

## **ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE**

### **HEAD 49 – FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT Subhead 000 Operational expenses**

Members are invited to recommend to Finance Committee the creation of the following supernumerary post in Food and Environmental Hygiene Department for a period of five years with effect from the enactment date of the Private Columbaria Bill or with immediate effect upon approval of the Finance Committee (whichever the later) –

1 Administrative Officer Staff Grade B  
(D3) (\$180,200 - \$196,700)

### **PROBLEM**

We need to strengthen the staffing support at the directorate level in Food and Environmental Hygiene Department (FEHD) for implementation of the Private Columbaria Ordinance (the Ordinance) which is expected to be enacted before the summer recess of 2016.

### **PROPOSAL**

2. We propose to create a supernumerary Administrative Officer Staff Grade B (AOSGB) (D3) post in FEHD for a period of five years from the enactment date of the Private Columbaria Bill (the Bill) or with immediate effect upon approval of the Finance Committee, whichever is the later, to head a new dedicated branch in FEHD i.e. the Regulation of Private Columbaria Branch (RPCB) to steer and oversee the implementation of the new Ordinance when enacted.

**/JUSTIFICATIONS .....**

## JUSTIFICATIONS

3. The majority of existing private columbaria are in breach of statutory and Government requirements, including planning, land and building requirements. Members of the public, especially residents living near such columbaria are dissatisfied with their presence and the traffic impact and environmental nuisance caused by them. Consumers demand better protection. There have been instances of descendants complaining about the difficulties in enforcing an agreement after the purchaser had passed away, or in getting back the money and the ancestors' ashes after business cessation of a columbarium operator.

4. The Bill introduces for the first time a regulatory regime on private columbaria. As in any transition before the full benefits of a regulatory regime could materialise, dislocations and resistance by vested interests are inevitable. Since the problems have been in existence for the past few decades, we would not under-estimate the time and effort needed to clear up the legacy. In view of the expected complexity and volume of work involved in regularisation and rectification, we consider it necessary to create a supernumerary AOSGB post for five years to head the RPCB and to implement the new Ordinance when enacted. The holder of the proposed post is also expected to take up chairmanship of the Private Columbaria Licensing Board (the Licensing Board) to be set up under the Ordinance to determine applications for licences and other specified instruments.

### Major Responsibilities of the RPCB

5. The new RPCB would have an establishment of about 50 non-directorate staff<sup>1</sup>, comprising a Licensing Board Secretariat, a Licensing Team, and an Enforcement Team.

#### *Licensing Board Secretariat*

6. A statutory Licensing Board will be set up under the new Ordinance to determine applications for licence, exemption or temporary suspension of liability (TSOL), to issue guidelines and code of practice about the operation and management of columbaria, and to impose terms and conditions on the specified instruments as it thinks appropriate. The proposed AOSGB post (to be referred to as 'Head(RPCB)' hereinafter) will chair the Licensing Board and supervise the work of the Licensing Board Secretariat which services the Licensing Board. The

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<sup>1</sup> These include 43 new civil service posts and seven posts to be redeployed from the existing Cemeteries and Crematoria (Special Duties) Team of FEHD upon the establishment of the RPCB.

Secretariat will also assist the Licensing Board in formulating its rules and procedures, handbook and guidelines, declaration of interest arrangements, prepare meeting papers and minutes, and make arrangements for conducting Board meetings.

### *Licensing Team*

7. The Licensing Team will support the Licensing Board in discharging its statutory functions. In particular, the Team will carry out administrative work relating to the handling of applications for licence, exemption and TSOL, including –

- (a) formulating application guidelines, application forms, management plan guidelines, forms of specified instruments, sample agreement templates for sale/lease of niches, as well as guidelines for maintaining a register of such agreements and a register on interment and disinterment of ashes etc.;
- (b) conducting sessions to brief prospective applicants on the eligibility criteria and procedures for lodging applications;
- (c) formulating protocol and operation manual with relevant bureaux and departments to put in place proper procedures for processing applications received in a co-ordinated manner;
- (d) vetting the applications from an environmental hygiene perspective and co-ordinating inputs from relevant bureaux and departments. The latter covers matters including town planning, land use, building and fire safety, rights to use the premises, management plan, plans covering ash interment layout, ash interment capacity, ash interment quantity etc.;
- (e) conducting on-site inspections as necessary to check factual accuracy of the information submitted in the applications;
- (f) making recommendations on any terms and conditions to be attached to the specified instruments to be granted by the Licensing Board, in consultation with relevant bureaux and departments; and
- (g) handling enquiries and complaints from stakeholders.

