

**For Discussion  
on 11 December 2012**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Private columbaria – Outcome of Second  
Consultation and Way Forward**

**Purpose**

This paper briefs Members on the legislative proposals for regulating private columbaria based on the outcome of the second public consultation on the proposed licensing scheme for private columbaria, as well as the further research we undertook into the subject.

**Outcome of the Second Consultation**

2. The Food and Health Bureau (FHB) launched the second public consultation in December 2011 for three months<sup>1</sup>. We proposed to introduce a statutory licensing scheme (the licensing scheme) under a new Private Columbaria Ordinance (the Ordinance). We acknowledged that private columbaria played an important role in the market, both in terms of supply, and more importantly, choice of niches and related services. Views collected from the consultation indicated general support for taking forward the licensing scheme and the proposed regulatory framework therein.

3. Apart from the over 150 written submissions from individuals and organisations, a lot of constructive feedback came through different channels, including the relevant Legislative Council Panel, the Town Planning Board, the Consumer Council and advisory bodies (e.g. the Advisory Council on Food and Environmental Hygiene), all 18 District Councils, various concern groups and representatives of the trade. Set out below are the salient features of the proposed licensing scheme during the second consultation and the key views expressed thereon.

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<sup>1</sup> FHB launched the first public consultation in July 2010 for three months on review of columbarium policy. The public expressed strong support for a licensing scheme, but views were divergent over the scope and intensity of regulation and the arrangements for long-existing private columbaria.

*(a) Proposed Licensing Scheme*

4. We propose to set up a statutory Private Columbaria Licensing Board (the Licensing Board) as the licensing authority. The Secretary for Food and Health (SFH) would be the appointment authority who would ensure a balanced mix in the composition.

5. We propose to define a “private columbarium” as any place which offers to store human cremains, but which is not built and / or operated / maintained by the Government. This would include those run by charitable organisations as well as religious institutions, irrespective of whether the storage of cremains in niches is (a) long term or temporary; or (b) at a charge or not. Those in existence before enactment of the Ordinance would come under the scope of this definition. The keeping of human cremains of a limited number of deceased family members at home would normally not be covered by this definition. Views collected reflected no major disagreement with this definition.

6. In considering a licence application, the Licensing Board would have to be satisfied, among other things, that granting the licence would not be contrary to public interest. Such public interest considerations might include the overall supply of niches in the territory, views from residents or district bodies, as well as the interests of patrons of columbaria which came into existence before the commencement of the licensing scheme. The Food and Environmental Hygiene Department (FEHD) would be the executive arm and enforcement agency of the Licensing Board. On these proposals, some respondents hoped that the Government would ensure that the impact of private columbaria on nearby residents and the environment could be minimised. Others opined that the interest of those who had already purchased niches should be catered for.

7. For new private columbaria which come into being after the commencement of the licensing scheme, we would require the operator to operate on self-owned premises. This is to ensure long-term occupation of the premises to safeguard the interest of consumers. For private columbaria which existed before the commencement of the licensing scheme, while it is preferable that this be operated on self-owned premises, for those that were not run on self-owned premises, the operator would be required to prove that he has the right to continue to use the premises for at least five more years. All operators would be required to comply with other statutory and Government requirements over town planning, building and fire safety, environmental hygiene, environmental protection, as well as the land lease conditions and are not illegally occupying any Government land. The

Licensing Board, when granting the licence, would impose appropriate licensing conditions on aspects such as protecting consumers' interest and minimising nuisance to the neighbouring community. Breach of licensing conditions might lead to suspension or cancellation of licence. In addition, the Licensing Board would promulgate a Code of Practice (CoP) on aspects such as fire prevention and staff training to guide the licensees. For these proposed features, some respondents preferred most, if not all, of the licensed private columbaria would operate on self-owned premises to safeguard interest of consumers. There was wide support for the requirement for a proper contract between the operator and the consumer.

