

Bills Committee on Private Columbaria Bill

**Government's Response to the
Submission from the Consumer Council (dated 23 February 2015)
in respect of the Private Columbaria Bill**

This paper sets out the Government's response to the submission made by the Consumer Council to the Bills Committee on 23 February 2015.

	Key Comment	Response from the Administration
(A) Consumer protection – sales stage		
1	<p><u>Regulating sales tactics</u></p> <p>There have been allegations that some of the sales agents for private columbaria made false or misleading representations about the private columbaria (e.g. prospect of obtaining approval) in order to boost sales. The Bill does not address malpractices transpiring in the course of sale transactions for private columbaria. Apart from relying on the Trade Descriptions Ordinance, the Bill may provide for the following safeguards –</p> <p>(a) To require licensed columbaria operators to take reasonable care and diligence to ensure that their agents comply with all applicable law and act in a fair and honest manner;</p> <p>(b) To require the private columbaria to execute an agency agreement when engaging any sales agent;</p> <p>(c) To make failure to ensure propriety on the part of agents a ground for revocation or suspension of licence or lead to penalty upon the licence holder.</p> <p>In the longer run, the Government should monitor the market and consider whether it is appropriate to extend the regulatory regime to govern the sales</p>	<p>The objective of the Private Columbaria Bill (the Bill) is to provide for a licensing regime that regulates private columbaria, with a view to ensuring compliance with statutory and Government requirements, enhancing protection of consumer interests and putting the further development of the trade on a sustainable path.</p> <p>After the announcement of the Bill, we have enhanced public education, advising consumers to stay vigilant prior to the commencement of the Private Columbaria Ordinance (the Ordinance). We thank the Consumer Council for expressing support for the direction taken by the Government and conveying messages for the protection of consumer interests, e.g. the editorial at CHOICE magazine, at that stage. We plan to launch another round of enhanced public education before the coming Ching Ming Festival, advising consumers to refrain from making rash decisions in purchasing niches.</p> <p>Once the Ordinance comes into operation, no private columbarium will be allowed to sell or let out new or unoccupied niches unless a licence has been issued in respect of the columbarium. In other words, niches being sold or let out (whether or not through sales agents) after the commencement of the Ordinance would have to come from licensed columbaria. Should any operator of a private columbarium sell or offer for sale its niches (whether or not through sales agents) prior to obtaining a licence, the operator may be in contravention of the relevant provisions of the Ordinance, and would be liable to criminal liability (namely, on summary conviction to a fine of \$2 million and imprisonment for three years, and on</p>

	agents as well.	<p>conviction on indictment to a fine of \$5 million and imprisonment for seven years). We believe such penalties should carry sufficient deterrence.</p> <p>With the benefit of the Consumer Council's advice, there are provisions in the Bill setting out the requirements that a seller of an interment right in respect of a columbarium must meet in terms of what prescribed information, recommendations and essential terms, including price of niches, services to be provided etc., should go into the agreement for sale of interment right (see Part 5 of and Schedule 4 to the Bill). We would consider drawing up sample contract templates for reference by consumers and operators.</p> <p>We will seek legal advice on whether some requirements as suggested could be imposed by the Licensing Board by way of licensing conditions upon issue of a licence.</p> <p>Our current working target is early passage of the Bill by LegCo. We note the Consumer Council's suggestion to consider, in the longer run, whether it is appropriate to extend the regulatory regime to govern the conduct of sales agents.</p>
2	<p><u>Regulating service bundling</u></p> <p>It is crucial to impose additional conditions on licensed columbaria to prevent anti-competition trade practices, e.g. forbidding them from bundling the sale of interment rights with other funeral services and coercing consumers to purchase "one-stop" service.</p>	<p>We will liaise with the Consumer Council to get a better understanding of its concern, and thereafter consult the Commerce and Economic Development Bureau (which oversees the Competition Ordinance (Cap. 619)) and the Department of Justice.</p>
(B) Consumer protection – contract stage		
3	<p><u>Unenforceable agreement</u></p> <p>Although clause 42 of the Bill provided for the requirements for the agreement for sale of interment rights and the purchasers' right to cancel the agreement (and receive refund from seller), the Bill did not stipulate any legal consequence in case of default. An additional deterrent measure can be provided for under the Bill to criminalise default in</p>	<p>The agreement of sale of interment right entered into between a consumer and a seller is a private contract.</p> <p>Under the Bill, should a consumer decide to cancel an unenforceable agreement and the seller refuse to refund in accordance with the Bill, there are provisions under which the consumer may bring an action in the court to recover the relevant amounts paid under the agreement (see clause 41(4) of the Bill).</p>