8. The above duties are complicated, contentious and voluminous for the following reasons –

- (a) The applications for licences have to comply with a range of requirements relating to town planning, lands, building safety, fire safety, rights to use premises, etc. According to the information

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gathered by the Development Bureau (DEVB) as well as the data received under the Notifications Scheme<sup>2</sup> administered by FEHD, the majority of existing private columbaria do not fully comply with these requirements. The relevant regularisation/rectification work is expected to involve complex procedures and disputes;

- (b) We expect significant conflict of interests among different stakeholders, particularly between the private columbaria operators and residents nearby. Resolving the conflicts would not be easy, given the financial stakes involved and residents' understandable concern about their living environment. Also implicated would be the interests of the consumers who may be affected by the cessation of columbarium operations. In addition, we would not wish to under-estimate the possible reactions of land/premises owners whose right to take possession of property may be affected by the ash disposal procedures upon cessation of columbarium operations; and
- (c) The information gathered by the Government so far indicates there are at least around 140 private columbaria in operation<sup>3</sup>. We envisage that, soon after the new Ordinance comes into operation, the majority of these existing private columbaria will submit applications to the Licensing Board for different specified instruments so that they could continue their operation. This involves a huge amount of meticulous work relating to vetting, coordinating with other departments and outside parties, conducting inspections, handling enquiries, complaints, appeals or even judicial reviews. Some vetting may also necessitate verification of the legality of actions taken/instruments entered into decades ago. As there are conflicting interests among different stakeholders in the Licensing Board's decisions on the applications for specified instruments and the issues involved are complex and sensitive, the Head(RPCB) will have to closely supervise and give steer throughout the process to ensure that issues

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<sup>2</sup> Upon introduction of the Bill into the Legislative Council on 25 June 2014, a Notification Scheme was launched administratively to allow the Government to obtain a fuller picture of the overall landscape and to provide the Licensing Board with some reference in assessing the pre-Bill status of an applicant in future. As at June 2015, a total of 140 private columbaria joined the Notification Scheme. Among them, 136 columbaria were on the 'Information on Private Columbaria' published and updated by DEVB (DEVB's List). In percentage terms, this represents about 96.5% of the 141 private columbaria (excluding private cemeteries) on DEVB's List. Another four are outside DEVB's List.

<sup>3</sup> In total, 385 000 niches with interred ashes are reported by the 140 columbaria on the Notification Scheme. Amongst these, 312 000 niches with interred ashes are reported by 88 columbaria claiming to be dated columbaria. The above aggregate figures of 385 000 niches and 312 000 niches have not reflected the data of one small-scale dated columbarium which provided incomplete data.

involving other bureaux and departments which need resolution at a senior level could be handled efficiently and effectively while enquiries, complaints, appeals and judicial reviews are handled properly.

### *Enforcement Team*

9. The Enforcement Team in the RPCB will undertake enforcement work against the operators of private columbaria who contravene provisions in the Ordinance, particularly in respect of –

- (a) sale of niches or interment rights without a licence after the Ordinance comes into operation;
- (b) abscondment without having properly disposed of ashes in their possession according to the manner prescribed in the Ordinance;
- (c) continued operation without applying for specified instruments after the expiry of the grace period<sup>4</sup> specified in the Ordinance;
- (d) continued operation after their applications for new issue or renewal of licence, exemption and TSOL (as the case may be) have been rejected and appeals, if lodged, dealt with; and
- (e) failure to comply with the terms and conditions imposed by the Licensing Board.

The work on collection of evidence, liaison with legal advisors and prosecution involving summary conviction or indictable conviction is, by nature, time-consuming and complex.