***(b) Proposed Exemption from Licensing Scheme***

8. Adhering to the principle of proportional and reasonable regulation, we consulted the public on whether three categories of private columbaria should be exempted from the licensing scheme.

9. The first category is private columbaria run by the Board of Management of the Chinese Permanent Cemeteries (BMCPC) and other private columbaria operating within private cemeteries listed under Schedule 5 to the Public Health and Municipal Services Ordinance (Cap. 132), since they are already regulated under the Private Cemeteries Regulation (Cap. 132 BF), with the BMCPC being further governed by the Chinese Permanent Cemeteries Ordinance (Cap. 1112). There is no need for them to come forward to apply to the Licensing Board for exemption.

10. The second category is undertakers of burials, since these undertakers are already regulated under the Undertakers of Burials Regulation (Cap. 132CB). The storage of cremains in their premises is temporary in nature and forms part of their one-stop after-death services. They could, upon application to the Licensing Board, be exempted from the licensing scheme, subject to any management or mitigation measures prescribed by the Licensing Board.

11. The third category is long-existing columbaria -

- (a) we advocate the pursuit of regularisation as the primary route for long-existing private columbaria which do not fully meet prevailing statutory and Government requirements to gain long-term legitimacy for their continued operation;
- (b) there was clear public support during the first public consultation for long-existing private columbaria which did not fully meet prevailing statutory and Government requirements to

seek regularisation where appropriate from relevant authorities pending the introduction of the proposed licensing scheme. That said, views had also been expressed that a pragmatic way to deal with the historical legacy problems of certain long-existing private columbaria was called for. In order not to upset the final resting place of the deceased, some respondents suggested that consideration be given to empowering the authorities to exercise discretion (i.e. exemption on a permanent basis from the licensing scheme) towards certain private columbaria which met specific criteria but which were not in compliance with all the relevant statutory and Government requirements. In their view, private columbaria to be accorded such treatment should include those which had existed for a long time. However, members of the public who lived in the vicinity of these columbaria might have a different view; and

- (c) with an open mind, we invited views from the public during the second consultation as to whether the proposal should be pursued and if so what should be the criteria for exempting certain private columbaria from the licensing scheme. We were of the view however that under no circumstances should private columbaria which posed obvious or imminent danger in terms of building and fire safety be exempted from the licensing scheme. Besides, the criteria for exempting certain private columbaria should be clearly stated and sufficiently stringent so as to avoid abuse. In any case, in exercising discretion to exempt certain private columbaria from the licensing scheme, the Licensing Board should still be empowered to impose conditions which might, among other things, require the columbaria to contain their operation to the extent of the number of niches sold before a certain date. Sale of new / unoccupied niches might have to be frozen, and be prohibited forthwith.

12. On the above exemption proposals in paragraphs 9 and 10, respondents generally regarded them reasonable, although some opined that licensed undertakers to be exempted should be required to undertake measures to minimise the nuisance caused to nearby residents due to their service for temporary storage of cremains. On the exemption proposed for dated columbaria in paragraphs 9 to 11, some regarded this as a pragmatic way out, while others considered it unfair to exempt columbaria which were unauthorised in the first place.

*(c) temporary suspension of liability from the licensing scheme for existing private columbaria*

