

For discussion  
on 5 January 2016

LC Paper No. CB(2)548/15-16(01) (revised)

## **Bills Committee on Private Columbaria Bill**

### **The Second Batch of Draft Committee Stage Amendments (Part B)** **To be Proposed by the Government**

#### **Purpose**

This paper sets out the second batch of draft Committee Stage Amendments (Part B) to the Private Columbaria Bill (the Bill) (CSAs)<sup>1</sup> to be proposed by the Government.

#### **Textual and Technical Amendments**

2. We propose a number of textual or technical amendments to enhance the clarity of the Bill. Details of the draft CSAs, the source proposing the change and the justifications for the change are set out in **Annex 1** and a marked-up version is at **Annex 2**.

#### **Advice Sought**

3. Members are invited to note the contents of the paper.

Food and Health Bureau  
31 December 2015  
[updated on 13 January 2016]

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<sup>1</sup> Following deliberation, the various batches of draft CSAs will be fine-tuned into formal CSAs for inclusion into a consolidated version.

**The Second Batch of Draft Committee Stage Amendments (Part B) to the Private Columbaria Bill (CSAs)  
to be proposed by the Government**

| Item<br>[Source] | Clause<br>[Page No.] | Proposed Draft CSAs with Chinese Translation   |  | Intent and Justifications   |
|------------------|----------------------|--|--|---|
|                  |                      | English  | Chinese  |   |
| B0001<br>[ALA]   | 21<br>[C3437]        | By deleting “ash interment quantity as at Bill announcement time” and substituting “quantity, etc.”. | 刪除“及以草案公布時間狀況為準的骨灰安放布局及骨灰安放數量的證據”，代以“、骨灰安放布局及數量等證據”。 | 21.01 Please see item 19 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| B0002<br>[Govt]  | 22(7)(a)<br>[C3445]  | By adding “furnaces or ” after “land by the”.  | 刪除“該等設施”，代以“該等火爐或設施”。                                | 22.01 This seeks to enhance the clarity of the provision.   |
| B0003<br>[Govt]  | 22(7)(b)<br>[C3445]  | By adding “furnaces or ” after “whether the”.  | 刪除“該等設施”，代以“該等火爐或設施”。                                | 22.02 This seeks to enhance the clarity of the provision.   |
| B0004<br>[Govt]  | 33(1)(d)<br>[C3461]  | By deleting “additional” and substituting “new”.   | 刪除“額外”，代以“新”。  | 33.01 This seeks to enhance consistency with similar expressions in the Bill.                         |
| B0005<br>[ALA]   | 41(2)(b)<br>[C3472]  | In the Chinese text, by adding “處所” after “骨灰安置所”.   | 在中文文本中，在“骨灰安置所”之後，加入“處所”。                            | 41.01 Please see item 3 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015.     |

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| B0006<br>[ALA]  | 41(3)<br>[C3477]         | By deleting paragraph (h).   | 刪除第(h)段。                             | <p>41.02 Please see item 4 of our response dated 1 December 2015 to ALA's letter dated 26 June 2015.</p> <p>41.03 Having reviewed the provision, we propose deleting paragraph (h).</p> <p>In response to ALA's suggestion, we will streamline the presentation in clause 41(4) in due course, rather than deleting “, (h)” at this stage.</p> |
| B0007<br>[Govt] | 41(3)(i)(iii)<br>[C3477] | By deleting “another” and substituting “any other”.                    | 在中文文本中，在“其他方式”之前，加入“任何”。             | 41.04 This seeks to enhance the clarity of the provision.  |
| B0008<br>[Govt] | 43(2)(b)<br>[C3479]      | By deleting “agreement” and substituting “agreements”.                 | 在英文文本中，刪除“agreement”，代以“agreements”。 | 43.01 This seeks to enhance the clarity of the provision.  |
| B0009<br>[ALA]  | 43(3)<br>[C3478]         | In the Chinese text, by deleting “及登記冊的複本” and substituting “的複本及登記冊”. | 在中文文本中，刪除“及登記冊的複本”，代以“的複本及登記冊”。      | 43.02 Please see item 6 of our response dated 1 December 2015 to ALA's letter dated 26 June 2015.  |
| B0010<br>[Govt] | 44(2)<br>[C3481]         | By adding “pre-Bill” after “in respect of a”.                          | 刪除“就骨灰安置所”，代以“就草案前骨灰安置所”。            | 44.01 This seeks to enhance the clarity of the provision.  |

