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Paper for the House Committee meeting on 18 March 2016

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

Purpose

This paper reports on the deliberations of the Bills Committee on the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bills Committee").

Background

2. The first Chinese Permanent Cemetery ("CPC") was established in 1913 in Aberdeen for the burial of persons of the Chinese race permanently resident in Hong Kong. In 1964, the Board of Management of the Chinese Permanent Cemeteries ("the Board") chaired by the Secretary for Home Affairs (then titled as the Secretary for Chinese Affairs) became a statutory non-profit making organization in accordance with the Chinese Permanent Cemeteries Ordinance (Cap. 1112) ("the Ordinance") with the purposes of providing, maintaining and administering CPCs. The Chinese Permanent Cemeteries Rules (Cap. 1112A) ("the Rules") made under section 8 of the Ordinance govern the conduct of internal affairs of the Board and the management and use of CPCs.

3. Currently, the Board manages four CPCs¹ providing a total of over 300 000 burial lots and niches. To tie in with the Government's efforts to encourage environmentally friendly interment, the Board established in 2011 a Garden of Remembrance at Junk Bay Cemetery for the scattering of cremated human ashes.

4. Under the Rules, there are limitations in relation to the use of CPCs' cemetery facilities. One of the limitations is that the remains or ashes of the first deceased person's family members are not allowed to be buried or deposited

¹ The four CPCs are Aberdeen Chinese Permanent Cemetery, Tsuen Wan Chinese Permanent Cemetery, Cape Collinson Chinese Permanent Cemetery and Junk Bay Chinese Permanent Cemetery.

together with the first deceased person in the same cemetery facility, unless they are the "close relatives" of the first deceased person. There are two types of grave spaces, i.e. non-exhumable lots (無須起回骨殖墓地) and exhumable lots (須起回骨殖墓地)². Only non-exhumable lots may be used for subsequent burials of close relatives' ashes. There are also limitations on the maximum number of sets of ashes that can be deposited in a niche.

5. In order to better utilize the land of CPCs to meet the increasing community needs for cemetery facilities, the Board has proposed, among others, to relax the restrictions in relation to the use of grave spaces and family niches, and recommended to the Administration amendments to the Ordinance and the Rules.

The Bill

6. The Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") was introduced into the Legislative Council on 8 July 2015. The Bill, consisting of four parts, seeks to -

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

The Bills Committee

7. At the House Committee meeting on 9 October 2015, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

8. Under the chairmanship of Hon Steven HO Chun-yin, the Bills Committee has held four meetings with the Administration. The Bills Committee has also

² Under rule 3 of the Rules, 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.

received one written submission from Civic Party which has been issued vide LC Paper No. CB(2)365/15-16(01).

Deliberations of the Bills Committee

Scope of eligible deceased persons to be interred, buried or deposited in CPCs

The Administration's proposal

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

10. Clause 10(8) and (10) of the Bill propose 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 the Rules and substituting it by "relative". 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 members. 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 relatives of the first eligible deceased buried in the grave space, interred in the urn or deposited in the ossuary niches or family niches. The proposed amendments will enable the burial, interment or deposit of the human remains or ashes of a married woman with her paternal family.

Eligibility for first interment, burial or deposit

11. The Legal Adviser to the Bills Committee has pointed out to the Bills Committee that six categories of persons are specified as permanent residents of the Hong Kong Special Administrative Region ("HKSAR") under paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115) ("IO") whereas "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules refers to the continuous residency requirement for a total of not less than seven years or the right to land and to remain free of conditions of stay in Hong Kong. The Bills Committee has enquired whether those persons who have

acquired the permanent resident status under Article 24 of the Basic Law and paragraph 2 of Schedule 1 to IO (e.g. a "doubly non-permanent resident" child born in Hong Kong (whose parents were not Hong Kong permanent residents at the time of the birth of the child) after the establishment of HKSAR and died at the age of five) will be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules. The Legal Adviser to the Bills Committee has pointed out that a Hong Kong permanent resident enjoys the right of abode in Hong Kong under section 2A of IO³ which is different from that of the "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules which only refer to the continuous residency requirement for a total of not less than seven years or the right to land and to remain free of conditions of stay in Hong Kong. Query has been raised as to whether the definition of "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules reflects the Administration's policy intent and whether the Administration should modify the definition of "permanently resident in Hong Kong" having regard to Article 24 of the Basic Law and by making reference to the relevant provisions of IO.