	providing refund.	Civil action is a remedy commonly applicable to various trades and industries. We will liaise with the Consumer Council to get a better understanding of its concern. Unless there is overriding justification for departing from the across-the-board practice, we have yet to see a case for imposing criminal sanction in the Bill if the seller is unable to refund the purchaser even after he/she brings an action in court to recover the relevant amount paid under the agreement.
4	<p><u>Cooling-off period</u></p> <p>A cooling-off period clause could be added to the essential terms of agreement for sale of interment right provided for under the Bill (i.e. Schedule 4 of the Bill), to the effect that a purchaser may cancel the agreement within 21 working days and receive a refund after deducting administrative expenses reasonably incurred for cancellation of the agreement and any other service provided during the cooling-off period.</p>	We will consult the relevant Bureaux / Departments, and assess the need of this proposal.
(C) Consumer protection – post-contract stage		
5	<p><u>Compensation fund</u></p> <p>A compensation fund should be set up to protect consumers aggrieved by sudden closure of any columbaria. Reference could be made to the Travel Industry Compensation Fund which sources funds by collecting levy from the sale proceeds in each transaction. Considering the substantial prepayment at stake, consumers should be willing to accept a levy being a certain percentage of the purchase price in return for a compensation fund offering protection.</p>	<p>It is not considered appropriate to adopt a levy collection scheme as such outlays would most likely be passed onto the consumers upfront. It would not deter operators who are minded to fly by night.</p> <p>Under a false sense of security that the compensation fund would bail them out, consumers might become less alert to the risks associated with niche transactions involving heavy pre-payment.</p> <p>It is not equitable to have law-abiding operators shouldering the burden on behalf of those operators who chose to shirk their responsibility to maintain interred ashes.</p> <p>Such a scheme, if any, would not be able to benefit those who purchased the niches prior to the commencement of the Ordinance and had not paid any levies.</p> <p>Part 5 of and Schedule 4 to the Bill set out the requirements that a seller of an interment right in respect of a columbarium must meet in terms of what prescribed information, recommendations and</p>

		<p>essential terms that should be included in agreement for sale of interment right. We would consider drawing up sample contract templates for easy reference by consumers and operators.</p> <p>We should bear in mind the different <i>modus operandi</i> of the travel industry and the columbarium industry. Having regard to the supply/demand balance and the lapse of time between transaction and actual consumption of service, the amount that is recoverable by the aggrieved at the event-triggering point under the columbarium industry setting might not be able to address those consumers' concerns, as compared with the travel industry setting. In the case of the latter, the compensation would enable the aggrieved to pay for the lion share of a substitute of the same nature. This would not be so in the case of the columbarium industry, in respect of which protection would be safeguarded by early passage of the Bill, a regulatory framework with sanctions to deter breaches, and consumer education.</p>
(D) Other matters		
6	<p><u>Management plan for columbaria seeking exemption</u></p> <p>Submission of a management plan approved by the Licensing Board should form one of the eligibility criteria in the application for exemption.</p>	<p>Even though submission of a management plan is not an eligibility criteria in the application for exemption, the Licensing Board may, upon issue of an exemption, impose exemption conditions on measures to minimise the nuisance caused to the neighbourhood (see clause 28 of the Bill).</p> <p>Exempted columbaria are required to cease sale of interment right from the Bill announcement time (i.e. no new income from sale of new or unoccupied niches). On the other hand, they would have to incur costs for –</p> <ul style="list-style-type: none"> (a) complying with the building requirements (such as relocating niches from upper storeys to approved premises); (b) fulfilling the obligations of managing and maintaining the columbarium operations; (c) complying with the exemption conditions to follow up mitigation measures and safety measures; and (d) fulfilling the obligations of properly handling interred ashes before cessation of business.

