



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

27 November 2015

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

Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 17 April 2015 which seeks the Government's responses to your observations on Parts 5 and 10 of, and Schedule 3 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".

(Miss Diane WONG)
for Secretary for Food and Health

The Government's Response to ALA's Observation
on Parts 5 and 10 of, and Schedule 3 to, the Private Columbaria Bill (the Bill)

Item	Response from the Government
1	<p>Issue: Re: clause 44(2) –</p> <ul style="list-style-type: none"> • “就骨灰安置所持有豁免書或暫免法律責任書的人，須在該骨灰安置所內的一個顯眼位置，展示一份採用中文及英文的通告，指出出售該骨灰安置所的任何安放權，屬第 8 條所訂罪行。” • “A person who holds an exemption or temporary suspension of liability (TSOL) in respect of a columbarium must exhibit at a conspicuous place in the columbarium a notice, in both English and Chinese, to the effect that any sale of an interment right in respect of the columbarium is an offence under section 8.” <p>The clause imposes a duty on a person who holds an exemption or a TSOL in respect of a columbarium to exhibit a notice as required to the effect that any sale of an interment right in respect of the columbarium is an offence. The offence in question is provided for in clause 9 instead of clause 8.</p> <p>Response: We agree that the reference in clause 44(2) should be revised to “an offence under section 9”. Clause 64(1) and section 1(2) of Schedule 7 should be revised similarly to “an offence under section 9”.</p>
2	<p>Issue: Re: heading of clause 46 –</p> <ul style="list-style-type: none"> • “限制安放的骨灰的數量” • “Number of sets of ashes interred restricted”. <p>Should “number of sets of ashes” be rendered as “骨灰的份數” instead of “骨灰的數量” in the Chinese text?</p> <p>Response: We will consider amending the Chinese heading of clause 46 to “限制安放的骨灰的份數”.</p>

Item	Response from the Government
3	<p>Issue: Re: Clause 47(1) –</p> <ul style="list-style-type: none"> • (1) “就骨灰安置所持有指明文書的人，須將該骨灰安置所保持清潔，並且維修妥善。” (1) “a person holding a specified instrument in respect of a columbarium must keep the columbarium clean and in good repair.” <p>Re: Clause 47 (2) –</p> <ul style="list-style-type: none"> • (2) “任何人違反第(1)款，即屬犯罪，一經定罪，可處第 2 級罰款及監禁 6 個月。” (2) “a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.” <p>Please explain the policy reason(s) for imposing criminal sanction on a person holding a specified instrument in respect of a columbarium for failure to keep the columbarium clean and in good repair. Should the meaning of “clean” and “in good repair” be spelt out expressly in the provision?</p> <p>Response: According to our research, there are similar provisions in other legislation, whereby it is an offence with penalties, if a licensee fails to keep ... “clean and in good repair”. Similar formulation appears in section 27(b) of the Slaughterhouse Regulation (Cap. 132 sub. leg. BU). Our proposed penalty level is comparable with section 14(2) of the Funeral Parlours Regulation (Cap. 132 sub. leg. AD). It is pertinent to note that such words as “clean” and “in good repair” are also not expressly defined in the aforesaid legislation.</p> <p>We propose imposing, as an across-the-board practice, an obligation on the part of an operator to keep the columbarium clean and in good repair for the benefit and safety of the visitors. Examples of what constitute -</p> <ul style="list-style-type: none"> (a) “clean” include: proper handling of burning of offerings (say inside furnaces) to minimise nuisance from waste (e.g. litters or ashes) on environmental hygiene grounds, or pest control (e.g. elimination of rodents and mosquito-breeding grounds) for public health reasons; and (b) “in good repair” include: timely rectification of non-structural defects (e.g. drain leakage or defective cooling towers) on environmental hygiene grounds, or structural defects (e.g. spalling concrete at structural beams) for public safety reasons. <p>Whether a columbarium is kept “clean” and “in good repair” is a matter of fact for the court to determine having regard to the circumstances of the case. Since each case must be decided on its own facts, even if we seek to define such terms by way of examples, the list of examples may not be exhaustive. We prefer to keep the statutory provision as it is. We may, in the light of experience, introduce guidelines or codes of practice on what constitutes “clean” and “in good repair” in the interest of enhancing certainty and clarity.</p>