10. While the primary responsibility for proper disposal of ashes kept by a private columbarium rests squarely with the columbarium operator concerned<sup>5</sup>, the Enforcement Team will need to be proactive in ensuring that this is done and to keep information on ash disposal by columbaria. Close monitoring of the follow-up actions taken by private columbarium operators is needed to minimise the risks of abrogation of responsibility. In respect of genuine cases of unclaimed ashes upon business cessation of a columbarium operator, the RPCB of the FEHD

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<sup>4</sup> This is subject to clause 21(2) of the Bill, which provides that the Licensing Board may consider applications for specified instruments made out of time

<sup>5</sup> Any government act to handle ash disposals would inevitably involve the use of limited public resources. This should only be done sparingly with respect to ashes that remain unclaimed after conscientious and thorough attempts by the operators to relocate the ashes and contact the surviving relatives and friends of the interred. Otherwise, significant moral hazard would result – after all, the purchase of niches is a commercial transaction between two private parties, with the columbarium operators reaping not insubstantial financial returns.

has to pick up the pieces. This could involve application to the Court for occupation orders and the consequential need to handle court hearings and submissions by land owners. At the same time, the RPCB would also need to provide temporary storage for the ashes while renewing efforts to contact the descendants of the interred notwithstanding the likely paucity of personal data on the interred in FEHD's possession. Where there is evidence of abrogation of responsibility by private columbarium operators, the RPCB may also need to instigate prosecution. Work relating to unclaimed ashes involves not only stringent statutory and administrative procedures as well as meticulous efforts, but also respect for the deceased and sensitivity for the feelings of the descendants. The Enforcement Team may also be required to resolve disputes among family members in the event of competing claims for ashes and associated articles deposited in the niches.

11. In sum, the ash disposal procedure could be highly complicated as it involves personal data of claimants, court procedures on occupation orders and claiming of ashes and items displaced from the niches. Also, it could become a sensitive issue when we come to the final disposal of unclaimed ashes. If many columbaria cease operation, it could take a long time (could be in terms of years) for FEHD to handle all the ashes. In view of the sensitive nature of ash disposal and likely significant concerns of the family members of the deceased persons, it is necessary for the Head(RPCB) to closely supervise and steer the enforcement work and the handling of disputes and complaints from parties concerned.

### **Major Responsibilities of the Head(RPCB)**

12. We consider that the RPCB should be led by a sufficiently senior directorate officer who possesses the necessary leadership skills, administrative experience, strategic vision and political acumen to steer through the complicated, contentious and demanding portfolio and the wide range of issues outlined above. We propose to create a supernumerary post of Head(RPCB) post at the AOSGB rank for five years to oversee the implementation of the new Ordinance.

13. Head(RPCB) will provide overall strategic direction to the RPCB and oversee all aspects of its work. This includes putting in place the operational framework, procedures, guidelines and manpower structures for regulation of private columbaria; chairing the Licensing Board to consider and determine the merits of applications from private columbaria for licence, exemption and TSOL; providing steer for an effective enforcement strategy against breaches of the Ordinance; and overseeing plans for ash disposal in the prescribed manner, etc. The holder of the post will lead the RPCB in dealing with sensitive and complex issues arising from compliance with various eligibility requirements, challenges from the operators/applicants against various aspects of the regulatory work, complaints from other stakeholders such as nearby residents and claimants of

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displaced ashes. The new post will help ensure effective communications with stakeholders and high-level co-ordination among relevant bureaux and departments in furtherance of the objectives and functions of the new regulatory regime vis-à-vis private columbaria. Head(RPCB) will report to the Director of Food and Environmental Hygiene. The duty list of the proposed supernumerary AOSGB post is at Enclosure 1.

Encl. 1

14. On the duration of the proposed Head(RPCB) post, we expect that it will take the Licensing Board and the RPCB several years to handle the applications for licence, exemption and TSOL from private columbaria that have been in existence before the new Ordinance comes into operation. On current planning, the Licensing Board would start to receive applications from private columbaria upon completion of the necessary preparation (which would likely take a few months after the enactment of the Ordinance). Existing private columbaria would then be given around three months to file their applications. Eligible applicants currently not meeting the land use, planning, building or other statutory requirements but fulfilling certain specified criteria would be granted a TSOL, initially for up to three years (and extendable, where justified, by up to another three years), to allow them to pursue regularisation or rectification with relevant Government departments before being granted a licence or exemption as the case may be. This regularisation or rectification process would involve complex procedures and disputes, such as applications to the Town Planning Board for changes in land use and/or planning parameters; discussions with the District Councils; traffic impact assessments; assessment of land premium by the Lands Department; assessment of structural safety by authorised persons/registered structural engineers; ascertaining the applicants' rights to use the columbarium premises; and examination of the efficacy of their management plan, etc. As the operation of private columbaria involves huge financial returns, the operators are likely to mount vigorous challenges of every aspect that may frustrate their attempts to seek regularisation/rectification at a lower cost. The possibility of appeals and judicial reviews cannot be ruled out either.