12. According to the Administration, the Board does make reference to Schedule 1 to IO in determining "permanently resident in Hong Kong" and the current construction does not bar the Board from making such reference and provides a more relaxed definition of "permanently resident in Hong Kong". The Bills Committee has enquired with the Administration as to what extent the scope of persons who are "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules is wider than "Hong Kong permanent resident" under section 2A(1) and paragraph 2 of Schedule 1 to IO and has asked the Administration to provide examples of the circumstances under which certain categories of persons who have not acquired permanent resident status under IO but can be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules. The Administration has responded that "permanently resident in Hong Kong" in relation to any person, pursuant to rule 3 of the Rules, means "continuous residence in Hong Kong for a total period of not less than seven years or the right to land in Hong Kong and to remain free of conditions of stay for the purposes of IO." Apart from the six categories of persons who have acquired the permanent resident status under paragraph 2 of Schedule 1 to IO, "permanently resident in Hong Kong" also includes other persons who have the right to land in Hong Kong and to remain free of conditions of stay, e.g. "former Hong Kong permanent residents". The Administration has confirmed that "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules include the six categories of persons which are specified as the permanent residents of HKSAR under paragraph 2 of Schedule 1

³ Under section 2A(1) of IO, a Hong Kong permanent resident enjoys the right of abode in Hong Kong, that is to say he has the right (a) to land in Hong Kong; (b) not to have imposed upon him any condition of stay in Hong Kong, and any condition of stay that is imposed shall have no effect; (c) not to have a deportation order made against him; and (d) not to have a removal order made against him.

to IO. The Administration has also assured members that it is the intention of the Bill to broaden the eligibility for the first interment, burial or deposit in CPCs, and the current definition of "permanently resident in Hong Kong" provides a wider definition than "permanent resident in Hong Kong". Hence, the Administration considers it not necessary to amend the definition with reference to section 2A(1) of IO.

Eligibility for subsequent burial or deposit

13. Members in general are supportive of the proposed expansion of the scope of deceased persons eligible to be buried or deposited in CPCs. Regarding the definition of "relative", the Administration has confirmed the policy intent that in deducing the relationship of "relative", a step child of a person will be treated as the child of a person, an adopted child will be treated as the child of a person by whom he was adopted and a child born out of wedlock will be treated as a legitimate child and any relationship of the half-blood will be treated as a relationship of the whole blood. Some members including Hon CHAN Chi-chuen and Dr Hon Helena WONG, however, remain concerned about the clarity of the Rules. There are suggestions that for avoidance of doubt, the proposed amended rule 3 should spell out clearly that the term "descendant" under clause 10(8)(e) covers step-child, adopted child and illegitimate child born out of wedlock. If an exhaustive definition of the term "descendant" is not to be provided in the Rules, the Administration should make reference to how the term "kinship" is defined in the Food and Environmental Hygiene Department ("FEHD")'s administrative guidelines governing the use of public niches to empower the Board to determine whether the subsequent deceased is in close relationship with the first deceased, so as to allow the Board more flexibility in considering applications for subsequent burials or deposits. In a similar vein to clause 10(8), the Administration should spell out clearly in the Bill that a child under the proposed amended rule 4(2)(c) (as amended by clause 11) will include a step-child, adopted child and an illegitimate child.

14. In response to members' views and suggestions, the Administration has agreed to propose Committee stage amendments ("CSAs") to stipulate clearly in rule 3 of the Rules that the following relationship between two persons will be covered for the purposes of the Rules -

- (a) a child of a person includes -
 - (i) a child of the person born out of wedlock;
 - (ii) an adopted child of the person;
 - (iii) a step-child of the person; and
- (b) a half-blood brother or sister of a person is to be treated as a brother or sister of the person.

