

Bills Committee on Private Columbaria Bill

**Government's Response to the Issues Raised by
Members of the Bills Committee at Previous Meetings
(Issued on 31 December 2015)**

This paper sets out the fourth batch of Government's responses to the issues raised by members of the Bills Committee at previous meetings.

	Information requested / follow-up action required	Response from the Government
(A) Matters arising from the meeting on 23 January 2015		
1	Information on the eligibility criteria for specified instruments (i.e. licence, exemption and TSOL) under the Bill to be fulfilled by applicants.	Please refer to <u>Annex 1</u> for details.
(B) Matters arising from the meeting on 17 April 2015		
2	Information on the land-related, planning-related and building-related requirements a private columbarium operator must meet in order to obtain a licence.	Please refer to our response to item 1 above.

	Information requested / follow-up action required	Response from the Government
(C) Matters arising from the meeting on 27 April 2015		
3	Information on the provisions in relation to the interpretations of owner of a columbarium premises, ash interment layout and ash interment capacity in the Bill.	<p>Subject to the CSAs referred to in item 2 of our response dated 1 December 2015 to ALA's letter dated 26 June 2015, the following provisions of the Bill are relevant –</p> <ul style="list-style-type: none"> (a) clause 2 provides for the definition of “owner” in relation to any premises, which include columbarium premises; (b) according to clause 13(1)(b), the applicant for a licence in respect of a private columbarium must be the one holding the columbarium premises directly from the Government under lease; and (c) clause 14(1) provides for, inter alia, modification of the requirement in (b) above in respect of a pre-Bill columbarium. Hence, the applicant for a licence in respect of a pre-Bill columbarium may or may not be the owner of the columbarium premises; (d) in the light of clause 15(1)(h), the applicant for an exemption in respect of a pre-Bill columbarium may or may not be the owner of the columbarium premises. <p>Separately, clause 10 contains the definitions of “ash interment layout” and “ash interment capacity”.</p>
4	Response to the suggestion of restricting the extension of a TSOL to not more than once.	<p>Experience transpires that the regularisation / rectification exercise takes time. Legal proceedings could also complicate matters.</p> <p>Clause 11(9) states that a TSOL “may not be extended more than once, unless exceptional circumstances exist”. We intend to keep the clause as it is, as this will give the Licensing Board the necessary flexibility of extending the TSOL for more than once for complicated cases.</p> <p>We wish to reiterate that the provision will be invoked only if the Licensing Board considers that there are exceptional circumstances surrounding the case. For instance, there may be cases where the applicant has taken all reasonable endeavours to meet the requirements referred to in clause 13 (read together</p>

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		with clause 14) but is still unable to complete the relevant regularisation / rectification applications within the two TSOL periods due to circumstances beyond his / her control. Under such a scenario, the applicant is not at fault and, with additional time allowed, it is still possible for the applicant to fulfil the eligibility requirements for a licence or an exemption (as the case may be). If the Licensing Board is not conferred with the power to extend the TSOL for more than once, the relevant columbarium would have to cease operation upon the expiry of the second TSOL period, thereby curtailing the supply of niches from possibly licensable columbarium and giving rise to unnecessary social tension and disruption.
(D) Matters arising from the meeting on 12 May 2015		
5	To consider providing more clearly in the Bill on whether a holder of a specified instrument in respect of a private columbarium (“instrument holder”) had to apply for transfer of the specified instrument when a proprietor, partner or director was changed.	<p>Section 2(2) of Schedule 3 provides that the application must be signed –</p> <p>(a) if the applicant is a natural person – by the applicant;</p> <p>(b) if the applicant is a partnership – by a partner (note: we will address the view that this should follow due authorisation procedure of the partnership); and</p>
6	To consider including a provision in the Bill to require instrument holders to make available to the public information on changes in proprietorship, partnership or directorship.	<p>(c) if the applicant is a body corporate – by a director or other officer concerned in the management of the body corporate (note: we will address the view that this should follow due authorisation procedure in accordance with the relevant legal instruments of the body corporate).</p> <p>A specified instrument is issued to –</p> <p>(a) in the case of a natural person – to the individual (sole proprietor);</p> <p>(b) in the case of a partnership – to one or more partner(s), holding it on behalf of the partnership;</p> <p>(c) in the case of a body corporate (including company) – to the body corporate (including</p>

