

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1404/16-17  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/16

**Bills Committee on Private Columbaria Bill**

**Minutes of the fifth meeting**  
**held on Friday, 3 February 2017, from 8:45 am to 10:45 am**  
**in Conference Room 3 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 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  
Dr Hon Elizabeth QUAT, 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 CHEUNG Kwok-kwan, JP  
Hon LUK Chung-hung  
Hon LAU Kwok-fan, MH  
Hon Nathan LAW Kwun-chung

Dr Hon LAU Siu-lai

**Members absent** : Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon CHU Hoi-dick  
Hon HO Kai-ming

**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 Meisy KWOK  
Legislative Assistant (2) 6

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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 and CB(2)345/16-17(01) and (02)]

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

2. The Bills Committee requested the Administration to provide:

- (a) examples on the use of the phrase "終局決定" in legislation concerning other appeal boards;
- (b) examples of appeal boards which had adopted arrangements similar to those set out in clause 84(6) to (8);
- (c) the background of proposing appointment of a legal adviser to the Private Columbaria Appeal Board; and
- (d) information on the number of columbarium premises which were occupied under a short term tenancy granted by the Government and the total area of the columbarium premises

concerned.

The Administration was requested to provide the required information under items (a) to (c) above before the next meeting.

*(Post-meeting note: The Administration's response was issued to members vide LC Paper Nos. CB(2)804/16-17(01) and CB(2)986/16-17(04) on 13 February and 15 March 2017 respectively.)*

## **II. Date of next meeting**

3. Members noted that the next meeting would be held on Monday, 13 February 2017 at 4:30 pm.

## **III. Any other business**

4. There being no other business, the meeting ended at 10:45 am.

Council Business Division 2  
Legislative Council Secretariat  
12 May 2017

**Proceedings of the fifth meeting of the  
Bills Committee on Private Columbaria Bill  
on Friday, 3 February 2017, from 8:45 am to 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000415 – 000553	Chairman		
Clause-by-clause examination			
000554 – 001429	Chairman Administration	Examination of Part 8 - clauses 80 to 83	
001430 – 002738	Chairman Administration Mr CHAN Chi-chuen Dr Junius HO Mr Holden CHOW	<p>Examination of Part 8 - clause 84</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration advised that while the Bill did not provide for a party to an appeal to request for changing the date set for the hearing of an appeal, the Private Columbaria Appeal Board ("Appeal Board"), having considered the reasons provided by a party to an appeal, might consider rescheduling the hearing or otherwise.</p> <p>Dr Junius HO's view that requiring the legal adviser to the Appeal Board ("Legal Adviser") to make known to every party to the appeal his/her advice to the Appeal Board on legal matters relating to an appeal (clause 84(6) to (8)) was a breach of duty of confidentiality under common law. The Administration's advice that statutory provision would override common law and that the policy intent of clause 84(6) to (8) was to enable a fair hearing for the parties concerned.</p> <p>Dr HO's expression of reservation about the proposed arrangements set out in clause 84(6) to (8). The Administration's explanation of the rationale of the policy intent.</p> <p>Mr Holden CHOW's view that the Legal Adviser was not representing the Appeal Board at a hearing if he/she was not required to carry out the duty of confidentiality. The Administration's response that the Appeal Board and the Legal Adviser were neutral in a hearing.</p>	
002739 – 004156	Chairman Mr LEUNG Yiu-chung Mr Paul TSE Dr Junius HO Mr Holden CHOW	The Administration's response to Mr LEUNG Yiu-chung's view on the phrase "終局決定" in the Chinese text of clause 84(12). The Administration's advice that by "final", it implied that after an appeal was determined, all	