Item	Response from the Government
4	<p>Issue: Re: clause 97(1) –</p> <ul style="list-style-type: none"> • “[...]《土地(雜項條文)條例》(第 28 章)第 6(1)、(2)及(3)條，並不就在該期間的該項佔用而適用。” • “Section 6(1), (2) and (3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) does not apply in respect of the unlawful occupation of unleased land [...]” <p>Re: clause 97(4)(b) –</p> <ul style="list-style-type: none"> • “該條例第 6(2)或(3)條所指的權力，已就該土地或其任何部分而行使 [...]” • “a power has been exercised under section 6(2) or (3) of that Ordinance [...]” <p>It is noted that section 6(3) of Cap. 28 contains provision regarding section 6(2A)(iii) of Cap. 28. Please clarify whether clause 97(1) and 4(b) intends, by virtue of including section 6(3) of Cap. 28 therein, to cover such matters as provided for in section 6(2A)(iii) of Cap. 28.</p> <p>Response: Section 6(2A) of Cap. 28 refers to a structure being erected or an erected structure not being habitually and bona fide used (namely structures where no notice is required for enforcement). Clause 97(1) only provides that “section 6(1), (2) and (3) of Cap. 28 does not apply [...]”, but does not provide that “section 6(2A) of Cap. 28 does not apply [...]”. We will consider inserting a sub-clause under clause 97 to put it beyond doubt that reference to section 6(3) of Cap. 28 therein only relates to section 6(2)(b) of Cap. 28, but not to section 6(2A)(iii) of Cap. 28. That way, it is clear that LandsD’s enforcement action under section 6(2A)(iii) of Cap. 28 will not be prejudiced as a result of such reference in clause 97.</p>
5	<p>Issue: Re: clause 97(3)(b) –</p> <ul style="list-style-type: none"> • “發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行” • “[an application ...] has been refused, which refusal has been appealed against and is suspended from operation under section 35” <p>The clause refers to suspension of the Licensing Board’s decision pursuant to clause 35. The scope of clause 35 only confines to those decisions made by the Licensing Board under clause 33(1), which does not include the application referred to in clause 97(3).</p> <p>Response: Should the Private Columbaria Licensing Board (the Licensing Board) –</p> <ol style="list-style-type: none"> refuse an application for the issue of a specified instrument under clause 13, 14, 15 or 16, the operator is simply not in possession of any specified instrument; revoke, suspend, refuse to renew or extend a specified instrument under clause 33, the operator is in possession of a specified instrument, though invalidated as a result of the Licensing Board’s decision.

Item	Response from the Government
	<p>Hence, it is only under the scenario in (b), but not (a), where clause 35 (suspending the Licensing Board's decision from operation pending determination of appeal) may be invoked.</p> <p>We will consider amending clause 97(3) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the instrument-related condition is met, if an application for the issue of a TSOL in respect of the pre-Bill columbarium –</p> <ul style="list-style-type: none"> (a) has been made but has not been determined; (b) has been refused and the period within which an 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 been determined. <p>We will also consider amending clause 97(5) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the instrument-related condition is met, if an application for the extension of a TSOL in respect of the pre-Bill columbarium –</p> <ul style="list-style-type: none"> (a) has been made but has not been determined; (b) has been refused and the period within which an appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against, and is suspended from operation under section 35 pending determination of appeal. <p>We wish to take this opportunity to flag up below our proposal to amend clause 97(4).</p> <p>Apart from enforcing section 6(1), (2) and (3) of Cap. 28, LandsD is also acting in its capacity as a landlord and will consider regularisation applications for seeking lawful authority to occupy unleased land according to the established policy and practice. Given this, unlike clause 12(2) and (3), no similar provision under clause 12 exists in respect of section 6(1), (2) and (3) of Cap. 28. Section 6(4) of Cap. 28 is not affected by clause 97. In other words, LandsD may initiate prosecution if appropriate.</p> <p>For clause 97(4), we will consider repealing it and substituting it with an alternative formulation to the effect that clause 97(3) does not apply if, upon the making of the application for a TSOL and in respect of the unleased land referred to in clause 97(1), the Director of Lands considers that the occupation of land as is necessary for, or ancillary to, the operation of the pre-Bill columbarium as shown in the plan submitted under clause 18(b)(ii) (read together with clause 19(3)(d)) includes unlawful occupation of unleased land but the applicant –</p> <ul style="list-style-type: none"> (a) does not apply to the Director of Lands for lawful authority to occupy the unleased

