

立法會
Legislative Council

LC Paper No. CB(2)1239/16-17
(These minutes have been
seen by the Administration)

Ref : CB2/BC/1/16

Bills Committee on Private Columbaria Bill

Minutes of the fourth meeting
held on Tuesday, 24 January 2017, at 10:45 am
in Conference Room 2 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
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon LAU Kwok-fan, MH
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Members absent : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon SHIU Ka-chun
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

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

Mr Thomas LEUNG
Assistant Director/ New Buildings 1
Buildings 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

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 Meisy KWOK
Legislative Assistant (2) 6

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) and (02), CB(2)688/16-17(01), CB(2)707/16-17(01) and CB(2)1843/15-16]

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

2. The Bills Committee requested the Administration to relay to the future Private Columbaria Licensing Board ("Licensing Board") members' suggestion of uploading information on applications for specified instruments (i.e. licences, exemptions or temporary suspension of liability) onto the Licensing Board's website.

II. Date of next meeting

3. Members noted that the next meeting would be held on Friday, 3 February 2017 at 8:45 am.

III. Any other business

4. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
19 April 2017

**Proceedings of the fourth meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 24 January 2017, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000500 - 001350	Chairman Mr POON Siu-ping Deputy Chairman Mr CHAN Chi-chuen	<p>Members noted the submission from Pink Alliance which was tabled at the meeting (LC Paper No. CB(2)707/16-17(01)).</p> <p>Discussion about the Administration's paper entitled "Summary of Views Received and the Government's Response" (LC Paper No. CB(2)688/16-17(01)).</p> <p><u>Items 4 and 14 of LC Paper No. CB(2)688/16-17(01)</u></p> <p>Mr POON Siu-ping's concern and the Administration's response regarding protection for consumers in case a private columbarium was unsuccessful in obtaining a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) and had to cease operation.</p> <p>At the request of the Deputy Chairman, the Administration briefed members on part (B) of LC Paper No. CB(2)688/16-17(01) which concerned ash disposal.</p> <p>The Administration's advice that having regard to the views of some members and deputations, the Administration would study whether persons who had a close relationship with a deceased person, e.g. the partner (irrespective of whether of same sex or different sex) or the carer of the deceased, could be covered in the Bill as far as ash disposal was concerned. In response to Mr CHAN Chi-chuen's enquiry, the Administration advised that it would consider introducing amendments to the Bill to cater for the above circumstances. The Administration would revert to the Bills Committee on the outcome of its consideration as early as practicable.</p>	
Clause-by-clause examination			
001351 - 002144	Chairman Administration ALA6	<p>Examination of Part 4 - Division 5, clause 38</p> <p>ALA6's advice that the legal effect of clause</p>	

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		<p>38(10) was that the person from whom a specified instrument was transferred and the transferee might enter into an agreement for indemnity.</p> <p>ALA6 invited members to note that as approval from the future Private Columbaria Licensing Board ("Licensing Board") was not required for a change of a shareholder of a company which held a specified instrument (as the holder of the specified instrument would still be the company which remained unchanged), a columbarium might, in substance, be operated by a different party (or parties) through the purchase of the shares of the company concerned. She advised members to consider whether operators of private columbaria should be required to obtain the Licensing Board's approval under such circumstances. Members raised no objection to the proposed arrangement under the Bill.</p>	
002145 - 003554	<p>Chairman Administration Mr Holden CHOW Mr CHAN Chi-chuen Deputy Chairman Mr POON Siu-ping ALA6</p>	<p>Examination of Part 4 - Division 5, clause 39</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding whether the Bill had imposed any restrictions on mortgaging columbarium premises.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the status of a private columbarium the exemption in respect of which was suspended.</p> <p>The Deputy Chairman's enquiry and the Administration's response regarding the legal consequences of providing false or misleading information in an application for a specified instrument. The Administration's explanation of clause 97 which concerned offence of providing false or misleading information.</p> <p>Mr POON Siu-ping's view that the term "覺得" in the Chinese text of clause 39(2)(e) was not assertive. Responses of ALA6 and the Administration regarding the term "覺得". The Administration's advice on the reasons for using the term "覺得".</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding protection for consumers in case a private columbarium had to wind up or was unsuccessful in renewing/extending a specified instrument. The Administration's explanation of clause 38(9) and (10).</p>	