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	Deputy Chairman ALA6	<p>administrative appeal channels would have been exhausted for the case, and a party to the appeal might make application to the court for judicial review according to the general principles applicable if he/she was aggrieved by the Appeal Board's decision.</p> <p>Mr LEUNG's concern that the phrase "終局決定" might be interpreted by a party to the appeal that he/she had no other avenue to pursue the case further after the Appeal Board had made a decision. The Administration's advice that the phrase was commonly used in Hong Kong legislation and it was not necessary to provide in legislation the availability of judicial review of an administrative decision.</p> <p>Dr Junius HO's view that the phrase "終局決定" was acceptable.</p> <p>The Chairman's request for the Administration to provide before the next meeting examples on the use of the phrase "終局決定" in legislation concerning other appeal boards. The Administration undertook to do so and advised that the appeal procedures and the right of a party to the appeal to seek judicial review would be included in its publicity.</p> <p>Mr Paul TSE's view and the Administration's response regarding the neutrality of the Legal Adviser.</p> <p>In response to Mr TSE's enquiry, the Administration advised that under clause 81(3), the Chairperson and Deputy Chairperson of the Appeal Board should be legally qualified (under clause 80, "legally qualified" meant qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336)).</p> <p>Dr Junius HO's request for the Administration to provide examples of appeal boards which had adopted arrangements similar to those set out in clause 84(6) to (8).</p> <p>Mr Holden CHOW's enquiry regarding the background of proposing appointment of a legal adviser to the Appeal Board, given that the Chairperson and the Deputy Chairperson of the Appeal Board were legally qualified.</p> <p>The Administration undertook to provide the required information before the next meeting.</p>	<p>Admin (paragraph 2(a) of the minutes)</p> <p>Admin (paragraph 2(b) of the minutes)</p> <p>Admin (paragraph 2(c) of the minutes)</p>

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		<p>Responses of ALA6 and the Administration to the Deputy Chairman's enquiry regarding the use of the word "however" in legislation.</p> <p>Mr LEUNG Yiu-chung's call for the Administration to step up publicity on the appeal procedures and the right of a party to the appeal aggrieved by the decision of the Appeal Board to seek judicial review.</p>	
004157 – 004458	Chairman Administration ALA6	<p>Examination of Part 8 - clause 85</p> <p>ALA6's advice that the Appeal Board was not empowered to award costs under the Bill and the issue had been discussed by the former Bills Committee.</p> <p>The Administration's advice on the reasons for not having such a provision. Having considered the possible impact of the arrangements on award of costs on the trade, the former Bills Committee accepted the Administration's proposal. Members raised no objection in this regard.</p>	
004459 – 004624	Chairman Administration	Examination of Part 8 - clauses 86 to 87	
004625 – 005025	Chairman Administration Dr Junius HO	<p>Examination of Part 8 - clause 88</p> <p>Dr Junius HO's enquiry and the Administration's response in relation to the prosecution procedures regarding an offence under clause 88(1) or (2).</p>	
005026 – 005221	Chairman Administration ALA6	<p>Examination of Part 8 - clause 89</p> <p>ALA6 drew members' attention that clause 89 empowered the Chairperson of the Appeal Board to make rules and determine its practice or procedure as mentioned. The rules so made were not subsidiary legislation and would therefore not be subject to amendment by the Legislative Council ("LegCo"). The issue had been discussed by the former Bills Committee.</p> <p>The Administration's advice that there was a need for flexibility to allow operational practices and procedures to be made or revised in a timely manner to cater for changing circumstances. There were similar provisions in the Telecommunications Ordinance (Cap. 106) which empowered the Chairman of the Telecommunications Authority to determine matters of practice or procedure which were not subsidiary legislation.</p>	

