

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1993/16-17  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/16

**Bills Committee on Private Columbaria Bill**

**Minutes of the eighth meeting**  
**held on Thursday, 16 March 2017, at 2:30 pm**  
**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  
Dr Hon Priscilla LEUNG Mei-fun, SBS, 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  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Helena WONG Pik-wan  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon LUK Chung-hung  
Hon LAU Kwok-fan, MH  
Hon Nathan LAW Kwun-chung  
Dr Hon LAU Siu-lai

**Members absent** : Hon Starry LEE Wai-king, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Holden CHOW Ho-ding  
Hon CHEUNG Kwok-kwan, JP

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**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

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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)954/16-17(01), CB(2)986/16-17(01) to (04) and CB(2)999/16-17(01)]

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

2. The Bills Committee requested the Administration to:

- (a) provide a paper detailing its response to the concerns raised by Ms Alice MAK in her letter (LC Paper No. CB(2)954/16-17(01)) before 1 April 2017. The Administration's written response should include measures to address the concerns raised in Ms MAK's letter;

- (b) provide examples of provisions in other legislation concerning the definition of "related person";
- (c) fine-tune the meaning of "related item" and to make it clear that the definition of "ashes" would include a container of such ashes; and
- (d) submit the final version of the Committee stage amendments ("CSAs") proposed by the Administration to the Bills Committee before the Bills Committee submitted its report to the House Committee ("HC").

*(Post-meeting note: The Administration's response to (a) above had been issued to members vide LC Paper No. CB(2)1116/16-17(01) on 31 March 2017 and its response to (b) above was in the **Appendix.**)*

## **II. Any other business**

### 3. Members noted that:

- (a) the Bills Committee would make a verbal report on its deliberations to HC on 24 March 2017;
- (b) the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 12 and 13 April 2017; and
- (c) the deadline for giving notice to move CSAs to the Bill, if any, was 1 April 2017.

4. There being no other business, the meeting ended at 4:22 pm.

**Examples of provisions in other legislation  
concerning the definition of "related person"**

I. Fatal Accidents Ordinance (Cap. 22), section 2

*Dependant, in relation to a deceased person, means –*

...

- (c) any person who -
  - (i) was living with the deceased in the same household immediately before the date of his death; and
  - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased;

...

II. Law Amendment and Reform (Consolidation) Ordinance (Cap. 23),  
section 20C(5)

*Dependant, in relation to an injured person, means –*

...

- (c) any person who -
  - (i) was living with the injured person in the same household immediately before the date of his injury; and
  - (ii) had been living with the injured person in the same household for at least 2 years before that date, as the husband or wife of the injured person;

...