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003555 - 003742	Chairman Administration	Examination of Part 4 - Division 5, clause 40	
003743 - 004402	Chairman Administration Mr CHAN Chi-chuen ALA6	<p data-bbox="703 371 1241 400">Examination of Part 4 - Division 5, clause 41</p> <p data-bbox="703 439 1299 902">Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the conditions and time limit for suspending the operation of the Licensing Board's decision in respect of an application for a specified instrument pending determination of an appeal. The Administration's advice that the period of such suspension would be within the validity period of the relevant specified instrument (which would not be extended even though an appeal against the Licensing Board's decision of suspension had yet to be determined). The Licensing Board might issue guidelines covering such issues.</p> <p data-bbox="703 943 1299 1106">ALA6's advice that ash disposal procedures prescribed in the Bill would be triggered if the specified instrument of the columbarium concerned expired before the decision of the Private Columbaria Appeal Board was made.</p>	
004403 - 005822	Chairman Administration ALA6 Mr Holden CHOW Deputy Chairman	<p data-bbox="703 1151 1241 1180">Examination of Part 4 - Division 5, clause 42</p> <p data-bbox="703 1218 1299 2107">ALA6's advice that the requirements imposed by the Licensing Board under clause 42(3)(b) (i.e. the information required and the time within which such information should be provided) would not be provided for in subsidiary legislation and therefore would not be subject to amendment by the Legislative Council ("LegCo"). Non-compliance with the Licensing Board's requirements might be punishable with a fine and imprisonment. She informed members that the former Bills Committee on Private Columbaria Bill ("the former Bills Committee") had expressed concerns about the serious consequence (i.e. criminal sanction) for non-compliance given that the requirements so imposed could not be amended by LegCo. Members of the former Bills Committee were, however, also aware that criminal sanction was necessary in order to have sufficient deterrent effect. They considered that as non-compliance cases would be handled by the court, it could play the role of "gatekeeper" in deciding the penalty to be imposed on the offenders concerned. Taking into account the above factors, the former Bills Committee accepted the proposed requirements and suggested that its concerns, factors for consideration and</p>	

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		<p>acceptance of the requirements concerned should be covered in the speech of the Secretary for Food and Health ("SFH") for resumption of the Second Reading debate on the former Private Columbaria Bill ("the former Bill"). She invited members to consider whether the provision set out in clause 42(3)(b) was acceptable.</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding whether the Licensing Board would re-examine the holder's eligibility for the specified instrument issued in respect of a columbarium if there were changes in ownership of the columbarium concerned.</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding whether the offences for contraventions of clause 42(1), (3) and (5) were strict liability offences.</p> <p>The Administration's response to the Deputy Chairman's view that a time frame for providing the required information under clause 42(3)(b) should be added to that clause while the Licensing Board should still have the flexibility on deciding a reasonable time for the provision of the required information. The Deputy Chairman's advice that she would consider whether to propose amendments to clause 42(3)(b).</p> <p>The Chairman's request for the Administration to note the Deputy Chairman's concerns. His view that amendments to clause 42(3)(b), if any, could be proposed either by members or by the Administration.</p>	
005823 - 005843	Chairman Administration	Examination of Part 4 - Division 5, clause 43	
005844 - 005931	Chairman Administration	Examination of Schedule 3, section 1	
005932 - 010103	Chairman Administration ALA6	<p>Examination of Schedule 3, section 2</p> <p>ALA6's advice that pursuant to section 2 of Schedule 3, unincorporated associations could not make applications to which Schedule 3 applied.</p>	
010104 - 010157	Chairman Administration	Examination of Schedule 3, section 3	
010158 - 010933	Chairman Administration	Examination of Schedule 3, section 4	

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	Mr LEUNG Kwok-hung ALA6 Deputy Chairman	<p>Mr LEUNG Kwok-hung's enquiry and the Administration's response regarding the meaning of the phrase "廣泛流通" in the Chinese text of section 4(1)(b) of Schedule 3. The Chairman's remarks that several means were provided under section 4(1) of Schedule 3 in respect of publication of notices of licence applications.</p> <p>The Administration's response to Mr LEUNG's concern regarding publishing the aforesaid notices on websites with a low hit rate.</p> <p>The Chairman's view that in drafting the relevant provisions, the Administration should take note of Mr LEUNG's concern about the possibility of the absence of English language newspapers in Hong Kong some day.</p> <p>ALA6's advice that section 4 of Schedule 3 only applied to applications for the issue of licences.</p> <p>Suggestion of the Deputy Chairman and Mr LEUNG Kwok-hung in relation to uploading information on applications for specified instruments onto the Licensing Board's website. The Administration's advice that it would relay the suggestion to the Licensing Board.</p> <p>The Deputy Chairman's suggestion of requiring holders of specified instruments to provide information on the types of specified instruments issued in respect of their columbaria on the websites of the columbaria concerned. The Administration's advice that under clause 94, the Licensing Board might issue a code of practice setting out principles, procedures, guidelines, standards or requirements in relation to columbaria.</p>	Admin (paragraph 2 of the minutes)
010934 - 011019	Chairman Administration ALA6	<p>Examination of Schedule 3, section 5</p> <p>ALA6's advice that the Licensing Board might, with the approval of SFH, by notice published in the Gazette, amend Schedule 3 and that such notice was subsidiary legislation.</p>	
011020 - 011624	Chairman Administration	Examination of Part 4 - Division 6, clauses 44 and 45	
011625 - 011754	Chairman Deputy Chairman Administration	<p>Examination of Part 5 - Division 2, clause 50</p> <p><i>(The Deputy Chairman took the chair in the absence of the Chairman.)</i></p>	