13. The purpose of proposing temporary suspension of liability is to enable existing operators to continue maintaining the operation of their columbaria while working to secure full compliance with the licensing requirement(s) which they could not fully meet at the time when the licensing scheme comes into operation. Upon commencement of the licensing scheme, existing columbaria which are not exempted according to the arrangements in paragraph 11 above but which have yet to comply fully with the licensing requirements might apply to the Licensing Board for temporary suspension of liability. Depending on whether the private columbaria in question have a reasonable prospect of fully meeting the licensing requirements within a reasonable period of time, the Licensing Board has full discretion in deciding whether to grant or extend such temporary suspension of liability, and if so, the period of such and the conditions to be attached after having considered all relevant factors, including the wider public interest, subject to such columbaria not posing obvious or imminent danger in terms of building and fire safety. Temporary suspension of liability would normally be a one-off situation. Only in exceptional cases would the Licensing Board consider, upon application, granting extension to such temporary suspension of liability. Private columbaria which have applied for or been granted temporary suspension of liability or such extension should freeze the number and sale of their new / unoccupied niches. The whole scheme of temporary suspension of liability is intended to be a transitional measure to be phased out at an appropriate time, taking into account the overall supply of columbarium niches in the market. Some respondents considered it appropriate to allow unauthorised private columbaria a reasonable period of time to apply for regularisation. Others objected to the proposed mechanism, on the ground that the columbaria should have sufficient time to apply for regularisation before commencement of the new legislation. Yet some other respondents suggested the mechanism be tightened up to prevent abuse.

14. A detailed summary of the mainstream views collected during the second consultation is at Annex. It can be seen from Annex that while stakeholders were in general positive towards the proposed regulatory framework as proposed above, different respondents also raised various concerns. There were concerns that the proposed licensing requirements might create compliance burden and financial difficulties for private columbaria. Advocates who stressed the importance of respecting the arrangements already entered into under traditional customs for the deceased cautioned against any moves that would upset the resting place of the

deceased. Advocates who preached protecting the rights of people living in close proximity to these columbaria were against exempting dated columbaria.

15. In the light of the views collected, the Government has been carefully deliberating the details of the licensing scheme. In parallel, we have also completed another round of visits to private columbaria which appear on the list of “Information on Private Columbaria”<sup>2</sup> published by the Development Bureau to gain a deeper understanding of their operation. Based on such deliberation and further information gathered, we have come up with a more detailed framework of the proposed licensing scheme, and commissioned a Business Impact Assessment Study, with a view to finalising a set of regulatory requirements which are reasonable, practicable and enforceable.

## **Way Forward**

### ***(a) General***

16. If all goes well, the finalised set of regulatory requirements will be encapsulated in a new Bill, the Private Columbaria Bill, which we aim at introducing into LegCo in the last quarter of 2013. The objectives of the Bill would be to regulate private columbaria through a licensing scheme to –

- (a) ensure compliance with all relevant statutory and Government requirements. These include the land lease, statutory town planning, building safety and fire safety as well as environmental and traffic requirements;
- (b) ensure a sustainable mode of operation supporting a reasonable standard of service, management and maintenance; and
- (c) enhance protection of consumer interests. This covers both the rights of the deceased who had paid for the niches before death and the purchasers of niches earmarked for future use by themselves and/or their relatives.

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<sup>2</sup> In order to provide information to the public in a more systematic manner before the licensing scheme is to be introduced, the Government has in the meantime arranged to publish town planning and land/lease information on the private columbaria made known to the Planning Department and/or the Lands Department.

***(b) General Framework***

17. We propose that the Bill should provide for the following –
- (a) a licensing mechanism, including requirements that must be fulfilled in order to obtain a licence and application procedures;
  - (b) exemption from having to obtain a private columbarium licence;
  - (c) temporary suspension of liability arising from the operation of private columbaria without a licence or an exemption, subject to application and conditions;
  - (d) other provisions for the purpose of the Ordinance, for example:
    - (i) enabling provisions for setting up a Licensing Board, covering its composition, functions and powers;
    - (ii) provisions that prescribe the executive and enforcement arms of the Licensing Board, together with their powers; and
    - (iii) provisions that cover the appeal mechanism open to parties aggrieved by the decisions of the Licensing Board, transitional arrangements, sanctions and penalties, etc.

18. No person may be engaged in the operation of a private columbarium in Hong Kong, unless such operation is covered by a licence, an exemption or temporary suspension of liability. Any person who without reasonable excuse contravenes the above commits an offence, and is liable on conviction to a fine and to imprisonment.

