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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

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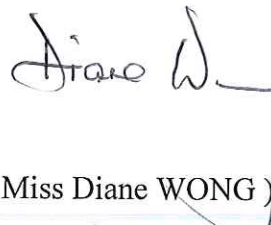
Ms Wendy KAN
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Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 26 June 2015 which seeks the Government's responses to your observations on Division 1 of Part 5 of, and Schedule 4 to, 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

The Government's Response to ALA's Observation
on Division 1 of Part 5 of, and Schedule 4 to, the Private Columbaria Bill (the Bill)

Item	Response from the Government
1	<p>Issue: Re: heading of clause 40 –</p> <ul style="list-style-type: none"> • “第 5 部的釋義” • “Interpretation of Part 5” <p>Given that clause 40 provides for the interpretation of both Part 5 and Schedule 4, should the heading of clause 40 be changed from “Interpretation of Part 5” to “Interpretation of Part 5 and Schedule 4”?</p> <p>Response: We will consider deleting “and Schedule 4” in clause 40 and adding an interpretative provision in Schedule 4 to define the terms used in that Schedule.</p>
2	<p>Issue: Re: clause 41(2)(b) –</p> <ul style="list-style-type: none"> • “骨灰安置所是根據租賃或租契佔用 — 出售該處所的安放權，而其年期超逾該租賃或租契的年期；或” • “for columbarium premises occupied under a tenancy or lease—by selling an interment right in respect of the premises for a term that extends beyond the term of the tenancy or lease; or” <p>Clause 11(3) provides that the validity period of a licence must not exceed the shorter of (a) if the columbarium premises are occupied under a tenancy, lease or <u>other instrument</u>, the remainder of the term of the tenancy, lease or <u>other instrument</u>, and (b) 10 years. Clause 41(2)(b) only makes provision in respect of columbarium premises that are occupied under a tenancy or lease, but not under other instrument. Please explain the reason(s) for making such provision.</p> <p>Response:</p> <p>We have checked each and every relevant provision in the Private Columbaria Bill (the Bill) where reference has been made to either of the following terms –</p> <p>(a) “lease, licence or other instrument”; and</p> <p>(b) “tenancy, lease or other instrument”,</p> <p>in terms of the expression and the context.</p> <p>To make sure that the terms are expressed in a precise way and appropriate to the context, we will move CSAs to streamline the expressions where required and make consequential amendments to the definition and meaning of certain terms in clause 2. The CSAs will cover clauses 11(3) and 41(2)(b), amongst others.</p>

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3	<p>Issue: Re: clause 41(2)(b) – In the Chinese text, “骨灰安置所” should be “骨灰安置所處所” as the Chinese rendition of “columbarium <u>premises</u>” in the English text.</p> <p>Response: We will consider adding “處所” after “骨灰安置所” in clause 41(2)(b).</p>
4	<p>Issue: Re: clause 41(3)(h) –</p> <ul style="list-style-type: none"> • “賣方向買方交付經買方簽署的該協議的一份複本；” • “the seller delivered to the purchaser a copy of the agreement as signed by the purchaser at the time the purchaser signed it;” <p>In the Chinese text, there is no Chinese rendition in respect of “at the time the purchaser signed it” in the English text.</p> <p>Response: We will consider adding “在買方簽署該協議時，” before “賣方向買方交付經買方簽署的該協議的一份複本” in clause 41(3)(h).</p>
5	<p>Issue: Re: clause 41(3)(j) –</p> <ul style="list-style-type: none"> • “發牌委員會訂明的任何其他規定，均已獲符合。” • “any other requirements prescribed by the Licensing Board are met.” <p>Please clarify whether “any other requirements prescribed by the Licensing Board” include any requirements which are not relating to the sale of an interment right. Will the Licensing Board prescribe these requirements by making subsidiary legislation?</p> <p>Response: Our intention is that the requirements prescribed by the Licensing Board in clause 41(3)(j) are in relation to the sale of an interment right. Such requirements would not be in the form of subsidiary legislation, but would be imposed as licensing conditions.</p>
6	<p>Issue: Re: clause 43(3) –</p> <ul style="list-style-type: none"> • “就骨灰安置所持有牌照的人，須應署長或獲授權人員要求，將根據本條就該骨灰安置所備存的協議及登記冊的複本，提供予署長或該人員查閱。” • “A person holding a licence in respect of a columbarium must make the copies of agreements, and the register, kept in respect of the columbarium under this section available for inspection, on request, by the Director or an authorized officer.” <p>In the Chinese text, “就該骨灰安置所備存的協議及登記冊的複本” should be “就該骨灰安置所備存的協議的複本及登記冊”，as the relevant English text is “<u>the copies of agreements, and the register, kept in respect of the columbarium</u>”.</p> <p>Response: We will consider amending “就該骨灰安置所備存的協議及登記冊的複本” in clause 43(3) to “就該骨灰安置所備存的協議的複本及登記冊”.</p>