**Proceedings of the eighth meeting of the  
Bills Committee on Private Columbaria Bill  
on Thursday, 16 March 2017, at 2:30 pm  
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>			
000634 - 000844	Chairman Ms Alice MAK Administration	<p><u>Letter from Ms Alice MAK raising concerns about the existence of a vacuum period upon the gazettal and commencement of the Private Columbaria Ordinance and the supply of niches during that period (LC Paper No. CB(2)954/16-17(01)) and the Administration's reply to Ms MAK's letter (LC Paper No. CB(2)986/16-17(03))</u></p> <p>The Chairman sought members' views on the Administration's proposal of providing a detailed response on the issues raised by Ms Alice MAK in her letter at the meeting of the Panel on Food Safety and Environmental Hygiene ("FSEH Panel") scheduled for 11 April 2017.</p> <p>While preferring to discuss the issues raised in her letter at the meeting of the Bills Committee, Ms Alice MAK accepted the Administration's proposal. She, however, requested the Administration to provide a detailed response which should include measures to address the concerns raised in her letter in order to facilitate the discussion by the FSEH Panel. The Administration undertook to do so.</p> <p><u>The Administration's paper entitled "Supplementary Information Requested by Members at Previous Meetings" (LC Paper No. CB(2)986/16-17(04))</u></p> <p>Members noted the Administration's response to issues raised by members at previous meeting set out in the captioned paper.</p>	Admin (paragraph 2(a) of the minutes)
Draft Committee stage amendments			
000845 - 001430	Chairman Administration ALA6	<p>Discussion of the draft Committee stage amendments ("CSAs") proposed by the Administration (LC Paper No. CB(2)986/16-17(01)).</p> <p><u>Sections 6 and 9(5) of Schedule 5 (Item 1 of Annex 1 to LC Paper No. CB(2)986/16-17(01))</u></p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's briefing on its proposed CSAs.</p> <p>ALA6's advice that:</p> <p>(a) according to the proposed definition of "related person", a related person was not necessarily living as the husband or wife of the deceased person. Members should consider whether the proposed definition was acceptable from the policy perspective; and</p> <p>(b) as an ash handler might be subject to criminal sanction if he/she did not return the ashes in accordance with the relevant requirements under the Bill, members should consider whether it was necessary to provide in the Bill the means upon which an ash handler was to verify a person as a related person when a claim was received from that person.</p>	
001431 - 002219	Chairman Mr CHAN Chi-chuen Administration	<p>Mr CHAN Chi-chuen's enquiry and the Administration response regarding:</p> <p>(a) the reasons for not combining the two elements under the definition of "related person";</p> <p>(b) the basis of requiring a person to live with a deceased person in the same household for at least two years before the date of the death of the deceased person ("the prescribed living period") in order to qualify as a related person;</p> <p>(c) verification of the status of a related person; and</p> <p>(d) the rationale for according a lower priority to the claim for the return of ashes from a related person than that from a relative.</p> <p>The Administration's response that in formulating the definition of "related person", reference had been made to other existing legislation, including the Fatal Accidents Ordinance (Cap. 22) and the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23). Reference to relevant experience would also be drawn with respect to verification of the status of a related person. The future Private Columbaria Licensing Board ("Licensing Board") might draw up guidelines in this regard. The claim from a related person</p>	

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		<p>would have the highest priority if he/she was an authorized representative. The Administration considered its proposed order of priority for claiming for the return of ashes appropriate and therefore would not change it.</p> <p>The Administration's response regarding Mr CHAN's views that the claim for the return of ashes from a partner of the deceased person or a person who was of the same sex as the deceased person and was married to the deceased person in a place outside Hong Kong ("same-sex spouse") should have the same priority as that from a relative. The Administration's advice that in defining "relative", reference had been made to the existing legislation. Competing claims for return of ashes from two or more "prescribed claimants" of the same priority should be determined by the court.</p> <p>Mr CHAN's enquiry regarding whether the Administration would have strong objection to a member's proposed CSA to shorten the prescribed living period to one year.</p> <p>At Mr CHAN's request, the Administration undertook to provide examples of provisions in other legislation concerning the definition of "related person".</p>	Admin (paragraph 2(b) of the minutes)
002220 - 002554	Chairman Dr Priscilla LEUNG	Dr Priscilla LEUNG's expression of support for the CSAs proposed by the Administration under sections 6 and 9(5) of Schedule 5. Her views that the duration of the prescribed living period should be two years so as to tally with other legislation and a relative's claim for the return of ashes should have priority over that of a related person.	
002555 - 002753	Chairman ALA6 Mr CHAN Chi-chuen Administration	<p>ALA6's advice that members should consider how an ash holder could verify a person as a related person, given that an ash handler might be subject to criminal sanction if the ashes were returned to a person in contravention of the relevant requirements under the Bill. Her suggestion that members might make reference to clause 54(1) and consider requiring a person who claimed to be a related person to make a statutory declaration to confirm that fact.</p> <p>Mr CHAN Chi-chuen's enquiry and ALA6's response in relation to the requirement of making statutory declaration by a related person in other legislation. ALA6's advice that while the court might be involved in the relevant proceedings</p>	



