



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

9 October 2014

Ms Wendy KAN
Assistant Legal Adviser
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1 Legislative Council Road
Central, Hong Kong

Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 4 September 2014 which seeks the Administration's responses to your observations on Parts 1 to 4 of the Private Columbaria Bill. Our responses to your observations and our other suggestion are set out at **Annex**.

Yours sincerely,

(Miss Diane WONG)
for Secretary for Food and Health

c.c. DoJ (Attn: Ms Phyllis Ko & Miss Cindy Cheuk)
Clerk to Bills Committee

The Administration's Response to ALA's Observation
on Parts 1 to 4 of the Private Columbaria Bill

Item	Response from the Administration
1	<p>Re: clause 2(1), paragraph (c) of the definition of “ashes” –</p> <ul style="list-style-type: none">● “不包括任何由人類骨灰轉化而成的人造鑽石、珠寶、裝飾品或其他物料”● “excludes synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes” <p>We will consider placing “任何” before “其他物料” (instead of “由人類骨灰”).</p>
2	<p>Re: clause 2(1), paragraph (c) of the definition of “columbarium” –</p> <ul style="list-style-type: none">● “不包括用作或將用作在署長根據《公眾衛生及市政條例》(第 132 章) 第 118(1) 條給予的准許下撒骨灰的處所”● “excludes premises used or to be used for scattering ashes with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132)” <p>The Director of Food and Environmental Hygiene is specified in Schedule 3 to the Public Health and Municipal Services Ordinance (Cap. 132) as the Authority for the purposes of section 118(1) of that Ordinance. We consider it appropriate to refer to the Director in paragraph (c) of the definition of “columbarium”.</p>
3	<p>Re: clause 2(1), paragraph (b) of the definition of “dedicated person” –</p> <ul style="list-style-type: none">● “就安放權(不論是否關乎骨灰安置所的龕位或其他地方)而言—指符合以下說明的人：該人的骨灰，將會透過行使該權利而獲安放，不論該人是否在世，亦不論是否已分配某特定龕位或位置”● “in relation to an interment right (whether in respect of a niche or otherwise in a columbarium)—a person whose ashes are to be interred by exercising the interment right, whether or not the person is living and whether or not a specific niche or location is allocated” <p>We will consider amending “or otherwise” to “or any other place” in the English text, and amending “不論是否關乎骨灰安置所的龕位或其他地方” to “不論是關乎骨灰安置所中的龕位或其他地方” in the Chinese text.</p>

Item	Response from the Administration
4	<p>Re: clause 2(1), paragraph (a)(ii) of the definition of “inter” –</p> <ul style="list-style-type: none"> ● “不論該等骨灰或裝載該等骨灰的容器，是否存放在龕位內；但” ● “whether or not the ashes or container of ashes are or is kept in a niche; but” <p>“該等骨灰或裝載該等骨灰的容器” is equivalent in meaning to “the ashes or container of ashes”. Since the lead-in phrase of the definition refers to “就某人的骨灰而言” (“in relation to ashes of a person”), the Chinese text of paragraph (a) refers to “該等骨灰 (i.e. “the ashes”) when the term “ashes” is repeated.</p>
5	<p>Re: clause 2(1), paragraph (b) of the definition of “inter” –</p> <ul style="list-style-type: none"> ● “不包括在署長根據《公眾衛生及市政條例》(第 132 章) 第 118(1) 條給予的准許下，在任何處所撒骨灰” ● “excludes scatter ashes in, on or at any premises with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132)” <p>Please see our reply to Item 2 above. We consider it appropriate to refer to the Director in paragraph (b) of the definition of “inter”.</p>
6	<p>Re: clause 2(8) -</p> <ul style="list-style-type: none"> ● “在本條例中，提述對營辦骨灰安置所屬必需(或與之配套)的違規構築物，指屬符合第(7)款所指的對營辦該骨灰安置所屬必需(或與之配套)的違規構築物。” ● “In this Ordinance, a reference to non-compliant structures necessary for, or ancillary to, the operation of a columbarium means non-compliant structures that are structures necessary for, or ancillary to, the operation of the columbarium within the meaning of subsection (7).” <p>We will consider amending “指屬符合第(7)款所指的對營辦該骨灰安置所屬必需(或與之配套)的違規構築物” to “指屬符合第(7)款所指的對營辦該骨灰安置所屬必需(或與之配套)的構築物者”.</p>