15. Some members including Hon Cyd HO, Hon CHAN Chi-chuen and Dr Hon Helena WONG share a similar view that the restrictions in relation to subsequent/multiple burials or deposits in CPCs' cemetery facilities should be further relaxed such that the first deceased person's homosexual partner, opposite-sex cohabitants, "sworn brother (結拜兄弟)" or "sworn sister (金蘭姊妹)" will also be allowed to be buried or deposited together with the first deceased person. The Administration has explained that under the existing Rules, the requirement of "relative" is not applied to subsequent deposit of cremated human ashes in ordinary niches. This means that it is possible for the ashes of the first deceased person's homosexual partner, "sworn brother" or "sworn sister" to be deposited together with the first deceased person in the same ordinary niche in CPCs. Yet, for family niches, the Board considers that the requirement of "relative" upon the passage of the Bill, should still apply, so as to uphold traditional values of family.

Allowing subsequent burials of human ashes in exhumable lots

16. Under the existing rules 16 and 17 of the Rules, subsequent burials of close relatives' ashes may be permitted in non-exhumable lots but not in exhumable lots. Clauses 18 and 19 of the Bill seek to remove such restriction. Clause 14 adds a new rule 7A to the Rules 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.

17. While supporting the proposed relaxation, there is a view that for better utilization of the land resources, permittees⁴ should be provided with greater flexibility in arranging multiple burials/deposits of remains/ashes in CPCs' cemetery facilities. For example, if a permittee has purchased two or more non-exhumable grave spaces/lots/niches in CPCs, he/she should be allowed to remove from one of the facilities the remains of the first deceased persons for reburial in the other facilities. The permittee may then flexibly arrange burials of remains of other deceased family members in the lot/niche so vacated.

18. According to the Administration, permittees can arrange for "relocation/co-location" of the urns of ashes of their deceased family members through multiple deposits of the urns in the same family niche in a particular CPC. However, in accordance with the Rules, the cemetery facilities including grave spaces, urn lots or niches in CPCs should be reverted to the Board if the skeletal human remains/ashes of the first deceased buried/deposited in that cemetery facility have been removed. While a permittee can arrange subsequent burials of his/her family members together in the same non-exhumable lot, he/she has to

⁴ Under rule 3 of the Rules, 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.

revert the other vacant lot to the Board after the removal of the remains of the deceased first buried in that lot. The Administration has emphasized that the Board determines the eligibility for subsequent burials or deposits based on the relationship/family tie of the deceased to the first deceased person. If the remains/ashes of the deceased first buried/deposited in the grave space/niche are removed, there will be no basis for the Board to determine the eligibility for subsequent burials or deposits. Besides, there are possibilities that vacant lots/niches may be abused by some permittees for burials or deposits of ineligible deceased persons, which may give rise to speculation activities including illegal transfer of cemetery facilities. In the Administration's view, a balance has to be struck between facilitating the public to use the cemetery facilities in CPCs and safeguarding the proper use of the facilities.

Removing the restriction on the maximum number of sets of ashes that can be deposited in a niche

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

20. A majority of the Bills Committee members are supportive of the proposed removal of the restriction on the maximum number of sets of ashes that can be deposited in a niche in CPCs, as it will give permittees flexibility in using the cemetery facilities in CPCs. Hon WONG Kwok-hing is, however, concerned whether the above proposal is in line with the prevailing practices of FEHD in restricting the use of public niches. The Administration's advice is that the ordinary niche and the family niche in CPCs are roughly equal in size to the standard and large niches provided by FEHD. Subsequent to FEHD's relaxation measure in 2014, each standard niche may accommodate more than two sets of cremated ashes, while each large niche may accommodate more than four sets, if applicants so prefer. By making reference to FEHD's arrangements, the Board proposes to remove the restriction on the maximum number of sets of ashes that can be deposited in a niche to allow each ordinary and family niche to accommodate respectively more than two and four set of ashes. The Board will be empowered to determine the maximum number of sets of ashes to be deposited in a niche. This will allow better utilization of the niches provided in CPCs.

21. Dr Hon Helena WONG takes the view that it is necessary to specify a limit on the sets of skeletal remains or ashes that can be deposited in niches in CPCs, instead of empowering the Board to determine the maximum number of sets of skeletal remains or ashes for deposit in the niches. The permittees should be informed of the relevant restrictions when they buy the niches so that they can

plan how to make the best use of the facilities. She has expressed concern that the absence of restriction on the maximum number of sets of ashes that can be deposited in a niche may result in unlimited burial of remains or deposit of ashes in cemetery facilities in CPCs, bringing about various problems including impacting on the traffic flow in the vicinity of CPCs during annual festivals for paying respect to ancestors.