15. Hence, it is expected that it would take at least several years for this regularisation/rectification process to complete; for the Licensing Board to complete determination of the applications for licence or exemption for the pre-Bill columbaria; and for the appeals arising from the Licensing Board's decisions on such applications to be dealt with. However, the exact duration of time that needs to be taken is difficult to estimate at this stage. The picture may become clearer when the first three-year term of the TSOL expires.

**/Non-Directorate .....**

**Non-Directorate Support**

16. To support the work of the proposed AOSGB post, we will create a time-limited Personal Secretary I post and other 42 permanent posts in FEHD. The new RPCB, led by the proposed AOSGB, will be supported by 50 non-directorate officers including seven officers redeployed from the existing Cemeteries and Crematoria Special Duties Team within FEHD. The organisation chart of RPCB is at Enclosure 2.

Encl. 2

**ALTERNATIVES CONSIDERED**

17. We have critically examined whether the duties of the proposed directorate post could be absorbed by the existing two Deputy Directors (DDs) ranked at D3 within FEHD. Having regard to their portfolio and current workload as well as the complexity and huge volume of work envisaged in the implementation of the new Ordinance, we consider it not feasible for the existing DDs to absorb any such additional work without compromising the delivery of their existing duties. The existing and proposed organisation chart of FEHD and the details of the work schedule of the two existing DDs are at Enclosure 3 and Enclosure 4 respectively.

Encls.  
3 & 4**FINANCIAL IMPLICATIONS**

18. The creation of the proposed supernumerary directorate post will incur a notional annual salary cost at mid-point of \$2,290,800. The full annual average staff cost, including salaries and on-costs, is \$3,280,000.

19. The notional annual salary cost at mid-point for the 43 non-directorate new civil service posts is estimated to be \$21,662,040 in a full year and the full annual average staff cost, including salaries and on-costs, is \$28,031,000.

20. FEHD has included sufficient provision in the 2016-17 draft Estimates to meet the costs of the staffing proposal and will reflect the resources required in the Estimates of subsequent years.

**PUBLIC CONSULTATION**

21. On 2 February 2016, we consulted the Legislative Council Panel on Food Safety and Environmental Hygiene on the above staffing proposal. Members supported the creation of the proposed AOSGB post.

/ESTABLISHMENT .....



**ESTABLISHMENT CHANGES**

22. The establishment changes of FEHD for the past two years are as follows –

<b>Establishment (Note)</b>	<b>Number of posts</b>			
	<b>Existing (As at 1 February 2016)</b>	<b>As at 1 April 2015</b>	<b>As at 1 April 2014</b>	<b>As at 1 April 2013</b>
A	15 <sup>#</sup>	15	15	15
B	294	292	289	288
C	10 877	10 876	10 849	10 839
<b>Total</b>	<b>11 186</b>	<b>11 183</b>	<b>11 153</b>	<b>11 142</b>

Note:

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks, the maximum pay point of which is above MPS point 33 or equivalent

C - non-directorate ranks, the maximum pay point of which is at or below MPS point 33 or equivalent

# - As at 1 February 2016, there was no unfilled directorate post in FEHD

**CIVIL SERVICE BUREAU COMMENTS**

23. The Civil Service Bureau supports the creation of the proposed supernumerary AOSGB post for five years. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities required.

**ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE**

24. As the AOSGB post is proposed on a supernumerary basis, its creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

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**Job Description for the Post of  
Head (Regulation of Private Columbaria Branch)**

