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Report of the Bills Committee on Private Columbaria Bill

Purpose

1. This paper reports on the deliberations of the Bills Committee on Private Columbaria Bill ("the Bill").

Background

2. In view of the public's concern over the shortage of columbarium facilities as well as the increasing number of unauthorized private columbaria, the Government launched a public consultation exercise on the review of columbarium policy in July 2010. When briefing the Panel on Food Safety and Environmental Hygiene ("the Panel") on the outcome of the public consultation in April 2011, the Administration advised that while there was public support for introducing a licensing scheme to enhance the regulation of private columbaria, there were divergent views on the scope and level of regulation under the proposed licensing scheme and the arrangement for pre-existing private columbaria. The Government launched another public consultation exercise in December 2011 regarding the licensing scheme for private columbaria.

3. The Administration consulted the Panel on its legislative proposal for regulating private columbaria in December 2012 and November 2013 respectively. Members were advised that the proposed licensing scheme would seek to strike a balance among competing interests of various stakeholders, having regard to (a) the wider community interest, including meeting society's needs for provision of columbaria; (b) the sentiment of the descendants, in particular their wish not to upset the resting place of the deceased as far as practicable; (c) minimizing the nuisance caused by such columbaria to their neighbouring community; and (d) ensuring a sustainable mode of operation in the long run.

The Bill

4. According to the Legislative Council ("LegCo") Brief (File Ref.: FH CR 2/3751/07) issued by the Food and Health Bureau on 18 June 2014, the Bill seeks to provide a licensing scheme for regulating the operation of private columbaria¹. After commencement of the Private Columbaria Ordinance ("the Ordinance"), a person must obtain a licence for operating, keeping, managing or controlling a private columbarium (including the selling and letting out of interment right in respect of new or unoccupied niches in the columbarium). That said, a private columbarium that was in operation (with ashes already interred in the niches in the columbarium) immediately before the Bill announcement time ("BAT") (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 to continue its operation, subject to the eligibility criteria as set out in the Bill. For a pre-Bill columbarium that is granted exemption status, its scale of operation is meant to be frozen. To allow time for individual columbaria to put right irregularities so as to qualify for a licence or obtain an exemption, the operator of a pre-Bill columbarium may apply for a "temporary suspension of liability" ("TSOL").

The Bills Committee

5. At the House Committee meeting on 27 June 2014, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon IP Kwok-him, the Bills Committee held 35 meetings² with the Administration. The membership of the Bills Committee is in **Appendix I**. The Bills Committee has also received views from 26 deputations at one of its meetings. A list of deputations/individuals which have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

6. The salient points of deliberations of the Bills Committee are set out in the following paragraphs. A table of contents is set out below.

¹ Under the amended definition, "columbarium" means any premises that are used, or claimed, represented or held out, to be used, for keeping ashes.

² The aggregate duration of these meetings is about 73 hours.

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Coverage of the Bill

Definition of ashes

7. Clause 2(1) provides, inter alia, the definition of "ashes", which excludes synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes ("synthetic materials"). Members share deputations' concern that the current definition of "ashes" will allow private columbaria to circumvent the regulatory provisions under the Bill through keeping synthetic materials in a columbarium in disguise. The Administration has advised that it will propose to remove such exclusion from the definition to deter private columbarium operators from circumventing the proposed licensing regime. It will therefore move a CSA to amend the definition of "ashes" to include diamonds, jewellery, ornaments or any other materials transformed from human ashes as appropriate. The Ordinance does not apply to premises used for carrying out ash transformation work, subject to their compliance with the requirements imposed under the Bill. The Administration will move a CSA (new clause 4A) to give effect to the exclusion for such premises from the application of the Bill.

Domestic keeping of synthetic materials

8. Clause 5(1) provides that the Bill does not apply to the keeping of ashes in domestic premises where no more than five containers of ashes are kept in the premises, provided that each container contains the ashes of only one person. Some members including Mr Albert CHAN opine that as containers for ashes can be in different forms and synthetic materials could be regarded as one of such forms, it is difficult to define "container" as far as keeping of synthetic materials is concerned. They take the view that transforming ashes into synthetic materials will become more common and restricting the quantity of synthetic materials to be kept in domestic premises may not be necessary. Given that keeping of synthetic materials transformed from ashes of more than one person in one container in domestic premises contravenes clause 5(1), they have expressed concern that there will be a lot of disputes in this regard in future.

