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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 11 December 2012**

**Columbarium policy -
Proposed licensing scheme for private columbaria**

Purpose

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the proposed licensing scheme to regulate private columbaria.

Background

Public consultation on columbarium policy and a licensing scheme for privately owned or operated columbaria

2. According to the Administration, it is projected that the annual number of deaths will increase steadily from 43 700 in 2010 to 52 800 in 2020. The annual number of cremations will also rise from 39 200 in 2010 to 49 600 in 2020 correspondingly. With an increasing demand for cremation service, there is also an increasing need for the supply of niches.

3. At present, apart from the eight public columbaria managed by the Food and Environmental Hygiene Department, there are columbarium facilities run by public bodies (e.g. the Board of Management of Chinese Permanent Cemeteries), religious entities and the private sector. According to the Administration, members of the public are relatively less concerned about columbarium facilities

managed by public bodies or religious groups. However, the same may not be true for some privately owned or managed columbarium facilities. It is in this respect that the Administration has proposed a licensing scheme to regulate private columbaria in order to ensure that there will not be a proliferation of unauthorized columbarium facilities.

4. On 6 July 2010, the Government launched a three-month public consultation on review of columbarium policy. In the consultation document, it was suggested that columbarium development should be primarily taken forward in the following directions -

- (a) increasing the supply of columbarium facilities to meet the overall public demand;
- (b) encouraging public acceptance of more environmentally friendly and sustainable means of handling cremains;
- (c) enhancing consumer protection in the choice of private columbarium facilities; and
- (d) enhancing the regulation of private columbaria.

5. According to the Administration, the public and the stakeholders across different sectors in the community broadly endorsed the key concepts and directions of the proposals. While there was also public support for a licensing scheme to enhance the regulation of private columbaria, there were divergent views on the scope and level of regulation under the licensing scheme and the arrangements for pre-existing private columbaria.

6. On 13 December 2011, the Government launched another public consultation on the licensing scheme for private columbaria and the consultation exercise ended on 30 March 2012. The consultation exercise covered a wide range of areas which included introducing a statutory licensing scheme under a new piece of legislation to be entitled "the Private Columbaria Ordinance"; setting up a statutory Private Columbaria Licensing Board as the licensing authority; imposing regulations on the operations and requirements of private columbaria; and proposing temporary suspension from liability for pre-existing private columbaria.

Publication of "Information on Private Columbaria"

7. In order to help members of the public make informed decisions when purchasing niches before the introduction of the proposed licensing scheme, the Development Bureau has published since December 2010 and updated quarterly the Information on Private Columbaria ("the Information") covering private columbaria known to the Government. The Information consists of two parts. Part A sets out private columbaria which are compliant with the user restrictions in the land leases and town planning requirements and are not illegally occupying Government land. Part B includes other private columbaria made known to the Lands Department and Planning Department that do not fall under Part A. Private columbaria under Part B may have been confirmed to be non-compliant with the user restrictions in the land leases and/or statutory town planning requirements and/or illegally occupying Government land or are pending checking for compliance with the relevant conditions for inclusion in Part A. As at September 2012, there were 29 and 52 private columbaria in Part A and Part B respectively.

Deliberations of the Panel

8. The Panel discussed the subject of columbarium policy at a number of meetings between 2009 and 2012 and received views of deputations at two meetings. The deliberations and concerns of members on the proposed licensing scheme to regulate private columbaria are summarized below.

Proposed exemption from the licensing scheme

9. Members noted that during the first public consultation exercise, there was a view that pre-existing private columbaria with niches of a designated number or below or those which had existed for a long time should be exempted from the proposed licensing scheme. In order to avoid possible disputes, some members suggested that the Administration should define the expression of "long time" and specify the designated number of niches provided in the facilities for eligibility for exemption. They expressed worry that if the time span of existence was not defined, operators of unauthorized columbaria might mislead consumers by claiming that they would be exempted from the scheme.

10. The Administration advised that the designated number of niches and the time span of their existence were two possible factors for the consideration of exemption from the proposed licensing scheme. During the first public consultation exercise, there were suggestions that exemption from the proposed licensing scheme should be extended to cover the storage of cremains of family members at home and storage of cremains of monks or believers in the genuine religious institutions. There was also a suggestion that a reasonable period of time should be given to certain pre-existing private columbaria to rectify irregularities. While the Administration was open-minded about the criteria for exemption, it stressed that no exemption from the licensing scheme would be granted to those private columbaria posing obvious or imminent danger in terms of building and fire safety.