Item	Response from the Administration
7	<p>Re: clause 11(2) –</p> <ul style="list-style-type: none"> ● “發牌委員會可運用其酌情權，決定文書的發出年期、續期年期或延展年期(有效期)” ● “The Licensing Board may, in its discretion, determine the term for which the instrument is issued, renewed or extended (validity period)” <p>It is clear that the term refers to “specified instrument” (“指明文書”). That said, we will consider inserting “specified” (“指明”) before “instrument” (“文書”).</p>
8	<p>Re: clause 11(3)(a) –</p> <ul style="list-style-type: none"> ● “(如骨灰安置所處所，是根據租賃、租契或其他文書佔用的) 該租賃、租契或文書餘下的租期” ● “if the columbarium premises are occupied under a tenancy, lease or other instrument, the remainder of the term of the tenancy, lease or other instrument” <p>Re: clause 11(4) -</p> <ul style="list-style-type: none"> ● “就屬關於根據租賃、租契或其他文書佔用的骨灰安置所處所的豁免書的有效期，不得超逾該租賃、租契或文書餘下的租期” ● “The validity period of an exemption in respect of columbarium premises occupied under a tenancy, lease or other instrument must not exceed the remainder of the term of the tenancy, lease or other instrument” <p>Re: clause 11(5)(a) –</p> <ul style="list-style-type: none"> ● “(如骨灰安置所處所，是根據租賃、租契或其他文書佔用的) 該租賃、租契或文書餘下的租期” ● “if the columbarium premises are occupied under a tenancy, lease or other instrument, the remainder of the term of the tenancy, lease or other instrument” <p>The “tenancy, lease or other instrument” is not limited to that granted by the Government, but also that made between private parties. We have no particular comment on using “租期” or “年期”. We will consider replacing “租期” with “年期” in clause 11(3)(a), clause 11(4) and clause 11(5)(a).</p>

Item	Response from the Administration
9	<p>Re: clause 13(2) –</p> <ul style="list-style-type: none"> ● “儘管有第 11(1)條的規定，發牌委員會須先行批准一份管理方案(由申請人擬備並涵蓋第 85 條所規定的事宜者)，方可批准要求就該骨灰安置所發出牌照的申請” ● “Despite section 11(1), the Licensing Board may grant an application for the issue of a licence in respect of a columbarium only if a management plan, prepared by the applicant and covering matters required under section 85, has been approved by the Licensing Board” <p>We will consider amending clause 13(2) to the following:</p> <p>(a) <u>English text</u></p> <p>“Despite section 11(1), the Licensing Board may grant an application for the issue of a licence in respect of a columbarium only if a management plan, submitted by the applicant in respect of the columbarium and covering matters required under section 85, has been approved by the Licensing Board.”</p> <p>(b) <u>Chinese text</u></p> <p>“儘管有第 11(1)條的規定，發牌委員會須先行批准一份管理方案(由申請人就某骨灰安置所呈交並涵蓋第 85 條所規定的事宜者)，方可批准要求就該骨灰安置所發出牌照的申請。”</p>
10	<p>Re: clause 15, heading –</p> <ul style="list-style-type: none"> ● “草案前骨灰安置所的豁免書——資格基於年代久遠、符合法規及持有從政府取得的處所或佔用權” ● “Exemption for pre-Bill columbarium — eligibility based on datedness, legal compliance and premises held from Government or right to occupation” <p>The heading of clause 15 reflects the contents of the provision. No amendment is considered necessary.</p>
11	<p>Re: clause 15(1) –</p> <ul style="list-style-type: none"> ● “只要以下一項或多於一項事宜，未獲申請人證明致使發牌委員會信納，該委員會可拒絕要求就草案前骨灰安置所發出豁免書的申請” ● “The Licensing Board may refuse an application for the issue of an exemption in respect of a pre-Bill columbarium if the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following” <p>We will consider inserting “某” between “就” and “草案前骨灰安置所”.</p>