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		<p>company). Normally, a director represents a company while an officer represents a non-company body corporate.</p> <p>If there is a change in the holder of a specified instrument, an application for transfer of the specified instrument will need to be processed under clause 32. While this might be required say if the sole proprietor changes, this might not be required if the director / officer changes (as it is the company / non-company body corporate who is holding the specified instrument).</p> <p>We note Members' views that the Licensing Board should be notified of a change of the proprietor, partner or director of the applicant not only at the application stage, but also of the holder of a specified instrument as long as the specified instrument is in force. We have made reference to section 14(2) and (3) of the Insurance Companies Ordinance (Cap. 41). We will consider including an express provision to require the holder of a specified instrument to notify the Licensing Board of the change of the proprietor, partner or officer / director in writing within 14 days after the change takes place.</p> <p>Clause 44(1) requires an instrument holder to exhibit the specified instrument at a conspicuous place in the columbarium. A specified instrument sets out, inter alia, the name of the instrument holder etc. In this way, the public would be aware of a change of the instrument holder.</p> <p>The Partnership Ordinance (Cap. 38) and Companies Ordinance (Cap. 622) contain several provisions which touch on change of partnership and directorship respectively. For change of director in a company, the Registrar of Companies must be notified (section 645 of Cap. 622) and such information would be available to the public upon search.</p>

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7	To reflect in the relevant provisions in the Bill in relation to an instrument holder that is a body corporate.	Under our policy intention, “body corporate” encompasses a company incorporated under the Companies Ordinance (Cap. 622) or the former Companies Ordinance (Cap. 32), a body incorporated under a specific Ordinance (e.g. Tung Wah Group of Hospitals under the Tung Wah Group of Hospitals Ordinance (Cap. 1051)), etc. We will consider moving CSAs to put it beyond doubt that “body corporate” in the Bill includes a corporation sole. Apart from clause 33(2)(f) applicable to the scenario of a company, we will consider whether or not any amendment to clause 33(2) is necessary to provide for the relevant scenario in respect of a body corporate.
8	Information on whether a licence would be granted if a partner in the partnership was a body corporate and whether unincorporated associations, e.g. charitable organisations which were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), were covered and if so how the applicable circumstances were to be provided for under clause 33(2).	<p>Please refer to our reply to ALA’s letter dated 17 April 2015.</p> <p>Our policy intention is that only natural person, partnership or body corporate may be allowed to make an application for a specified instrument. Should an unincorporated association wish to operate private columbaria, it should set up a company for the purpose, or it may apply as a proprietor or a partner. It is possible for a charitable organisation to make an application in one of the three capacities mentioned above.</p> <p>If so authorised by its constitution, a corporation can enter into partnership with an individual person, or with another corporation whatever may be its nationality and wherever it may be situated. Such a partnership always requires special articles in the constitution of the corporate partner since many of the provisions of the Partnership Ordinance (Cap. 38) would be difficult to apply (e.g. provisions as to death and bankruptcy can hardly apply). Where a partner is a limited company, given that it has limited liability, the other partners who are not a limited company will be held fully liable.</p>

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9	To review the provisions of clauses 33(3) and 36(2).	<p>Re: clause 33(3). We will consider moving suitable CSAs to the effect that when notifying the person of its decision in writing under the scenario referred to in clause 33(2)(g)(i) –</p> <p>(a) where the case is a natural person who is the instrument holder, the notification should be sent to the instrument holder’s last known address and the natural person’s personal representative;</p> <p>(b) where the case is a partner who is the instrument holder, the notification should be sent to the instrument holder’s last known address, that partner’s personal representative, and the other partners of the partnership.</p> <p>Re: clause 36(2). Clause 36 (1)(b) provides that “if a change occurs that materially affects the accuracy of the information that the person has provided in connection with the application, the person must notify the Licensing Board of the change, in writing, within 14 days of the change”. Clause 36(4) provides that a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.</p> <p>“Material” means important, essential and relevant. In determining whether the facts are material, a court will consider whether the facts are related to the parts of the case being argued about, and form part of the reasons for its decision.</p> <p>There are examples of provisions in prevailing legislation which provide that a person shall report a material change in respect of the information furnished, otherwise it would constitute an offence (see for example, regulations 58 and 68(1)(a) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I); and sections 6(3) and 23 of the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 sub. leg. AD)).</p> <p>It is not possible to give an exhaustive list of all possible categories of what constitutes “material change”.</p>

