



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

3 January 2016

Ms Wendy KAN
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1 Legislative Council Road
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Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 1 December 2015 which seeks the Government's responses to your observations on Part 11 and other provisions of, and Schedule 7 to, the Private Columbaria Bill. Our responses to your observations and our other suggestion are set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Diane Wong", with a long horizontal line extending from the end of the signature.

(Miss Diane WONG)

for Secretary for Food and Health

The Government's Response to ALA's Observation
on Part 11 and other provisions of, and Schedule 7 to, the Private Columbaria Bill (the Bill)

Item	Response from the Government
1	<p>Issue: Re: Clause 102 –</p> <ul style="list-style-type: none"> “在第 6(5)條之後 — 加入 ‘(6) 第(1)、(2)及(3)款的效力，受《私營骨灰安置所條例》(2014 年第 號) 第 97 條所規限。’。” “After section 6(5) – Add ‘(6) Subsections (1), (2) and (3) have effect subject to section 97 of the Private Columbaria Ordinance (of 2014).’.” <p>The reference to “section 6(5) should be “section 6(7)”, and the new subsection to be added should be subsection 8 instead of subsection 6, in view of the amendments made to section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) in February 2015.</p> <p>Response:</p> <p>The Private Columbaria Bill (the Bill) was introduced into LegCo on 25 June 2014. The Land (Miscellaneous Provisions)(Amendment) Bill 2014 was introduced into LegCo on 4 July 2014. Following passage by LegCo and gazettal on 6 February 2015, section 3(5) of the Land (Miscellaneous Provisions) (Amendment) Ordinance (3 of 2015) has added the new section 6(6) and (7) of Cap. 28.</p> <p>We will consider amending clause 102 by changing –</p> <p>(a) “After section 6(5)” to “After section 6(7)” and</p> <p>(b) “(6) [...]” to “(8) [...]”.</p>
2	<p>Issue: Re: Clause 111(1) –</p> <ul style="list-style-type: none"> “(1) 在第 113(2)條之後 — 加入 ‘(2AA) 骨灰安置所如受附表 5 第 2A 部所指明的人管理和控制，即屬私營墳場。’。” “After section 113(2) – Add ‘(2AA) A columbarium that is under the management and control of a person

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	<p>specified in Part 2A of the Fifth Schedule is a private cemetery.’.”</p> <p>In the new subsection (2AA) to be added, please replace “人” with “人士” in the Chinese text, as the Chinese rendition of “a person” in the English text, in view of the Chinese text of the new section 113A of, and the heading of new Part 2A of the Fifth Schedule to, the Public Health and Municipal Services Ordinance (Cap. 132).</p> <p>Response: We will consider amending “人” in the proposed section 113(2AA) of Cap. 132 to “人士” for consistency with the new section 113A of, and the new Part 2A in the Fifth Schedule to, Cap. 132.</p>
3	<p>Issue: Re: Clause 112 –</p> <ul style="list-style-type: none"> • “在第 113 條之後 — 加入 ‘113A. 由附表 5 第 2A 部所指明的人士管理和控制的骨灰安置所 [...] (2) 除非 — (a) 管理和控制私營骨灰安置所的指明人士，已向主管當局提供該骨灰安置所的名稱及位置；及 (b) 自上述資料如此提供後，最少已過了 6 個月， 否則不得在該骨灰安置所內安放骨灰，亦不得出售該骨灰安置所的安放權。 [...] (5) 指明人士須應要求向主管當局提供一份名單，列出每間由該人管理和控制的私營骨灰安置所的名稱、位置及其他詳情。 [...].’” • After section 113— Add ‘113A. Columbarium managed and controlled by person specified in Part 2A of Fifth Schedule [...] (2) No ashes may be interred in a columbarium that is under the management and control of a specified person, nor may an interment right in respect of the columbarium be sold, unless— (a) the specified person has provided to the Authority information on the name and location of the columbarium; and (b) at least 6 months have lapsed since the information was so provided. [...] (5) A specified person must provide to the Authority, on request, a list

