

**立法會**  
**Legislative Council**

LC Paper No. CB(2)918/16-17  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/16

**Bills Committee on Private Columbaria Bill**

**Minutes of the third meeting**  
**held on Friday, 13 January 2017, at 10:45 am**  
**in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon CHAN Hak-kan, BBS, JP (Chairman)  
Hon Tanya CHAN (Deputy Chairman)  
Hon LEUNG Yiu-chung  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Chi-chuen  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon Nathan LAW Kwun-chung  
Dr Hon LAU Siu-lai

**Members absent** : Hon Steven HO Chun-yin, BBS  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP  
Hon CHU Hoi-dick  
Hon HO Kai-ming  
Hon CHEUNG Kwok-kwan, JP  
Hon LUK Chung-hung  
Hon LAU Kwok-fan, MH

**Public Officers attending** : Item I

Mr Daniel CHENG, JP  
Deputy Secretary for Food and Health (Food) 1  
Food and Health Bureau

Miss Diane WONG  
Principal Assistant Secretary for Food and Health  
(Food) 2  
Food and Health Bureau

Mr Peter SZE  
Senior Government Counsel  
Department of Justice

Miss Cindy CHEUK  
Senior Government Counsel  
Department of Justice

Mr CHIU Yu-chow  
Assistant Director (Grade Management and  
Development)  
Food and Environmental Hygiene Department

Ms Doris CHOW  
Assistant Director (Estate Management) (Lands  
Administration Office/ Headquarters)  
Lands Department

Ms Christine TSE  
Assistant Director of Planning /Special Duties  
Planning Department

Mr Michael LI Ho-ping  
Chief Building Surveyor/Legal Services  
Buildings Department

**Clerk in attendance** : Mr Colin CHUI  
Chief Council Secretary (2) 4

**Staff in attendance** : Ms Wendy KAN  
Assistant Legal Adviser 6

Ms Catherina YU  
Senior Council Secretary (2) 4

Miss Kay CHU  
Council Secretary (2) 4

Miss Meisy KWOK  
Legislative Assistant (2) 6

Action

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**I. Meeting with the Administration**

[File Ref.: FH CR 2/3751/07; LC Paper Nos. CB(3)113/16-17, LS10/16-17, CB(2)345/16-17(01) to (02), CB(2)579/16-17(02) to (09), and CB(2)670/16-17(01) ]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to:

- (a) provide a written response to the submissions received by the Bills Committee for discussion at the next meeting;
- (b) consider providing information on unlawful occupation of unleased land in pre-cut-off columbaria and the quantity of ashes interred on unlawfully-occupied land of such columbaria; and

Action

- (c) provide information on the provisions in other legislation which were similar to clause 23(2)(b).

*(Post meeting note: The Administration's responses to items (a) and (c) were issued to members vide LC Paper No. CB(2)688/16-17(01) on 23 January 2017 and LC Paper No. CB(2)862/16-17(01) on 24 February 2017 respectively.)*