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	<p>land; and (b) does not provide a written declaration that he/she has no claim to the unleased land.</p> <p>In other words, although an application for the issue of a TSOL has been submitted and the application or the appeal is still pending determination, the Director of Lands may continue to take enforcement action against the columbarium by invoking section 6(1), (2) and (3) of Cap. 28, if the operator of a pre-Bill columbarium fails to meet the amended clause 97(4).</p> <p>Similarly, “submitted under clause 18(b)(ii) (read together with clause 19(3)(d))” will also be inserted in clause 16(2)(b) before “includes”.</p>
6	<p>Issue: Re: clause 97(5) – to render the Chinese text of “The instrument-related condition is met [...]”.</p> <p>Response: We will consider deleting “。” at the end of clause 97(5)(b) and substituting — “， 則文書相關條件即屬獲符合。”.</p>
7	<p>Issue: Re: clause 97(5) –</p> <ul style="list-style-type: none"> • “如有人提出申請，要求就有關草案前骨灰安置所將暫免法律責任書延期 [...]” • “[...] if an application for the extension of a temporary suspension of liability in respect of the pre-Bill columbarium [...]”. <p>For the sake of consistency (for example in clauses 2(2)(c) and 11(1)(c)), please consider replacing “延期” with “延展” as the Chinese rendition of “extension” in the English text.</p> <p>Response: We will consider replacing “延期” in clause 97(5) with “延展”.</p>

Item	Response from the Government
8	<p>Issue: Re: clause 97(3) –</p> <p>(3) 如有人提出申請，要求就有關草案前骨灰安置所發出暫免法律責任書，而</p> <p>(a) 該申請雖已提出，但未獲定奪；或</p> <p>(b) 發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行，</p> <p>則文書相關條件即屬獲符合。</p> <p>(3) The instrument-related condition is met if an application for the issue of a temporary suspension of liability in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined; or</p> <p>(b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.</p> <p>Re: clause 97(4) –</p> <p>(4) 第(3) 款在以下情況下不適用: 在有關申請提出之前 –</p> <p>(a) 一份通知 –</p> <p>(i) 已根據《土地(雜項條文)條例》(第 28 章)第 6(1) 條就第(1)款所提述的未批租土地或其任何部分而發出(不論是針對申請人或任何其他人士發出)；而</p> <p>(ii) 不獲遵從，亦未被撤回；或</p> <p>(b) 該條例第 6(2) 或(3) 條所指的權力，已就該土地或其任何部分而行使(不論是針對申請人或任何其他人行使)。</p> <p>(4) Subsection (3) does not apply if, before the making of the application and in respect of the unleased land referred to in subsection (1), or any part of it –</p> <p>(a) a notice –</p> <p>(i) has been given under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), whether against the applicant or any other person; and</p> <p>(ii) has not been complied with or withdrawn; or</p> <p>(b) a power has been exercised under section 6(2) or (3) of that Ordinance, whether against the applicant or any other person.</p>

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	<p>Re: clause 97(5) –</p> <p>(5) 如有人提出申請，要求就有關草案前骨灰安置所將暫免法律責任書延期，而 —</p> <p>(a) 該申請雖已提出，但未獲定奪；或</p> <p>(b) 發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行。</p> <p>(5) The instrument-related condition is met if an application for the extension of a temporary suspension of liability in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined; or</p> <p>(b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.</p> <p>(A) Clause 97(3) does not apply, if the matters provided for in clause 97(4) arise. No such arrangement, however, has been provided for in respect of clause 97(5).</p> <p>(B) Please confirm whether an application for an extension of a TSOL must be made before the expiry of the term of a TSOL issued.</p> <p>Response:</p> <p>Re: (A). Clause 16(2) refers to the stage of deciding on the issue of a TSOL (the decision-making stage) while the amended clause 97(3) refers to the stage where the application or the appeal is pending determination (the application-processing stage). The formulation of clause 16(2)(b) and the amended clause 97(4) (see the second last paragraph of item 5) is similar.</p> <p>Once such cases are debarred by the matters provided for in clause 16(2)(b) at the aforesaid decision-making stage, no such cases will exist at the stage of the extension of a TSOL. Hence, there is no need to adopt a formulation whereby clause 97(5) does not apply if the matters provided for in the amended clause 97(4) arise, in the same way as clause 97(3).</p> <p>Re: (B). An application for an extension of a TSOL must be made before the expiry of the term of the TSOL issued. We will consider stipulating a time limit before the expiry of the TSOL issued, no later than that by which an application for an extension of the TSOL is to be submitted. We will also consider inserting a provision to the effect that the TSOL issued, in respect of which an application for an extension of the TSOL is made within the time limit and which expires prior to the determination of such application, may, unless such application is withdrawn or the TSOL issued is revoked, remain in effect until the determination by the Licensing Board of such application (see section 9(5) of the Bedspace Apartments Ordinance (Cap. 447) for reference).</p>