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		Members raised no objection to the proposed arrangements in clause 89.	
005222 – 005441	Chairman Administration Mr Holden CHOW	Examination of Part 8 - clause 90  Mr Holden CHOW's view and the Administration's response that the appointment of a legal adviser to the Appeal Board might not be necessary, given that the procedures in determining an appeal by the Appeal Board were very similar to a court hearing and that under clause 87(1), the Appeal Board might, before determining an appeal, refer a question of law arising in the appeal to the Court of Appeal for determination by way of case stated.	
005442 – 005555	Chairman Administration	Examination of Part 5 - clause 46	
005556 – 011153	Chairman Administration Dr KWOK Ka-ki Mr LEUNG Yiu-chung ALA6	Examination of Part 5 - clause 47(1) and (2)  The Administration's response to Dr KWOK Ka-ki's view that the Administration should endeavour to tackle columbaria located on unlawfully-occupied government land rather than allowing operators of these columbaria to apply for regularization, and that columbarium operators whose columbarium premises were occupying government land under a short term tenancy granted by the Government should not be allowed to sell interment rights for a duration exceeding the term of the short term tenancy.  Dr KWOK's request for the Administration to provide information on the number of columbarium premises which were occupied under a short term tenancy granted by the Government and the total area of the columbarium premises concerned. The Administration's advice that it would check with the relevant government departments on the availability of the required information.  Mr LEUNG Yiu-chung's view and the Administration's response in relation to allowing an operator whose columbarium premises were occupying government land under a short term tenancy granted by the Government after the enactment of the Private Columbaria Ordinance ("Ordinance") to sell an interment right. The Administration advised that clause 47 provided for the restrictions on the sale of interment rights in respect of columbaria operated on land occupied under different instruments, including a land instrument granted by the Government .	Admin (paragraph 2(d) of the minutes)



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		<p>Dr KWOK Ka-ki's enquiry and the Administration's response regarding whether the sale of an interment right by an operator whose columbarium premises were occupying government land under a short term tenancy granted by the Government was an offence, given that the operator concerned did not own the land concerned. The Administration's explanation of the meaning of sale of interment right stipulated in clause 3. ALA6's advice that the Bill concerned with the sale of an interment right as opposed to the sale of the land concerned.</p> <p>Dr KWOK's enquiry and the Administration's response regarding whether the Government would be held legally liable if there was a dispute between the seller and the purchaser about an interment right. The Administration's advice that Part 2 of Schedule 4 stipulated the essential terms which must be set out in an agreement for the sale of an interment right ("agreement") and a consumer should know the particulars about the interment right he/she intended to purchase.</p> <p>The Administration's response to Mr LEUNG Yiu-chung's view on allowing private columbarium operators to make profit by selling interment rights in respect of a columbarium situated on Government land under a short term tenancy. The Administration's advice that only licensee could sell interment right in respect of the licensed columbarium, and licensed columbaria were subject to the Administration's policies on market premium for land on Government lease and market rental for short term tenancy.</p> <p>Mr LEUNG Yiu-chung's enquiry and the Administration's response regarding how the Administration would prevent the aforesaid operators from misleading purchasers in the sale of interment rights.</p>	
011154 – 013307	<p>Chairman Mr LEUNG Kwok-hung Mr LAU Kwok-fan Dr KWOK Ka-ki Deputy Chairman Administration</p>	<p>Mr LEUNG Kwok-hung's expression of similar concerns raised by Mr LEUNG Yiu-chung and Dr KWOK Ka-ki. The Administration's advice that granting a short term tenancy at market rental for conducting commercial activities on Government land was not uncommon and such an arrangement was not unique for columbarium operation.</p> <p>The Chairman's view that the concern raised by Mr LEUNG Yiu-chung, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki about granting of short</p>	

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		<p>term tenancy for conducting commercial activities on Government land was not entirely relevant to the Bill. The Chairman suggested that the Administration should arrange a separate meeting with Mr LEUNG Yiu-chung, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki to explain to them the issues of concern, particularly the measures the Administration would adopt to prevent an operator of a columbarium located on unlawfully-occupied government land from making profit by way of selling interment rights. The Deputy Chairman's suggestion that the Administration should also explain in more detail the meaning of interment right at that meeting.</p> <p>Mr LAU Kwok-fan's view that the Administration should provide examples of columbaria premises occupying government land under a short term tenancy granted by the Government to facilitate members' understanding of the objectives of the relevant provisions.</p> <p>Dr KWOK Ka-ki's view that as consumers would have expected that interment of ashes in private columbaria was long-term in nature, granting short term tenancy to columbarium premises should be carefully considered. The Administration explained clause 47 and advised that the provision sought to address the aforesaid concerns.</p> <p>Mr LEUNG Yiu-chung's enquiry and the Administration's response in relation to the monitoring of the sale of interment rights by private columbarium operators. The Administration's advice that the Bill sought to handle the historical legacy of private columbaria and put the operation of private columbaria on a regulated and sustainable track. At the Chairman's request, the Administration explained the meaning of "interment right" stipulated in clause 2.</p> <p>In response to Dr KWOK Ka-ki's enquiry, the Chairman said that members might propose amendments to clauses which had been examined by the Bills Committee if they had different views on such clauses.</p> <p>The Chairman's suggestion that the Administration should brief Mr LEUNG Yiu-chung, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki on the Bill at that separate meeting. The Deputy Chairman's suggestion</p>	