Empowering the Board to cremate unclaimed human remains

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

23. Clause 8(4) of the Bill seeks to empower the Board to make rules for the cremation of unclaimed human remains. Clause 16 also adds a new rule 14A to the Rules to provide that the Board may cremate the human remains removed from an exhumable lot if 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.

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

25. The Administration has informed the Bills Committee that before publishing notice in the Gazette and local Chinese newspapers stating its intention to disinter and remove the human remains and ashes from an exhumable lot (the amended rule 14(2)(b) of the Rules) or to cremate the unclaimed human remains removed from the lot (the new rule 14A(b) of the

Rules), the Board will endeavor to contact the permittee through other means including his/her last known mailing address, telephone number, email address, etc. The Legal Adviser to the Bills Committee has suggested the Administration to consider spelling out clearly in the Bill (a) such other modes of service of notice and (b) that such other means of contacting the permittee will have to be exhausted, or in cases if it is not practicable to serve the notice on the permittee via such means, before notice is published in the Gazette and in two local Chinese newspapers. Some members including the Chairman, Dr Hon Kenneth CHAN and Dr Hon Helena WONG have further suggested that the Administration should consider making it a requirement that the Board will publish the notice also in English newspapers, having regard to the possibility that some of the descendants of the deceased persons buried in CPCs may not be able to read Chinese and hence aware of the Board's announcement in Chinese newspapers of its intention of disinterment, removal and cremation.

26. Having considered the Bills Committee's views, the Administration has advised that to ensure that permittees or their descendants who are not conversant with Chinese will have an opportunity to learn from the newspapers that the Board will soon disinter and remove human remains and ashes from an exhumable lot or cremate human remains removed from an exhumable lot, it will put forward CSAs to specify in the Rules that the Board shall publish a notice in the Gazette and in at least two local Chinese newspapers and at least one local English newspaper stating the above intention. If the permittee has not contacted the Board six months after the publication of the notice, the Board may disinter and remove the human remains and ashes, or cremate unclaimed human remains and ashes.

27. The Administration has emphasized that the Board will make every effort to contact the permittee through other means in addition to those specified in the relevant provisions of the Rules. According to the Board's established practice, it will try to contact and notify the permittee as far as possible of its intention to disinter and remove human remains and ashes from an exhumable lot held by the permittee. The arrangements will be communicated to the permittees when they subscribe for the burial lot and clearly set out in the relevant document "Burial Lot Subscription: Conditions and Guide". In actual practice, the Board will also request the permittee to provide other contact methods, e.g. telephone number and email address, through which the Board will contact the permittee about six months prior to the expiry of the term. The Board will set out more clearly such arrangements and contact methods in "Burial Lot Subscription: Conditions and Guide" in future. As the contact methods mentioned above may change with changing social practices, advancement in science and technology or under special circumstances of individual permittees, the Administration does not intend to list all the methods available exhaustively in the Rules in order to allow more flexibility in actual operation.

28. In response to members' enquiries, the Board has advised that among the 14 500 exhumable lots whose term of use expired between 2008 and 2012, 35 sets of disinterred human remains were not claimed. As at mid-2015, there were about 100 ossuary niches in CPCs still available for storage of skeletal human remains. Based on past data, it is estimated that CPC's existing ossuary niches will be exhausted in less than 10 years. If the Board is empowered to make rules for cremation of unclaimed disinterred human remains in exhumable lots six years after expiry of the service term, the human ashes will be stored with proper records to allow for any future reclaims by permittees. On reclaiming the cremated ashes, the family concerned needs to pay back any costs incurred to the Board arising from the exhumation and cremation of human remains, as well as the subsequent storage fee. According to the current fee schedule of the Board as stipulated in the Third Schedule to the Rules, \$3,000 will be charged for exhumation. The family concerned will also need to pay back the Board the fees charged by FEHD for applying for the "Permit to Remove/Exhume Remains" and the "Cremation of Skeletal Remains", which currently stand at \$120 and \$90 respectively.