11. Some members held the view that exemption should not be granted to those pre-existing private columbaria which had breached statutory regulations or illegally occupied Government land even if they posed no obvious or imminent danger in terms of building and fire safety, as they would not be able to secure compliance with the licensing requirements.

12. Members noted that in the consultation document of the second consultation exercise, it was suggested that certain private columbaria which met specified criteria but were not in compliance with all relevant statutory and Government requirements might be exempted from the future Private Columbaria Ordinance. Some members considered that there was a need to require these private columbaria to be subject to the regulation of the proposed licensing authority in order to enhance consumer protection. According to the Administration, all those columbaria to be exempted from the proposed licensing scheme would still need to conform to the requirements of other legislation such as those related to lands, planning, fire safety and building structure. In order to continue their business, the unauthorized columbaria should regularize any breaches of planning and/or lease terms by seeking the relevant planning permission and/or lease modification. Relevant government departments would continue to take enforcement actions against relevant aspects of private columbaria in accordance with their respective mandate as empowered by the relevant legislation and/or land lease.

13. Some members pointed out that the existence of a private columbarium in the neighbourhood had brought about impact on traffic, noise and environmental nuisance. They expressed grave concern about the proposed exemption of

undertakers of burials from the proposed licensing scheme, as the nuisance posed by their licensed premises to the neighbourhood might get even worse. They also expressed worry that too many exemptions might weaken the effectiveness of the regulation of private columbaria.

Temporary suspension from liability for pre-existing private columbaria

14. Members noted that the licensing authority was proposed to be empowered to approve applications for temporary suspension from liability arising from operating without a licence or an exemption. The purpose was to allow the operators to continue their operation while working to rectify their irregularities with a view to securing compliance with the licensing requirements. However, some members were concerned that this proposed arrangement might encourage operators of pre-existing columbaria, particularly those who were unlikely to secure compliance with the licensing requirements, to rush to sell off their niches during this transition period. They urged the Administration to take appropriate actions during the transition period such as snap shooting the current situation of the pre-existing private columbaria listed in Part B of the Information and disallowing them to further market their niches to new customers.

15. According to the Administration, the licensing authority would decide, on the merits of each case, whether to give such temporary suspension from liability. Applicants for temporary suspension from liability were required to satisfy the licensing authority that they had a reasonable chance to regularize their operation within a reasonable period of time.

Right to use the premises of private columbaria

16. Members noted that under the proposed licensing scheme, new columbaria which came into being after the commencement of the proposed licensing scheme should be operated on self-owned premises by the operators. For pre-existing private columbaria which did not run on self-owned premises, the operators were required to have the right to continue to use the premises for at least five years. Some members questioned whether a term of five years could be considered a long-term commitment in providing columbarium services.

17. The Administration advised that although some pre-existing private columbaria were operating on rented premises, they had a sound track record of business practices and could provide proof on their rights to continue to use the premises/site for at least five years. It was neither reasonable nor pragmatic to cease their business merely because they were not owners of the premises.

Protection of consumers' interests

18. Some members enquired whether the setting up of a maintenance fund would be adopted as a licensing requirement for private columbaria. The Administration advised that there was public concern about the operation of columbaria pertaining to the safety and long term maintenance of the physical structure, particularly those columbaria where most niches had been sold, as their long-term income source was limited and unstable. The Administration, therefore, proposed that an applicant for a licence to operate a columbarium should set up a maintenance fund on separate account to be used exclusively for the repair and maintenance of the columbarium concerned.

19. Some members considered that the proposed licensing scheme did not provide sufficient protection to consumers. Although the proposed scheme would require the licensee to properly handle interred cremains before the cessation of the columbarium operation, consumers would not be entitled to a refund if the operator went bankrupt. They also considered the pre-payment arrangement for a permanent columbarium service unfair to consumers and that columbaria should only be able to impose charges for a maximum of a five-year service.

20. According to the Administration, the proposed licensing scheme would require a licensee to apply for a licence renewal once every five years and the licensing authority would examine whether the columbarium could continuously meet the licensing requirements, which included, among others, the handling of cremains upon business cessation and the setting up of a maintenance fund. The proposed licensing scheme would significantly enhance the protection of consumers' interests.