***(c) Private Columbaria Licensing Board***

19. The Licensing Board should be the licensing authority. The functions of the Licensing Board are to decide on the merits of applications for (a) a licence; (b) an exemption; or (c) temporary suspension of liability, having regard to all relevant factors which include, among other things, compliance with various regulatory requirements, professional input from relevant disciplines and public interest considerations such as the overall supply of and demand for columbarium niches, views of residents in the district, as well as the interest of patrons of columbaria which came into existence before the introduction of the licensing scheme.

20. Members of the Licensing Board would be appointed by the Chief Executive. Representatives from relevant Government Bureaux and Departments may be invited to attend meetings of the Licensing Board to provide information / expert advice on a need basis. Apart from being the executive arm and secretariat of the Licensing Board, FEHD will also be the enforcement agency in respect of the licensing scheme.

***(d) Licensing Regime***

**(1) Licence**

21. Following commencement of the new legislation, all private columbaria, which are not exempted nor given temporary suspension of liability, shall have to obtain a licence from the Licensing Board for operating their columbaria. A licence for a private columbarium shall be valid for five years, subject to renewal, or any shorter period as the Licensing Board considers appropriate.

22. The following should be required of applicants seeking a licence for private columbarium –

- (a) right to use the premises – Where the application is in respect of a new private columbarium, the place or premises for operation as a private columbarium should be self-owned by the operator. Where the application is in respect of an existing private columbarium which does not run on self-owned premises, the operator will be required to prove that he has the right to continue to use the premises / site involved for at least five years (i.e. the proposed licensing term);
- (b) statutory requirements – the subject premises for operation as a private columbarium shall comply with all statutory requirements such as those relating to town planning (Cap. 131), building safety (Cap. 123), fire safety (Cap. 95, Cap. 502 and Cap. 572), environmental hygiene (Cap. 132) and environmental protection (Cap. 311);
- (c) lease conditions and land occupation – the use and development of the subject premises / site as a columbarium and / or other aspects of the land use should be permitted under the lease conditions. If not, the lease should have been modified first to allow for columbarium use. In addition, there should not be any unlawful occupation of Government land for purposes



relating to the operation of the columbarium; and

- (d) management plan – as part of the requirements of a licence application, the operator should submit to the Licensing Board a management plan for the columbarium covering, among other things, holding capacity for visitors, admission control, traffic and public transport arrangement / management, crowd management, security management, manpower deployment on both peak and normal grave sweeping days; and measures to ensure compliance with a CoP.

23. The Licensing Board may impose licensing conditions, the key examples of which are –

- (a) setting up of a maintenance fund to ensure long term sustainability of the columbarium business ;
- (b) ensuring the proper handling of human cremains deposited with the columbarium in question upon business cessation, and adopting prescribed measures to guard against failure of performance;
- (c) adherence to the management plan submitted as part of the licence application (paragraph 22 above);
- (d) the licensee entering into contract with consumers;
- (e) keeping a register of all the niches and the relevant buyers for inspection by enforcement officers;
- (f) submission of biennial report to certify building safety;
- (g) compliance with the CoP promulgated by the Licensing Board; and
- (h) no variation to the number and location of niches as approved by the Licensing Board, unless the Licensing Board agrees.

## **(2) Exemption**

24. The columbaria situated within private cemeteries specified in Schedule 5 to Cap. 132 would be automatically exempted without conditions.

25. The undertakers of burials whose licences do not debar them from engaging in temporary storage of human remains in the course of providing burial service would be exempted subject to application and conditions to be imposed (e.g. complying with any management and / or mitigation measures imposed).

26. For private columbaria which have been in existence before a cut-off date and which do not pose any obvious or imminent danger in terms of building and fire safety, their operators may apply to the Licensing Board for exemption, provided that the following conditions are met –

- (a) an authorised person as specified certifying the premises as being safe by reference to specified building and fire safety standards;
- (b) ceasing the sale of niches by a certain date; and
- (c) complying with any management and / or mitigation measures to be imposed.

