

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1701/16-17  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/16

**Bills Committee on Private Columbaria Bill**

**Minutes of the sixth meeting**  
**held on Monday, 13 February 2017, at 4:30 pm**  
**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 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  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon CHEUNG Kwok-kwan, JP  
Hon LAU Kwok-fan, MH  
Hon Nathan LAW Kwun-chung
- Members absent** : Hon Tommy CHEUNG Yu-yan, GBS, JP  
Hon Steven HO Chun-yin, BBS

Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon Elizabeth QUAT, JP  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon Holden CHOW Ho-ding  
Hon LUK Chung-hung  
Dr Hon LAU Siu-lai

**Public Officers : Item I  
attending**

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

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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) and (02) and CB(2)804/16-17(01)]

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

2. The Bills Committee requested the Administration to provide, before the next meeting, information on its preliminary thinking on handling of enquiries from members of the public and operators of private columbaria after the enactment of the Private Columbaria Ordinance.

*(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)862/16-17(01) on 24 February 2017.)*

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

3. Members noted that the next meeting would be held on Wednesday, 22 February 2017 at 8:45 am.

**III. Any other business**

4. There being no other business, the meeting ended at 6:29 pm.

Council Business Division 2  
Legislative Council Secretariat  
22 June 2017

**Proceedings of the sixth meeting of the  
Bills Committee on Private Columbaria Bill  
on Monday, 13 February 2017, at 4:30 pm  
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>			
000746 – 001928	Chairman Administration Dr KWOK Ka-ki	<p>The Administration's response to the Chairman's enquiry regarding the Administration's briefing for Mr LEUNG Yiu-chung, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki on their concerns raised at the meeting on 3 February 2017.</p> <p>Discussion about the Administration's paper entitled "Supplementary Information Requested by Members at the meeting on 3 February 2017" (LC Paper No. CB(2)804/16-17(01)).</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response regarding whether phrases other than "終局決定" were used in legislation concerning other appeal boards and whether the Administration would consider replacing the phrase "終局決定". The Administration's explanation of the reasons for using the phrase "終局決定". Given an administrative decision by a public authority was subject to judicial review as a matter of administrative law, it was not necessary to provide for this expressly in legislation.</p> <p>Dr KWOK's enquiry and the Administration's response in relation to the handling of enquiries from members of the public and operators of private columbaria ("operators") after the enactment of the Private Columbaria Ordinance ("the Ordinance"). At Dr KWOK's request, the Administration undertook to provide, before the next meeting, information on its preliminary thinking on handling of enquiries from members of the public and operators after the enactment of the Ordinance.</p> <p>The Chairman's request for the Secretariat to provide the Administration with a list of issues raised by members at previous meetings for the Administration to respond before the next meeting scheduled for 22 February 2017.</p> <p><i>(Post-meeting note: The list of follow-up actions pending the Administration's response</i></p>	<p>Admin (paragraph 2 of the minutes)</p> <p>Secretariat</p>

Time marker	Speaker(s)	Subject(s)	Action required
		was sent to the Administration on 14 February 2017.)	
Clause-by-clause examination			
001929 – 002433	Chairman Administration Dr KWOK Ka-ki	Examination of Part 5 – Division 1, clause 48  Dr KWOK Ka-ki's enquiry and the Administration's response regarding whether a purchaser would be refunded all money paid under an agreement for the sale of an interment right ("agreement") if he/she was misled by the seller. The Administration's advice that clause 47(4) did not affect, limit or diminish any rights of a purchaser to claim under an agreement under the common law rules or equitable principles or any other Ordinance.	
002434 – 003137	Chairman Administration ALA6 Dr KWOK Ka-ki	Examination of Part 5 – Division 1, clause 49  ALA6's advice that the requirements imposed by the future Private Columbaria Licensing Board ("the Licensing Board") under clause 49(2)(b) (i.e. the particulars of an agreement to be entered into the register and the time within which such particulars to be entered) were not provided for in subsidiary legislation and therefore were not 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 concern 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 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 proposed arrangements in clause 49(2)(b) were acceptable.	