**Rank** : Administrative Officer Staff Grade B (D3)

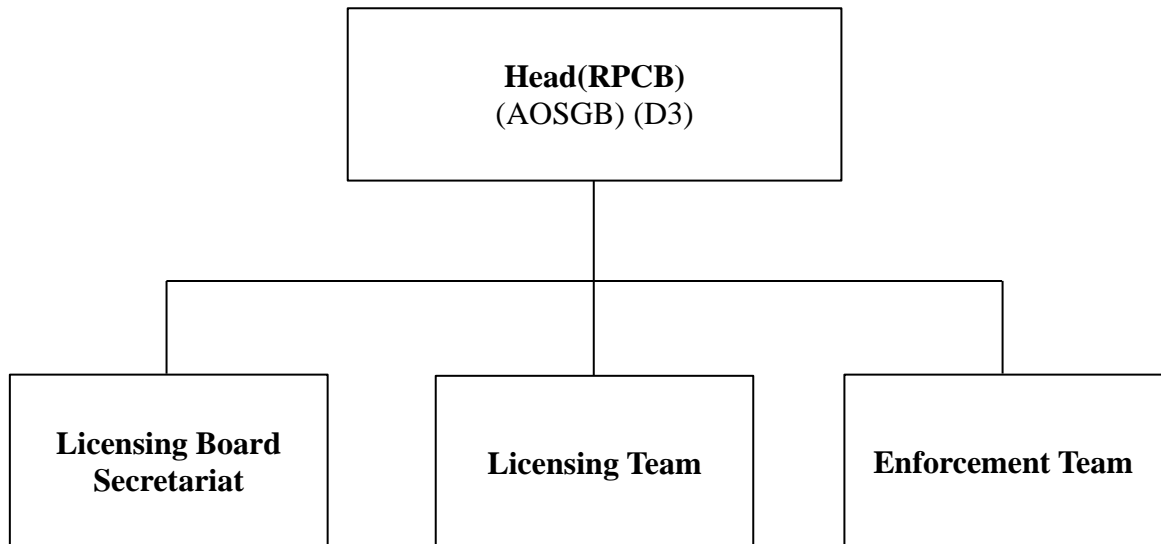
**Responsible to** : Director of Food and Environmental Hygiene

**Main Duties and Responsibilities –**

1. To provide strategic direction to the Regulation of Private Columbaria Branch (RPCB) in the implementation of the Private Columbaria Ordinance.
2. To steer the setting up of the mechanisms, procedures, guidelines and execution manpower structures for the RPCB and the provision of support to the Private Columbaria Licensing Board.
3. To assume the role of chairperson of the Private Columbaria Licensing Board to consider and determine the merits of applications for licence, exemption and temporary suspension of liability as well as the transfer and renewal of and variation of conditions in such specified instruments made under the Private Columbaria Ordinance.
4. To oversee the enforcement actions against illegal private columbaria and other breaches of provisions in the Private Columbaria Ordinance.
5. To oversee compliance with the statutory requirements and prescribed procedures for ash disposal by the private columbaria under the Private Columbaria Ordinance and the implementation of the ash disposal procedures by the RPCB.
6. To steer the RPCB in dealing with sensitive and complex issues regarding ensuring compliance with various eligibility requirements, challenges from the operators/applicants against various aspects of the regulatory work, complaints from other stakeholders such as residents living near private columbaria and claimants of displaced ashes, etc.
7. To co-ordinate matters at a senior level that cut across Bureaux and Departments for the speedy resolution of issues related to the handling of applications and enforcement, etc.
8. To strategise the publicity efforts necessary for effective communication of the regulatory requirements to the public and all relevant stakeholders.