Item	Response from the Government
7	<p>Issue: Re: section 1(a) of Schedule 4 –</p> <ul style="list-style-type: none"> • “關於賣方的牌照的資料(牌照編號及牌照的有效期)；” • “information about the seller’s licence (licence number and the validity period of the licence);” <p>Please clarify whether or not the licence number and the validity period of the seller’s licence are the only information required under this provision.</p> <p>Response: A licence sets out various pieces of information, including the licence number, the location of the licensed premises, the name of the licensee and the validity period of the licence, etc. We will consider amending “information about the seller’s licence (licence number and the validity period of the licence)” in section 1(a) of Schedule 4 to “information as set out in the seller’s licence, including but not limited to licence number and the validity period of the licence”.</p>
8	<p>Issue: Re: section 1(b) of Schedule 4 –</p> <ul style="list-style-type: none"> • “關於業權、租賃、產權負擔及對使用和處置限制的資料” • “information about ownership, tenancy, encumbrances and restrictions on use and disposition” <p>It is noted that “ownership” in the English text is rendered as “業權” in the Chinese text. Should the Chinese rendition be “擁有權” instead?</p> <p>Response: We will consider amending “業權” in section 1(b) of Schedule 4 to “擁有權”.</p>
9	<p>Issue: Re: section 1(b) of Schedule 4 – This provision requires that an agreement for the sale of an interment right must set out information about ownership, tenancy, encumbrances and restrictions on use and disposition. No reference, however, has been made to “lease or any other capacity” as stated in section 1(b)(ii) of Schedule 4. Please consider to make appropriate amendment(s).</p> <p>Response: The leading phrase of section 1(b) of Schedule 4 only gives a general description of the types of information required to be provided under the ensuing subparagraphs (i) to (iv). The information required under section 1(b)(ii) of Schedule 4 as to whether the seller occupies the columbarium premises under a tenancy or lease or any other capacity falls within the general description of “information about ... tenancy”. It may not be necessary to amend the general description in the leading phrase of section 1(b) of Schedule 4. That said, the CSAs referred to in our response to item 2 will cover section 1(b) of Schedule 4, amongst others.</p>

Item	Response from the Government
10	<p>Issue: Re: section 1(b)(i) of Schedule 4 –</p> <ul style="list-style-type: none"> “賣方是否骨灰安置所處所的唯一擁有人、其中 1 名、2 名或多於 2 名的聯權共有人或分權共有人，以及(若然是)賣方在該處所中的權益的詳情；” “whether the seller is the only owner, one or 2 or more joint owners or co-owners of the columbarium premises and, if so, the particulars of the seller’s interest in the columbarium premises;”. <p>Please clarify the meaning of “whether the seller is the only owner, <u>one or 2 or more joint owners or co-owners of the columbarium premises</u>” in the English text. The relevant Chinese text is “賣方是否骨灰安置所處所的唯一擁有人、其中 1 名、2 名或多於 2 名的聯權共有人或分權共有人”.</p> <p>Response: Section 1(b)(i) of Schedule 4 requires information to be provided in an agreement for the sale of an interment right as to whether the seller is the only owner or is a joint owner or co-owner of the columbarium premises, and if so, the particulars of the seller’s interest in the columbarium premises. The particulars should include the seller’s share in the ownership of the columbarium premises. We will consider amending this section by substituting “one or 2 or more joint owners or co-owners” with “or is a joint owner or co-owner” to make it clearer. Correspondingly, “、2 名或多於 2 名的” in the Chinese text will be deleted.</p>
11	<p>Issue: Re: section 1(b)(ii) of Schedule 4 –</p> <ul style="list-style-type: none"> “賣方是否根據租賃、租契或其他身分，佔用骨灰安置所處所，以及(若然是)該租賃、租契或佔用權的詳情，包括該租賃、租契或佔用權終結的日期；” “whether the seller occupies the columbarium premises under a tenancy or lease or any other capacity and, if so, the particulars of the tenancy, lease or right to occupy including the date on which the tenancy, lease or right is to end;” <p>In the English text, please consider to add “in” before “any other capacity”. Please also consider to make corresponding amendment(s) to the Chinese text.</p> <p>Response: Please see our response to item 2. The CSAs will cover section 1(b)(ii) of Schedule 4, amongst others.</p>
12	<p>Issue: Re: section 1(b)(iii) of Schedule 4 –</p> <ul style="list-style-type: none"> “是否有任何存在於骨灰安置所處所的、可能損害買方的權益的按揭或任何其他產權負擔；” “whether mortgage or any other encumbrance subsists in the columbarium premises that may jeopardize the purchaser’s interest;” <p>In the Chinese text, should “任何” where it first appears be deleted?</p> <p>Response: We will consider deleting “任何” in section 1(b)(iii) of Schedule 4 where it first appears.</p>