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		<p>The Chairman said that members had discussed and accepted similar empowering provisions at previous meetings to allow flexibility in implementing the Ordinance. The Administration should include members' concerns, factors for consideration and acceptance of the requirements concerned in SFH's speech for resumption of the Second Reading debate on the Bill. Members raised no objection in this regard.</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response regarding the period for keeping copies of all agreements and a register of agreements by a person holding a licence in respect of a columbarium.</p>	
003138 – 003759	Chairman Administration Deputy Chairman	<p>Examination of Schedule 4 – Part 1, section 1</p> <p><i>(The Deputy Chairman took the chair in the absence of the Chairman.)</i></p> <p>The Deputy Chairman's enquiry and the Administration's response in relation to specifying the font size in an agreement, carrying out random checks on agreements and registering the agreements with relevant authorities. The Administration's advice that the aforesaid requirements could be included in the guidelines or codes of practice to be drawn up by the Licensing Board.</p>	
003800 – 004402	Deputy Chairman Administration Mr CHAN Chi-chuen	<p>Examination of Schedule 4 – Part 2, section 2</p> <p>The Administration's response to the enquiries of the Deputy Chairman and Mr CHAN Chi-chuen regarding whether an operator was required to specify the total number of containers of ashes to be interred in a niche as well as the total number of set of ashes to be interred in the columbarium concerned when applying for a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability).</p>	
004403 – 004501	Deputy Chairman Administration ALA6	<p>Examination of Schedule 4 – Part 3, sections 3 and 4</p> <p>ALA6 informed members that the Licensing Board might, with the approval of SFH, by notice published in the Gazette, amend Schedule 4. Such notice would be subsidiary legislation.</p>	
004502 – 004622	Deputy Chairman Administration	Examination of Part 7 – clauses 63 and 64	

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004623 – 005100	Deputy Chairman Administration ALA6 Mr CHAN Chi-chuen	<p>Examination of Part 7 – clause 65</p> <p>ALA6 informed members that the Bill did not provide for consequences for a person failing to comply with clause 65 and the issue had been discussed by the former Bills Committee.</p> <p>The Administration's explanation of the reasons for not imposing criminal sanction for contravention of clause 65. The Administration advised that in drafting clause 65, it had made reference to the Public Health and Municipal Services Ordinance (Cap. 132) and the Burial and Cremation Act 2013 in South Australia which had provisions similar to clause 65.</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that cases concerning improper disposal of ashes interred in a columbarium could be brought to the court. Clause 65 was meant to serve as general guiding principles and would help convey to the court the legislative intent.</p> <p>Mr CHAN Chi-chuen's enquiries and the Administration's responses regarding provisions in relation to claiming for the return of ashes which were improperly disposed of by an operator and the meaning of disposal of ashes without having regard to the dignity of the deceased persons concerned.</p> <p>Members raised no objection to not imposing criminal sanction for contravention of clause 65.</p>	
005101 – 005724	Deputy Chairman Administration ALA6	<p>Examination of Part 7 – clause 66</p> <p>ALA6 informed members that SFH might, by notice published in the Gazette, amend clause 66(4) by substituting another period for any period specified therein. Such notice would be subsidiary legislation.</p> <p>The Administration's advice that clause 66(3), (4), (5) and (6) were added to the Bill having regard to the views of the former Bills Committee and the proposal that SFH might amend Schedule 7 (which concerned grace period for columbarium to continue operation without selling interment right) by notice published in the Gazette which would be subsidiary legislation. The Administration therefore proposed that clause 66(4) should be amended through subsidiary legislation.</p>	



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		Members raised no objection to the Administration's proposal.	
005725 –010832	Deputy Chairman Administration ALA6 Mr CHAN Chi-chuen	<p>Examination of Part 7 – clauses 67 to 69</p> <p>ALA6 drew members' attention that under clauses 67 and 68, the failure of a person who had operated, kept, managed or in any other way had control of the columbarium or the instrument holder concerned to give a specified response (instead of whether the columbarium concerned had actually been abandoned) constituted the basis of abandonment of the columbarium concerned.</p> <p>The Deputy Chairman's enquiry and the Administration's response regarding the situations of suspected abandonment of a columbarium.</p> <p>At Mr CHAN Chi-chuen's request, the Administration explained situations under which clause 67 would apply.</p>	
010833 - 011436	Deputy Chairman Administration ALA6 Mr CHAN Chi-chuen	<p>Examination of Part 7 – clause 70</p> <p>ALA6's response to the Deputy Chairman's enquiry that a person who had given a specified response must continue to operate the columbarium and failing to do so would constitute criminal offence under clause 72.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the meaning of the term "operation (營辦)" in the Bill.</p> <p>The Administration's advice that an application for a licence in respect of a columbarium must be accompanied by a management plan for the Licensing Board's approval. Mr CHAN's enquiry and the Administration's response regarding whether the Bill provided for actions against an operator who did not operate a columbarium according to the management plan approved by the Licensing Board.</p> <p>At the Deputy Chairman's request, the Administration explained clause 70.</p>	
011437 – 011603	Deputy Chairman Administration	Examination of Part 7 – clause 71	
011604 – 011745	Deputy Chairman Administration Mr CHAN Chi-chuen	<p>Examination of Part 7 – clause 72</p> <p>In response to Mr CHAN Chi-chuen's enquiry,</p>	