Legislative timetable

21. Members were concerned about the growing number of private columbaria operating on the land/buildings not permitted for columbaria use.

They expressed worry over the proliferation of unauthorized private columbaria arising from the long lead time for implementing the licensing scheme. Noting that the Administration aimed to introduce the legislative proposal into the Legislative Council ("LegCo") in the fourth quarter of 2013, they considered the time span for the legislative process and the transition period of 18 months to allow time for pre-existing columbaria to apply for a licence/exemption/temporary suspension from liability too long. They urged the Administration to expedite the introduction of the legislative proposal into LegCo.

22. According to the Administration, the legislative proposal for regulating private columbaria touched on a complex social issue with divergent public views and was sensitive given the traditional concepts. The Administration also needed time to draw up details of the requirements for the regularization of existing private columbaria listed in Part B of the Information. Upon the completion of the second public consultation exercise in March 2012, the Administration would commence the drafting of the legislative proposal which would take around 12 months. It was estimated that the legislative proposal could be introduced into LegCo by the end of 2013 at the earliest.

23. The Panel passed a motion at its meeting on 6 July 2010, urging the Administration to expeditiously enact the legislation to provide for a licensing scheme for regulating private columbaria within the Fourth LegCo, and step up its effort in taking enforcement actions to proscribe unlawfully operated private columbaria.

Supply of columbarium facilities

24. Noting that the Administration had formulated a set of guidelines for developers to convert or redevelop industrial buildings into multi-storey columbarium blocks, members sought information on the progress of the implementation.

25. The Administration advised that since the provision of columbarium facilities was not a permitted use of any of the sites in the industrial buildings in urban areas, applications for a planning permission or change of land use should be submitted to the Town Planning Board ("TPB") for development of columbarium facilities on these sites. In processing an application, TPB would take into account all relevant planning considerations, including land use

compatibility, traffic and environmental impacts, as well as views from relevant government departments. TPB would also conduct public consultation on the case in accordance with the statutory procedures laid down in the Town Planning Ordinance (Cap. 131).

Relevant question raised by Member at Council meeting

26. At the Council meeting of 15 February 2012, Hon Tanya CHAN raised a written question concerning private columbaria. The question and the Administration's reply are in **Appendix I**.

Relevant papers

27. A list of the relevant papers on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
6 December 2012

Press Releases

LCQ13: Private columbaria

Following is a question by the Hon Tanya Chan and a written reply by the Secretary for Food and Health, Dr York Chow, in the Legislative Council today (February 15):

Question:

Recently, some members of the public have reflected to me that some of the private columbaria (columbaria) in Part B (List B) (i.e. those columbaria that do not fall under Part A which sets out the columbaria that are "compliant with the user restrictions in the land leases and the statutory town planning requirements and are not illegally occupying government land") in the Information on Private Columbaria published by the Government have withdrawn their applications to the Town Planning Board for revising the planning permissions for land. It is understood that these columbaria continue to operate and are still selling niches to members of the public, which means that these columbaria are operating in breach of the planning permissions granted to them; however, up until now, the Government has not put in place any licensing scheme to regulate the columbaria. It has been learnt that the Lands Department (LandsD) has detected a case of occupation of government land by a columbarium in Tuen Mun, and has also rejected an application from a columbarium in Ma Shi Chau of Tai Po for revising its land lease conditions. In this connection, will the Government inform this Council:

(a) of the number of niches currently provided by the columbaria in List B, as well as their prices; whether the authorities will consider immediately collecting the relevant data if they do not have such data in hand; if they will, of the details; if not, the reasons for that;

(b) of the number of complaints received by the authorities in the past three years about columbaria being suspected of breaching the user restrictions in land leases or planning permissions; among these columbaria, the number of those which are confirmed by the authorities to have breached the user restrictions in land leases or planning permissions, and whether all such columbaria have been included in List B; if not, the number of those columbaria which have not been included in List B and the reasons for their exclusion from List B;

(c) whether the authorities will take law enforcement and regulatory actions under the Town Planning Ordinance (Cap. 131) against the columbaria which have withdrawn their applications for revising planning permissions; if they will, of the details; if not, the reasons for that;

(d) whether LandsD will take law enforcement and regulatory actions against the columbaria which have occupied government land or breached land lease conditions; if it will, how it will deal with the columbaria which have breached land lease conditions but are still operating; how the authorities will reduce the impact of their enforcement and regulatory actions on the ashes of the deceased which are placed in the niches of non-compliant columbaria;