Expanding the ambit of donations that can be made by the Board

29. Clause 7 of the Bill seeks to expand the ambit of 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. In response to some members' enquiries, the Administration has explained that as some charities are not operating at a large scale to benefit "the entire community of Hong Kong", it is proposed that the Board may also donate to any charity operating for the benefit of "a particular sector of that community", such as those organizations servicing the ethnic minorities, the elderly or people suffered from a particular type of disability or illness.

30. Some members including the Chairman and Hon IP Kwok-him consider that the drafting of the expression "a particular sector of that community" should be improved to avoid ambiguity and better reflect the policy intent. The Administration has, for clarity sake, taken on board members' suggestion. It will move CSAs so as to spell out clearly in section 7(2) of the Ordinance that the Board may donate to any charity operating for the benefit of the community of Hong Kong or "any sector" of the community.

Other issues

Fee for multiple interments or burials

31. The Bills Committee notes that Schedule 3 to the Rules specifies the fees for, among others, multiple burial (for the second and any subsequent burial) and under which the phrases "each coffin burial" and "each burial or reburial in

urn" ("每次棺材埋葬" and "每次金塔埋葬或再埋葬" in the Chinese text) are used. Some members including the Chairman and Dr Hon Helena WONG have expressed concern that the existing wordings may cause ambiguity in interpretation as the number of set of human remains/skeletal remains/ashes involved in each burial/reburial is not clearly defined. In their views, there is a need to improve the drafting of the phrases in order to enhance clarity and avoid future disputes between the Board and permittees.

32. After considering members' views, the Administration has agreed to move CSAs to stipulate clearly the fee arrangements for multiple interments or burials in the same grave space or urn lot in item 5 of Schedule 3 to the Rules. The proposed new arrangements are as follows -

- (a) for an interment of encoffined human remains, the fee for each set of human remains is HK\$3,600; and
- (b) for a burial or reburial of skeletal remains or ashes in containers, the fee for each set of skeletal remains or ashes is HK\$1,800.

Adoption of the term "terrorist act"

33. In relation to clause 29 of the Bill which amends rule 23 of the Rules to provide that the Board is 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 Legal Adviser to the Bills Committee has pointed out that as the term "terrorist attack" is not defined in any Ordinance of Hong Kong, the use of such a term (which hinges on the liability of the Board) may in future trigger arguments between the Board and permittees. The Chairman considers that for the sake of clarity, the Administration should consider spelling out the meaning of "terrorist attack" in the Bill or draw reference to the definition of "terrorist act" under section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) which are adopted in other Ordinances. The Administration has agreed to move CSAs to adopt the term "terrorist act" in clause 29 of the Bill.

The Board's liability in cases of subsidence or damage

34. Some members including the Chairman, Hon Cyd HO, Hon YIU Si-wing and Hon CHAN Chi-chuen have asked if subsidence is 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, whether the Board will be liable to pay compensation for damage to any grave space, urn lot or niche; or, if the subsidence is caused by a third party, whether the Board will hold that third party liable.

35. The Administration has explained to the Bills Committee that the Board has all along made its best endeavour to prevent subsidence within its cemeteries. Different preventive measures are taken by the Board for this purpose. In general, development projects in the cemeteries are designed and carried out by qualified professionals and are subject to approval by relevant authorities in order to ensure that the facilities built by the Board are sound and up to standard. This should effectively avoid subsidence arising from defective design or planning problem. Relevant works on the burial lot are also carried out by the Board's term contractors or registered stonemasons. They are required to act cautiously and provide protection to avoid damages to neighbouring lots in accordance with the contractual requirements and relevant guidelines issued by the Board. If the Board's appointed contractors or the registered stonemason appointed by a permittee cause subsidence to a lot, the Board will hold the contractor or the registered stonemason liable and will request them to rectify the subsidence after seeking permission/consent from the permittee of the affected lot. These apart, the Board has also adopted a performance management system to monitor the performance of its term contractors and registered stonemasons. There has been regular patrol by cemetery staff in the cemeteries. Should there be any signs of subsidence in a lot, cemetery staff would take photos of the subsided lot and inform the permittee to take necessary action. The Board will keep record of subsidence and monitor the situation to avoid causing damages to its neighbouring lots.