Item	Response from the Administration
12	<p>Re: clause 15(1)(c) –</p> <ul style="list-style-type: none"> ● “對營辦骨灰安置所屬必需(或與之配套)的土地佔用範圍，限於以草案公布時間狀況為準的對其營辦屬必需(或與之配套)的範圍” ● “that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time” <p>We will consider inserting “該” before “骨灰安置所”.</p>
13	<p>Re: clause 16(2)(a) –</p> <ul style="list-style-type: none"> ● “申請人未能證明致使發牌委員會信納以下一項或多於一項” ● “the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following” <p>We will consider inserting “事宜” after “一項或多於一項”.</p>
14	<p>Re: clause 16(2)(a)(iv) –</p> <ul style="list-style-type: none"> ● “對營辦骨灰安置所屬必需(或與之配套)的土地佔用範圍，限於以草案公布時間狀況為準的對其營辦屬必需(或與之配套)的範圍；或” ● “that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time; or” <p>We will consider inserting “該” before “骨灰安置所”.</p>
15	<p>Re: clause 16(2)(b)(ii) –</p> <ul style="list-style-type: none"> ● “沒有向地政總署署長提供書面聲明，述明申請人對該未批租土地沒有申索權(不論是基於在申請日期之前或之後管有該土地，或任何其他理由)” ● “does not provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land, whether based on possession of the unleased land before, on or after the date of application or on any other ground” <p>We will consider amending “在申請日期之前或之後” to “在申請日期之前、當日或之後”.</p>

Item	Response from the Administration
16	<p>Re: clause 17(1) –</p> <ul style="list-style-type: none"> ● “本條適用於發牌委員會就要求就某骨灰安置所發出指明文書的申請作出定奪” ● “This section applies to the determination by the Licensing Board of an application for a specified instrument in respect of a columbarium” <p>We will consider amending “本條適用於發牌委員會就要求就某骨灰安置所發出指明文書的申請作出定奪” to “本條適用於發牌委員會就某骨灰安置所的指明文書申請作出的定奪”.</p>
17	<p>Re: clause 18(b)(iii) –</p> <ul style="list-style-type: none"> ● “申請表格所指明的資料、證明書及其他文件，或發牌委員會在其他情況下要求的資料、證明書及其他文件” ● “the information, certificates and other documents specified in the application form or otherwise required by the Licensing Board” <p>The “application form” (申請表格) mentioned in clause 18(b)(iii) refers to the documentation adopting the “specified form” (指明格式) mentioned in clause 18(a) (in which an application for a specified instrument is made).</p>
18	<p>Re: clause 19(4) –</p> <ul style="list-style-type: none"> ● “有關骨灰安置所場內實況，須由合資格專業人士證明為在所有方面，均與有關圖則相符” ● “A qualified professional must certify that the current site situation of the columbarium premises conforms to the plans in all respects” <p>Re: clause 20(1)(a) –</p> <ul style="list-style-type: none"> ● “該委員會信納，該骨灰安置所以場內實況而論，在包括第(2) 款指明的詳情的所有方面，均與該等圖則相符；及” ● “it is satisfied that the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); and” <p>We will consider amending “有關骨灰安置所場內實況” to “有關骨灰安置所處所的場內實況” in clause 19(4), and amending “該骨灰安置所” to “該骨灰安置所處所” in clause 20(1)(a).</p>