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10	To consider providing in clause 35 a provision which is similar to clause 34(3).	Please see our response to ALA's letter dated 17 April 2015, namely "we will consider if there are ways to address the concerns about the requirements to notify decisions and reasons under different circumstances appearing in similar individual sub-clauses under clauses 32, 33, 34, 35 and section 5 of Schedule 3".
11	To seriously consider spelling out in the Bill what constituted "a change occurs that materially affects the accuracy of the information" referred to in clause 36(1)(b).	Please see our response to item 9 above.
12	To consider including in the Bill the requirement for publication of notices of applications for the issue of exemption and TSOL, applications for the renewal of licences and exemption, applications for the extension of TSOL and applications for transfer of specified instruments and variation of conditions of specified instruments.	<p>Currently, the Bill provides for a publication and inspection process at the stage when an application for the issue of licence is put up. The purpose of this process is to inform the public of the application for a licence, allow them to inspect the particulars of the application, and enable the public to submit their comments on the application to the Licensing Board.</p> <p>In handling the historical legacy of private columbaria, we need to be pragmatic and strike a reasonable balance between the need to forestall social acrimony (including the need to avoid disturbing the final resting places of the deceased whose ashes were interred in private columbaria prior to the Bill announcement time) and the interests of the residents nearby. As private columbaria seeking an exemption or a TSOL would no longer be allowed to sell or let out any more niches, their conditions (including the nuisance caused to the neighbourhood, if any) would be frozen at the level as at the BAT. Hence, we consider it a pragmatic approach to expressly prescribe a publication and inspection process only in respect of an application for the issue of a licence, and not for an application for the issue of an exemption / a TSOL, nor an application for the renewal or extension (as the case requires) of a specified instrument. Any member of the public who is dissatisfied with the Licensing Board's decision may seek a judicial review.</p> <p>For an application to transfer a specified instrument under clause 32, it will only involve a change in</p>

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		<p>instrument holder while the circumstances in respect of the private columbarium should remain by and large the same. As regards an application for variation of conditions of a specified instrument under clause 34, the Licensing Board may consider such application if the instrument holder could show sufficient cause to the Licensing Board's satisfaction. In other words, the Licensing Board would serve as the gatekeeper and would not consider application for variation of conditions unless it is satisfied that the proposed variation in conditions is warranted in the circumstances. We therefore consider that there is no strong need for the Licensing Board to publish the applications under clause 32 or 34 for inspection.</p> <p>There will be significant manpower and resource implications if the publication of licence applications is to be extended to the applications for the issue of exemption or TSOL applications, the renewal or extension (as the case requires) of a specified instrument, the transfer of specified instruments, and the variation of conditions.</p>
13	To consider requiring the future Licensing Board to inform the Land Registry of the latest position of specified instruments.	Noted. Clauses 38 and 68 are relevant.
14	To consider setting a timeframe for issuing a certificate of columbarium use by the Licensing Board.	Clause 38 provided that as soon as the Licensing Board has issued a specified instrument to a person, the Licensing Board must issue a certificate of columbarium use. This provision would ensure that the Licensing Board would issue the certificate of columbarium use within a reasonable timeframe. We consider that amendments may not be necessary. We may consider including a reference timeframe in the guidelines to be issued by the Licensing Board.
15	To consider replacing "section 8" by "section 9" in clause 44(2).	We will consider amending clause 44(2) by substituting "section 8" with "section 9".

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16	To consider replacing “顯著偏離” by “關鍵偏離” in the Chinese text of clause 45.	<p>The approval of plans by the Licensing Board is a tool to monitor and ensure compliance with the requirements and conditions imposed under the specified instruments under the Bill.</p> <p>We consider that amending “顯著偏離” to “關鍵偏離” in the Chinese text of clause 45 may not be necessary.</p>
17	Information on the provisions in other legislation which were similar to clause 47.	Please see our response to ALA’s letter dated 17 April 2015.
18	Information on whether clause 47(1) would be applicable to columbarium premises with cockroach problems.	Please see our response to ALA’s letter dated 17 April 2015.
19	Information on whether the penalties under the relevant provisions in the Public Health and Municipal Services Ordinance (Cap. 132) were equivalent to those provided under clause 47(2).	Please see our response to ALA’s letter dated 17 April 2015.
20	To consider stating expressly in the Bill situations under which a columbarium would be regarded as not complying with the requirements under clause 47(1).	Please see our response to ALA’s letter dated 17 April 2015.