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		<p>the Administration explained clause 98 which dealt with liability of directors, partners, etc. for offences under the Ordinance.</p>	
011746 – 013233	<p>Deputy Chairman Administration Mr CHAN Chi-chuen ALA6</p>	<p>Examination of Part 7 – clause 73</p> <p>The Administration's response to Mr CHAN Chi-chuen's observation that an owner or mortgagee would not be prohibited from selling the premises comprising a columbarium which was subject to prescribed ash disposal procedures, but the purchaser of the premises could not take vacant possession of the columbarium premises until the prescribed ash disposal procedures had been completed.</p> <p>ALA6 drew members' attention that under clause 73(11), a person who had operated, kept, managed or in any other way had control of the columbarium might be requested to produce information for facilitating the carrying out by a person in possession of the prescribed ash disposal procedures. No criminal sanction was imposed on a person who failed to comply with clause 73(11). She informed members that the issue had been discussed by the former Bills Committee.</p> <p>The Administration's explanation that the policy intent of clause 73(11) was to facilitate the carrying out by a person in possession of the prescribed ash disposal procedures. Members raised no objection to the provision.</p> <p>The Deputy Chairman's enquiry and the Administration's response regarding how ashes interred in a columbarium could be returned to a claimant if a person in possession was unable to obtain the necessary information.</p>	
013234 – 014443	<p>Deputy Chairman Administration ALA6 Mr CHAN Chi-chuen</p>	<p>Examination of Part 7 – clause 74</p> <p>ALA6 drew members' attention that while an operator was required to carry out the prescribed ash disposal procedures under the Bill, the Director of Food and Environmental Hygiene ("DFEH") and/or a specified officer might carry out any steps that they considered necessary for disposal of ashes in respect of a columbarium under the circumstances set out in clause 73(4) and clause 74(1). The former Bills Committee had discussed the issue and accepted these provisions. She suggested that members might consider whether such provisions were acceptable after examining Part 2 of Schedule 5</p>	

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		<p>which dealt with ash disposal procedures.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration advised that the purpose of empowering DFEH and/or a specified officer to take steps that they considered necessary for disposal of ashes was to facilitate return of ashes to claimants.</p> <p>The Deputy Chairman's enquiry and the Administration's response regarding possible steps that DFEH and/or a specified officer might consider necessary for disposal of ashes.</p> <p>In response to Mr CHAN Chi-chuen's enquiry, the Administration advised that the policy intent was to allow DFEH and/or a specified officer to carry out steps that were considered necessary for the disposal of ashes, which could be steps in addition to the prescribed ash disposal procedures, if necessary.</p> <p>The Deputy Chairman's view on the power conferred on DFEH and/or a specified officer with respect to ash disposal and her advice that such power should be discussed when the Bills Committee examined Schedule 5.</p> <p>ALA6 drew members' attention that a specified officer might request a person to produce the information that the officer considered necessary to facilitate disposal of ashes in accordance with clause 74(5). No criminal sanction would be imposed on a person failing to comply with clause 74(5). She invited members to consider whether such an arrangement was acceptable. Members raised no objection in this regard.</p>	
014444 – 014609	Deputy Chairman Administration	Examination of Part 7 – clauses 75 to 77	
014610 – 015040	Deputy Chairman Administration Mr CHAN Chi-chuen	<p>Examination of Part 7 – clause 78</p> <p>Enquiries of the Deputy Chairman and Mr CHAN Chi-chuen in relation to publishing status of private columbaria (e.g. whether the columbarium had ceased operation) on relevant websites.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding issue of a certificate of cessation of columbarium use.</p>	
015041 – 015159	Deputy Chairman Administration	Examination of Part 7 – clause 79	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
015200 – 020014	Deputy Chairman Administration	Examination of Schedule 5 – Part 1, sections 1 to 5  The Deputy Chairman's enquiry and the Administration's response regarding whether a person who had entered or remained on the columbarium premises subject to an occupation order had to bear any consequences.	
020015 – 020034	Deputy Chairman	Date of next meeting	

Council Business Division 2  
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22 June 2017