Time marker	Speaker(s)	Subject(s)	Action required
		<p>under other legislation, an ash handler had to decide whether to return the ashes to a person who claimed to be a related person.</p> <p>The Administration's advice that in the case of other legislation, a person who claimed to be a related person could be required to make a declaration.</p> <p>The Chairman's enquiry and the Administration's response regarding the reasons of not providing the requirement to make a statutory declaration by a related person. The Administration's advice that the requirement might be covered by the guidelines issued by the Licensing Board.</p>	
002754 - 003225	<p>Chairman Mr Nathan LAW ALA6 Administration</p>	<p>Mr Nathan LAW's enquiry and ALA6's response regarding whether there were any conflicts between the CSAs proposed by the Administration in relation to "related person" and the one proposed by Dr Fernando CHEUNG concerning the definition of "relative". ALA6's advice further that the CSA proposed by Dr Fernando CHEUNG would have an implication on the operation of clause 54.</p> <p>Mr LAW's enquiry and the Administration's response regarding whether the Administration would accord the same priority to claim for the return of ashes from the partner or the same-sex spouse of a deceased person and that from a relative of the deceased person.</p> <p>Mr LAW's view that the Administration's CSAs should also cover same-sex spouse.</p>	
003226 - 003747	<p>Chairman Dr Priscilla LEUNG Administration ALA6</p>	<p>Responses of the Administration and ALA6 to Dr Priscilla LEUNG's enquiry regarding the punishment for not returning ashes in accordance with the relevant requirements under the Bill by an ash handler stipulated in clause 72. The Administration's explanation of the due diligence defence provided for in the common law.</p>	
003748 - 004203	<p>Chairman Administration</p>	<p><u>Schedule 1 (Item 2 of Annex 1 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
004204 - 004934	<p>Chairman Administration ALA6</p>	<p><u>Clause 39 and new provisions (Item 3 of Annex 1 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>ALA6's advice that members should consider whether the powers proposed to be given to the Licensing Board under new clauses 39(2A) and 40A(3)(b) were acceptable from the policy perspective.</p> <p>The Administration's advice of the justifications for the proposed empowerment. Members raised no objection to the Administration's proposal.</p>	
004935 - 005105	Chairman Administration	<p><u>Section 2(1) of Schedule 3 (Item 1 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
005106 - 005627	Chairman Administration	<p><u>New provisions (Item 2 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
005628 - 010448	Chairman Administration Deputy Chairman Mr CHAN Chi-chuen	<p><u>Section 9 of Schedule 5 (Item 3 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p> <p>Enquiries of the Deputy Chairman and Mr CHAN Chi-chuen and the Administration's response regarding meanings of ashes and a container of ashes. The Administration's advice that it would fine-tune the meaning of "related item" and make it clear that the definition of "ashes" would cover a container of such ashes.</p>	Admin (paragraph 2(c) of the minutes)
010449 - 011203	Chairman Administration	<p><u>Clause 52 (Item 4 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
011204 - 011547	Chairman Administration	<p><u>Clause 66(3) and (4) (Item 5 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>The Administration's briefing on its proposed CSAs.</p>	
011548 - 013026	Chairman Administration ALA6 Mr LEUNG Che-cheung	<p><u>Relevant clauses (Item 6 of Annex 2 to LC Paper No. CB(2)986/16-17(01))</u></p> <p>ALA6 drew members' attention that the Administration's proposed amendments set out in item 6(a) of Annex 2 to LC Paper No.</p>	