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(E) Matters arising from the meeting on 26 May 2015		
21	To move CSA to clauses 97(1), 97(3), 97(4), 97(4)(b), 98(3) and 99(3).	<p>Please see our response to ALA's letter dated 17 April 2015. We will consider moving CSAs to clause 97 to provide for the following –</p> <ul style="list-style-type: none"> (1) for clause 97(1) and 97(4)(b), a reference to section 6(3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) does not cover section 6(2A)(iii) of that Ordinance; (2) for clauses 97(3), 98(3) and 99(3), we will consider replacing paragraphs (a) and (b) with paragraphs (a) to (c) below: <ul style="list-style-type: none"> (a) has been made but has not been determined; (b) has been refused and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined. (3) clause 97(4) will be amended to the effect that clause 97(3) does not apply if upon the making of an application for a TSOL and in respect of the unleased land referred to in clause 97(1), the applicant – <ul style="list-style-type: none"> (a) does not apply to the Director of Lands for lawful authority to occupy the unleased land; and (b) does not provide a written declaration that he/she has no claim to the unleased land.
22	To review the Chinese text of clause 97(1) and (2).	We consider that the Chinese text of clause 97(1) and (2) reflects the policy intent as accurately as the English text.

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23	Responses to members' concerns about the efforts to be made by relevant government departments to complement each other, upon enactment of the Ordinance.	We are in the process of drawing up an inter-departmental protocol for processing applications for specified instruments. Besides, upon establishment, the Licensing Board will prepare and publish guidelines for the reference of prospective applicants seeking different kinds of specified instruments. This will help ensure transparency of the process.
(F) Matters arising from the meeting on 22 June 2015		
24	<p>To consider including provisions in the Bill to –</p> <p>(a) override the contracts which were signed between consumers and private columbarium operators before enactment of the Ordinance and bring the contracts into conformity with the provisions in the Bill;</p> <p>(b) allow consumers who had entered into contracts with private columbarium operators before enactment of the Ordinance to have the right to inter ashes permanently in the columbaria concerned; and</p> <p>(c) subject to certain conditions, provide for mandatory performance by licensees of the contractual obligations in terms of the interment rights (rather than returning the money to consumers), and allow consumers to use the niches permanently unless</p>	<p>BL 160 provides that “documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law.”</p> <p>Proposals (a) and (b) involve the retrospective application of the Ordinance to transactions before its enactment. Any proposals of retrospective legislation which alter the common law presumption against retrospective operation and may have the effect of contravening the Basic Law, including provisions concerning property rights, requires careful examination.</p> <p>Retrospective legislation is contrary to the general principle that legislation by which the conduct is to be regulated ought to deal with future acts, and ought not to change the character of past transactions, carried out upon the faith of the then existing law. It is a principle accepted by governments that retrospective application of legislation should be avoided except where necessary. The proposed retrospective provision will inflict a detriment to a class of persons, namely the operators of the columbarium (being a party to the contract). It is justifiable only if the legislation is reasonable under the circumstances and is fair and just both to the individual and the Government. In this case, we do not see sufficient justifications to deprive the parties to pre-enactment agreements (executed before the enactment of the Bill) of the legal certainty and their entitlements under such agreements.</p> <p>Re: (b) and (c). It may not be practically feasible to</p>

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	the period of interment right was clearly stated in the relevant contracts.	<p>implement proposal (b) / (c) to mandate private columbarium operators to provide consumers with the right to inter ashes permanently, as the operators themselves do not have the entitlements to use the leased land permanently.</p> <p>Under common law, the terms of an agreement must be agreed to by the parties to the agreement. Where the agreement is silent on the period of interment, there are principles under common law which govern whether and if so what terms are implied in the agreement. Each case would have to be decided on its own facts. It would be difficult to conceive how the licensee could sell a niche permanently (i.e. implying the conferment of an interment right beyond the term of the lease).</p> <p>Under clause 41(2)(c), an 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, including selling an interment right for a term that extends beyond the term of the lease or other instrument under which the land on which the columbarium is situated is held directly from the Government.</p> <p>Requiring mandatory performance by columbarium operators might not be the best solution to consumers affected. Where, for instance, a private columbarium operator has absconded and abandoned the columbarium, indiscriminately demanding that the ashes be interred in the abandoned columbarium premises permanently may not serve the best interest of the purchaser. Instead, a refund of payment would allow the affected purchasers a choice to inter (or re-inter) the ashes elsewhere.</p>
25	To remove the exclusion of synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes from the definition of ashes under clause 2(1)	We will consider moving suitable CSA to amend the definition of ashes to capture synthetic materials transformed from human ashes in clause 2 of the Bill. Detailed proposal will be put to the Bills Committee for discussion in due course.

