents, may have the consequences of “tightening” the eligibility.

3. Relatives

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
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<i>Clause 10(8)</i>	<i>Rule 3</i>
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The term “relevant person” is a label used in the definition of “relative” in Rule 3. It is used to distinguish from other references to “person” in paragraphs (c)(iii), (d), (e)(ii), (e)(iii) and (f) of Rule 3.

The answer to the conditions as mentioned in your incoming letter is affirmative, i.e. -

- (a) an adopted child would be treated as the child of a person or persons by whom he was adopted;
- (b) any relationship of the half-blood would be treated as a relationship of the whole blood;
- (c) a step-child of a person would be treated as the child of a person; and
- (d) a child born out of wedlock would be treated as a legitimate child of his mother and reputed father,

provided that there is documentary proof establishing the relationship between the children and the relevant person

4. Voluntary Surrender of Subscriber Lots

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
--	<i>Rule 11</i>

The “donor” under the provision of Rule 11(2) of Cap. 1112A refers to the person who surrenders the subscriber lot.

Whilst subscriber lots accounts for a very small portion (around 3%) of grave spaces of Chinese Permanent Cemeteries (CPCs) only, they were allocated to subscribers, a group of people (and their successor in title) having special contribution to the development of the CPCs, more than 50 years ago. We do not intend to amend the rules in relations to subscribers in the current exercise.

5. Ashes

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
<i>Clause 10(11)</i>	<i>Rule 3</i>

We see merit in clearly defining ashes to exclude *synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes* (“Synthetic Materials”) under the Private Columbaria Bill, so as to exclude the storage place of Synthetic Materials from being regulated.

However, the purpose of the CPCO (and the Rules) should be distinguished from that of the Private Columbaria Bill. As a matter of fact,

we do not intend to prohibit, though not encourage either, Synthetic Materials from being deposited in CPCs. The definition of “ashes” proposed in the Bill would allow more flexibility for the cemetery users.

More importantly, whilst ashes under the current construction may include Synthetic Materials, tightening of the definition may affect the status of what may have already been deposited in the CPCs.

Against such background, we do not intend to change the definition of ashes in the current exercise.

6. Eligibility

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
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<i>Clause 11</i>	<i>Rule 4</i>
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We would like to confirm that a child under the proposed Rule 4(2)(c) is intended to cover a step-child, adopted child and an illegitimate child, provided that there is documentary proof establishing the relationship between the child and the person.

We would also like to confirm that we do not intend to impose requirement of Chinese race permanently resident in Hong Kong for Rule 4(2)(b) and (c).

7. Disinterment and Removal of Human Remains and Ashes from Exhumable Lot on Expiry of the Term

<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
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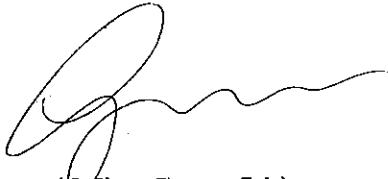
<i>Clause 15</i>	<i>Rule 14(2)</i>
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Under the established practice, the BMCPC will remove any coffin, urn or other container in which such human remains or ashes are contained and any other subject left at the grave space after the BMCPC has disinterred the human remains and ashes and removed them from the lot.

The permittee would have been notified of such arrangement when they enter into contract with the BMCPC. In that case, there may not be necessity to spell out every “object” the BMCPC will remove in the Rules, as the list of “objects” may not be exhaustive.

8. Disinterment and Removal of Human Remains and Ashes from Exhumable Lot on Expiry of the Term	
<i>Relevant Clause of the Bill</i>	<i>Relevant Provision of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (CPCO) / Chinese Permanent Cemeteries Rules (Cap. 1112A) (the Rules)</i>
<i>Clause 15 and 16</i>	<i>Rules 14(2) and 14A</i>
<p>Under the established practice, the BMCPC will endeavour to contact and inform the permittee that the Board intends to disinter human remains and ashes and remove them from the exhumable lot. Apart from the legal requirement of publishing notice in the Gazette and two local Chinese Newspapers, the BMCPC may also contact the permittee via his or her last known mailing address, telephone number, email address, etc. As the contact methods may not be exhaustive and may change with advancement in technology, we do not intend to spell every single method used in the Rules so as to allow more flexibility in actual operation.</p>	

Yours faithfully,



(Miss Grace Li)
for Secretary for Home Affairs