**II. Date of next meeting**

3. Members noted that the next meeting would be held on Tuesday, 24 January 2017 at 10:45 am.

**III. Any other business**

4. There being no other business, the meeting ended at 12:49 pm.

Council Business Division 2  
Legislative Council Secretariat  
2 March 2017

**Proceedings of the third meeting of the  
Bills Committee on Private Columbaria Bill  
on Friday, 13 January 2017, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
001049 - 001201	Chairman	<p>Members noted that eight deputations/individuals had responded to the Bills Committee's call for written submissions (LC Paper Nos. CB(2)579/16-19(02) to (09)) and a submission from the Hong Kong Sex Culture Society Limited (LC Paper No. CB(2)607/16-17(01)) was tabled at the meeting.</p> <p>The Chairman said that the Administration would provide a written response to the submissions received by the Bills Committee for discussion at the next meeting.</p>	Admin (paragraph 2(a) of the minutes)
Clause-by-clause examination			
001202 - 003145	Chairman Administration Dr KWOK Ka-ki	<p>Examination of Part 4 - Division 2, clause 20</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response regarding whether it was the Administration's policy to issue a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) to a pre-cut-off columbarium so long as the applicant concerned had declared that he/she had no claim to the unleased land which was unlawfully occupied. The Administration's advice that the requirement that an applicant of a TSOL must apply to the Director of Lands for lawful authority to occupy the unleased land was to prevent the applicant from raising any adverse possession claim of the land concerned and all applications for regularization would be considered on a case-by-case basis. The future Private Columbaria Licensing Board ("the Licensing Board") might refuse an application for a specified instrument if the applicant concerned failed to meet all requirements.</p> <p>At Dr KWOK's request, the Administration would consider providing information on unlawful occupation of unleased land by pre-cut-off columbaria and the quantity of ashes interred on unlawfully occupied land of such columbaria.</p>	Admin (paragraph 2(b) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		<p>In response to Dr KWOK's enquiry about the mechanism for verifying the quantity of ashes interred before the cut-off time, the Administration advised that information on niches (including the number of and photos on sold and occupied niches, sold but not yet occupied niches, and niches available for sale) was collected through the administrative Notification Scheme ("the Notification Scheme").</p> <p>Dr KWOK's enquiry regarding whether applications submitted by operators of dated pre-cut-off columbaria would include agreements for the sale of interment rights ("agreements") entered into, and information on niches sold but not yet occupied, before the cut-off time. The Administration's advice that having regard to the views of the former Bills Committee, the Administration had proposed a Committee stage amendment to the former Bill which was introduced into the Fifth Legislative Council ("LegCo") to relax the restriction that disqualified a dated pre-cut-off columbarium from seeking exemption should it continue to inter ashes after the cut-off time. Under the relaxation, a dated pre-cut-off columbarium interring ashes in pre-cut-off-time-sold niches after the cut-off time but before the enactment date of the Private Columbaria Ordinance ("the Ordinance") might still be eligible for an exemption; and a dated pre-cut-off columbarium having obtained an exemption might still inter ashes in pre-cut-off-time-sold niches during the validity period of an exemption. In relation to an application for the issue of a specified instrument in respect of a pre-cut-off columbarium, the applicant would have to submit the application and provide the relevant documents to the Licensing Board at any time after the expiry of six months beginning on the enactment date; but before the expiry of nine months beginning on that date. Amongst the information submitted in respect of a dated pre-cut-off columbarium, an applicant seeking a licence would have to submit information on the ash interment capacity as at the cut-off time, while an applicant seeking an exemption would have to submit information on the ash interment quantity as at the cut-off time and the registers on niches in respect of which the interment rights were sold before the cut-off time but had not been exercised or had only been exercised partially.</p>	

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003146 - 005423	Chairman Mr LEUNG Yiu-chung Dr KWOK Ka-ki Administration	<p>Mr LEUNG Yiu-chung's view that an application for regularization by an operator of a dated pre-cut-off columbarium located on land which was unlawfully occupied should not be considered. The Administration's advice that the issue of a TSOL sought to allow the operator of a dated pre-cut-off columbarium time to complete the regularization in order to meet the eligibility requirements for a licence or an exemption. A TSOL might or might not be issued depending on individual circumstances. Under clause 16, no specified instrument would be issued if a columbarium was subject to a law enforcement action mentioned in that clause. The Administration explained the major factors for considering applications for regularization.</p> <p>Dr KWOK Ka-ki's view that the policy bureaux and the Lands Department ("LandsD") were passing the responsibilities of taking enforcement actions against unlawful occupation of unleased land to one another, and such act would be exploited by operators of pre-cut-off columbaria to justify their unlawful occupation of unleased land. The Administration's explanation of clause 20(2)(a)(iv) and (2)(b).</p> <p>The Administration advised that, after the enactment of the Ordinance, for private columbaria failing to apply for or obtain a specified instrument, Food and Environmental Hygiene Department would be empowered to take enforcement actions against them, in addition to LandsD's power to take enforcement actions against such columbaria located on unleased land which was unlawfully occupied.</p>	
005424 - 005600	Chairman Dr Junius HO	Dr Junius HO's suggestion of making improvements to the presentation of the Chinese text of the table of contents of the Bill.	
005601 - 005940	Chairman Administration Dr KWOK Ka-ki	<p>Examination of Part 4 - Division 2, clause 21</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response regarding what constituted "any other relevant considerations" stipulated in clause 21(2)(b).</p>	
005941 - 010402	Chairman Administration Dr KWOK Ka-ki ALA6	<p>Examination of Part 4 - Division 3, clause 22</p> <p>In response to Dr KWOK Ka-ki's enquiry, the Administration advised that upon receipt of the written legal advice given by a legal practitioner under clause 22(3), the legal adviser of the Licensing Board might be called upon to give</p>	