011755 - 012017	Deputy Chairman Administration	Examination of Part 5 - Division 2, clauses 51 and 52	
012018 - 012241	Deputy Chairman Administration	<p>Examination of Part 5 - Division 2, clause 53</p> <p>The Deputy Chairman's enquiry and the Administration's response in relation to entering into the register the name of a dedicated person whose ashes had not yet been interred.</p>	
012242 - 013641	Deputy Chairman Administration ALA 6 Mr Holden CHOW	<p>Examination of Part 5 - Division 2, clause 54</p> <p>ALA6's advice that the particulars to be contained in the endorsed register mentioned in clause 54(2)(a) would be specified by the Licensing Board as per clause 23(2)(b). The particulars would not be provided for in subsidiary legislation and therefore would not be subject to amendment by LegCo. Non-compliance with clause 54(2) might be punishable with a fine and imprisonment. Her reiteration of the former Bills Committee's concerns and considerations mentioned earlier (time marker: 004403 – 005822). She invited members to consider whether the aforesaid arrangements were acceptable.</p> <p>The Administration's advice that under clause 54(2)(a), the holder of an exemption was required to update the endorsed register as soon as practicable after effecting the changes of a dedicated person and the Licensing Board would not be involved in the updating process. As such, the requirements under clause 54(2)(a) were different from that under clause 23(2)(b). ALA6's advice that if the intention was that, she would discuss with the Administration the drafting of the relevant provisions.</p> <p>The Deputy Chairman's view that members might consider whether the inclusion of members' concerns, factors for consideration and acceptance of the arrangements under the relevant provision in SFH's speech was sufficient. She would consider whether to propose amendments to the relevant provision.</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that clause 54(1) related to an exemption in respect of a pre-cut-off columbarium. A pre-cut-off columbarium which was granted an exemption was not allowed to sell or let niches after the cut-off time (i.e. 8:00 am on 18 June 2014).</p> <p>In response to Mr Holden CHOW's enquiry, the Administration explained the respective</p>	

		scenarios under clause 54(3)(a) and (b).	
013642 - 014715	Deputy Chairman Administration Mr POON Siu-ping Mr CHAN Chi-chuen ALA6	<p>Examination of Part 5 - Division 2, clause 55</p> <p>Mr POON Siu-ping's enquiry and the Administration's response regarding the meaning of "all reasonable times" stipulated in clause 55(10)(a) and the authorization by the Secretary for Home Affairs ("SHA") to a public officer to enter and inspect a columbarium of a Chinese temple.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration advised that interment of ashes of religious practitioners in religious ash pagodas was only allowed in columbaria of Chinese temples which had been issued with exemption.</p> <p>ALA6's advice that SHA was empowered under clause 55(2) to specify, by a notice published in the Gazette, among others, the number of sets of ashes that might be interred under clause 55(1). SHA might also decide under clause 55(7) that a columbarium was to cease to be specified under clause 55(2) and his or her decision must be notified in the Gazette. Under clause 55(8), a notice published in the Gazette under clause 55(2) or (7) was not subsidiary legislation and therefore not subject to amendment by LegCo. Non-compliance with clause 55(4) or (9) might be punishable with a fine and imprisonment. She invited members to note the former Bills Committee's concerns and considerations mentioned earlier (time marker: 004403 – 005822) and consider whether the proposed arrangements were acceptable.</p>	
014716 - 014843	Deputy Chairman Administration	<p>Examination of Part 5 - Division 2, clause 56</p> <p>In response to the Deputy Chairman's enquiry, the Administration explained the provisions in relation to enforcement provided for in the Bill.</p>	
014844 - 015130	Deputy Chairman Administration	Examination of Part 2, clauses 8 and 9	
015131 - 015824	Deputy Chairman Administration	<p>Examination of Schedule 1, sections 1 to 4</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that in considering appointment to the Licensing Board, they would consider candidates with land-related, planning-related and building-related backgrounds as well as professionals such as lawyers and accountants. The Food and Environmental Hygiene Department would</p>	

		provide secretarial support to the Licensing Board.	
015825 - 020127	Deputy Chairman Administration Mr CHAN Chi-chuen ALA6	Examination of Schedule 1, section 5 The Administration's response to Mr CHAN Chi-chuen's view that an individual who had a conflict of interest with that of the Licensing Board should not be appointed to the Licensing Board and his enquiry regarding the criteria for appointment of a member to the Licensing Board. ALA6's advice that SFH might, by notice published in the Gazette, amend Schedule 1 and that such notice was subsidiary legislation.	
020128 - 020155	Chairman	Date of next meeting	

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