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	<p>setting out the name, location and other particulars of each columbarium that is under the specified person's management and control.</p> <p>[...]"</p> <p>In the Chinese text of new section 113A(2)(a) and (5) of Cap. 132, should “私營” be deleted.</p> <p>Response: We will consider deleting “私營” in the proposed section 113A(2)(a) and (5) of Cap. 132.</p>
4	<p>Issue: Re: Clause 112 – In new section 113A(2)(a) of Cap. 132, should “的資料” be added after “名稱及位置” in the Chinese text, as the Chinese rendition of “information on” in the English text?</p> <p>Response: We will consider amending “提供該骨灰安置所的名稱及位置” to “提供關於該骨灰安置所的名稱及位置的資料” in the proposed section 113A(2)(a) of Cap. 132.</p>
5	<p>Issue: Re: Clause 112 – Please clarify the legal consequence(s) for a specified person failing to comply with new section 113A(2) or (5) of Cap. 132.</p> <p>Response:</p> <p>There is no direct legal consequence for a specified person failing to comply with the new section 113A(2) or (5) of the Public Health and Municipal Services Ordinance (Cap. 132).</p> <p>The intention is to subject the specified person to the regulation under Cap. 132 and the Private Cemeteries Regulation (Cap. 132, sub. leg. BF), rather than under the Bill. However, if there is blatant and repeated non-compliance with section 113A(2) or (5) of Cap. 132, consideration could be given to invoking the new section 113(4) of Cap. 132, added by clause 111(3) of the Bill, whereby the Chief Executive in Council may delete a specified person from Part 2A of the Fifth Schedule to Cap. 132. If so, such a specified person will be subject to the application of the Bill.</p>
6	<p>Issue: Re: Clause 112 – What are the particulars of the columbarium required to be set out in the list under new section 113A(5) of Cap. 132?</p> <p>Response: Possible particulars which we might require the specified person to provide under the proposed section 113A(5) of Cap. 132 may include the number of niches in the columbarium.</p>
7	<p>Issue: Re: Clause 116 –</p> <ul style="list-style-type: none"> • “第 2 條 — 廢除私營墳場的定義

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	<p>代以</p> <p>‘私營墳場 (private cemetery)指 —</p> <p>(a) 本條例附表 5 第 2 部所指明的墳場；或</p> <p>(b) 由該附表第 2A 部所指明的人士管理和控制的骨灰安置所。’。”</p> <ul style="list-style-type: none"> • “Section 2— <p>Repeal the definition of <i>private cemetery</i></p> <p>Substitute</p> <p>‘<i>private cemetery</i> (私營墳場) means—</p> <p>(a) a cemetery specified in Part 2 of the Fifth Schedule to the Ordinance; or</p> <p>(b) a columbarium that is under the management and control of a person specified in Part 2A of that Schedule.’.”</p> <p>In the Chinese text of paragraph (b) of the definition of “private cemetery” to be substituted, “骨灰安置所<u>。</u>” should be “骨灰安置所<u>；</u>”.</p> <p>Response: We will amend the “骨灰安置所。” in paragraph (b) of the definition of <i>private cemetery</i> in clause 116 to “骨灰安置所；”.</p>