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9	<p>Issue: Re: clause 97(6)(b) –</p> <ul style="list-style-type: none"> “如屬其他情況 — 以草案公布時間為準的，對營運該骨灰安置所屬必需(或與之配套)的不合法佔用未批租土地的範圍。” “in any other case—the extent of unlawful occupation of unleased land as was necessary for, or ancillary to, the operation of the columbarium as at the Bill announcement time.” <p>For the sake of consistency (for example in clause 8), please consider replacing “營運” with “營辦”.</p> <p>Response: We will consider replacing “營運” in clause 97(6)(b) with “營辦”.</p>
10	<p>Issue: Re: clause 98(1)(a) –</p> <ul style="list-style-type: none"> “在某期間內，在任何土地上作出或繼續的違例發展，對營辦某草案前骨灰安置所屬必需(或與之配套)” “the [unauthorized] development is necessary for, or ancillary to, the operation of a pre-Bill columbarium”. <p>Re: clause 98(4) –</p> <ul style="list-style-type: none"> “第(3)款在以下情況下不適用：在有關申請提出之前，就第(1)款提述的土地(或其任何部分)上作出或繼續的違例發展而言” “Subsection (3) does not apply if, before the making of the application and in respect of an unauthorized development undertaken or continued on the land referred to in subsection (1), or any part of it” <p>For the sake of consistency (for example in clause 2(6)), please consider replacing “作出或繼續” with “進行或持續”.</p> <p>Response: We will consider replacing “進行或持續的違例發展” in clause 2(6) and “作出或繼續的違例發展” in clause 98(1)(a) and (4) with “進行或繼續的違例發展” to make it consistent with section 20(7) of the Town Planning Ordinance (Cap. 131).</p>

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11	<p>Issue: Re: clause 98(3)(b) –</p> <ul style="list-style-type: none"> “發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行” “has been refused, which refusal has been appealed against and is suspended from operation under section 35”. <p>The clause refers to suspension of the Licensing Board’s decision pursuant to clause 35. The scope of clause 35 only confines to those decisions made by the Licensing Board under clause 33(1), which does not include the application referred to in clause 98(3).</p> <p>Response: For similar reasons set out in item 5, we will consider amending clause 98(3) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the condition is met, if an application for the issue of an exemption or a TSOL in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined;</p> <p>(b) has been refused and the period within which an appeal may be lodged against the refusal has not yet expired; or</p> <p>(c) has been refused, which refusal has been appealed against, but the appeal has not been determined.</p> <p>We will also consider amending clause 98(5) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the condition is met, if an application for the renewal of an exemption or the extension of a TSOL in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined;</p> <p>(b) has been refused and the period within which an appeal may be lodged against the refusal has not yet expired; or</p> <p>(c) has been refused, which refusal has been appealed against, and is suspended from operation under section 35 pending determination of appeal.</p>
12	<p>Issue: Re: clause 98(4)(b) –</p> <ul style="list-style-type: none"> “一份通知” “a notice”. <p>To make it consistent with section 23(1) or (2) of the Town Planning Ordinance, please consider replacing “通知” with “通知書”.</p> <p>Response: We will consider replacing “通知” in clause 98(4)(b) with “通知書”</p>

