

Bills Committee on Private Columbaria Bill

Government's Response to the Issues Raised by Members of the Bills Committee during Previous Meetings

	Information requested / follow-up action required	Response from the Government
(A) Matters arising from the meeting on 6 June 2016		
1	To undertake to review and propose amendments, in a timely manner, to the provisions of the Private Columbaria Ordinance ("the Ordinance") (e.g. keeping of synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes in domestic premises, ash disposal, etc.) where the licensing authority or enforcement authorities had encountered difficulties in enforcing and conduct a review of the Ordinance after its implementation for, say, three years. The Administration's undertaking to do so should be covered in the speech of the Secretary for Food and Health ("SFH's speech") for the resumed Second Reading debate on the Bill.	We undertake to keep in view the implementation of the Ordinance and propose amendments to the Ordinance as and when necessary. A review of the Ordinance will in any event be conducted around three years after implementation. We will incorporate the above undertaking in SFH's speech for the resumption of Second Reading debate on the Bill.
2	To consider whether to take over Hon LEE Cheuk-yan's proposed Committee stage amendments ("CSAs") to clause 17 which sought to empower the future Private Columbaria Licensing Board to have regard to past records of non-compliance with statutory and government requirements related to planning, land and building by private columbaria in determining an application for a specified instrument (i.e. a licence, an exemption or temporary suspension of liability).	<p>Pending sight of Hon. Lee Cheuk-yan's proposed CSAs, our initial response is set out below.</p> <p>Clause 17 empowers the future Licensing Board to have regard to public interest and any other relevant considerations in determining the merits of an application for a specified instrument in respect of a columbarium. This general provision, empowering as it already does the Licensing Board to have regard to relevant considerations, should be able to address Hon Lee's concerns.</p> <p>The licensing scheme is forward-looking. Even if the past records of non-compliance with statutory and Government requirements are confined to planning, land and building matters by private columbaria, it</p>

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		<p>remains questionable whether acts of non-compliance which accrued prior to the enactment of the Private Columbaria Bill should be included as a relevant consideration in determining the merits of the applications. It is pertinent to note that –</p> <p>(a) by virtue of clause 30(1) and (2), a temporary suspension of liability (TSOL) in respect of a pre-Bill columbarium is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards meeting the requirements for a licence or exemption (as the case requires) and procuring the issue of the licence or exemption (as the case requires) before the expiry of the TSOL; and</p> <p>(b) clause 33(2) provides that the Licensing Board may exercise the powers to revoke, suspend, or refuse to renew or extend a specified instrument if the instrument holder has been convicted of an offence under the Private Columbaria Ordinance.</p> <p>In a way, such provisions should help address Hon. Lee's concern about recalcitrant non-compliance on a habitual basis.</p> <p>It would not be desirable to list out exhaustively what the relevant considerations would be, as it might inadvertently diminish the flexibility accorded to the Licensing Board by this provision. We therefore do not intend to amend clause 17.</p>
3	To consider amending clause 52(1)(b)(ii) to the effect that a holder of a specified instrument (as opposed to his/her employees, servants, or agents), who failed to provide the assistance and information required to be provided under clause 49(2), was liable for the punishment stipulated in clause 52(1)(b)(ii).	<p>The original provision is silent on what legal consequences would apply should there be a contravention of clause 49(2). After ALA sought clarification about this point, we have added clause 52(1)(b)(ii) to provide that a person commits an offence if the person fails to provide the assistance and information required to be provided under clause 49(2). It is pertinent to note that that provision applies across-the-board, without making any distinction between employers and employees.</p> <p>At the meeting on 6 June 2016, Members expressed the view that clause 52(1)(b)(ii) should not target at employees. We acknowledged Members' concern and agreed to revisit the provision. On reflection, to the</p>