		<p>Seen in this light, they are serving the community by continuing to operate rather than exiting from the market before commencement of the Ordinance. Hence, it is not proportional to impose the same stringent requirements applicable to licensees (like management plan) on exemptees.</p>
7	<p><u>Surveillance</u></p> <p>Surveillance during the transition period as well as during the period of temporary suspension of liability (TSOL) is of utmost importance in order to ensure that no unlicensed columbaria are offering niches for sale, with a view to avoiding abuse of the licensing regime and deterring consumer traps.</p>	<p>A dedicated inspection and enforcement team will be set up within the Food and Environmental Hygiene Department (FEHD) for this purpose.</p> <p>Should any pre-Bill columbarium sell its niches after the announcement of the Bill, it may lose the eligibility to apply for exemption. However, a pre-Bill columbarium intending to apply for a licence can indeed continue to sell their niches up to the commencement of the Ordinance. Hence, the earlier the Bill is passed, the sooner would we be able to remove the uncertainty associated with the “window” in question.</p> <p>Upon commencement of the Bill, operators are not allowed to sell or let out niches until they have obtained a licence. In other words, operators with TSOL status will also not be allowed to sell or let out niches. Contravention of the relevant provisions of the Bill will constitute an offence. They would be liable on summary conviction to a fine of \$2 million and imprisonment for three years, and on conviction on indictment to a fine of \$5 million and imprisonment for seven years. We believe such penalties should carry sufficient deterrence.</p>
8	<p><u>Transparency</u></p> <p>Up-to-date and reader-friendly information about all operators, their respective columbaria and application progress/outcome should be available for public inspection on a free-of-charge basis.</p>	<p>This is noted.</p>
9	<p><u>Expeditious passage and implementation of the Bill</u></p> <p>The proposed legislation should be passed and implemented expeditiously so as to minimise the period of uncertainty and potential hazard.</p>	<p>This is in line with our thinking. We are working closely with the Bills Committee for early implementation of the licensing regime.</p>

<p>10</p>	<p><u>Market shortage</u></p> <p>Apart from regulating the private columbaria industry and promoting alternative burial methods, increasing the supply of public niches is an essential means to ensure a healthy and sustainable columbaria industry.</p>	<p>This is in line with our thinking.</p> <p>On green burial, we will continue to step up publicity and educational programmes to enhance public awareness and acceptance of green burial.</p> <p>On public supply of niches, the Government is committed to taking forward the district-based columbarium development scheme for all districts to share the responsibility of constructing public columbaria collectively. With concerted efforts of relevant parties, our work starts to bear fruit. Support from DCs has already been obtained for seven columbarium projects, involving more than 450 000 new niches.</p> <p>Between 2015 and 2017, the Board of Management of the Chinese Permanent Cemeteries (BMCP) and religious bodies are expected to provide about 25 000 and 47 000 new niches respectively.</p> <p>Meanwhile, FEHD and BMCP have adopted the following measures to optimise the use of existing niches –</p> <p>(a) prior to January 2014, a standard niche and a large niche of FEHD were allowed to hold 2 and 4 sets of ashes respectively. Since most of the niches have not been used to this capacity, it is estimated that about 167 000 urn spaces have yet to be utilised. To make better use of such space, with effect from January 2014, FEHD has relaxed the restriction on placing additional sets of ashes into the niches in public columbaria, including (i) relaxing the definition of “close relative”; and (ii) allowing the public to place more than two sets of ashes in a standard niche and more than four sets in a large niche. The application process is user-friendly and this option will make worshipping the deceased more convenient; and</p> <p>(b) there are about 220 000 urn spaces in the existing standard niches and family niches at BMCP’s columbaria. On 17 February 2014, the Home Affairs Bureau (HAB) consulted the LegCo Home Affairs Panel on relaxing the restriction in relation to the use of grave spaces and family niches through introducing amendments to the Chinese Permanent Cemeteries Ordinance (Cap. 1112) and its Rules (Cap. 1112A), including, among other</p>
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		things, expanding the eligibility for use of family niches in the CPC. HAB aims to introduce the relevant amendments to LegCo in 2015-16.
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