

Bills Committee on Private Columbaria Bill

Summary of the Framework and Provisions of the Private Columbaria Bill

Purpose

To facilitate focussed deliberation in the clause-by-clause examination, this paper sets out, by reference to each of the four topics in the work plan, a general understanding of the framework and provisions of the Private Columbaria Bill (“the Bill”).

Background

2. Properly regulated private columbaria could complement public columbaria, and help meet social needs, in terms of added supply and choice of niches and related services. In line with the feedback received during the two consultation exercises, Members and deputations generally support the introduction of proposed licensing regime for regulating private columbaria in Hong Kong.

Scope and Objectives

3. The Bill provides 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.

4. From the outset, we have to recognise that the proposed licensing scheme could not offer a panacea to each and every problem inherited from the past. Nor could we offer perfect solutions to some of the unwieldy situations that might eventually come about. Nonetheless,

the Bill represents a big step forward in the right direction, and lays the foundation for the necessary fabrics to be built up and refined.

Definitions, Exclusions and Exemptions

5. Part 1 of the Bill contains preliminary provisions, with the following clauses –

- (a) clause 1 sets out the short title and provides for commencement;
- (b) clauses 2 and 3 provide for the definition and meaning of words and expressions; and
- (c) clauses 4 and 5 provide for the exclusions and exemptions from application of the Bill.

Instruments required for operating private columbaria

6. After commencement of the Ordinance, a person must obtain a licence for operating a private columbarium (including the selling and letting out of new or unoccupied niches in the columbarium. That said, a private columbarium that has commenced operation (with ashes already interred in the niches in the columbarium) before the Bill announcement time (i.e. 8:00 a.m. on 18 June 2014) (hereinafter referred to as “pre-Bill columbarium”) would have the option of applying for an exemption and/or a temporary suspension of liability (“TSOL”) to continue its operation, subject to the eligibility criteria, including compliance with the requirements, as set out in the Bill.

7. Part 3 of the Bill sets out the control on operation of private columbaria. Under clause 8, a person must have a licence to operate a private columbarium (including selling interment rights (see clause 3 of the Bill for its meaning)). However, operation without selling interment

rights in respect of the private columbarium is permitted, if the person holds an exemption or a TSOL. Clause 9 provides that contravention of clause 8 is an offence.

8. Under the Bill, Divisions 1 to 4 of Part 4 (clauses 10 to 31), to be read with Schedules 2 and 3, provide for the issue of licences, exemptions and TSOLs (“specified instruments”) for operating private columbaria, with the following –

- (a) Division 1 (clauses 10 to 12) empowers the Private Columbaria Licensing Board (“Licensing Board”) to issue, renew or extend specified instruments;
- (b) Division 2 (clauses 13 to 17) prescribes the requirements for the grant or refusal of applications for specified instruments (eligibility criteria);
- (c) Division 3 (clauses 18 to 22) provides for –
 - (i) the form of, plans and other information required for, applications for specified instruments;
 - (ii) the time-limit for the submission of applications in respect of pre-Bill columbaria for specified instruments; and
 - (iii) the notification scheme: proof of particulars about pre-Bill columbaria (see clause 22 for details);
- (d) Division 4 (clauses 23 to 31) provides for the form of specified instruments and the conditions that are to be or may be imposed on specified instruments; and
- (e) Divisions 5 to 6 (clauses 32 to 39) contain supplementary provisions about specified instruments and related applications.

Licensing authority and appeal mechanism

9. The Licensing Board is to serve as the licensing authority to regulate the operation and management of private columbaria. The Private Columbaria Appeal Board (“Appeal Board”) is to hear and determine appeals against decisions of the Licensing Board and of the Director of Food and Environmental Hygiene as provided for under the Bill.

10. Under the Bill, Part 2 (clauses 6 to 7), to be read with Schedule 1, provides for the establishment of the Licensing Board, empowers the Licensing Board to determine applications for specified instruments and provides for the powers and functions of the Licensing Board.

11. Under the Bill, Part 8 (clauses 70 to 80) provides for the establishment of the Appeal Board to hear and determine appeals, and provides for the powers and deals with the procedures of the Appeal Board.

Duties and obligations relating to the operation of private columbaria

12. To enhance the protection for consumer interests, the Bill sets out clearly the duties and obligations relating to the operation of private columbaria, particularly the requirements about the agreements for sale of interment rights (as laid down in Part 5 of and Schedule 4 to the Bill). This is applicable to agreements entered into by licensees and consumers, after commencement of the Ordinance.

13. The responsibility for the proper handling of ashes interred in a private columbarium falls squarely with the operator concerned. The Bill requires an operator to properly dispose of the ashes interred in its columbarium (including in the case of cessation of operation) in accordance with a set of prescribed ash disposal procedures (see Part 7 of

and Schedule 5 to the Bill). This is applicable to all interred ashes in any private columbaria to which the Bill applies, irrespective of when the agreements are entered into or when the ashes are interred.

Miscellaneous matters

14. Under the Bill –

- (a) Part 6 (clauses 48 to 54) contains the enforcement provisions;
- (b) Part 9 (clauses 81 to 95), to be read with Schedules 6 to 7, contains miscellaneous provisions;
- (c) Part 10 (clauses 96 to 100) deals with the implications of the Bill on specified Ordinances; and
- (d) Part 11 (clauses 101 to 118) contains related and consequential amendments to specified Ordinances.

Summing up

15. Members are invited to note the above summary for the purpose of charting the way forward on the clause-by-clause examination.

Food and Health Bureau
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