### **(3) Temporary suspension of liability**

27. An operator of an existing private columbarium may apply to the Licensing Board for temporary suspension of liability –

- (a) if he/she is applying for a licence, but cannot fully meet the licensing criteria at the outset and is working towards meeting such criteria; or
- (b) if he/she (an undertaker or an operator of a long-existing columbarium) is applying for an exemption but has yet to be granted such exemption.

28. The Licensing Board will have full discretion in deciding, on the merits of each case –

- (a) whether to give such temporary suspension of liability to a particular operator of a private columbarium, and if so, the period of such suspension and the conditions to be attached; and

- (b) whether, upon application, a temporary suspension of liability which will soon expire should be extended, and if so, for how long.

The Licensing Board will exercise its discretion in consultation with the relevant Government bureaux / departments and after having considered all relevant factors, including the wider public interest. In respect of an application in paragraph 27 (a), it would be up to the operator of an existing private columbarium who has yet to meet all the licensing criteria and is applying for temporary suspension of liability to satisfy the Licensing Board that he / she has a reasonable chance to regularise his / her operation within a reasonable period of time. Relevant conditions which may be imposed for temporary suspension of liability may include requiring the private columbarium operator or licensed undertaker to take concrete remedial actions for managing / mitigating nuisance to the neighbourhood. The operators of private columbaria who have applied for or been given temporary suspension of liability or such extension should freeze the number and sale of their new / unoccupied niches.

*(e) Transition, appeal and sanctions*

29. We tentatively propose that a transition period of 18 months should be introduced from the commencement of the new legislation to allow time for existing columbaria to apply for a licence or exemption or temporary suspension of liability as appropriate. Any aggrieved applicant could appeal to the Municipal Services Appeals Board.

30. During the transition period, unless a licence has been obtained, the person in charge of any existing private columbaria (other than those in private cemeteries listed in Schedule 5 to Cap. 132) would be liable to be prosecuted for operating a private columbarium without a licence if he offers niches for sale, while he would not be prosecuted for merely operating a private columbarium. At the end of the 18-month transition period, the same person would be liable to be prosecuted for operating a private columbarium without a licence even if he does not offer niches for sale, unless the operation of the private columbarium is covered by exemption or temporary suspension of liability. The exemption or temporary suspension of liability would be null and void if the holder of such exemption or temporary suspension offers niches for sale.

31. Apart from the offence of operating a private columbarium without a licence, exemption or temporary suspension of liability as set out in paragraph 18, we would also make it an offence for any person who fails to handle interred human cremains deposited with them properly upon

cessation of business. Anyone who without reasonable excuse contravenes this provision is liable on conviction to a fine and to imprisonment.

### **Advice Sought**

32. The above are the Administration's proposals at this point in time. Subject to any comments from Members and the outcome of the Business Impact Assessment to be carried out, we will finalise the detailed provisions of the draft legislation with a view to introducing the relevant Bill into LegCo.

Food and Health Bureau  
Food and Environmental Hygiene Department  
December 2012

## **Public Consultation on Licensing Scheme for Private Columbaria Summary of Opinions**

On 13 December 2011, the Food and Health Bureau (FHB) published the consultation document on the proposed licensing scheme for private columbaria and launched a public consultation for about three and a half months until 30 March 2012.