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		<p>extent that the provision itself is meant to apply to employers and employees alike on an equal footing, we are of the view that clause 52(1)(b)(ii) should not target at employers either. We therefore propose instead to take out clause 52(1)(b)(ii).</p> <p>We could live with deleting clause 52(1)(b)(ii) and count on the remaining provisions in clause 52 (read together with clause 49(1) which deals with power to inspect columbaria) for our purpose.</p> <p>Please refer to the Committee Stage Amendments (CSAs) to clause 52 proposed by the Government issued on 11 June 2016.</p>
4	To consider including in clause 65(4)(b) the reference to clause 64(4C) and (4D).	Taken on board. Please refer to the CSAs to clause 65(4)(b) proposed by the Government issued on 11 June 2016. This has incorporated the suggestions made by ALA.
5	To consider whether to take over Hon Cyd HO's proposed CSA to the definition of "relative" in section 5(2) of Schedule 5.	<p>As per our previous written response to the Bills Committee, if a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong is the authorized representative or the purchaser, he/she is entitled to claim for the return of the ashes in that capacity. Such persons, depending on the actual circumstances, may also be an eligible claimant (see paragraph (b) of the definition of "eligible claimant" under section 5(2) of Schedule 5) and as such lodge competing claims for the item together with the ashes as mentioned in section 9(8) of Schedule 5.</p> <p>In the circumstances provided for in section 14 of Schedule 5, namely that the ashes are in the Director's possession and no legal proceedings are pending, the Director may, by exercising her discretion, hand the ashes over to a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong etc. as he or she deems appropriate.</p> <p>Setting out, in the definition of "relative", relationships not formally recognised under the prevailing law in Hong Kong could open up the definition to very far-fetched relationships which are difficult to ring-fence. We therefore do not intend to amend the definition of "relative" under section 5(2) of Schedule</p>

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		<p>5.</p> <p>Hon. Cyd Ho's amendment is more an issue related to equality before the law between heterosexual and homosexual partners. This is better addressed in the context of say legislation dealing with marriage, rather than this Bill.</p>
6	To propose CSAs to clause 99(6).	<p>The proposed CSAs to clause 99(6) seek to better align the provision with our policy intent, namely allowing time for seeking compliance with the building-related requirements during the validity period of TSOL. For details, please refer to the CSAs to clause 99(6) proposed by the Government issued on 11 June 2016.</p>
7	<p>To provide information on:</p> <p>(a) the policies and administrative arrangements for land premium for private columbaria which applied for specified instruments;</p> <p>(b) conditions and criteria for waiving land premium for the eligible columbaria under different situations; and</p> <p>(c) the imposition of conditions to forbid private columbarium operators who were exempted from paying land premium to resell niches or charge purchasers extortionate fees.</p>	<p><u>Premium</u></p> <p>Please see items 6 to 7 in LC Paper No. CB(2)721/15-16(02) for our previous written responses to Members' questions.</p> <p>Under the current policy, any application for land grant / lease modification / land exchange / STT / waiver etc. to permit the proposed use will be processed in accordance with the established procedures. Approval of any such application is subject to payment of full market value (FMV) premia, waiver fees or STT rentals as well as administrative fees as appropriate by the applicant unless policy directive is provided to charge nominal or concessionary premia / rentals / fees. The same procedures will apply to a private columbarium (be this a pre-Bill columbarium or not) seeking a licence under the Private Columbaria Bill (the Bill).</p> <p>For pre-Bill columbaria confirmed to be eligible for exemption status in all other respects, D of Lands might, upon application, consider administratively regularising the breach of lease conditions and / or unlawful occupation of unleased land for the proposed exempted area before and during the exemption period, by way of a waiver and / or a STT, with the relevant waiver fees, STT rentals and administrative fees waived, depending on the circumstances and merits of each application. As explained at the Bills Committee meeting on 6 June 2016, the arrangements in this paragraph apply to the following in respect of an</p>

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		<p>exempted columbarium –</p> <p>(a) ashes interred in the columbarium before the Bill announcement time (BAT);</p> <p>(b) ashes interred in the columbarium between the BAT and the enactment date in respect of niches sold before the BAT; and</p> <p>(c) ashes to be interred in the columbarium after obtaining an exemption in respect of niches sold before the BAT.</p> <p><u>Safeguards against abuse</u></p> <p>We have plans to impose respective restrictions against changes of ashes interred or to be interred (as the case requires) under the above categories. In addition, we will also take on board Members' suggestions to impose exemption conditions to restrict the imposition of any additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of an interment right entered into before the BAT.</p> <p>For details, please refer to the CSAs on clause 31A proposed by the Government issued on 11 June 2016.</p>
8	To include the information under item 7 in SFH's speech.	Will do.
9	To consider amending clause 65(3)(a) to specify that a specified officer might occupy the entire columbarium premises or part of them under an occupation order.	Hon. Alan Leong's suggestion has been taken on board. Please refer to the CSAs to clause 65(3)(a) proposed by the Government issued on 11 June 2016.