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| B0011<br>[ALA]  | 44(2)<br>[C3481]            | By deleting “8” and substituting “9”.                        | 刪除“8”，代以“9”。              | 44.02 Please see item 1 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| B0012<br>[ALA]  | 46, heading<br>[C3482]      | In the Chinese text, by deleting “數量” and substituting “份數”. | 在中文文本中，刪除“數量”，代以“份數”。     | 46.01 Please see item 2 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| B0013<br>[Govt] | 46(1)<br>and (2)<br>[C3483] | By deleting “specified in” and substituting “shown on”.      | 刪除“指明”，代以“示”。             | 46.02 This seeks to enhance consistency with similar expressions in the Bill.                       |
| B0014<br>[Govt] | 46(2)<br>[C3483]            | By adding “pre-Bill” after “in respect of a”.                | 刪除“就骨灰安置所”，代以“就草案前骨灰安置所”。 | 46.03 This seeks to enhance the clarity of the provision.   |

Footnote:

“Source” refers to the party giving the views, which could be –

- (1) “Govt” denotes “HKSAR Government”;
- (2) “Mbr” denotes “Bills Committee Members (Private Columbaria Bill)”;
- (3) “ALA” denotes “Assistant Legal Adviser (Private Columbaria Bill)”;
- (4) “Dptn” denotes “Deputations who have attended a previous meeting and/or provided written submissions”

**Food and Health Bureau**

**31 December 2015**

**[updated on 13 January 2016]**

第二批政府建議就《私營骨灰安置所條例草案》提出的草擬委員會審議階段修正案(B 部分)  
的標明修訂事項文本

**The Second Batch of Draft Committee Stage Amendments (Part B) to the Private Columbaria Bill (CSAs)**  
**to be proposed by the Government - Marked-Up Version**

| 中文  | English  |
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| <p style="text-align: center;"><b>第 2 次分部 — 關於草案前骨灰安置所的申請</b></p> <p>21. 關於草案前骨灰安置所的申請 — 時限 <del>及以草案公布時間狀況為準的骨灰</del><br/><del>安放布局及骨灰安放數量的證據</del>、<del>骨灰安放布局及數量等證據</del>，以及圖則<br/>[B0001]</p> | <p style="text-align: center;"><b>Subdivision 2—Applications in respect of Pre-Bill Columbaria</b></p> <p>21. Application concerning pre-Bill columbarium—time limit, evidence of ash<br/>interment layout and <del>ash interment quantity as at Bill announcement</del><br/><del>time</del>quantity, etc. and plans [B0001]</p> |

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| <p><b>22. 通報計劃：證明關於草案前骨灰安置所的詳情</b><br/>[...]</p> <p>(7) 為免生疑問，為施行第 21(3)(d)及(e)條 —</p> <p>(a) 第(6)款只關乎以下事宜的證明：供焚化祭品的火爐或其他設施，在草案公布時間已存在於有關骨灰安置所，以及該等火爐或設施在該時間佔用土地；及 [B0002]</p> <p>(b) 發牌委員會對該等火爐或設施是否屬以下條文所提述的必要配套設施的決定，不受第(6)款影響 — [B0003]</p> <p>(i) 第 2(1)條(<b>骨灰安置所</b>的定義)或第 2(5)(b)、(6)(b)或(7)(b)條；或</p> <p>(ii) 附表 2 第 4(1)條中<b>可就草案前骨灰安置所核證的構築物</b>的定義的(a)(ii)段。</p> <p>[...]</p> | <p><b>22. Notification scheme: proof of particulars about pre-Bill columbarium</b><br/>[...]</p> <p>(7) To avoid doubt, for the purposes of section 21(3)(d) and (e)—</p> <p>(a) subsection (6) relates only to proof of the existence of the furnaces for burning offerings or any other facilities in the columbarium as at the Bill announcement time and the occupation of land by the <b>furnaces or</b> facilities as at that time; and [B0002]</p> <p>(b) subsection (6) does not affect the Licensing Board's determination of whether the <b>furnaces or</b> facilities fall within the essential ancillary facilities referred to in— [B0003]</p> <p>(i) section 2(1) (definition of <b>columbarium</b>) or section 2(5)(b), (6)(b) or (7)(b); or</p> <p>(ii) paragraph (a)(ii) of the definition of <b>structures certifiable for a pre-Bill columbarium</b> in section 4(1) of Schedule 2.</p> <p>[...]</p> |
| <p><b>33. 撤銷、暫時吊銷、拒絕續期或延展及更改條件</b></p> <p>(1) 在符合第(2)款的規定下，發牌委員會可 —</p> <p>(a) [...]</p> <p>(b) [...]</p> <p>(c) [...]</p> <p>(d) 更改規限任何以下項目的條件，或對任何以下項目施加 <b>額外-新</b> 條件 — [B0004]</p> <p>(i) 牌照；</p> <p>(ii) 在牌照下的對出售有關骨灰安置所的安放權的授權；</p> <p>(iii) 豁免書；</p> <p>(iv) 暫免法律責任書。</p>   | <p><b>33. Revocation, suspension, refusal to renew or extend and variation of conditions</b></p> <p>(1) Subject to subsection (2), the Licensing Board may—</p> <p>(a) [...]</p> <p>(b) [...]</p> <p>(c) [...]</p> <p>(d) vary any conditions to which any of the following is subject or impose <b>additional-new</b> conditions on it— [B0004]</p> <p>(i) a licence;</p> <p>(ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;</p> <p>(iii) an exemption;</p> <p>(iv) a temporary suspension of liability.</p>  |