2. The consultation document set out a number of detailed proposals relating to the regulatory framework of the licensing scheme for private columbaria. The Government proposed to formulate a new piece of legislation titled the *Private Columbaria Ordinance*, under which all private columbaria (unless exempted) should be subject to regulation under the licensing scheme. A statutory Private Columbaria Licensing Board would also be set up as the licensing authority. The licensing scheme would impose regulation on private columbaria on various aspects, including the right of the columbarium operator to use the premises, compliance with statutory requirements and land lease conditions, management of the columbaria and consumer protection, etc. In addition, the consultation document proposed to exempt those columbaria situated within private cemeteries listed in Schedule 5 to the *Public Health and Municipal Services Ordinance*, as well as undertakers of burials, from the licensing scheme. Arrangements for long-existing private columbaria were also covered in the consultation document. At present, there were many private columbaria which had been operating for years in the market, providing a place for the storage of cremains of deceased family members for many members of the public. However, some of these columbaria did not meet all the statutory and Government requirements and land lease conditions. These columbaria should first of all actively seek regularisation in order to obtain a licence for continued operation and sale of niches under the future regulatory regime. As it took time to apply for regularisation, the licensing regime would provide for arrangements on temporary suspension of liability with the purpose allowing the operators to continue maintaining the operation of the niches already sold while working to regularise their columbaria in order to rectify the irregularities. Private columbaria given exemption or

temporary suspension of liability would still be required to comply with the conditions imposed by the licensing authority, including cessation of sale of their remaining niches, reduction of noise and air pollution, etc. While keeping an open mind about the concept, arrangements and conditions of exemption, the Government would like to gauge public views before proceeding to the formulation of the relevant policy and various details.

3. During the consultation, the Government received over 150 submissions from individuals and organisations through various channels. FHB and relevant officials also widely consulted different sectors of the community and obtained a good deal of constructive views through various channels, including the relevant Legislative Council Panel, the Town Planning Board, the Consumer Council and relevant advisory bodies (e.g. the Advisory Council on Food and Environmental Hygiene), all 18 District Councils, various concern groups, representatives of the trade and a number of relevant stakeholders.

### **Summary of Opinions**

4. A wide range of views and suggestions on various aspects of the licensing scheme for private columbaria were collected. The public and stakeholders from various sectors expressed unanimous support for taking forward the licensing scheme for private columbaria and were in general positive towards the proposed regulatory framework. The mainstream opinions are summarised in the ensuing paragraphs.

#### *Licensing Scheme*

5. The public and various stakeholders generally welcomed the introduction of the licensing scheme to enhance the regulation of private columbaria. While some respondents noted that the supply of columbarium facilities should be geared towards public columbaria, many felt that private columbaria also played an important role in the market in terms of providing choice of niches. Different stakeholders expressed divergent views over the scope and intensity of regulation under the licensing scheme. On the one hand, they hoped the Government would ensure that the impact of private columbaria on nearby residents and

environment could be minimised. On the other hand, they deemed it necessary that the Administration, while imposing effective regulation, should have regard to the interests of those who had already purchased niches, as well as the sustainable development of the trade. There were suggestions that operators providing niches on a tenancy basis or at a monthly rent should be regulated under the licensing scheme. Some members of the local communities considered that both the retail outlets and the agents of private columbaria should be covered under the licensing scheme.

### Composition of the Private Columbaria Licensing Board

6. On the composition of the Private Columbaria Licensing Board (“the Licensing Board”), the views collected were generally supportive of a balanced mix. Some respondents opined that members of the Licensing Board should include district representatives as well as representatives of relevant Government departments and professionals, such that public views could be taken into account when the Licensing Board considered applications from private columbaria for a licence/exemption/temporary suspension of liability. There were also proposals from the trade that members of the Licensing Board should comprise representatives of the trade, consumers and religious bodies.

### Licensing Conditions

7. On the proposed requirements of licence applications and licensing conditions, respondents were by and large of the view that given public expectation of long-term storage of cremains, in future the premises for operation as a private columbarium should be self-owned by the operator, since self-ownership, as opposed to tenancy, provided more assurance of long-term occupation of the premises. Besides, the public in general maintained that private columbaria should be located far away from residential areas and that improvement on the outlook, layout and management of these facilities should be made in order to minimise the nuisance (e.g. noise, air pollution and traffic congestion) to neighbouring residents. Some were of the views that when considering individual applications, the Licensing Board should consult the relevant districts extensively. The public also considered that applicants for a licence