9. The Administration has advised that there are practical difficulties in quantifying synthetic materials to be kept in domestic premises for the purpose of the Bill. It has proposed increasing the number of containers of ashes that can be kept in domestic premises from five to 10 (see the amended clause 5(1)(a)). The Administration does not envisage strong public views against domestic keeping of synthetic materials and considers that keeping a large quantity of synthetic materials in domestic premises unlikely. As such, the Administration is inclined towards adopting a lenient approach towards domestic keeping of synthetic materials. That said, it will act on complaints about domestic keeping of synthetic materials. Should instances of abuse come to light after the enactment of the Ordinance, the Administration will swiftly initiate amendments to the relevant provisions.

10. The majority of members are of the view that it is difficult to come up with a perfect solution on this issue at present and support keeping to the Administration's proposal put forward in the Bill. They, however, have requested the Administration to review and propose amendments, in a timely manner, to these provisions as well as other provisions (e.g. provisions in relation to occupation order and prescribed ash disposal procedures in Schedule 5) where the licensing authority or enforcement authorities have encountered enforcement difficulties in implementing the Ordinance after its enactment. The Administration should also conduct a comprehensive review of the Ordinance after its enactment for a period of time, say, three years.

11. At members' request, the Administration has undertaken to keep in view the implementation of the Ordinance, propose amendments to the Ordinance as and when necessary, and conduct a review of the Ordinance in any event around

three years after enactment. The Administration has also agreed that the Secretary for Food and Health will give the undertakings in his speech for resumption of the Second Reading debate on the Bill ("SFH's speech").

Domestic keeping of ashes

12. Some members including Mr LEUNG Kwok-hung and Dr Kenneth CHAN have suggested that domestic keeping of ashes of relatives should not be subject to any restrictions on quantity.

13. The Administration has advised that introducing the element of making reference to relationship will grossly complicate the issue. It will keep the provision in the Bill as it is except that the cap on the number of containers of ashes that can be kept in domestic premises will be raised from five to 10.

Transient exhibition of ashes

14. There is concern on whether a licence will be required for premises in which ashes are placed for a short duration for exhibition purposes. The Administration has advised that it will move a CSA (new clause 4B) to the effect that the Ordinance does not apply to the premises used for transient exhibition of ashes during the time when the exhibition is held, subject to fulfilling the following: the exhibition is held for a period of not more than 14 days; the ashes are kept in the premises only for the purpose of the exhibition; no interment right in respect of the premises is sold, no more than 10 containers of ashes (each container containing the ashes of only one person) are kept in, on or at the premises.

Applications for specified instruments

Eligibility of an unincorporated association for a specified instrument

15. Section 2 of Schedule 3 prescribes who may make an application for a specified instrument (i.e. a licence, exemption or TSOL). According to the Administration, its policy intention is to allow only a natural person, a partner in a partnership or a body corporate (which includes a company) to make an application to which Schedule 3 applies.

16. Some members including the Chairman and Mr Albert CHAN are concerned about whether unincorporated associations (which may include charitable organizations which are exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112)) as well as monasteries and ancestral halls with long history, which have not been registered as a company but have

sold or let out niches, would have practical difficulties in making any of the aforesaid applications in one of the aforesaid capacities.

17. The Administration has advised that it is not envisaged that the operators of pre-Bill columbaria would have great difficulties in making applications for a specified instrument in the capacity of a natural person, partner in a partnership or body corporate (including a company). The Administration does not intend to allow an unincorporated association to apply for a specified instrument in respect of a columbarium under the Bill for the following reasons:

- (a) unlike the above-mentioned capacities (i.e. a natural person, partner in a partnership or body corporate (including a company)), unincorporated associations are not legal entities and would hence be difficult in entering into agreements for the sale of interment rights in the name of the association. It will also give rise to difficulties in identifying the persons who should be held liable for a breach, in particular when the membership of an unincorporated association may change from time to time, etc.; and
- (b) in relation to the regulatory provisions under the Bill, in the case of unincorporated associations, it could be difficult for the future Private Columbaria Licensing Board ("the Licensing Board") and enforcement authorities to hold the person in charge of the columbarium accountable.

The Administration has further explained that it is possible for a charitable organization to make an application in one of the three capacities mentioned above. A lot of religious organizations have formed companies which are limited by guarantee. If so authorized by its constitution, a corporation can enter into a partnership with an individual person, or with another corporation. Such a partnership may require special articles in the constitution of the corporate partner since many of the provisions of the Partnership Ordinance (Cap. 38) would be difficult to apply (e.g. provisions as to death and bankruptcy can hardly apply). Where a partner is a limited company, given that the corporate partner has limited liabilities, the other partners who are not a limited company will be held fully liable. In addition, the operators will have no problem in setting up a company or enter into a partnership, and unincorporated associations changing their capacities into natural persons, partners or companies can be covered under the amended provision on grace period under the transitional provisions in Schedule 7.