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		<p>that the Administration should also explain to them the meaning of sale of interment right stipulated in clause 3.</p> <p>Mr LEUNG Yiu-chung's reiteration of his concern about inadequate protection to a consumer who had entered into an agreement with an operator on the sale of an interment right in respect of the latter's columbarium that was situated on Government land occupied under short term tenancy.</p>	
013308 – 013955	<p>Chairman Dr Junius HO Administration</p>	<p>Dr Junius HO's enquiry and the Administration's response regarding the duration of interment rights under different terms of government lease/tenancy. The Administration's explanation of section 2(b)(ii) and (iii) of Part 2 of Schedule 4.</p> <p>Dr HO's view and the Administration's response regarding the provision of a sample agreement. The Administration's advice that sample templates for agreements would be drawn up for easy reference by consumers and private columbarium operators.</p>	
013956 – 020019	<p>Chairman Administration ALA6 Dr KWOK Ka-ki Deputy Chairman Mr LEUNG Kwok-hung Mr CHAN Chi-chuen</p>	<p>Examination of Part 5 - clause 47(3) to (5)</p> <p>ALA6's advice that pursuant to clause 47(3), an agreement was not enforceable against a purchaser unless the other requirements specified by the Private Columbaria Licensing Board ("Licensing Board") under clause 47(3)(i), if any, were met. Such requirements were not subsidiary legislation and therefore would not be subject to amendment by LegCo. She informed members that the former Bills Committee had discussed the issue and had accepted the Administration's proposal. She said that members should also consider how a seller of an interment right knew about the requirements, subsequent amendments made to these requirements and the time when these amendments took effect to ensure compliance.</p> <p>Dr KWOK Ka-ki's enquiry about the reasons why the aforesaid requirements were not subsidiary legislation. The Administration's advice that as it would neither be possible nor desirable at this stage to spell out in an exhaustive list the requirements that the Licensing Board might deem fit to specify, the Licensing Board should be provided with the necessary flexibility. Having regard to the views of the former Bills Committee, the</p>	

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		<p>Administration had proposed to amend the relevant provision to allow a purchaser to cancel an unenforceable agreement within six months after the date of the agreement ("the six-month period") by giving the seller a written notice of cancellation rather than to cancel the agreement at any time after it was entered into. The foresaid amendments had been reflected in clause 48(2).</p> <p>In response to Dr KWOK's request for examples of provisions in other legislation which were of similar nature as clause 47(3)(i), ALA6 replied that she had not come across such similar provisions.</p> <p>Dr KWOK's enquiry and the Administration's response on whether the Licensing Board would bear any legal liability in respect of the requirements it imposed under clause 47(3)(i).</p> <p>The Administration's response to the enquiries of the Deputy Chairman, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki regarding enhancement of consumer protection (e.g. enhancing the terms and using larger font size in an agreement, an agreement should be signed in the presence of a witness, etc.).</p> <p>The Administration's response to the Deputy Chairman's enquiry regarding the legal implications on an agreement if there were any changes in the requirements imposed by the Licensing Board within the six-month period.</p> <p>The Deputy Chairman's view and the Administration's response regarding the power of the Licensing Board.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding whether the six-month period was a cooling-off period for a purchaser and how clause 47(3)(f) and (g) would be executed in practice.</p> <p>The Administration's response to Mr LEUNG Kwok-hung's view in relation to putting in place a mechanism for monitoring the Licensing Board.</p>	
020020 – 020055	Chairman	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
12 May 2017