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8	<p>Issue: Re: Clause 118 –</p> <ul style="list-style-type: none"> 附表 1 — 加入 <p>‘128. 根據《私營骨灰安置所條例》(2014 年第 號)第 6 條設立的私營骨灰安置所發牌委員會。</p> <p>129. 根據《私營骨灰安置所條例》(2014 年第 號)第 71 條設立的私營骨灰安置所上訴委員會。’。”</p> <ul style="list-style-type: none"> Schedule 1— <p>Add</p> <p>‘128. Private Columbaria Licensing Board established under section 6 of the Private Columbaria Ordinance (of 2014).</p> <p>129. Private Columbaria Appeal Board established under section 71 of the Private Columbaria Ordinance (of 2014).’.”</p> <p>Please confirm the accuracy of the numbers opposite to the Private Columbaria Licensing Board and Private Columbaria Appeal Board. According to the computer version of the Prevention of Bribery Ordinance (Cap. 201) available at the Bilingual Laws Information System (BLIS) as at 30 November 2015, there are only 125 public bodies in Schedule 1 to Cap. 201.</p> <p>Response:</p> <p>The Private Columbaria Bill was introduced into LegCo on 25 June 2014. The Insurance Companies (Amendment) Bill 2014 was introduced into LegCo on 30 April 2014. Following passage by LegCo and gazettal on 17 July 2015, section 108 of the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015) has added items 126 and 127 to Schedule 1 to the Prevention of Bribery Ordinance (Cap 201). Such changes have not yet been shown on BLIS. New items to be added to Schedule 1 should therefore start from 128.</p> <p>We will keep in view if the relevant item numbers assigned to the Private Columbaria Licensing Board (“128”) and the Private Columbaria Appeal Board (“129”) in Schedule 1 to Cap. 201 will be affected by any other enactments taking effect before the enactment of the Private Columbaria Bill.</p>
9	<p>Issue: Re: Section 1(2) of Schedule 7 –</p> <ul style="list-style-type: none"> “只要上述人士在寬限期內沒有出售有關骨灰安置所的安放權，則該人不會因在該寬限期內繼續營辦該骨灰安置所，而屬犯本條例第 8 條所訂罪行。 “The person does not commit an offence under section 8 of this Ordinance by continuing to operate the columbarium in the grace period in so far as the person does not sell any interment right in respect of the columbarium in that period.” <p>The reference to “section 8” should be “section 9”. It is noted that amendment will be</p>

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	<p>made.</p> <p>Response: We will consider changing “section 8” to “section 9” in section 1(2) of Schedule 7.</p>
10	<p>Issue: Re: Section 1(2) of Schedule 7 – Subject to Clause 8(2), a person commits an offence under clause 9 if the person operates, keeps, manages or in any other way has control of a columbarium without a licence after the enactment date. Section 1(2) of Schedule 7 only covers the act of “continuing to operate the columbarium” without also the act of “continuing to keep, manage or in any other way have control of the columbarium”. Please explain the reasons(s) for such exclusion.</p> <p>Response: We will consider amending section 1(2) of Schedule 7 to cover also the act of “continuing to keep, manage or in any other way have control of the columbarium”.</p>
11	<p>Issue: Re: Section 3 of Schedule 7 –</p> <ul style="list-style-type: none"> • “根據本條例第 43 條備存安放權出售協議紀錄的規定，不適用於在刊憲日期前訂立的協議。” • “The requirement under section 43 of this Ordinance to keep records of agreements for the sale of interment rights does not apply to an agreement made before the enactment date.” <p>Similar to Question 37 set out in the Schedule to my letter dated 5 November 2015, please clarify whether the requirement under clause 43 to keep records of agreements for the sale of interment rights includes the requirement set out in clause 43(1), (2) and (4).</p> <p>Response:</p> <p>Please see points 2.08 to 2.12 in the last column against items A0007 and A0008 in the first batch of CSAs (Part A) issued to the BC.</p> <p>There is indeed a difference between –</p> <p>(a) clause 43(1), (2) and (3) requiring a licensee to keep a record on agreements for sale of interment rights. Such agreements would naturally mean those entered into after the enactment date; and</p> <p>(b) clause 43(4) requiring a holder of a specified instrument (licence, exemption or TSOL) to keep a record on (a) interment / disinterment of ashes in and from the columbarium and (b) the contact details of authorised representatives in respect of ashes interred in the columbarium. Such information would naturally be used for the purpose of the ash disposal procedures (Part 7 and Schedule 5). Our intention is that this requirement should apply to ashes interred in the columbarium, even if the receipt of ashes occurred before the enactment date.</p> <p>Hence, we will consider excising clause 43(4) from Division 1 of Part 5 and instead</p>