Effect of legal proceedings on applications

18. Some members have expressed concern about whether applications for specified instruments will be affected if legal proceedings have been instituted in respect of the columbarium premises concerned. The Administration has explained that even if such legal proceedings have been instituted, it does not necessarily follow that its application for a specified instrument under the Bill would be affected. Whether the relevant application would be affected depends on whether the legal proceedings would affect the applicant's fulfilment of the eligibility requirements for the specified instrument concerned under the Bill. According to clause 17, the Licensing Board must also have regard to the public interest and may have regard to any other relevant considerations in determining an application for a specified instrument.

19. As regards what constitutes any other relevant considerations referred to in clause 17, the Administration has advised that the relevant considerations to be taken into account by the licensing authority of a licensing regime are dependent on the contextual nature and characteristics of individual licensing regimes. Examples of provisions requiring the licensing authority to take into account any other relevant considerations under other licensing regimes include section 8A of the Dutiable Commodities Ordinance (Cap. 109), section 27(3A) of the Firearms and Ammunition Ordinance (Cap. 238), and section 28 of the Road Traffic Ordinance (Cap. 374). The Administration submits that it would not be possible to make an exhaustive list of the scenarios and circumstances which may be relevant to the licensing authority's considerations under the Bill, as they differ for individual cases and evolve over time. Such considerations will also apply to the private columbarium industry alike. Detailed manifestations may need to be adjusted in tandem with operators' response to the details of the regulatory framework. To facilitate the Licensing Board's consideration of an operator's application for issue and renewal of a licence and to facilitate subsequent enforcement actions, the Administration considers it necessary to have such a provision in respect of the determination of an application for a specified instrument under the Bill. In any case, there is no unfettered discretion conferred upon a licensing authority in the realm of public law³. In accordance with the principles of administrative law, the Licensing

³ According to the Administration, the following passage from Wade & Forsyth's Administrative Law 8th Ed. (p. 357) clearly explains the principle that there is no unfettered discretion conferred upon a licensing authority in the realm of public law:

"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish ... This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interests. There is nothing paradoxical in the imposition of such legal limits ... Nor is it (the principle) confined to the sphere of administration; it operates wherever discretion is given for some public purpose."

Board in exercising its discretionary power under clause 17, must act reasonably, in good faith and on lawful and relevant grounds of public interest. It should only take into account relevant considerations. Irrelevant considerations being taken into account by the Licensing Board may be a ground for judicial review. Its discretion is thus subject to the boundaries imposed by the above principle under the administrative law.

Considerations relevant to determination of applications

20. Noting that (as at December 2015), a significant number of private columbaria (124 in total) remain placed in Part B of the "Information on Private Columbaria"⁴ published by the Development Bureau ("DEVB's List") which is set out in **Appendix III**, Mr LEE Cheuk-yan considers that, in determining an application for a specified instrument under clause 17, the Licensing Board should also have regard to whether since its date of operation the columbarium concerned has remained non-compliant with, as the case may be, the land-related requirements, planning-related requirements or building-related requirements as specified in Part 1 of Schedule 2 to the Bill. He intends to propose CSAs to clause 17 to include such a factor.

21. According to the Administration, clause 17, which empowers the Licensing Board to have regard to, inter alia, any other relevant considerations, should be able to address Mr LEE's concerns. It is pertinent to note that:

- (a) by virtue of clause 30(1) and (2), a 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 may be) and procuring the issue of the licence or exemption (as the case may be) before the expiry of that TSOL; and
- (b) clause 33 allows the Licensing Board to 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 Ordinance.

The Administration considers that in a way, such provisions should help

⁴ According to the Administration, the "Information on Private Columbaria" published by the Development Bureau consists of two parts. Part A is a list of private columbaria which comply with user restrictions in the land leases and the statutory town planning requirements and are not illegally occupying Government land. Part B is a list of other private columbaria made known to the Lands Department and/or Planning Department that do not fall under Part A.

address Mr LEE's concern about recalcitrant non-compliance on a habitual basis. 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. Nevertheless, having regard to the concern raised by Mr LEE, the Administration has clarified that the relevant considerations should include, among others, compliance or otherwise with requirements in Schedule 2 as well as steps taken to rectify non-compliance, if any. Following further discussion with concerned members, the Administration has agreed to move CSAs to clause 17 to provide that in relation to:

- (a) an application for the issue of a licence or exemption; or
- (b) an application for the extension of TSOL,

the other relevant considerations referred to in subclause 2(b) include (but are not limited to) whether, in respect of the columbarium, the applicant has not complied with the applicable requirements in Schedule 2, as well as the record of the steps that the applicant has taken towards meeting such requirements.

