

立法會
Legislative Council

LC Paper No. LS87/14-15

**Paper for the House Committee Meeting
on 9 October 2015**

**Legal Service Division Report on
Chinese Permanent Cemeteries (Amendment) Bill 2015**

I. SUMMARY

1. The Bill

The Bill seeks to amend the Chinese Permanent Cemeteries Ordinance (Cap. 1112) and the Chinese Permanent Cemeteries Rules (Cap. 1112A) to:

- (a) broaden the scope of eligible deceased persons to be interred, buried or deposited in a cemetery specified in the First Schedule to Cap. 1112A;
- (b) allow the burials of human ashes in an exhumable lot;
- (c) provide for the power to cremate unclaimed human remains;
- (d) amend the purposes and powers of the Board of Management of the Chinese Permanent Cemeteries (the Board); and
- (e) provide for related matters and to make technical amendments.

2. Public Consultation

No public consultation has been conducted on the legislative proposals apart from the consultation with the Panel on Home Affairs on 17 February 2014.

**3. Consultation with
LegCo Panel**

According to the Clerk to the Panel on Home Affairs, the Panel was briefed on 17 February 2014 on the proposed amendments to Cap. 1112 and Cap. 1112A to relax the restrictions in relation to the use of grave spaces and family niches in the Chinese Permanent Cemeteries. Members in general supported the proposed amendments but concerns were raised on the tracking of cases involving cremation of unclaimed human remains by the Board and retrieval of information on such cases upon enquiries by the public.

4. Conclusion

The Legal Service Division is seeking clarification with the Administration on certain legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 July 2015. Members may refer to the Legislative Council (LegCo) Brief (File Ref.: HAB/CR 1/20/15) issued by the Home Affairs Bureau on 24 June 2015 for further details.

Object of the Bill

2. The Bill seeks to amend the Chinese Permanent Cemeteries Ordinance (Cap. 1112) and the Chinese Permanent Cemeteries Rules (Cap. 1112A) to broaden the scope of eligible deceased persons to be interred, buried or deposited in a cemetery specified in the First Schedule to Cap. 1112A; to allow the burials of human ashes in an exhumable lot; to provide for the power to cremate unclaimed human remains; to amend the purposes and powers of the Board of Management of the Chinese Permanent Cemeteries (the Board); to provide for related matters and to make technical amendments.

Background

3. Cap. 1112, which was enacted in 1964, establishes the Board, chaired by the Secretary for Home Affairs (then titled as the Secretary for Chinese Affairs), to provide, maintain and administer cemeteries and burial grounds for persons of the Chinese race permanently resident in Hong Kong. Cap. 1112A is the rules made by the Board under section 8 of Cap. 1112 to govern the conduct of internal affairs of the Board and the management and use of any Chinese Permanent Cemetery (CPC)¹.

4. At present, there are restrictions under Cap. 1112A in relation to the use of cemetery facilities in the CPCs. One of the restrictions is that the remains or ashes of the first deceased person's family members are not allowed to be buried or deposited together with the first deceased person in the same cemetery facilities, unless they are the close relatives of the first deceased person. Only non-exhumable lots (but not exhumable lots)² may be used for a subsequent burial of close relatives' ashes. There are also restrictions on the maximum number of sets of ashes that could be deposited in a niche. The Administration considers these restrictions outdated and unnecessary. According to paragraph 2 of the LegCo Brief, having reviewed its operation to meet the increasing community needs for cemetery facilities, the Board has proposed a set of amendments to Cap. 1112 and Cap. 1112A to relax the restrictions on the use of cemetery facilities in the CPCs.

¹ According to rule 2 of Cap. 1112A, Cap. 1112A shall apply to the cemeteries specified in the First Schedule, namely, Aberdeen Chinese Permanent Cemetery, Tsuen Wan Chinese Permanent Cemetery, Cape Collinson Chinese Permanent Cemetery and Junk Bay Chinese Permanent Cemetery.

² Under rule 3 of Cap. 1112A, non-exhumable lots (which are allocated for burial not subject to exhumation) are of a permanent nature whereas exhumable lots have a term of expiry.

Provisions of the Bill

5. The major proposed amendments are summarized below.

Broadening the scope of eligible deceased persons to be interred, buried or deposited in a CPC

6. Under the existing rules 16, 17 and 21A of Cap. 1112A, there cannot be shared use of cemetery facilities including grave space, urn or family niche unless the human remains of the subsequent burials or deposits of skeletal or cremated remains or cremated human ashes are those of the close relatives of the first deceased buried in the grave space, interred in the urn or deposited in the niche. "Close relative" refers to a limited category of persons under rule 3 of Cap. 1112A, i.e. the spouse, parent, brother, sister or direct descendant (including their wives) provided that a married woman shall be deemed to be the same person as her husband and her close relatives shall be those of her husband. Hence, a married woman is not eligible to be buried or deposited in a niche, grave space or urn lot with members of her paternal family.

7. The Bill proposes to expand the eligibility for subsequent burial or deposit in cemetery facilities by removing all references to "close relative" as defined under rule 3 of Cap. 1112A and substituting it by "relative" (clause 10(10) and (8)). The definition of "relative" is proposed to be widened to include grandparents, great-grandparents, grandparents-in-law and great-grandparents-in-law, brothers-in-law, sisters-in-law as well as other family members³. The proposed amendments under clauses 14, 21, 23 and 26 provide that subsequent burials of human remains, skeletal remains or ashes are permitted if they are those of a relative of the first eligible deceased buried in the grave space, interred in the urn or deposited in the ossuary niches or family niches. The effect of the proposed amendments is that the scope of the eligible deceased persons to be interred, buried or deposited in a CPC would be broadened, and that the human remains or ashes of a married woman can be interred, buried or deposited with her paternal family.