#### 41. 賣方不可強制執行某些安放權出售協議

- (1) 如某人(賣方)為向另一人(買方)出售某骨灰安置所的安放權，而與買方訂立協議，則本條適用。
- (2) 如賣方本意是以下列方式，按上述協議出售其無權出售的安放權 —
  - (a) 骨灰安置所處所是根據可按期續約的、由政府批出的短期租賃佔用，而該租賃可按照有關短期租賃協議，藉發出達指明期間的通知而終止 — 以須按相同的定期而繳付款項以外的方式，出售該處所的安放權；
  - (b) 骨灰安置所處所是根據租賃或租契佔用 — 出售該處所的安放權，而其年期超逾該租賃或租契的年期；或 [B0005]
  - (c) 出售安放權，而其年期超逾租契、許可證或其他文書(有關骨灰安置所位處的土地，是根據該租契、許可證或文書從政府取得而持有者)的年期，  
則賣方不得針對買方強制執行該協議。
- (3) 除非符合以下所有條件，否則賣方不可針對買方強制執行上述協議 —
  - (a) 在訂立該協議時，賣方就有關骨灰安置所持有牌照，並在強制執行該協議時，仍持有該牌照；
  - (b) 該協議以書面訂立，並由賣方及買方雙方簽署；
  - (c) 該協議以清晰措詞列出 —
    - (i) 附表 4 第 1 部所指明的資料及建議；及
    - (ii) 對賣方及買方在該協議下的權利和責任的全面描述，包括(但不限於)該附表第 2 部所指明的事宜；
  - (d) 該協議列出買方在第 42 條下的取消權；
  - (e) 該協議包含訂定以下事項的條款：在行使安放權後，是否可以行使買方在第 42 條下的取消權，及如可行使該取消權的話，有何行使條件；
  - (f) 在買方訂立該協議前，賣方已向買方解釋該協議列明的資料、建議、權利及責任；
  - (g) 賣方取得買方的書面確認，指獲得(f)段提述的解釋；
  - ~~(h) 賣方向買方交付經買方簽署的該協議的一份複本；~~ [B0006]

#### 41. Certain agreement for sale of interment right unenforceable by seller

- (1) This section applies if a person (*seller*) enters into an agreement with another person (*purchaser*) for the sale, to the purchaser, of an interment right in respect of a columbarium.
- (2) The agreement is not enforceable by the seller against the purchaser if the seller purports to sell under the agreement an interment right that the seller is not entitled to sell—
  - (a) for columbarium premises occupied under a short term tenancy from the Government that is renewable on a periodic basis and terminable on notice given for a specified period in accordance with the short term tenancy agreement—by selling an interment right in respect of the premises otherwise than for payment payable on the same periodic basis;
  - (b) for columbarium premises occupied under a tenancy or lease—by selling an interment right in respect of the premises for a term that extends beyond the term of the tenancy or lease; or
  - (c) by selling an interment right for a term that extends beyond the term of the lease, licence or other instrument under which the land on which the columbarium is situated is held from the Government.
- (3) The agreement is not enforceable by the seller against the purchaser unless—
  - (a) the seller held a licence in respect of the columbarium at the time when the agreement was entered into and still holds the licence at the time of enforcing the agreement;
  - (b) the agreement is in writing and was signed by both the seller and the purchaser;
  - (c) the agreement sets out, in clear language—
    - (i) the information and recommendations specified in Part 1 of Schedule 4; and
    - (ii) a comprehensive description of the rights and obligations of the seller and the purchaser under the agreement including (but not limited to) the matters specified in Part 2 of that Schedule;