22. Given the Administration's agreement to move the aforesaid CSAs to clause 17, Mr LEE Cheuk-yan has indicated that he will not propose CSAs to that clause.

Documents and estimated time required for application for specified instrument

23. Some members have expressed concern about whether an applicant for a specified instrument in respect of a pre-Bill columbarium will be able to provide evidence of the eligibility-related particulars stipulated under clause 21(3) within the time limit, i.e. after the expiry of three months beginning on the enactment date but before the expiry of six months beginning on the same date. These members consider that pre-Bill columbarium operators should be informed in advance of such eligibility-related particulars to allow for their early preparation. The Administration is requested to provide a list of documents required for an application for a specified instrument and the estimated time required for an applicant to provide the relevant documents.

24. The Administration has advised that, to provide more time for applicants to provide such information, it will defer the starting time of the three-month application period by three months so that the application period will start after the expiry of six months beginning on the enactment date. The documents and forms required to be submitted in respect of an application for a specified instrument are spelt out in clauses 18, 18A, 19 and 21 of the Bill. A list of

such documents and information is in **Appendix IV**. The information provided will facilitate consideration of whether the relevant eligibility requirements for the relevant specified instruments are met. The time required for an applicant to prepare the relevant documents depends on the type of specified instrument being applied for, as well as the nature and complexity of each case (e.g. whether the applicant has already applied to the relevant departments for regularization/rectification of its breaches and whether a Traffic Import Assessment has to be conducted. As such, it would not be possible to provide a general estimate on the time required for preparing the documents for the application of a specified instrument.

Applications by operators who have not participated in Notification Scheme

25. Under clause 22(9) of the Bill, one of the requirements that an applicant for a specified instrument who has not participated in the Notification Scheme⁵ is required to satisfy the Licensing Board is that the applicant is precluded from such participation by circumstances beyond the applicant's control. Noting that participation in the Notification Scheme is on a voluntary basis, members consider it unnecessary for the Administration to impose such a requirement on the applicant. The Administration has agreed to remove that requirement.

Form and conditions of specified instruments

Publication of notices of licence applications

26. Section 4 of Schedule 3 provides for the publication of an application for the issue of a licence and information about inspection of the particulars of such an application. Noting that the Licensing Board will draw up guidelines on posting of notices of applications for a licence, members consider that the guidelines should include the requirement of posting such notices at conspicuous places. Some members have called on the Administration to consider including in the Bill the requirement for publication of notices of applications for the issue of exemption and TSOL, applications for the renewal of licences and exemption, applications for the extension of TSOL and

⁵ According to the Administration, before enactment of the Bill, the Food and Environmental Hygiene Department ("FEHD") does not have legal backing to enter a private columbarium to undertake inspection and obtain a snapshot of the information as at the Bill announcement time. To assist the future Licensing Board to determine the pre-Bill columbarium status of the relevant columbarium, the Administration has devised an administrative notification scheme. Operators taking part in the Notification Scheme are required to respond to a notice served by FEHD and provide details of their columbarium operation and, within a relevant deadline, allow FEHD to enter and inspect the columbarium premises for the purpose of verifying the information provided.

applications for transfer of specified instruments and variation of conditions of specified instruments.

27. According to the Administration, the purpose of the publication under section 4 of Schedule 3 is to inform the public of the application for a licence, to allow them to inspect the particulars of the application, and to enable the public to send their comments on the application to the Licensing Board. In handling the historical legacy of private columbaria, the Administration needs to be pragmatic and strike a reasonable balance between the need to forestall social acrimony (including the need to avoid disturbing the final resting places of the deceased whose ashes are interred in private columbaria prior to BAT) and the interests of the residents nearby. Under the Bill, operators of private columbaria seeking an exemption or a TSOL will not be allowed to sell or let out the interment right in respect of any more niches. Hence, the Administration considers it a pragmatic approach to provide for publication only in respect of an application for the issue of a licence, and not for an application for the issue of an exemption/a TSOL, nor an application for the renewal or extension (as the case may be) of a specified instrument. For an application to transfer a specified instrument under clause 32, it will only involve a change in instrument holder while the circumstances in respect of the private columbarium should remain by and large the same. As regards an application for variation of conditions of a specified instrument under clause 34, the Licensing Board may consider such application if the instrument holder could show sufficient cause to the Licensing Board's satisfaction. In other words, the Licensing Board will serve as the gatekeeper and will not allow application for variation of conditions unless it is satisfied that the proposed variation in conditions is warranted in the circumstances.