Item	Response from the Administration
19	<p>Re: clause 21, heading -</p> <ul style="list-style-type: none"> ● “關於草案前骨灰安置所的申請——時限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，以及圖則” ● “Application concerning pre-Bill columbarium—time limit, evidence of ash interment layout and ash interment quantity as at Bill announcement time and plans” <p>We will consider amending “ash interment quantity as at Bill announcement time” to “quantity, etc.” in the English text and “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” to “骨灰安放布局及數量等證據” in the Chinese text.</p>
20	<p>Re: clause 21(2)(b) –</p> <ul style="list-style-type: none"> ● “發牌委員會認為，在有關個案的整體情況下，考慮該申請是公正和符合公義的” ● “in all the circumstances of the case, the Licensing Board considers that it is just and equitable to consider the application” <p>We will consider amending “公正和符合公義的” to “公正和公平的”.</p>
21	<p>Re: clause 21(3) -</p> <ul style="list-style-type: none"> ● “第 14、15 或 16 條或附表 2 第 4 條(以上條文稱為資格相關條文)所攸關的、就某草案前骨灰安置所的指明文書申請，須附有以下詳情(每項均稱為資格相關詳情)的證據” ● “An application for a specified instrument in respect of a pre-Bill columbarium, to which section 14, 15 or 16 or section 4 of Schedule 2 (each is called an <i>eligibility-related provision</i>) is relevant, must be accompanied by evidence of the following particulars (each is called an <i>eligibility-related particular</i>)” <p>We will consider amending “(以上條文稱為資格相關條文)” to “(每項均稱為資格相關條文)”.</p>

Item	Response from the Administration
22	<p>Re: clause 22(3) –</p> <ul style="list-style-type: none"> ● “在進入 骨灰安置所 和核實由有關營辦人提供的關於有關須通報詳情的陳述及紀錄後，計劃人員如信納該等陳述及紀錄的準確性，可拍攝照片和製備任何其他紀錄” ● “On entering into the columbarium and verifying the statement of the notifiable particulars and records provided by the operator and being satisfied with their accuracy, the scheme officer might take photographs and make any other records” <p>We will consider inserting “有關” before “骨灰安置所”.</p>
23	<p>Re: clause 22(9) –</p> <ul style="list-style-type: none"> ● “凡有指明文書申請就某骨灰安置所提出，而該骨灰安置所被聲稱為草案前骨灰安置所，則為該申請的目的，發牌委員會可行使其 獨有的絕對酌情權，考慮關於有關須通報詳情的證據(並非第(4)款所提述的證據者)，但該委員會如此行事的先決條件，是” ● “For the purposes of an application for a specified instrument in respect of a columbarium that is alleged to be a pre-Bill columbarium, the Licensing Board may, in its sole and absolute discretion, consider evidence of the notifiable particulars other than evidence referred to in subsection (4) if” <p>We will consider amending “獨有的絕對酌情權” to “獨有和絕對酌情權”.</p>
24	<p>Re: clause 25 –</p> <ul style="list-style-type: none"> ● “在不局限第 11(1) 條的原則下，發牌委員會 如認為合適，可對骨灰安置所的 牌照，施加符合以下說明的條件” ● “Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on a licence in respect of a columbarium” <p>Re: clause 28 –</p> <ul style="list-style-type: none"> ● “在不局限第 11(1) 條的原則下，發牌委員會 如認為合適，可對草案前骨灰安置所的 豁免書，施加符合以下說明的條件” ● “Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on an exemption in respect of a columbarium” <p>The commas before and after “as it thinks fit” are not strictly necessary in clause 25 and clause 28.</p>