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26	Information on the cap of the capacity of temporary storage of ashes at premises of licensed undertakers of burials and the number of sets of ashes being kept at these premises.	Please refer to our response to item 3 of our response to issues raised by BC Members issued on 16 December 2015.
27	Information on the capacity of the Administration's facilities for temporary storage of ashes.	Please refer to <u>Annex 2</u> for details.
28	Information on the number of gazetted private crematoria which were specified in Part 6 of the Fifth Schedule to (Cap. 132) and were keeping ashes incidental to their operations as crematoria on a transient basis.	Please refer to <u>Annex 3</u> for details.
29	To formulate policies to handle ashes being kept in premises where obtaining a licence for the columbarium operation was unsuccessful.	Under Part 7 of and Schedule 5 to the Bill, operators of private columbaria to which the Bill applies are required to dispose of interred ashes properly in accordance with the applicable ash disposal procedures. These provisions apply to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date of the Ordinance, whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that day. The detailed arrangements have been set out in the LegCo Brief, the Bills Committee papers LC Paper No. CB(2)825/14-15(01) and LC Paper No. CB(2)878/14-15(01) for Members' reference.
30	To consider providing exemptions for keeping of more than five containers of ashes in the domestic premises concerned, provided that these were the ashes of relatives.	We suggest keeping the provision in the Bill as it is, as introducing the element of making reference to relationship will grossly complicate the issue. However, we will consider raising the cap on "5 containers of ashes" to "10 containers of ashes".
31	To consider elaborating the term of appointment and reappointment of members of	Please see our response to ALA's letter dated 21 May 2015.

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	the Licensing Board.	
(G) Matters arising from the meeting on 29 June 2015		
32	To consider proposing amendments to section 4(2) and (3) of Schedule 1 to deal with the situation where the Chairperson (or Deputy Chairperson, if applicable) of the Licensing Board had to be disregarded for the purposes of constituting a quorum of a meeting, and section 4(4) of Schedule 1 as to whether the Deputy Chairperson of the Licensing Board had a casting vote if the Chairperson of the Licensing Board was absent from a meeting.	Please see our response to ALA's letter dated 21 May 2015.
33	To consider specifying in section 1(1) of Schedule 1 that a majority of members of the Licensing Board should be non-public officers.	We will consider specifying in section 1(1) of Schedule 1 that a majority of members of the Licensing Board should be non-public officers.
34	To consider deleting the word "pecuniary" from section 5 of Schedule 1.	We will consider amending section 5 of Schedule 1 such that any member with a direct or indirect interest (any interest) will be required to disclose his interest to the Licensing Board or committee. This will ensure consistency with clause 73.
35	Response in relation to section 4(6) of Schedule 1 on what constituted a good reason for holding a meeting of the Licensing Board in private.	Under certain circumstances (e.g. where confidential information or personal data (such as the financial or business affairs of the applicant) is involved, where candid exchange of views may be affected; or where sensitive matters or matters regarding internal administration may be disclosed prematurely), it may not be advisable to open such meetings to the public. Hence, we consider section 4(6) of Schedule 1 appropriate, so as to allow flexibility for the Licensing Board / committees to consider whether a meeting should be held in private on a case by case basis. It is neither possible nor desirable to set out an exhaustive list of circumstances that constitute a good