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13	<p>Issue: Re: clause 98(5) –</p> <p>(5) 有關條件如下：有人提出申請，要求就有關草案前骨灰安置所將豁免書續期，或延展暫免法律責任書，而 —</p> <p>(a) 該申請雖已提出，但未獲定奪；或</p> <p>(b) 發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行。</p> <p>(5) The condition is that an application for the renewal of an exemption, or the extension of a temporary suspension of liability, in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined; or</p> <p>(b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.</p> <p>(A) clause 98(3) does not apply, if the matters provided for in clause 98(4) arise. No such arrangement, however, has been provided for in respect of clause 98(5).</p> <p>(B) Please confirm whether an application for a renewal of an exemption or an extension of a TSOL must be made before the expiry of the term of the exemption or the TSOL respectively.</p> <p>Response:</p> <p>Re: (A). Clause 12(2) refers to the stage of deciding on the issue of a specified instrument (the decision-making stage) while the amended clause 98(3) refers to the stage where the application or the appeal is pending determination (the application-processing stage). The formulation of clause 12(2)(b) and clause 98(4) is similar.</p> <p>Once such cases are debarred by the matters provided for in clause 12(2) at the aforesaid decision-making stage, no such cases will exist at the stage of the renewal of an exemption or the extension of a TSOL. Hence, there is no need to adopt a formulation whereby clause 98(5) does not apply if the matters provided for in clause 98(4) arise, in the same way as clause 98(3).</p> <p>Re: (B). An application for a renewal of an exemption or an extension of a TSOL must be made before the expiry of the term of the respective instrument issued. We will consider stipulating a time limit before the expiry of the exemption or the TSOL issued, no later than that by which an application for a renewal of the exemption or an extension of the TSOL is to be submitted. We will also consider inserting a provision to the effect that the exemption or the TSOL issued, in respect of which an application for a renewal of the exemption or an extension of the TSOL issued is made and which expires prior to the determination of such application, may, unless such application is withdrawn or the exemption or the TSOL issued is revoked, remain in effect until the determination by the Licensing Board of such application (see section 9(5) of the Bedspace Apartments Ordinance (Cap. 447) for reference).</p>

Item	Response from the Government
14	<p>Issue: Re: clause 99(3)(b) –</p> <ul style="list-style-type: none"> • “發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行” • “has been refused, which refusal has been appealed against and is suspended from operation under section 35” <p>The clause refers to suspension of the Licensing Board’s decision pursuant to clause 35. The scope of clause 35 only confines to those decisions made by the Licensing Board under clause 33(1), which does not include the application referred to in clause 99(3).</p> <p>Response: For similar reasons set out in item 5, we will consider amending clause 99(3) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the instrument-related condition is met, if an application for the issue of a specified instrument in respect of the pre-Bill columbarium –</p> <ul style="list-style-type: none"> (a) has been made but has not been determined; (b) has been refused and the period within which an 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 been determined. <p>We will also consider amending clause 99(5) (by replacing paragraphs (a) and (b) with paragraphs (a) to (c) below, subject to the final wording in the CSA) to the effect that the instrument-related condition is met, if an application for the renewal of a licence or an exemption or the extension of a TSOL in respect of the pre-Bill columbarium –</p> <ul style="list-style-type: none"> (a) has been made but has not been determined; (b) has been refused and the period within which an appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against, and is suspended from operation under section 35 pending determination of appeal.
15	<p>Issue: Re: clause 99(4) – why no reference to the notice served under section 24C(1) of the Buildings Ordinance (Cap. 123) was made in clause 12(3)(b) while clause 99(4) does contain such reference? Please explain.</p> <p>Response: Unlike the enforcement power to demolish unauthorised buildings or unauthorised building works (collectively to be referred to as “UBWs”) under section 24(1) of Cap. 123, section 24C of Cap. 123 seeks to -</p> <ul style="list-style-type: none"> (a) empower the Building Authority (BA) to issue a notice to an owner of the land or