(e) given that at present, quite a number of non-compliant columbaria are still selling niches to members of the public, whether the authorities will strengthen public education, so as to enhance their understanding of the regulatory policy on columbaria, and advise members of the public to refrain from buying niches from non-compliant columbaria; if they will, of the details; if not, the reasons for that; and

(f) given that at present, quite a number of columbaria that have been included in List B are still conducting publicity and promotion through various channels, and that quite a number of members of the public are attracted by such promotion efforts to buy niches from these columbaria, whether the authorities will consider restricting the conduct of promotion activities in any form by the columbaria in List B; if they will, of the details; if they will not, the reasons for that?

Reply:

President,

There is general public support for a licensing scheme to enhance the regulation of private columbaria. For this purpose, the Government has worked out the regulatory framework and are now conducting a public consultation on the proposed licensing scheme for private columbaria. The consultation lasts for about three and a half months till March 30, 2012.

In order to provide information on private columbaria made known to the relevant Government departments to the public in a more systematic manner and help the public make informed choices when purchasing niches before the introduction of the licensing scheme, the Development Bureau (DEVB) published in December 2010 relevant land/lease (user restrictions) and town planning information on the private columbaria made known to the Lands Department (LandsD) and/or Planning Department (PlanD), and which the departments had reason to believe are operating as columbaria. The information has been uploaded to the website of DEVB and will be updated quarterly, with the latest edition published on December 30, 2011. In addition, we have strengthened consumer education, through channels such as Announcements in the Public Interest (APIs), on the risks of choosing niches from private columbaria.

The relevant Government departments will continue to handle the matters, enquiries and complaints relating to private columbaria and take enforcement action against private columbaria found in breach of the relevant legislation and Government requirements, in accordance with their respective mandate and relevant legislation and administrative measures. My reply to the six parts of the question is as follows:

(a) The Information on Private Columbaria (the Information) published by the Government mainly covers planning and land information derived from the past applications for planning permission or complaint cases. It does not include information on the prices of niches. Planning permissions given in the early years normally did not include information on the number of niches. The supply and prices of private columbarium niches depend on their market demand and supply, their location and after-sales services. Currently, there are established channels and procedures for private columbaria to apply to the departments or organisations concerned for regularisation of their operation (e.g. applying for the relevant planning permission and/or lease

modification, etc). If the columbaria have submitted planning applications or obtained planning permission, the status of application or the number of niches under application or already approved (if any) will be included in the Information. Depending on the circumstances of each case, the number of niches that may be provided under the land leases will also be included.

Among the private columbaria in Part B of the Information, 21 are applying to the LandsD for regularisation of existing columbarium use and/or the Town Planning Board for planning permission. The Government calls on the remaining Part B columbarium operators to submit their applications for regularisation as soon as possible.

(b) In the past three years (i.e. 2009 to 2011), PlanD received 177 complaints against private columbaria, involving 40 cases. Among them, 26 cases were found to be in breach of the Town Planning Ordinance (Cap. 131). 23 of these breach cases are now included in Part B of the Information published by DEVB. Regarding the three breach cases that have not been included in Part B of the Information, two have ceased operation whereas for the remaining one, the person in charge of the monastery concerned argues that columbarium niches are provided only for private use and not for public sale. LandsD also received 592 complaints against private columbaria, involving 97 cases. Among them, 43 cases found to have breached the land leases or/and have illegally occupied Government land have been included in Part B of the Information published by DEVB.

The complaints received by PlanD and LandsD as well as cases found to have breached the Town Planning Ordinance, land leases or/and have illegally occupied Government land may include overlapping cases.

(c) PlanD points out that under the Town Planning Ordinance, the Planning Authority may only take enforcement action against unauthorised developments in the Development Permission Areas (DPAs) (i.e. rural New Territories). PlanD investigates each suspected unauthorised columbarium case within DPAs under the Ordinance. If there is sufficient evidence, the Planning Authority will serve Enforcement Notice on the concerned party requiring discontinuance of the unauthorised development. Non-compliance with the Notice is subject to prosecution.