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	<p>including the following in the relevant part of the Bill -</p> <p>(a) the same provision, subject to a caveat of “where available” in respect of the contact details of authorized representatives in the case of an agreement entered into before the enactment date; and</p> <p>(b) the penalty provision, with fines and imprisonment similar to those in clause 43(5), in respect of contravention of the provision at item (a) above.</p> <p>We will also consider making consequential amendment to the reference to “section 43(4)” in clause 58(2)(a)(iii) accordingly.</p> <p>With the above amendments and the headings of the relevant provisions to be tidied up, it will be clear that reference to “section 43 of this Ordinance” in section 3 of Schedule 7 is squarely about clause 43(1), (2) and (3) only.</p>
12	<p>Issue: Re: Clause 4(1)(c)–</p> <ul style="list-style-type: none"> • “(c) 由該附表第 2A 部所指明的人管理和控制的骨灰安置所；” • “(c) a columbarium under the management and control of a person specified in Part 2A of that Schedule;” <p>Please note Question 2 above in respect of the Chinese rendition of “a person” in the English text.</p> <p>Response: We will consider amending “人” to “人士” in clause 4(1)(c) for consistency with the new Part 2A in the Fifth Schedule to Cap. 132.</p>
13	<p>Issue: Re: Clause 82(3)–</p> <ul style="list-style-type: none"> • “如其他執法當局或任何其他人的專業知識，對執行本條例之下的職能屬必需，或攸關執行該等職能，則該指明人士可諮詢該當局或該人。” • “A specified person may consult any other enforcement authority or any other person if the expertise of the authority or person is necessary for or relevant to the performance of a function under this Ordinance.” <p>In the Chinese text, “該等職能” should be “該職能”, as the Chinese rendition of “a function” in the English text.</p> <p>Response: We will consider amending “該等” to “該” in clause 82(3).</p>
14	<p>Issue: Re: Clause 87(2) –</p> <ul style="list-style-type: none"> • “任何人犯第(1)款所訂罪行，一經循簡易程序定罪，可處第 3 級罰款及監禁 6 個月。” • “A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 3 and to imprisonment for 6 months.” <p>Please delete “summary” in the English text and “循簡易程序” in the Chinese text, for</p>

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	<p>the sake of consistency with the drafting of other relevant provisions of the Bill.</p> <p>Response: We will consider deleting “summary” in clause 87(2).</p>
15	<p>Issue: Re: Clause 92(2)(d) –</p> <ul style="list-style-type: none"> • “就關乎樓宇安全、消防安全、其他安全事宜、排水及污水的措施，訂定條文，包括規定須定期向發牌委員會提交由合資格專業人士的證明書或報告；” • “providing for measures relating to building safety, fire safety, other safety matters, drainage and sewage, qualified professional, to be submitted to the Licensing Board at regular intervals;” <p>In the Chinese text, please add “作出” after “合資格專業人士”.</p> <p>Response: We will consider adding “作出” after “合資格專業人士” in clause 92(2)(d).</p>
16	<p>Issue: Re: Clause 94(2)(c) –</p> <ul style="list-style-type: none"> • “發牌委員會職員；及” • “an officer of the Licensing Board; and” <p>In view of English text, should “an officer of” be replaced by “a staff of” in view of section 2 of Schedule 1?</p> <p>Response: We will consider amending clause 94(2)(c) to change “an officer” to “a member of the staff”.</p>
17	<p>Issue: Re: Heading of Schedule 2 –</p> <ul style="list-style-type: none"> • “攸關獲指明文書的資格以及對該等文書施加條件的規定” • “Requirements Relevant to Eligibility for, or Conditions Imposed on, Specified Instruments” <p>In the heading, “or” in the English text is rendered as “以及”. Please amend.</p> <p>Response: As Schedule 2 does not contain provisions relating to conditions imposed on specified instruments, we will consider amending the heading of Schedule 2 by deleting “, or Conditions Imposed on,”.</p>