should ensure that their premises were in compliance with all statutory and Government requirements such as those relating to town planning, building safety, fire safety, environmental hygiene and environmental protection, as well as land lease conditions. Some respondents indicated that an applicant for a licence should not contravene the deed of mutual covenant of the relevant building. As the overall supply of and demand for columbarium niches was included as one of the public interest considerations that the Licensing Board would take into account, some expressed concerns about the absence of clearly stated criteria in this regard. There were also suggestions that the Licensing Board should have regard to the applicants' background, financial position and integrity, e.g. whether they were involved in the practice of "violation first, application later" in columbarium development. Some respondents opined that since the supply of private columbarium facilities failed to meet the demand, the Administration should relax the licensing requirements for private columbaria. To enhance consumer protection, most respondents upheld the proposal that operators would be required to enter into contracts with consumers over the ownership/terms of use of niches. Respondents were also largely in favour of the setting up of a maintenance fund to be used for the long-term care and upkeep of the relevant facilities. In this connection, there were suggestions that steps should be taken to ensure that the money under the fund was properly maintained.

### Licensing Period

8. Regarding the proposal for the licensing period to be set at five years, there were views (mainly from the trade) that the licensing period should be extended to provide greater certainty for trade members investing in the operation of private columbarium business. On the other hand, some respondents argued for a shortening of the licensing period so that the Government could exercise regular monitoring to ensure that the operation of licensed private columbarium facilities continued to comply with the statutory and Government requirements and that timely remedial measures could be taken where necessary.



### Arrangements in Case of Cessation of Business

9. As for the proposed arrangements in case of cessation of business of private columbaria, some respondents (including the trade) opined that the Government should provide assistance to affected consumers (such as those who had suffered losses from purchasing niches of unauthorised private columbaria), including considering various means to protect consumer rights, such as requiring the establishment of a compensation fund by private columbarium operators. Some respondents, however, expressed concern that such a practice might in a way encourage the development of unauthorised columbaria or result in operators of soundly operated columbaria having to accept the liability of indemnities for operators of poorly-run columbaria. Thus, unauthorised columbaria failing to comply with the requirements would be able to evade their responsibility. The majority of the respondents agreed that the future legislation should require the licensee to handle interred cremains before he/she ceased operation under different situations. Failure to do so would be an offence. Meanwhile, some suggested that there should be more thorough discussion on handling of the affected cremains.

### Exemption Scheme

10. As regards the proposal for columbaria situated within private cemeteries listed in Schedule 5 to the *Public Health and Municipal Services Ordinance* to be exempted from the licensing scheme without condition and for licensed undertakers of burials to be exempted with conditions, most stakeholders considered such exemption reasonable, given that the former were currently governed by the relevant legislation and that these operators had proven track record in building and operating cemeteries and large scale columbaria while the cremains storage service provided by the latter was temporary in nature, pending the availability of proper niches elsewhere for long-term interment. However, some residents in Hung Hom expressed grave concern about granting licensed undertakers of burials exemption from the licensing scheme. Some suggested that the Licensing Board should require licensed undertakers of burials granted with exemption to take measures to minimise the nuisance being caused to the neighbourhood arising from their temporary storage

services, such as setting a time-limit of storage and the prohibition of burning of joss papers and incense by patrons within the premises and in the vicinity. On the other hand, some owners or residents of the relevant buildings objected to the granting of exemption to licensed undertakers of burials.