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| <p>(i) 在各方簽署該協議後，賣方須盡快循以下方式，向買方交付該協議的一份複本 —</p> <p>(i) 專人遞交予買方；</p> <p>(ii) 以掛號郵遞方式，寄交買方；或</p> <p>(iii) 任何其他方式，但賣方須能證明買方收到該複本；及 [B0007]</p> <p>(j) 發牌委員會訂明的任何其他規定，均已獲符合。</p> <p>(4) 凡協議不符合第(3)(b)、(c)、(d)、(e)或(j)款的規定，或該協議下的賣方沒有遵從第(3)(a)、(f)、(g)、(h)或(i)款的規定，則如 —</p> <p>(a) 該協議下的買方已根據第 42(1)條，向賣方給予取消通知；而</p> <p>(b) 賣方已拒絕向買方繳付須根據第 42(2)條繳付的款項，買方可向法院提起訴訟，以追討已根據該協議繳付的任何款項，並追討訟費。</p> | <p>(d) the agreement sets out the purchaser's cancellation rights under section 42;</p> <p>(e) the agreement includes a term on whether and, if so, on what conditions the purchaser's cancellation rights under section 42 may be exercised after the interment right has been exercised;</p> <p>(f) before the purchaser entered into the agreement, the seller has explained to the purchaser the information, recommendations, rights and obligations, as set out in the agreement;</p> <p>(g) the seller obtained the purchaser's acknowledgement, in writing, that the explanation referred to in paragraph (f) was given to the purchaser;</p> <p><del>(h) the seller delivered to the purchaser a copy of the agreement as signed by the purchaser at the time the purchaser signed it;</del> [B0006]</p> <p>(i) the seller delivered to the purchaser a copy of the agreement as soon as possible after it was signed by all parties, which delivery must be effected—</p> <p>(i) by personal delivery to the purchaser;</p> <p>(ii) by registered post to the purchaser; or</p> <p>(iii) in <del>another</del>any other manner if the seller can prove receipt of the copy by the purchaser; and [B0007]</p> <p>(j) any other requirements prescribed by the Licensing Board are met.</p> <p>(4) A purchaser under an agreement that does not meet the requirements of subsection (3)(b), (c), (d), (e) or (j), or in respect of which the seller has not complied with the requirements of subsection (3)(a), (f), (g), (h) or (i), may bring an action in a court to recover any amounts paid under the agreement together with costs if—</p> <p>(a) the purchaser has given the seller notice of cancellation under section 42(1); and</p> <p>(b) the seller has refused to pay the purchaser the amount payable under section 42(2).</p> |
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#### 43. 備存紀錄

- (1) 就骨灰安置所持有牌照的人，須備存所有出售該骨灰安置所的安放權的協議(包括被致無效或遭取消的協議)的複本，直至自有關協議獲完全執行、被致無效或遭取消當日起計的 6 年屆滿為止。
- (2) 就骨灰安置所持有牌照的人 —
  - (a) 須為出售該骨灰安置所的安放權的協議，備存登記冊；及
  - (b) 須在訂明期間內，將每份協議的訂明詳情，記入該登記冊。
- (3) 就骨灰安置所持有牌照的人，須應署長或獲授權人員要求，將根據本條就該骨灰安置所備存的協議 ~~及登記冊的複本~~的複本及登記冊，提供予署長或該人員查閱。 [B0009]
- (4) 就骨灰安置所持有指明文書的人，須備存關於以下事宜的紀錄 —
  - (a) 將骨灰安放在該骨灰安置所，以及將安放在該骨灰安置所的骨灰移走；及
  - (b) 安放在該骨灰安置所內的骨灰的獲授權代表的聯絡資料。
- (5) 任何人違反第(1)、(2)、(3)或(4)款，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

#### 43. Record keeping

- (1) A person holding a licence in respect of a columbarium must keep copies of all agreements for the sale of interment rights in respect of the columbarium (including agreements avoided or cancelled) until the expiry of 6 years beginning on the date the agreement is fully performed or is avoided or cancelled.
- (2) A person holding a licence in respect of a columbarium—
  - (a) must keep a register of agreements for the sale of interment rights in respect of the columbarium; and
  - (b) must enter the prescribed particulars of each of the **agreement agreements** into the register within the prescribed period. [B0008]
- (3) A person holding a licence in respect of a columbarium must make the copies of agreements, and the register, kept in respect of the columbarium under this section available for inspection, on request, by the Director or an authorized officer.
- (4) A person holding a specified instrument in respect of a columbarium must keep a record—
  - (a) on interment and disinterment of ashes in and from the columbarium; and
  - (b) of the contact details of authorized representatives in respect of ashes interred in the columbarium.
- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