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		<p>CB(2)986/16-17(01) involved a policy change. She also invited members to consider whether it was necessary to include in the Bill the term of appointment and resignation arrangements of members of the committees appointed by the Licensing Board.</p> <p>At the Chairman's request, the Administration explained the justifications for its proposed amendments to the relevant clauses and non-provision of the term of appointment and resignation arrangements for members of the committees appointed by the Licensing Board in the Bill.</p> <p>The Chairman's enquiry and the Administration's response in relation to enlarging the membership size of the Licensing Board.</p> <p>The Administration's response to Mr LEUNG Che-cheung's enquiry that appeals against the decisions of the Licensing Board would be handled by the Private Columbaria Appeal Board.</p> <p>Mr LEUNG Che-cheung's enquiry and the Administration's response regarding the differences in the scope of "消防" and "防火" and the reasons for replacing the words "消防" by "防火" in the Chinese text of section 3(1)(a) of Schedule 2.</p> <p>Completion of consideration of the CSAs proposed by the Administration.</p>	
013027 - 013213	Chairman Administration	<p>Noting that the CSAs proposed by the Administration were subject to further fine-tuning, the Chairman requested the Administration to provide a timetable for submitting the final version of its proposed CSAs for members' consideration.</p> <p>The Administration's response that only textual amendments would be made to the CSAs and the final version of the CSAs would be submitted to the Bills Committee before the Bills Committee submitted its report to the House Committee ("HC").</p> <p>Given the Administration's advice that only textual amendments would be made to its proposed CSAs, the Chairman suggested that members' views on the final version of the CSAs proposed by the Administration should be sought by circulation. ALA6 was requested to give her</p>	Admin (paragraph 2(d) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		views, if any, on the legal or drafting aspects of the final version of the CSAs proposed by the Administration. Members agreed.	
013214 - 015024	Chairman Mr SHIU Ka-chun Administration Mr CHAN Chi-chuen Mr Tommy CHEUNG Mr LEUNG Che-cheung Dr Priscilla LEUNG Dr KWOK Ka-ki ALA6 Dr Junius HO Dr LAI Siu-lai Mr Nathan LAW	<p><u>Draft CSA proposed by Dr Fernando CHEUNG and the Administration's response to Dr CHEUNG's proposed CSA</u></p> <p>On behalf of Dr Fernando CHEUNG who was absent from the meeting, Mr SHUI Ka-chun briefed members on the CSA proposed by Dr CHEUNG which was set out in LC Paper No. CB(2)986/16-17(02). The Administration briefed members on its response to the CSA proposed by Dr CHEUNG as set out in LC Paper No. CB(2)999/16-17(01).</p> <p>Mr CHAN Chi-chuen's enquiry and Mr SHIU Ka-chun's response that Dr Fernando CHEUNG had indicated his intention to request the Bills Committee to move his proposed amendment.</p> <p>Expression of views by Mr Tommy CHEUNG, Mr LEUNG Che-cheung, Dr Priscilla LEUNG, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Junius HO, Dr LAU Siu-lai and Mr Nathan LAW on the amendment proposed by Dr Fernando CHEUNG.</p> <p>ALA6's response to Dr KWOK Ka-ki's enquiry regarding the application of the CSA proposed by Dr Fernando CHEUNG to other legislation.</p> <p>The Chairman put the request for the Bills Committee to move the CSA proposed by Dr Fernando CHEUNG ("the request") to vote. Dr Priscilla LEUNG claimed a division to the votes.</p> <p>Five members including Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Mr SHIU Ka-chun, Mr Nathan LAW and Dr LAU Siu-lai voted in favour of the request. Nine members including Mr Tommy CHEUNG, Mr WONG Ting-kwong, Dr Priscilla LEUNG, Mr LEUNG Che-cheung, Ms Alice MAK, Mr POON Siu-ping, Dr Junius HO, Mr HO Kai-ming and Mr LUK Chung-hung voted against the request. The Chairman declared that Dr Fernando CHEUNG's proposed CSA would not be moved by the Bills Committee.</p>	
015025 - 015048	Chairman Mr CHAN Chi-chuen	Mr CHAN Chi-chuen indicated that he would consider whether to propose CSAs to further amend the Administration's proposed definition	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		of "related person" and the priority of claims.	
<i>Agenda item II - Any other business</i>			
015049 - 015305	Chairman Ms Alice MAK Administration	Dates for the Bills Committee to make a verbal report on its deliberations to HC, resumption of the Second Reading debate on the Bill and giving notice to move CSAs, if any, to the Bill.  At Ms Alice MAK's request, the Administration undertook to provide a paper detailing its response to the issues raised in Ms MAK's letter to the FSEH Panel before 1 April 2017.	Admin (paragraph 2(a) of the minutes)

Council Business Division 2  
Legislative Council Secretariat  
2 August 2017