Item	Response from the Administration
25	<p>Re: clause 29(2) –</p> <ul style="list-style-type: none"> ● “暫免法律責任書須述明” ● “A temporary suspension of liability must state” <p>We will consider amending “A temporary suspension of liability” to “The temporary suspension of liability”.</p>
26	<p>Re: clause 30, heading –</p> <ul style="list-style-type: none"> ● “暫免法律責任書——關於未批租土地及違規構築物” ● “Temporary suspension of liability—conditions about unleased land and non-compliant structures” <p>We will consider inserting –</p> <p>(a) “的條件” after “構築物”; and</p> <p>(b) “steps to be taken,” (“須採取的步驟、”) after “about” (“關於”).</p>
27	<p>Re: clause 30(3) –</p> <ul style="list-style-type: none"> ● “暫免法律責任書受以下所有條件規限” ● “A temporary suspension of liability is subject to all of the following conditions” <p>We will consider amending “A temporary suspension of liability” (暫免法律責任書) to “The temporary suspension of liability” (有關暫免法律責任書) (instead of adding “in respect of a pre-Bill columbarium”).</p>
28 & 29	<p>Re: clause 31 –</p> <ul style="list-style-type: none"> ● “在不局限第 11(1) 條的原則下，發牌委員會如認為合適，可對骨灰安置所的暫免法律責任書，施加符合以下說明的條件” ● “Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on a temporary suspension of liability in respect of a columbarium” <p>Please see our reply to Item 24 above. The commas before and after “as it thinks fit” are not strictly necessary.</p> <p>We will consider amending “a columbarium” (“骨灰安置所”) to “a pre-Bill columbarium” (“某草案前骨灰安置所”).</p>

Item	Response from the Administration
30	<p>Re: clause 31(a) –</p> <ul style="list-style-type: none"> ● “關乎樓宇安全、消防安全、其他安全事宜、排水及污水的措施，包括規定須定期向發牌委員會提交由合資格專業人士作出的證書或報告；及” ● “on measures relating to building safety, fire safety and other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and” <p>We will consider amending “fire safety and” to “fire safety,”.</p>
31	<p>Re: clause 32(1)(b) –</p> <ul style="list-style-type: none"> ● “豁免書” ● “exemption” <p>We will consider inserting “an” before “exemption”.</p>
32	<p>Re: clause 32(3)(a) –</p> <ul style="list-style-type: none"> ● “須符合指明格式，並以書面向該委員會提出；及” ● “must be made, in writing, to the Licensing Board in the specified form; and” <p>We will consider amending “該委員會” to “發牌委員會”.</p>
33	<p>Re: clause 32(3)(b)(i) –</p> <ul style="list-style-type: none"> ● “須附有—— (i) 申請表格所指明的資料、證明書及其他文件；或” ● “must be accompanied by the information, certificates and other documents— (i) specified in the application form; or” <p>The “application form” (申請表格) mentioned in clause 32(3)(b)(i) refers to the documentation adopting the “specified form” (指明格式) mentioned in clause 32(3)(a) (in which an application for the transfer of an instrument is made).</p>

Item	Response from the Administration
34	<p>Re: clause 34(1) and clause 34(2)(a) -</p> <ul style="list-style-type: none"> ● “(1) 如指明文書持有人提出書面申請，而該申請提出充分並令發牌委員會信納的因由，該委員會可應申請，藉在該文書上作出批註，更改規限該文書的條件。 (2) 上述申請—— <ul style="list-style-type: none"> (a) 須符合指明格式，並以書面向發牌委員會提出；及” ● “(1) The Licensing Board may, on application by the holder of a specified instrument in writing to it showing sufficient cause to its satisfaction, vary any conditions to which the instrument is subject, by an endorsement on the instrument. (2) The application— <ul style="list-style-type: none"> (a) must be made, in writing, to the Licensing Board in the specified form; and” <p>We will consider amending clause 34(1) (instead of amending clause 34(2)(a)) by deleting “in writing to it” (“書面”) to provide that the Licensing Board may vary conditions on application by the holder of a specified instrument. The requirement in clause 34(2)(a) for an application to be made in writing to the Licensing Board in the specified form will be retained.</p>
35	<p>Re: clause 34(2)(b)(ii)(A) –</p> <ul style="list-style-type: none"> ● “以下資料、證明書及其他文件—— <ul style="list-style-type: none"> (A) 申請表格所指明的資料、證明書及其他文件；或 (B) 發牌委員會在其他情況下要求的資料、證明書及其他文件” ● “the information, certificates and other documents— <ul style="list-style-type: none"> (A) specified in the application form; or (B) otherwise required by the Licensing Board” <p>The “application form” (申請表格) mentioned in clause 34(2)(b)(ii)(A) refers to the documentation adopting the “specified form” (指明格式) mentioned in clause 34(2)(a) (in which an application for the variation of conditions is made).</p>