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		<p>advice relating to the deed of mutual covenant of the columbarium premises concerned where appropriate. The legal practitioner concerned was still held accountable for the written legal advice submitted under clause 22(3).</p> <p>ALA6's advice that clause 22(3) only applied to applications for the issue of licences in respect of columbaria as provided.</p>	
010403 - 011749	<p>Chairman Administration Dr KWOK Ka-ki Mr LEUNG Yiu-chung Mr Holden CHOW ALA6</p>	<p>Examination of Part 4 - Division 3, clause 23</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response in relation to the handling of disagreements on the particulars about pre-cut-off columbaria which were collected through the Notification Scheme. The Administration referred members to clause 27 which concerned proof of particulars collected under the Notification Scheme.</p> <p>In response to Dr KWOK's concern about providing false particulars about pre-cut-off columbaria by some operators of private columbaria, the Administration advised that an applicant of a specified instrument would commit an offence and be liable on conviction to a fine of \$500,000 and to imprisonment for two years under clause 97(2) if he/she provided false or misleading information in making an application in respect of a columbarium.</p> <p>In response to Mr LEUNG Yiu-chung's enquiry, the Administration advised that an applicant should produce evidence to prove to the satisfaction of the Licensing Board as to the information he/she claimed.</p> <p>Mr Holden CHOW's remarks that information provided in an application for an exemption should not be considered if the applicant concerned was unable to produce evidence to authenticate such information. Under the common law, if held to constitute past consideration, a post-dated agreement would not be enforceable (e.g. a promise made by the operator to make available a niche without a promise by the purchaser to pay in the past and a post-dated agreement was entered into for making available the niche with a current promise to pay).</p> <p>ALA6's advice that, apart from the manner of keeping the registers, the particulars to be contained in the registers provided in clause</p>	



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		<p>23(2)(b) would be specified by the Licensing Board. The particulars would not be provided for in subsidiary legislation and therefore would not be subject to amendment by LegCo. Members should also consider how the relevant applicants knew about the requirements. She advised that she would explain clause 54(2) (which concerned the updating of the registers) and the penalty for contravening clause 54(2) when the Bills Committee examined that clause.</p> <p>Dr KWOK Ka-ki's enquiry and ALA6's response regarding provisions in other legislation which were similar to clause 23(2)(b).</p> <p>The Administration's response to Dr KWOK's suggestion of making the particulars of the registers specified under clause 23(2) to be subject to scrutiny by LegCo. The Administration's advice that the Licensing Board should be provided with the necessary flexibility in specifying the particulars to be contained in the registers for individual cases.</p> <p>At the Chairman's request, the Administration undertook to provide information on the provisions in other legislation which were similar to clause 23(2)(b).</p>	Admin (paragraph 2(c) of the minutes)
011750 - 012940	Chairman Administration	Examination of Part 4 - Divisions 3 and 4, clauses 24 to 29	
012941 - 013410	Chairman Administration Mr Holden CHOW	<p>Examination of Part 4 - Division 4, clause 30</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding measures to minimize the environmental nuisance caused to the neighbourhood by the operation of the columbarium and the handling of complaints about such nuisance.</p>	
013411 - 013727	Chairman Administration	Examination of Part 4 - Division 4, clauses 31 to 34	
013728 - 014424	Chairman Administration Mr LEUNG Kwok-hung	<p>Examination of Part 4 - Division 4, clause 35</p> <p>Mr LEUNG Kwok-hung's enquiry and the Administration's response regarding the meaning of "its holder must take, with reasonable expedition, all necessary steps" in clause 35 and the consequences of failing to complying with clause 35.</p>	
014425 - 014749	Chairman Administration	Examination of Part 4 - Division 4, clause 36	

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	Mr Holden CHOW	The Administration's response to Mr Holden CHOW's concern that the word "nuisance" in clause 36(b) might give rise to cause of legal action, given the word "nuisance", when used in the tort context, referred to a cause of action.	
014750 - 015041	Chairman Administration ALA6 Mr LEUNG Kwok-hung	Examination of Part 4 - Division 4, clause 37  ALA6's advice that clause 37 applied to all types of specified instruments in respect of pre-cut-off columbaria.  In response to Mr LEUNG Kwok-hung's enquiry, ALA6 advised that members should consider whether clause 37 was acceptable from the policy perspective. In the light of the Administration's explanation of the background leading to clause 37, Mr LEUNG Kwok-hung confirmed acceptance of the application of clause 37 to all types of specified instruments.	
015042 - 015253	Chairman Administration ALA6	Examination of Schedule 2 - Part 1, section 1  ALA6 drew members' attention to section 1(b) of Schedule 2 that it did not deal with the cases where the columbarium premises concerned were acquired through adverse possession as confirmed by the court. Accordingly, the relevant requirements could not be fulfilled in the relevant applications.	
015254 - 015825	Chairman Administration	Examination of Schedule 2 - Part 1, sections 2 to 3	
015826 - 020446	Chairman Administration	Examination of Schedule 2 - Part 2, section 4  <i>(Extension of the meeting for 15 minutes beyond the appointed ending time by the Chairman.)</i>  Examination of Schedule 2 - Part 3, sections 5 to 7	
<i>Agenda item II – Any other business</i>			
020447 - 020519	Chairman	Date of next meeting	