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		<p>reason for holding a meeting of the Licensing Board / committees in private.</p> <p>In fact, many other pieces of legislation also contain provisions providing exceptions for the relevant statutory boards to hold a meeting in private, such as section 23 of the Land Survey Ordinance (Cap. 473), regulation 9 of the Building (Appeal) Regulation (Cap. 123 sub. leg. L), section 6ZI of the Betting Duty Ordinance (Cap. 108), section 50 of the Unsolicited Electronic Messages Ordinance (Cap. 593), etc.</p>
36	To consider stipulating in the procedures and guidelines of the Licensing Board that the applicants whose interests were affected by its decisions should be given the right to be heard (i.e. to make representations if their applications in respect of specified instruments were not renewed, or were revoked or suspended).	As a matter of principle, under the general common law position on procedural fairness, a party whose interest is affected should be availed an opportunity to be heard, e.g. when a licence is refused, not renewed, or is revoked or suspended. We would reflect Members' suggestions to the future Licensing Board, so that it could consider setting out, in the guidelines and procedures of the Licensing Board made under section 4(1) of Schedule 1, the opportunity to be heard before the Licensing Board in line with the common law position.
37	To consider making information on disclosure of interests of members of the Licensing Board more transparent.	<p>The Licensing Board may determine its practice and procedures at its meetings (section 4(1) of Schedule 1) including any appropriate arrangements in making disclosure of the interests of members of the Licensing Board more transparent.</p> <p>We will reflect Members' suggestions to the Licensing Board.</p>
38	Response in relation to section 4(5) of Schedule 1 on the proposed arrangements for transacting business by way of circulation of papers by the Licensing Board, and consider removing section 4(5) of Schedule 1 from the Bill.	The Licensing Board may transact by way of circulation of papers when, for instance, a trivial matter requires an early decision. This provides flexibility easing the operation of the Licensing Board. In fact, it is common for other statutory boards to allow the transaction of business by way of circulation of papers. Examples include the Liquor Licensing Board (regulation 13(2) of the Dutiable

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39	Examples of provisions concerning transaction of business by way of circulation of papers by some statutory bodies.	<p>Commodities (Liquor) Regulations (Cap. 109 sub. leg. B), the Town Planning Board (section 2B(1) of the Town Planning Ordinance (Cap. 131)), the Communications Authority (section 11(1) of the Communications Authority Ordinance (Cap. 616)), the Medical Registration Council (section 4(4A) of the Medical Registration Ordinance (Cap. 161)), and the Hong Kong Trade Development Council (section 15 of the Hong Kong Trade Development Council Ordinance (Cap. 1114)).</p> <p>We intend to keep section 4(5) of Schedule 1 as it is.</p>
40	Response as to whether to provide in section 4 of Schedule 1 that applicants should be given the opportunity to make representations in relation to matters under clause 7(1)(a)(i) or (iii).	<p>For applications seeking specified instruments, the applicants might be invited by the Licensing Board to attend its meetings to provide information.</p> <p>In view of the need to ensure the smooth and efficient operation of the Licensing Board, we consider that allowing the applicant to attend a Licensing Board's meeting (rather than to make representations at a Licensing Board's hearing) when his/her application is first considered by the Licensing Board would best attain the balance between enhancing transparency and ensuring efficiency.</p> <p>In any case, if any applicant is aggrieved by the decision of the Licensing Board, the applicant would have an opportunity to be heard under clause 74(3) of the Bill if an appeal is lodged in accordance with clause 72(1)(a) (relating to a decision to refuse an application for a specified instrument) and (c) (relating to a decision to revoke or suspend a specified instrument). At the end of the day, an appellant who is dissatisfied with the decision of the Appeal Board may resort to judicial review when all other avenues have been exhausted.</p>

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41	To review clauses 71(4), clause 94(3) and 94(4).	<p>Please see our response to ALA's letter dated 21 May 2015.</p> <p>As regards clause 94(3) and (4), the intention is to exempt all members/officers of the Licensing Board, members of a committee of the Licensing Board, as well as any public officers carrying out the duties/powers under the Bill from any civil liability arising from the relevant act or omission. As such, it is necessary to make reference to all these categories in clause 94(2).</p> <p>It is clear that the acts referred to in clause 94(3) would only be relevant to the scenario of public officers referred to in clause 94(2)(d). We may consider amending clause 94, to avoid any doubt in construing the applicability of subsection 1 with reference to the relevant parties concerned under different context.</p> <p>Clause 94(1) provides public officers and members of the Licensing Board with an immunity from civil liability when they have acted in good faith in the course of performing a function under the Ordinance. That said, clause 94(4) preserves the liability of the Government in respect of an act or omission of the public officer, and hence the aggrieved person may still have an effective remedy by bringing an action against the Government.</p>
42	To consider specifying in the Bill the term of appointment of the Chairperson and Deputy Chairpersons of the Private Columbaria Appeal Board ("Appeal Board") and members of the Panel for hearing appeals.	Please see our response to ALA's letter dated 21 May 2015.