36. The Administration has further advised that although the Board gives no warranty against damages in the event of subsidence and shall not be liable for any compensation for the resulting disturbance to any grave under the existing rule 23 of the Rules, it is prepared to provide assistance to the affected permittees in the event of subsidence.

37. The Bills Committee notes that the proposed amended rule 22(3) of the Rules also relates to damage liabilities of the Board, which stipulates 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". Hon Cyd HO and Hon CHAN Chi-chuen have expressed concern as to whether the Board will 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.

38. In response to the Bills Committee's enquiries about the Board's liability against loss or damage under the above circumstances, the Administration has

advised that under the prevailing rule 22 of the Rules, the Board shall not be liable to any loss or damage to the items, whether movable or immovable, which are placed at any grave, urn space or niche. This is conveyed to the permittees and stated clearly in the relevant documents when they subscribe for the burial lot or urn space or niche. That said, the Board has always made its best endeavour to maintain order and security through regular patrol in the cemeteries. It will take immediate action should there be any irregularities. So far, there has never been any case of tomb or grave raid recorded in the four CPCs.

Committee Stage amendments

39. As mentioned in paragraphs 14, 26, 30, 32 and 33 above, the Administration will move a number of CSAs to the Bill to further enhance the clarity in presentation of the relevant provisions. A full set of the draft CSAs to be moved by the Administration is in **Appendix II**. Members raise no objection to these CSAs.

40. The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate

41. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 20 April 2016, subject to the moving of CSAs by the Administration.

Advice sought

42. Members are invited to note the deliberations of the Bills Committee.

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

Membership list

Chairman	Hon Steven HO Chun-yin, BBS
Members	Hon WONG Kwok-hing, BBS, MH Hon Cyd HO Sau-lan, JP Hon IP Kwok-him, GBS, JP Hon YIU Si-wing, BBS Hon MA Fung-kwok, SBS, JP Hon CHAN Chi-chuen Dr Hon Kenneth CHAN Ka-lok Dr Hon Helena WONG Pik-wan Hon Christopher CHUNG Shu-kun, BBS, MH, JP (Total : 10 members)
Clerk	Miss Josephine SO
Legal Adviser	Ms Vanessa CHENG
Date	27 October 2015

Chinese Permanent Cemeteries (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
5(3)	By deleting “rule 3” and substituting “rule 3(1)”.
7	By deleting “a particular” and substituting “any”.
10	By adding before subclause (1)— “(1A) Rule 3— Renumber the rule as rule 3(1).”
10(1)	By deleting “Rule 3,” and substituting “Rule 3(1),”.
10(2) to (11)	By deleting “Rule 3” and substituting “Rule 3(1)”.
10	By adding— “(12) After rule 3(1)— Add “(2) In determining a relationship between 2 persons for the purposes of these rules— (a) a child of a person includes— (i) a child of the person born out of wedlock; (ii) an adopted child of the person; and (iii) a step-child of the person; and (b) a half-blood brother or sister of a person is to be treated as a brother or sister of the person.”.”.

15 In the proposed rule 14(2)(b), by adding “and at least 1 local English newspaper” after “newspapers”.

16 In the proposed rule 14A(b), by adding “and at least 1 local English newspaper” after “newspapers”.

29 In the proposed rule 23, by deleting “terrorist attack” and substituting “terrorist act as defined by section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)”.

33 By deleting subclause (1) and substituting—

“(1) Third Schedule, item 5—

Repeal

“burial (rules 16 and 17)—for the second and any subsequent burial”

Substitute

“interments or burials (rules 7A and 18A)—for the second and each of the subsequent interments or burials”.

(1A) Third Schedule, item 5(a)—

Repeal

“each coffin burial”

Substitute

“(for an interment of encoffined human remains) each set of human remains”.

33 By deleting subclause (2) and substituting—

“(2) Third Schedule, item 5(b)—

Repeal

“each burial or reburial in urn”

Substitute

“(for a burial or reburial in containers of skeletal remains or ashes) each set of skeletal remains or ashes”.