## 第 2 分部 — 展示文書及通告、不得偏離經批准圖則等職責

### 44. 須展示文書及通告

- (1) 就骨灰安置所持有指明文書的人，須在該骨灰安置所內的一個顯眼位置，展示該文書。
- (2) ~~就骨灰安置所~~就草案前骨灰安置所持有豁免書或暫免法律責任書的人，須在該骨灰安置所內的一個顯眼位置，展示一份採用中文及英文的通告，指出出售該骨灰安置所的任何安放權，屬第 89 條所訂罪行。[\[B0010\]](#) [\[B0011\]](#)
- (3) 任何人違反第(1)或(2)款，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 3 個月。
- (4) 任何人不得 —
  - (a) 更改或污損指明文書，亦不得除去該文書上的任何資料；或
  - (b) 使用遭除去任何資料的指明文書，或曾被蓄意以任何方式更改或污損的指明文書，或以使用為出發點而管有符合上述情況的指明文書。
- (5) 任何人違反第(4)款，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 3 個月。

## Division 2—Duties to Exhibit Instruments and Notices, not to Deviate from Approved Plans, etc.

### 44. Instruments and notices to be exhibited

- (1) A person who holds a specified instrument in respect of a columbarium must exhibit it at a conspicuous place in the columbarium.
- (2) A person who holds an exemption or temporary suspension of liability in respect of a **pre-Bill** columbarium must exhibit at a conspicuous place in the columbarium a notice, in both English and Chinese, to the effect that any sale of an interment right in respect of the columbarium is an offence under section 89. [\[B0010\]](#) [\[B0011\]](#)
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (4) A person must not—
  - (a) alter, deface or make any erasure on a specified instrument; or
  - (b) use, or have in the person's possession with a view to using, a specified instrument on which an erasure has been made or which has been wilfully altered or defaced in any way.
- (5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

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| <p><b>46. 限制安放的骨灰的 <del>數量-份數</del> [B0012]</b></p> <p>(1) 就骨灰安置所持有牌照的人，須確保在龕位中存放的骨灰的份數，以及在並非龕位的位置存放的骨灰的份數，限於有關經批准圖則所 <del>指明-示</del> 的分別最高數目。 [B0013]</p> <p>(2) <del>就骨灰安置所-就草案前骨灰安置所</del>持有豁免書或暫免法律責任書的人，須確保在該骨灰安置所存放的骨灰的份數，限於在關鍵時間在該骨灰安置所，總共存放多少份骨灰(有關經批准圖則所 <del>指明-示</del>者)。 [B0013] [B0014]</p> <p>(3) 在第(2)款中 —</p> <p><b>關鍵時間</b> (material time) —</p> <p>(a) 就豁免書而言 — 指草案公布時間；或</p> <p>(b) 就暫免法律責任書而言，指 —</p> <p>(i) 如要求就骨灰安置所發出牌照的申請(而沒有要求發出豁免書的申請)仍然待決 — 刊憲日期；</p> <p>(ii) 如就骨灰安置所而言，要求發出豁免書的申請仍然待決 — 草案公布時間。</p> <p>(4) 任何人違反第(1)或(2)款，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。</p> | <p><b>46. Number of sets of ashes interred restricted</b></p> <p>(1) The holder of a licence in respect of a columbarium must ensure that the number of sets of ashes kept in niches, and the number of those kept otherwise than in niches, are limited to the respective maximum numbers <del>specified in shown on</del> the approved plans. [B0013]</p> <p>(2) The holder of an exemption or temporary suspension of liability in respect of a <del>pre-Bill</del> columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the material time, as <del>specified in shown on</del> the approved plans. [B0013] [B0014]</p> <p>(3) In subsection (2)—</p> <p><b>material time</b> (關鍵時間) means—</p> <p>(a) in relation to an exemption—the Bill announcement time; or</p> <p>(b) in relation to a temporary suspension of liability—</p> <p>(i) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the enactment date;</p> <p>(ii) if an application for the issue of an exemption is pending in respect of the columbarium—the Bill announcement time.</p> <p>(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.</p> |
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食物及衛生局

二零一五年十二月三十一日

[於二零一六年一月十三日更新]

Food and Health Bureau

31 December 2015

[updated on 13 January 2016]