(d) LandsD points out that Hong Kong has a total land area of about 110 441 hectares. Given that the areas and uses of the land are extensive, it is not possible for the LandsD and the District Land Offices (DLOs) concerned to conduct regular inspection of all land. However, upon receipt of a complaint or referral in respect of land use, the DLOs concerned will deploy their staff to carry out on-site inspections. Legal advice will be sought in light of the actual circumstances and follow-up action taken at different stages as appropriate.

If the DLO concerned finds that illegal occupation of unleased land (Government land) for columbarium use could be substantiated, it will post a notice under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), requiring the illegal occupation of the land to cease within a specified period. If the occupant fails to cease illegal occupation of the land within the specified period or fails to apply or is unsuccessful in applying for regularisation of the use of the land being illegally occupied, the DLO concerned will consider taking further action after seeking legal advice and prosecution

is not precluded. If a landowner operates a columbarium on leased land (private land), constituting a contravention of the lease conditions, the DLO concerned will take lease enforcement action such as issuance of warning letters, and eventual re-entering the concerned lot is not precluded. In taking the land control action on Government land or lease enforcement action on private land, the DLO concerned will normally consider the actual circumstances of the land involved, such as whether there is storage of cremains and the quantity, etc. If there is storage of cremains, the occupant/owner of the land in question will be given a specified period of time to make arrangements for relocation of the cremains and related matters.

During the consultation, some views we received suggested that the Government should provide assistance to consumers who had suffered losses from purchasing niches of unauthorised private columbaria. However, some views expressed concern that such practice might in a way encourage the development of unauthorised columbaria since relevant operators might not be held responsible for their misconduct. In the event that displacement of cremains happens as a result of enforcement actions against a private columbarium, it would be the responsibility of the operator of the private columbarium concerned to liaise with the descendents concerned on the proper handling of interred cremains, including exerting all reasonable effort to get in touch with the descendents, and sustaining such effort over a period of time while keeping the interred cremains intact. Currently, members of the public can pursue their claims under the general consumer protection regime or through private law remedies (such as the law of contract) if they consider that providers of columbarium niches are in breach of the sale and purchase contracts. The Commerce and Economic Development Bureau is currently drafting a Bill to introduce offences against commonly seen unfair trade practices, including the practices of false or misleading representation and inability to supply the products contracted for at the time of accepting advanced payment. Under exceptional circumstances, the relevant authority may remove the cremains and deposit them at a public facility as a transitional measure.

(e) and (f) Apart from the Information and APIs, we have also worked with the Consumer Council on other public education fronts. In April 2010, the Consumer Council published a topic report on private columbaria in its monthly magazine CHOICE, covering a detailed guide to the two-step checkout(*) for consumers' reference. In January 2011, the Consumer Council further published in CHOICE useful tips for purchasing private columbarium niches. Through the publication of the Information, members of the public are made aware that the columbaria in Part A are compliant with the user restrictions in the land leases and town planning requirements and are not illegally occupying Government land, while the columbaria in Part B have yet to comply with the relevant requirements for inclusion in Part A. This helps the public make informed choices when purchasing niches.

Note:

(*) First and foremost, consumers should check if the operation of the private columbarium concerned is in compliance with the relevant requirements on planning, building design and building standards. Under the existing Town Planning Ordinance, a columbarium must conform to the requirements of the land use zoning as specified in the statutory Outline Zoning Plan for the

site concerned. Secondly, the owners of the land on which the private columbarium is situated are required to ensure that the use of the land for that purpose is in compliance with all the land lease conditions. Consumers can obtain information on the permitted uses specified in the land lease by conducting a land search at the Land Registry. Consumers may also seek professional advice where necessary.

Ends/Wednesday, February 15, 2012
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**Relevant papers on Columbarium policy -
Proposed licensing scheme for private columbaria**

| Committee | Date of meeting | Paper |
|--|-------------------------|---|
| Panel on Food Safety and Environmental Hygiene | 12.5.2009 (Item IV) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 16.10.2009 (Item I) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 9.2.2010 (Item VI) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 6.7.2010 (Item III) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 20.9.2010 (Item I) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 15.10.2010 (Item I) | Agenda Minutes CB(2)218/10-11(01) |
| Panel on Food Safety and Environmental Hygiene | 12.4.2011 (Item IV) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 13.12.2011 (Item IV) | Agenda Minutes |
| Legislative Council | 15.2.2012 | Official Record of Proceeding (Question 13) |
| Panel on Food Safety and Environmental Hygiene | 16.3.2012 (Item I) | Agenda Minutes |