

**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.