Allowing subsequent burial of ashes in exhumable lots

8. Under the existing rules 16 and 17 of Cap. 1112A, subsequent burial of close relatives' ashes may be permitted in non-exhumable lot but not in exhumable lot. Clauses 18 and 19 of the Bill seek to remove such restriction.

³ Under clause 10(8) of the Bill, "relative", in relation to a person (relevant person) (whether deceased or not), means (a) the relevant person's spouse; (b) a father, mother, grandfather, grandmother, great-grandfather or great-grandmother of the relevant person or of the relevant person's spouse; (c) a brother or sister of (i) the relevant person; (ii) the relevant person's spouse; or (iii) a person referred to in paragraph (b); (d) a spouse of a person referred to in paragraph (c); (e) a descendant of (i) the relevant person; (ii) a person referred to in paragraph (a), (c) or (d); or (iii) a person referred to in paragraph (b), other than the relevant person; or (f) a spouse of a person referred to in paragraph (e).

Clause 14 adds a new rule 7A to Cap. 1112A to the effect that subsequent burials of ashes are allowed in both exhumable and non-exhumable lots provided that they are those of a relative of the first eligible deceased buried in the grave space.

Providing for the power to cremate unclaimed human remains

9. Under the existing rule 14 of Cap. 1112A, where a permittee⁴ does not disinter and remove the human remains from an exhumable lot upon the expiry of the initial term of 10 years or if extended, the extended term⁵, the Board may disinter and remove the human remains if the Board's intention to disinter has been published in the Gazette and in not less than two local Chinese newspapers and six months have elapsed from the date of such publication. However, Cap. 1112 and Cap. 1112A do not empower the Board to cremate the disinterred human remains.

10. The Bill seeks to empower the Board to make rules for the cremation of unclaimed human remains (clause 8(4)). Clause 16 also adds a new rule 14A to Cap. 1112A to provide that the Board may cremate the human remains removed from an exhumable lot if all of the following conditions are met:-

- (a) the permittee of the lot has not arranged with the Board for their disposal within six years from the expiry of the term of the lot;
- (b) the Board has published a notice in the Gazette and in at least two local Chinese newspapers stating that the Board intends to cremate the human remains; and
- (c) six months after the publication of the notice, the permittee still has not arranged with the Board for the disposal of the human remains.

11. The Bill makes it clear that the proposed power of the Board to cremate unclaimed human remains under the new rule 14A would not apply to an exhumable lot allocated by the Board before the commencement of the relevant amendments, nor would it apply to an exhumable lot whose term is not extended after the relevant amendments come into operation (new rule 28(2) of Cap. 1112A as added by clause 31).

⁴ Under rule 3 of Cap. 1112A, a "permittee" means a person to whom the Board has allocated a grave space, urn space, or niche and includes a subscriber, the successor in title to the original permittee and the legal heir of the person whose remains are buried in a space.

⁵ Under rule 13(2) of Cap. 1112A, the Board may allocate an exhumable lot, either (a) for an initial term of 10 years, which may be extended for one further and final term of six years at an additional premium which the Board, in its discretion, may determine at the time of expiry of the initial period; or (b) for an initial term of 10 years, which may be extended for an indefinite number of terms of up to 10 years each, at an additional premium which the Board, in its discretion, may determine at the time of expiry of each term; or (c) for a finite term of 10 years which will not be extended at its expiry.

Removing the restrictions on the maximum number of sets of ashes that could be deposited in a niche

12. Under the existing rules 20(5) and 21A(4) of Cap. 1112A, the maximum sets of human ashes that can be deposited into an ordinary niche are set at two, and a family niche are set at four. The Bill seeks to remove such restrictions and to empower the Board to determine the maximum number of sets of skeletal remains and ashes to be deposited in an ossuary niche (clause 23) and the maximum number of sets of ashes to be deposited in an ordinary niche (clause 24) and in a family niche (clause 26).

Other amendments

13. The Bill also seeks to expand the ambit of the donations which the Board may make to cover charities operating for the benefit of the community of Hong Kong or a particular sector of that community (clause 7).

14. Other amendments relate to consequential and technical amendments.

Commencement

15. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

Public Consultation

16. Upon enquiries with the Administration, it is noted that no public consultation has been conducted on the legislative proposals apart from the consultation with the Panel on Home Affairs (Panel) as stated in the following paragraph.

Consultation with LegCo Panel

17. The Clerk to the Panel has advised that the Panel was briefed on 17 February 2014 on the proposed amendments to Cap. 1112 and Cap. 1112A to relax the restrictions in relation to the use of grave spaces and family niches in CPCs. Members in general supported the legislative proposals, including, among others, broadening the scope of persons eligible to be buried or deposited in CPCs, allowing burial of cremated human ashes in exhumable lots and allowing cremation of unclaimed human remains by the Board. However,

concerns were raised on the tracking of cases involving cremation of unclaimed human remains by the Board and retrieval of information on such cases upon enquiries by the public.

Conclusion

18. The Legal Service Division is seeking clarification with the Administration on certain legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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