11. On the arrangements for long-existing private columbaria, there were divergent views in the community. At meetings of various District Councils, members largely subscribed to a pragmatic way to deal with the long-existing private columbaria, but expressed conflicting stance over the exemption conditions. District Councils with private columbaria in their districts generally expected more stringent exemption conditions. Similarly, some respondents (mainly neighbouring residents of private columbaria) were opposed to allowing certain private columbarium facilities to continue with their operation and urged law enforcement departments to take vigorous enforcement actions against irregularities of the private columbaria in question. Besides, some respondents believed that the exemption scheme would be unfair to those operating their private columbarium facilities in an authorised manner. Various political parties also put forth different views on this issue in their submissions. Some suggested scrapping unauthorised columbaria; some maintained that consideration might be given to replacing exemption with regulation by the issue of different types of licences; and some recognised that the historical legacy of the existing columbaria should be dealt with in a balanced and pragmatic way (such as granting exemption). Meanwhile, other respondents (mainly the trade and those who had already purchased private columbarium niches) were concerned about the possible relocation of cremains, which contradicted the traditional Chinese notion of “letting the deceased rest in eternal peace”. On account of this, they proposed that the long-existing private columbaria should be dealt with in a pragmatic way. They opined that consideration should be given to exercising discretion towards certain existing private columbaria which meet specified criteria but which were not in compliance with all the relevant statutory and Government requirements (e.g. exempting on a permanent basis from the licensing scheme). At the same time, they noted that in any case, the issue of unauthorised columbaria had been in existence for some time, in taking any enforcement action against existing columbaria, the authorities needed to

take into account the shortage of such facilities in the market. In this connection, some respondents submitted that consideration might be given to granting exemption to columbaria which had been in existence for over 10 to 20 years before commencement of the new legislation. Besides, the trade pointed out that if columbaria which had been given exemption or temporary suspension of liability or were applying for a licence were requested to freeze the sale of their unoccupied niches, they would have insufficient funds to remain in operation.

12. Some respondents were of the view that consideration should be given to granting exemption to columbarium facilities run by religious or charitable organisations (e.g. columbaria situated in temples and monasteries), while others held that whether a columbarium was run by religious bodies should not be a criterion for exemption given the difficulty in devising an objective standard and the fact that the operators might change from time to time. Some representatives of the trade advocated early implementation of a “registration scheme for private columbaria” and suggested that a general register of all private columbaria should be centrally publicised by FHB to replace Parts A and B of the Information on Private Columbaria kept by the Development Bureau.

#### *Mechanism for Temporary Suspension of Liability*

13. On the proposed mechanism for temporary suspension of liability, some respondents agreed with allowing unauthorised private columbaria to apply to the departments concerned for regularisation in respect of their operation (e.g. applying for the relevant planning permission and/or lease modification) through established channels and procedures, but pointed out that these unauthorised private columbaria should have had sufficient time to apply for regularisation before commencement of the new legislation. Hence, they either objected to the implementation of the mechanism for temporary suspension of liability or suggested tightening the mechanism in order to guard against abuse. Some respondents, however, considered it appropriate to allow unauthorised private columbaria a reasonable period of time to apply for regularisation. There were also propositions to give temporary suspension of liability to those private columbaria which already met town planning and lands

requirements but had yet to satisfy other requirements (such as environmental requirements), instead of adopting a one-size-fits-all approach in granting the temporary suspension of liability.

### *Penalty and Appeal Mechanism*

14. Some respondents supported the provision for sanctions that had a deterrent effect in the legislation. There were also submissions calling for the establishment of an appeal mechanism for those affected to lodge appeals against the decisions of the Licensing Board.

### *Legislative Timetable*

15. The respondents generally expected the Government to speed up the legislative process for the early introduction of the Bill into the Legislative Council. Many respondents pointed out that the proposed transition period of 18 months was too long and likely to create a lacuna before commencement of the legislation during which unauthorised private columbaria would be able to continue with their development and operation and expedite the sale of niches.

### **Other Views**

16. During the consultation, there were views which suggested that the Government should continue to increase the supply of columbarium facilities to meet the overall public demand; encourage public acceptance of more environmentally friendly and sustainable means of handling cremains; and further strengthen consumer education to better protect consumers who purchased niches in private columbarium facilities.

### **Conclusion**

17. Based on the consultation outcome above, FHB is drafting the relevant legislation. We will exercise prudence in balancing the views of various stakeholders in order to ensure that the scope and level of regulation under the relevant legislation is appropriate and in the overall interests of the community.