Item	Response from the Government
	<p>premises with UBWs, under subsection (1) (s24C(1) notice);</p> <p>(b) require the BA to register the s24C(1) notice in the Land Registry (LR) if the UBWs are not demolished within a specified timeframe, under subsection 4;</p> <p>(c) empower the BA to lodge a satisfaction certificate in the LR, upon demolition or alteration of such UBWs, under subsection (6).</p> <p>In gist, the category of UBWs subject to a s24C(1) notice does not fall within the category of UBWs subject to an order under section 24(1) of Cap. 123 (s24(1) order), according to the prevailing enforcement policy of the BA.</p> <p>S24C(1) notices serve to raise community awareness of UBWs as a liability, thereby inducing owners to demolish the UBWs so as to avert an encumbrance registered against property title. In other words, section 24C(1) of Cap. 123 may be invoked if considered appropriate for handling UBWs in respect of which enforcement action would be deferred according to the prevailing enforcement policy of the BA.</p> <p>Clause 12(3) refers to the stage of deciding on the issue of a specified instrument (the decision-making stage) while the amended clause 99(3) refers to the stage where the application or the appeal is pending determination (the application-processing stage).</p> <p>The legislative intent of clause 12(3) is that the Licensing Board may not grant an application for the issue of a specified instrument in respect of a pre-Bill columbarium if its UBWs included in the application are subject to specified law enforcement action under Cap. 123. Given our policy intention to impose a set of building-related requirements based on a pragmatic and risk-based approach and allow a pre-Bill columbarium fulfilling the relevant building-related requirements to seek a licence or an exemption as applicable during the validity period of TSOL, UBWs subject to a s24C(1) notice are not included in clause 12(3)(b) as a ground on which the Licensing Board may not grant an application for the issue of a specified instrument. In terms of the building-related requirements, the only consideration is an outstanding s24(1) order, and hence clause 12(3) only makes reference to section 24(1) of Cap. 123.</p> <p>With clause 99(4), an applicant with a pre-Bill columbarium subject to a s24(1) order or a s24C(1) notice may still be subject to law enforcement action under Cap. 123 during the aforesaid application-processing stage –</p> <p>(a) for one that is subject to an outstanding s24(1) order, the Licensing Board may not grant the application for the issue of a specified instrument at the aforesaid decision-making stage. With clause 99(4), the applicant could not take advantage of the aforesaid application-processing stage to evade specified law enforcement action under section 24(1) of Cap. 123;</p> <p>(b) for one that is subject to an outstanding s24C(1) notice, subject to its fulfilling the relevant eligibility requirements in all respects, its application for the issue of a specified instrument would still stand a chance of being granted at the aforesaid</p>

Item	Response from the Government
	<p>decision-making stage. A s24C(1) notice may still be issued by the BA during the aforesaid application-processing stage in respect of such UBWs (including a superseding s24C(1) notice if an outstanding notice could not be registered in the LR, say due to change of ownership or technical defects of the notice);</p> <p>(c) on the scenario where a s24(1) order is issued by the BA during the aforesaid application-processing stage in respect of such UBWs previously subject to an outstanding s24C(1) notice, this would mean that there have been changes in circumstances such that the UBWs become falling into the category of UBWs subject to a s24(1) order, such as seriously damaged after a fire. If so, such cases would become similar to those cases in (a) above. Hence, clause 12(3) of the Bill should be applicable to them.</p> <p>We will consider inserting “issued under section” between “or” and “24C(1)” under clause 99(4)(a).</p>
16	<p>Issue: Re: clause 99(5) –</p> <p>(5) 有人提出申請，要求就有關草案前骨灰安置所將牌照或豁免書續期，或延展暫免法律責任書，而 —</p> <p>(a) 該申請雖已提出，但未獲定奪；或</p> <p>(b) 發牌委員會已決定拒絕該申請，但該決定遭上訴反對，並根據第 35 條暫緩執行，</p> <p>則文書相關申請即屬獲符合。</p> <p>(5) The instrument-related condition is met if an application for the renewal of a licence or exemption, or the extension of a temporary suspension of liability, in respect of the pre-Bill columbarium –</p> <p>(a) has been made but has not been determined; or</p> <p>(b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.</p> <p>(A) clause 99(3) does not apply, if the matters provided for in clause 99(4) arise. No such arrangement, however, has been provided for in respect of clause 99(5).</p> <p>(B) Please confirm whether an application for a renewal of a licence or an exemption or an extension of a TSOL must be made before the expiry of the term of the licence or an exemption or the TSOL respectively.</p> <p>Response:</p> <p>Re: (A). Clause 12(3) refers to the stage of deciding on the issue of a specified instrument (the decision-making stage) while the amended clause 99(3) refers to the stage where the application or the appeal is pending determination (the application-processing stage).</p>