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43	To provide examples of how other statutory appeal boards handled requests for changing Presiding Officer or member(s) for hearing appeals.	Requests for changing the Presiding Officer or member(s) for hearing appeals will usually be made on the ground of bias or conflicts of interest. Disclosure of interests is necessary to ensure that the presiding officer or members constituting the Appeal Board will not be biased or have any conflict of interest with the parties to the appeal. The relevant test for apparent bias is whether, in the light of all the circumstances, a fair-minded and informed observer would conclude that there is a real possibility or apprehension that the Tribunal/Board is biased. The Appeal Board may also ask the parties to the appeal to see if they have any objection to the constitution of the Appeal Board before hearing an appeal.
44	To consider amending clause 72 to make clear what other decisions of the Licensing Board would be appealable.	We will consider amending clause 72 to clarify what decisions of the Licensing Board would be appealable.
45	Response on whether residents who were not satisfied with the Licensing Board's decisions might lodge appeals to the Appeal Board.	In accordance with section 4 of Schedule 3 to the Bill, the Licensing Board may publish a notice of an application for a licence through the Internet, in the newspaper or at a conspicuous place outside the columbarium. Members of the public who wish to voice out their views regarding the licence application may make a submission to the Licensing Board accordingly. The Licensing Board would take into account all relevant factors, including the views from the public, in determining the relevant applications. In any case, members of the public who are dissatisfied with the Licensing Board's decision may resort to judicial review.
46	To consider making clear the policy intent behind the term "persons aggrieved" under clause 72(1) by spelling out the persons who could lodge appeals.	We intend to allow only the applicants to lodge appeals to the Appeal Board. We will consider amending clause 72(1) to clarify who would be eligible to make an appeal.

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

**Main eligibility criteria required to be fulfilled, before a decision is taken by
the Private Columbaria Licensing Board (Licensing Board) on an application for the issue of a specified instrument**
[updated on 13 January 2016]

Instrument applied for	Type of columbarium	Aspects of eligibility criteria					
		Not subject to specified enforcement action (before the making of the application)	Land	Planning	Building	Interest in Premises	Management Plan
Licence	Any columbarium	<p>No proceeding for prosecution of an offence under section 20(8) or 21(2) of the Town Planning Ordinance (Cap. 131) has been instituted (whether against the applicant or any other person).</p> <p>No notice served (whether on the applicant or any other person) under section 23(1) or (2) of the Town Planning Ordinance (Cap. 131) is in force.</p> <p>No order served (whether on the applicant or any other person) under section 24(1) of the Buildings Ordinance (Cap. 123) is in force.</p>	<p>No unlawful occupation of unleased land.</p> <p>Compliance with lease, short term tenancy, licence or other instrument under which land is held from the Government.</p>	Compliance with the Town Planning Ordinance (Cap. 131) (TPO).	<p>No contravention of section 14 of the Buildings Ordinance (Cap. 123) –</p> <p>(a) compliance with requirements for approval and consent to commencement of building works under section 14 of Cap. 123; or</p> <p>(b) comprising certifiable building(s)³ (whole or part), to which section 14 of Cap. 123 does not apply.</p> <p>As a regulatory requirement under the Bill, in some cases of (a) and all cases of (b), these buildings are required to be certified by authorized persons/registered structural engineers (AP/RSE) to be structurally safe, and fulfil other requirements specified/required by the Licensing Board.</p>	Holding the columbarium premises directly from the Government under lease.	Approval of a management plan submitted by the applicant.

Licence (cont'd)	Pre-Bill columbarium	Same as above.	Same as above.	Same as above.	Same as above, except that for a pre-Bill columbarium, this requirement is modified to the extent that if it does not comply with the building-related requirements, the non-compliant structures necessary for, or ancillary to, the operation of the pre-Bill columbarium have to be structures certifiable for a pre-Bill columbarium ⁴ and comply with the requirements (certified by AP/RSE to be structurally safe and fulfilling other requirements specified/required by the Licensing Board).	Same as above, except that for a pre-Bill columbarium, this requirement is modified to the extent that if it does not hold the columbarium premises directly from the Government under lease, the operator must prove that he/she has the right to continue to use the premises for at least five years from the grant of the relevant instrument.	Same as above.
Exemption	Pre-Bill columbarium ¹	Same as above.	Same as above.	Not applicable.	Same as pre-Bill columbarium applying for a licence.	Same as pre-Bill columbarium applying for a licence.	Not applicable.