Item	Response from the Administration
36	<p>Re: clause 35(2)(a) –</p> <ul style="list-style-type: none"> ● “須在該人提交上訴通知後 7 日內，以書面向發牌委員會提出；及” ● “must be made, in writing, to the Licensing Board within 7 days of the lodging of the notice of appeal by that person; and” <p>We will consider amending “上訴通知” to “上訴通知書”.</p>
37	<p>Re: clause 36(1)(a) –</p> <ul style="list-style-type: none"> ● “某人提出申請，要求發出指明文書；而” ● “a person has made an application for a specified instrument; and” <p>We will consider amending “申請，要求發出指明文書” to “指明文書申請”.</p>
38 & 39	<p>Re: clause 37, heading –</p> <ul style="list-style-type: none"> ● “關乎指明文書申請的進一步條文 載有關乎本部所指的指明文書申請的進一步條文的附表 3，具有效力” ● “Further provisions on applications relating to specified instruments Schedule 3 (which contains further provisions on applications relating to specified instruments under this Part) has effect” <p>Re: Schedule 3, heading -</p> <ul style="list-style-type: none"> ● “關乎指明文書的申請的進一步規定” ● “Further Provisions on Applications Relating to Specified Instruments” <p>We will consider amending “指明文書的申請的進一步規定” to “指明文書申請的進一步條文” in the heading of Schedule 3 to align it with clause 37.</p>
40	<p>Re: clause 38(2)(a)(iii) –</p> <ul style="list-style-type: none"> ● “該文書的持有人的姓名或名稱；及” ● “the name of the instrument holder; and” <p>We will consider amending “文書的持有人” to “文書持有人”.</p>

Item	Response from the Administration
41	<p>Re: clause 38(2)(b) –</p> <ul style="list-style-type: none"> ● “須述明第 7 部及附表 5 條文中關於進行訂明骨灰處置程序及指明人員(第 65(1)條所界定者)根據第 65 條申請佔用令的權力的條文，適用於有關處所” ● “must state that the provisions of Part 7 and Schedule 5 on obligations to carry out the prescribed ash disposal procedures and the power of a specified officer, as defined by section 65(1), to apply for an occupation order under section 65 apply to the premises” <p>We will consider inserting “的責任” after “關於進行訂明骨灰處置程序”. We consider it appropriate to delete “條文” after “附表 5” and retain “的條文” after “佔用令的權力”.</p>
42	<p>Re: clause 38(3) –</p> <ul style="list-style-type: none"> ● “在發出上述證明書後，發牌委員會須在切實可行的範圍內，盡快將該證明書於土地註冊處針對有關處所註冊” ● “As soon as reasonably practicable after the certificate is issued, the Licensing Board must register the certificate against the premises in the Land Registry” <p>We will consider inserting “合理地” before “切實可行”.</p>

The Administration's Other Suggestion
on the Private Columbaria Bill

Item	Suggestions from the Administration
1	Re: clause 7(1)(a). The second “的” in “規管骨灰安置所的 的 營辦和管理” should be deleted.