Item	Response from the Government
13	<p>Issue: Re: section 1(b)(iii) of Schedule 4 – This provision only requires an agreement for the sale of an interment right to set out whether mortgage or any other encumbrance subsists in the columbarium premises that may jeopardize the purchaser’s interest, without further requiring the particulars of the mortgage and other encumbrance to be set out, as in sections 1(b)(i), (ii) and (iv) of Schedule 4. Please explain.</p> <p>Response: We will amend section 1(b)(iii) of Schedule 4 such that the particulars of mortgage or other encumbrance have to be set out in an agreement for the sale of an interment right.</p>
14	<p>Issue: Re: the meaning of “particulars” under sections 1(b)(i), (ii) and (iv) of Schedule 4 – These provisions respectively require particulars of the seller’s interest in the columbarium premises, particulars of the tenancy, lease or right to occupy and particulars of the instrument in question to be set out in an agreement for the sale of an interment right. Please consider to provide expressly in each of these provisions each item of the particulars so required in order to assist the seller in complying with these requirements.</p> <p>Response: Sample templates for agreements would be drawn up for easy reference by consumers and operators. This will provide guidance to the operators for their compliance with the relevant requirements.</p>
15	<p>Issue: Re: section 1(e) of Schedule 4 –</p> <ul style="list-style-type: none"> • “以下建議：買方須小心考慮，其權益是否受保障而不受財政風險影響；” • “a recommendation that the purchaser should carefully consider whether the purchaser’s interest is protected against the financial risks;” <p>In this provision, “the purchaser should carefully consider” in the English text is rendered as “買方須小心考慮” in the Chinese text. However, under section 1(f) of Schedule 4, “should” seek legal advice” in the English text is rendered as “應尋求法律意見” in the Chinese text. Please explain the reason(s) for rendering “should” in the English text differently in the Chinese text.</p> <p>Response: We will consider amending “須” in section 1(e) of Schedule 4 to “應” for consistency with section 1(f) of that Schedule.</p>
16	<p>Issue: Re: section 1(e) of Schedule 4 – Please clarify whether or not “the financial risks” under this provision mean the risks referred to in section 1(d) of Schedule 4. In the Chinese text of this provision, “the financial risks” in the English text is rendered as “財政風險”.</p> <p>Response: Our intention is that “the financial risks” in section 1(e) of Schedule 4 means the risks referred to in section 1(d) of that Schedule. We will consider amending section 1(e) of Schedule 4 by inserting “referred to in paragraph (d)” after “the financial risks” in the English text, and “(d)段所指的” before “財政風險” in the</p>

Item	Response from the Government
	Chinese text.
17	<p>Issue: Re: section 2(a) of Schedule 4 –</p> <ul style="list-style-type: none"> • “該協議各方的姓名或名稱；” • “the names of the parties to the agreement;” <p>Strictly speaking, the names of the parties to the agreement are not “rights and obligations of the seller and the purchaser under the agreement” referred to in clause 41(3)(c)(ii). Should appropriate amendment(s) be made?</p> <p>Response: We will consider amending the wording of clause 41(3)(c)(ii).</p>
18	<p>Issue: Re: section 2(b)(i) of Schedule 4 –</p> <ul style="list-style-type: none"> • “如該安放權關乎某龕位 — 該龕位的詳情(包括該龕位的編號、位置及尺寸);” • “if the interment right relates to a niche—the particulars of the niche (including the serial number, location and dimensions of the niche);” <p>Apart from the serial number, location and dimensions of the niche, what other particulars of the niche the Administration intended to be covered under this provision?</p> <p>Response: Other possible particulars may include the number of sets of ashes permitted to be deposited in the respective niche.</p>
19	<p>Issue: Re: section 2(b)(iii) of Schedule 4 –</p> <ul style="list-style-type: none"> • “將會根據協議提供的任何其他服務的詳情；” • “particulars of any other services to be provided under the agreement;” <p>Particulars of any other services to be provided under the agreement do not seem to fall within the description of the matter required under section 2(b) of Schedule 4, namely, a full description of the interment right sold. Please consider to amend.</p> <p>Response: We will consider making necessary amendments to section 2 of Schedule 4.</p>
20	<p>Issue: Re: section 2(b)(iv) of Schedule 4 – In the Chinese text, please consider, for the sake of consistency, to replace “協議” with “該協議” as the Chinese rendition of “the agreement” in the English text.</p> <p>Response: We will consider adding “該” before “協議” in section 2(b)(iv) of Schedule 4.</p>
21	<p>Issue: Re: section 2(b)(iv) of Schedule 4 –</p> <ul style="list-style-type: none"> • “該安放權的有效期的詳情；或” • “particulars of the duration of the interment right; or”. <p>Please clarify whether “or” after “particulars of the duration of the interment right;”</p>

Item	Response from the Government
	<p>should be replaced by “and”.</p> <p>Response: We will consider substituting “or” at the end of section 2 of Schedule 4 with “and”.</p>