Temporary Suspension of Liability (TSOL)	Pre-Bill columbarium ²	Same as above.	If the case involves unlawful occupation of unleased land, the applicant must make an application to the Director of Lands for lawful authority to occupy the unleased land and provide a written declaration that the applicant has no claim to the unleased land, whether based on adverse possession or any other ground.	Not applicable.	Certified by AP/RSE as not posing obvious or imminent danger in terms of building safety and fire safety.	Not applicable, as a TSOL is temporary in nature.	Not applicable.
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Notes

¹ To seek an exemption, a pre-Bill columbarium needs to prove that it (a) commenced columbarium operations before 1.1.1990 and (b) ceased sale of interment rights since 18.6.2014 8:00 a.m.

² To seek a TSOL, a pre-Bill columbarium also needs to make an application for the issue of a licence and/or an application for the issue of an exemption.

³ A certifiable building means—

(a) an New Territories (NT) small building erected on or after 16 October 1987 with a certificate of exemption issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);

(b) an NT small building erected on or after 1 January 1961 and before 16 October 1987 that complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection;

(c) a pre-1961 NT building,

where **NT small building** and **pre-1961 NT building** are defined by section 3(4) of Schedule 2 to the Bill and **pre-1961 NT building** is limited to a building in the New Territories built before 1 January 1961 if there has been no alteration, addition or reconstruction of the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date.

⁴ Structures certifiable for a pre-Bill columbarium essentially cover structures that—

(a) do not comply with requirements for approval and consent to commencement of building works under section 14 of the Buildings Ordinance (Cap. 123), and do not form the whole, or a part, of a certifiable building; but

(b) fall within the following description—

(i) they contain niches used or intended to be used for the interment of ashes where at least a niche in the structures was so used immediately before the Bill announcement time; or

- (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium; and
- (c) fall within the following description—
 - (i) they are an on-grade outdoor structures with niches;
 - (ii) they form the whole, or a part, of a single-storey building;
 - (iii) they form the whole, or a part, of the ground storey of a multi-storey building but do not form the whole, or any part, of any other storey of the building; or
 - (iv) they form the whole, or a part of, a multi-storey building that is an NT small building—
 - (A) that came into existence on or after 16 October 1987; and
 - (B) in respect of which a certificate of exemption has not been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).
- (d) in (c), a building—
 - (i) means any building including a building situated on land that was unleased land referred to in section 41(1)(ba) of the Buildings Ordinance (Cap. 123) at the time the building was erected on that land without a licence issued under section 5 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or in breach of the licence; but
 - (ii) excludes a building situated in or on another building that complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123).

FEHD - Provision of Temporary Storage Facilities for Human Ashes
(December 2015)

I For cremated ashes from crematoria		
<u>Location</u>	<u>Storage Capacity</u>	<u>Status</u>
Ex-staff quarter at Kwai Chung Crematorium	10,000 bags or 3,000 urns	In use
Sub-total of I	10,000 bags or 3,000 urns	
II For displaced cremains resulting from the introduction of the Private Columbarium Bill		
<u>Location</u>	<u>Storage Capacity</u>	<u>Status</u>
(i) WHS Columbarium Phase III	5,040 urns	Ready
(ii) Kiu Tau Road Columbarium, Phase V	15,280 urns	Ready
(iii) Declassified Staff quarters at Cape Collinson Crematorium	2,040 urns	To be ready by Q2 2016
(iv) Declassified Staff quarters at Hong Kong Cemetery	3,240 urns	To be ready by Q2 2016
(v) Old Kwai Chung Crematorium	23,000 urns	Conversion work to be completed by early 2017
Sub-total of II	48,600 urns	
Grand total of I + II	51,600 urns or 48,600 urns + 10,000 bags	

Annex 3

**Private crematoria specified in
Part 6 of the Fifth Schedule to
Public Health and Municipal Services Ordinance (Cap. 132)**

Name	Address
Chuk Lam Sim Yuen	Fu Yung Shan, Tsuen Wan, N.T.
Kwun Yam Temple	Keung Shan, Tai O, Lantau
Ling Yan Monastery	Lower Keung Shan, Lantau
Po Lam Monastery	Tei Tong Tsai, Lantau Island
Po Lin Monastery	Ngong Ping, Lantau Island
Sai Chuk Lam Temple	Ha Fa Shan, 10 Miles Route Twisk, Tsuen Wan, N.T.