Item	Response from the Government
	<p>Once cases subject to an outstanding s24(1) order are debarred by the matters provided for in clause 12(3) at the aforesaid decision-making stage, no such cases will exist at the stage of the renewal or the extension (as the case may be) of the specified instrument.</p> <p>Cases subject to an outstanding s24C(1) notice could still exist at the stage of the renewal or the extension (as the case may be) of the specified instrument. As such cases are not debarred under clause 12(3) at the aforesaid decision-making stage, they are similarly not debarred at the stage of the renewal or the extension (as the case may be) of the specified instrument.</p> <p>Hence, there is no need to adopt a formulation whereby clause 99(5) does not apply if the matters provided for in clause 99(4) arise, in the same way as clause 99(3).</p> <p>Re: (B). An application for a renewal of a licence or an exemption or an extension of a TSOL must be made before the expiry of the term of the specified instrument issued. We will consider stipulating a time limit before the expiry of the specified instrument issued, no later than that by which an application for a renewal of the licence or an exemption or an extension of the TSOL is to be submitted. We will also consider inserting a provision to the effect that the relevant specified instrument issued, in respect of which an application for a renewal or an extension (as the case may be) of the relevant specified instrument issued is made and which expires prior to the determination of such application, may, unless such application is withdrawn or the relevant specified instrument issued is revoked, remain in effect until the determination by the Licensing Board of such application (see section 9(5) of the Bedspace Apartments Ordinance (Cap. 447) for reference).</p>
17	<p>Issue: Re: clause 99(5) –</p> <ul style="list-style-type: none"> • “有人提出申請，要求就有關草案前骨灰安置所將牌照或豁免書續期，或延展暫免法律責任書，” and “則文書相關申請即屬獲符合” • “The instrument-related condition is met if an application for the renewal of a licence or exemption, or the extension of a temporary suspension of liability, in respect of the pre-Bill columbarium—” <p>Please consider replacing “有人提出申請” and “文書相關申請” with “如有人提出申請” and “文書相關條件” respectively.</p> <p>Response: We will consider replacing “有人提出申請” and “文書相關申請” in clause 99(5) with “如有人提出申請” and “文書相關條件” respectively.</p>

Item	Response from the Government
18	<p>Issue: Re: heading of Schedule 3 (proposed in the last reply) –</p> <ul style="list-style-type: none"> • “關乎指明文書的申請的進一步條文” • “Further Provisions on Applications Relating to Specified Instruments”. <p>Please consider replacing “指明文書申請” proposed in the last reply with “指明文書的申請”.</p> <p>Response: We will consider using “指明文書的申請 ...” in the heading of Schedule 3 and will consider replacing “指明文書申請 ...” in clause 37 (the heading and the provision) with “指明文書的申請 ...”.</p>
19	<p>Issue: Re: section 2(2) of Schedule 3 – whether an unincorporated association (not being a partnership) can make applications to which Schedule 3 applies; and who should sign the application if its members include a body corporate and not just natural persons.</p> <p>Response: Our policy intention is to allow only a natural person, a partnership or a body corporate to make an application to which Schedule 3 applies. A natural person, a partner and a director etc. could be imposed obligations on complying with the requirements under the Private Columbaria Bill. Who should sign the application by a natural person, a partnership or a body corporate is provided for in section 2(2) of Schedule 3.</p> <p>“Body corporate” encompasses a company incorporated under the Companies Ordinance (Cap. 622), a body incorporated under a specific Ordinance (hereinafter called “statutory body”) (e.g. Tung Wah Group of Hospitals under the Tung Wah Group of Hospitals Ordinance (Cap. 1051)), etc. To avoid the liability of the columbarium operations affecting their other cost centres (e.g. where the funds may be used for charitable purposes), it is not uncommon for such statutory bodies to set up a limited liability company under Cap. 622 for running their columbarium operations.</p> <p>An unincorporated association is a voluntary group of people (members) defined and bound together by a set of rules (often referred to as a constitution). Examples of such associations are unincorporated members’ clubs, unincorporated charitable institutions and voluntary associations for the purpose of carrying out functions of a social character. Some may be required to be registered under the Societies Ordinance (Cap. 151), while others may not. Associations of this kind have no legal entity and therefore cannot enter into contracts, sue or be sued, in the association’s name or on its behalf (except where such power has been expressly conferred by legislation). The membership of an association may vary from time to time and as such the question of who is liable or responsible under the Bill is not easy to ascertain. For these reasons, unincorporated associations would have difficulties in complying with the requirements under the Private Columbaria Bill. That said, they could set up a limited liability company under Cap. 622, assign a natural person or form a partnership for running their columbarium operations.</p>