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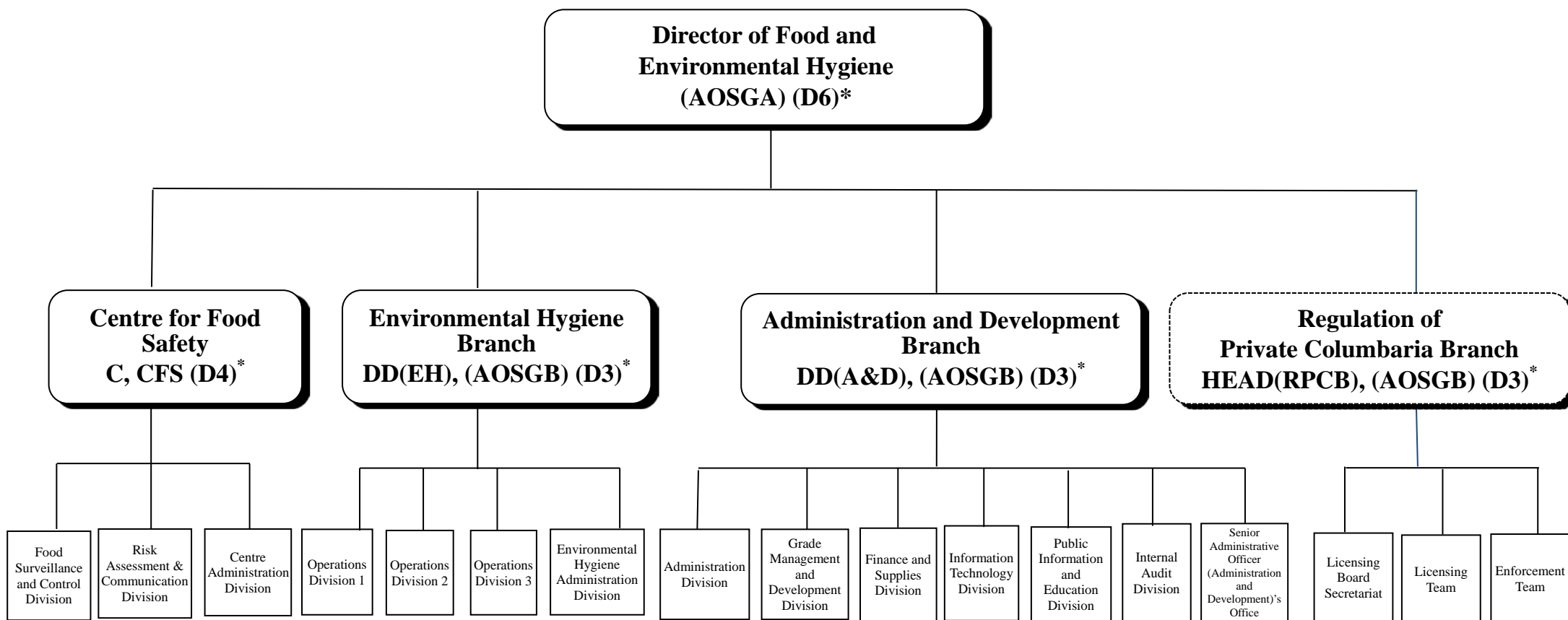
**Organisation Chart of the Planned Regulation of Private Columbaria Branch  
(RPCB) , Food and Environmental Hygiene Department**



**Legend**

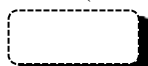
AOSGB      Administrative Officer Staff Grade B

## Organisation Chart of the Food and Environmental Hygiene Department



\* Legend

- AOSGA : Administrative Officer Staff Grade A
- AOSGB : Administrative Officer Staff Grade B
- C, CFS : Controller, Centre for Food Safety
- DD(A&D) : Deputy Director (Administration and Development)
- DD(EH) : Deputy Director (Environmental Hygiene)
- HEAD(RPCB) : Head (Regulation of Private Columbaria Branch)



Proposed creation of supernumerary post for five years

**Major Duties and Responsibilities of  
the Existing Deputy Directors of  
Food and Environmental Hygiene Department**

At present, Deputy Director (Administration and Development (DD(A&D))) supervises seven divisions of the Food and Environmental Hygiene Department. These divisions are responsible for appointments, discipline, personnel services and establishment, complaints management, general administration, planning and development of capital projects, grade management, outsourcing policies and systems, quality assurance, staff training, finance and supplies, public information and education, information technology development and internal audit. DD(A&D) oversees the human resources management matters and development of the professional grades, general support, housekeeping and financial management of the Department; steers capital works (including public columbaria, crematoria, toilets, market improvement, refuse collection points, etc.) and information technology projects; formulates and reviews policies on public markets; and formulates policies and strategies relating to the other work of the seven divisions.

2. Deputy Director (Environmental Hygiene) (DD(EH)) directly supervises three operations divisions which oversee district environmental hygiene operations and facilities in Hong Kong, Kowloon and the New Territories and one environmental hygiene branch administration division. The schedule of duties of DD(EH) spans extensively across a wide range of areas, including the strategic management of hawker control, public markets and public cooked food markets; of cemeteries, crematoria and columbaria; of slaughterhouses; of food businesses, trades and liquor licensing; of environmental hygiene services which cover street cleansing, pest and rodent control and collection of domestic wastes and recyclables; planning of enforcement operations against illegal outside seating by restaurants, illegal shop front extensions, unauthorised display of non-commercial publicity materials, fly-tipping, dripping from air-conditioners and water seepage in private buildings; and oversight of influenza/coronavirus disease related matters.

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