Item	Response from the Government
	<p>Some might argue that partnerships are unincorporated business associations. However, as explained in paragraph 1 above, partners can be held liable for the acts of themselves and the other partners.</p> <p>Against the above considerations, our policy intention is not to allow unincorporated associations (except partnership) to make an application to which Schedule 3 applies.</p>
20	<p>Issue: Re section 2(2)(c) of Schedule 3 –</p> <ul style="list-style-type: none"> • “如申請人是法人團體 — 須由董事或關涉該團體的管理的其他高級人員簽署。” • “if the applicant is a body corporate—by a director or other officer concerned in the management of the body corporate.” <p>This section uses the term “body corporate” whereas clause 33(2)(f) uses the term “company”. Please explain the reason(s) for using different terms. Should the same term be used instead.</p> <p>Response: “Body corporate” and “company” are two different terms used in different situations. Company is a subset of body corporate. Section 2(2)(c) of Schedule 3 deals with the signing of an application made by a body corporate, whereas clause 33(2)(f) specifically sets out the circumstances which trigger the Licensing Board to exercise its powers to handle the cessation of business of a columbarium (where the holder of the specified instrument is a company) that has come to its attention. That said, we will consider moving suitable CSA to ensure consistency of wording throughout the Bill as appropriate.</p>
21	<p>Issue: Re: heading of section 4 of Schedule 3 –</p> <ul style="list-style-type: none"> • “發布牌照申請及考慮公眾意見” • “Publication of licence applications and consideration of public views” <p>Should “and consideration of public views” be stated in the heading of the section in view of its content?</p> <p>Response: We will consider deleting the phrase “及考慮公眾意見” and “and consideration of public views” in the Chinese and English heading of section 4 of Schedule 3 respectively.</p>

Item	Response from the Government
22	<p>Issue: Re: section 4 of Schedule 3 – why this section is only applicable to an application for a licence and not an exemption or a TSOL.</p> <p>Response: In handling the historical legacy of private columbaria, we need to be pragmatic and strike a reasonable balance between the need to minimise the disturbance to society (including, on the one hand, the need to avoid disturbing the final resting places of the deceased whose ashes were interred in private columbaria prior to the announcement time of the Bill (i.e. 8:00 a.m. of 18 June 2014)) and, on the other hand, the interests of the residents nearby. As private columbaria applying for an exemption or a TSOL would no longer be allowed to sell or let out any more niches, their condition (including the nuisance so caused) would be frozen at the level as at the announcement time of the Bill. Hence, we consider it a pragmatic approach to require publication of notice only in respect of an application for the issue of a licence.</p> <p>There will be significant manpower and resource implications if the publication of licence applications is to be extended to the issue of exemption or TSOL applications, or the renewal or the extension (as the case may be) of a specified instrument.</p>
23	<p>Issue: Re: section 4(1)(c) of Schedule 3 –</p> <ul style="list-style-type: none"> • “在該骨灰安置所外的一個顯眼位置，張貼有關申請的通告。” • “posting a notice of the application at a conspicuous place outside the columbarium.” <p>Please consider replacing “有關申請” with “該申請”.</p> <p>Response: We will consider replacing “有關申請” in section 4(1)(c) of Schedule 3 with “該申請”.</p>
24	<p>Issue: Re: section 4(2) of Schedule 3 –</p> <ul style="list-style-type: none"> • “根據第(1)款發布的通告，須述明可在何處查閱有關申請的詳情。” • “A notice published under subsection (1) must state the place or places where the particulars of the application may be inspected.” <p>Please clarify the policy intention and amend the write-up to avoid any ambiguities.</p> <p>Response: Our policy intention is for section 4(2) of Schedule 3 to cover all the notices referred to in section 4(1)(a), (b) and (c) of that Schedule. We will consider amending section 4(2) of Schedule 3 to refer to a notice published or posted under section 4(1) of that Schedule. The Chinese text of section 4(1) and the section heading may also be adjusted accordingly to “發布或張貼”.</p>

Item	Response from the Government
25	<p>Issue: Re: section 5 of Schedule 3 – whether the content of section 5 of Schedule 3 duplicates that of clause 33.</p> <p>Response: As the Bill currently stands, section 5 of Schedule 3 requires notification of a decision of the Licensing Board on an application for a specified instrument (which, according to section 1(a) of Schedule 3, includes an application for the issue, renewal or extension of a specified instrument under clause 11). The Licensing Board will have to notify the applicant whether its decision was to approve or refuse its application. On the other hand, clause 33 provides for notification of a decision of the Licensing Board to revoke/suspend a specified instrument, or its decision to refuse the renewal of a licence or an exemption or the extension of a TSOL. While the coverage of section 5 of Schedule 3 and clause 33(3) is originally different, 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 and section 5 of Schedule 3.</p>