28. In the light of the above, the Administration considers that there is no strong need for the Licensing Board to publish the applications under clause 32 or 34. Moreover, there will be significant manpower and resource implications if the publication of licence applications is to be extended to the applications for the issue of exemption or TSOL, the renewal or extension (as the case requires) of a specified instrument, the transfer of specified instruments, and the variation of conditions.

Changes in proprietorship, partnership or directorship of private columbarium

29. According to the Administration, a specified instrument is issued:

- (a) in the case of a natural person – to the individual (sole proprietor);
- (b) in the case of a partnership – to one or more partner(s) authorized

by the partnership to hold it on behalf of the partnership; and

- (c) in the case of a body corporate (including a company) – to the body corporate (including a company). Normally, a director represents a company while an officer represents a non-company body corporate.

30. Under clause 32, an application for the approval of a transfer of a specified instrument is required to be made in order to transfer a specified instrument. The Administration has confirmed that such an application is not required to be made if the holder of a specified instrument is a company or a non-company body corporate.

31. Some members consider that the Licensing Board should be notified of a change of the director of the applicant not only at the application stage, but also of the holder of a specified instrument as long as the specified instrument is in force. The Administration is also requested to consider including a provision in the Bill to require instrument holders to make available to the public information on changes in proprietorship, partnership or directorship.

32. The Administration has advised that it will include an express provision to require the holder of a specified instrument to notify the Licensing Board of a change of any director, manager, secretary or other similar officer of the holder of the specified instrument in writing within 14 days after the change takes place. Clause 44(1) requires an instrument holder to exhibit the specified instrument at a conspicuous place in the columbarium. A specified instrument sets out, inter alia, the name of the instrument holder. In this way, the public would have access to information pertaining to a change of the instrument holder. For change of directorship in a company, the Registrar of Companies must be notified (section 645 of Companies Ordinance (Cap. 622) and such information would be available to the public upon search.

Exercise of Licensing Board's power to revoke, suspend, not renew or extend in respect of instrument holder which is a partner in a partnership or a body corporate (other than a company)

33. Clause 33(1) empowers the Licensing Board to revoke, suspend and refuse to renew or extend a specified instrument as well as vary conditions imposed on such instrument. Clause 33(2) further stipulates the circumstances under which the Licensing Board may exercise the powers under clause 33(1). Clause 33(2)(f) will apply when an instrument holder is a company whilst clause 33(2)(g) will apply to an instrument holder who is a natural person or a partner in a partnership. Concerns have been raised as to whether the

circumstances covered in clause 33(2) apply to an instrument holder which is a partner in a partnership or a body corporate.

34. The Administration has advised that under its policy intention, "body corporate" encompasses a company incorporated under the Companies Ordinance (Cap. 622) or the former Companies Ordinance (Cap. 32), a body incorporated under a specific Ordinance (e.g. Tung Wah Group of Hospitals under the Tung Wah Group of Hospitals Ordinance (Cap. 1051)), a corporation sole, etc. Apart from clause 33(2)(f) which is applicable to the scenario of a company, the Administration will move CSAs to clause 33(2) to provide for the relevant scenarios in respect of a body corporate (other than a company) and a partner in a partnership.

Notification of Licensing Board's decision to instrument holder who has died

35. Some members are concerned that the Licensing Board will not be able to execute its duties to notify an instrument holder of its decision if the instrument holder has passed away.

36. The Administration has advised that it will move a CSA to the effect that if a natural person, who is the instrument holder or is a partner in the partnership that is the instrument holder, dies and no application for succession of the specified instrument is received, the instrument holder will be notified of a Licensing Board's decision in writing in the following manner:

- (a) in the case of a natural person who is the instrument holder, the notification should be sent to the instrument holder's last known place of residence or business; and
- (b) in the case of a partner who is the instrument holder, the notification should be sent to the instrument holder's last known place of residence or business, and the usual places of residence or business of other partners of the partnership, if known.

Material change in respect of information furnished to Licensing Board

37. Clause 36 requires an applicant for a specified instrument to notify the Licensing Board of a change that materially affects the accuracy of the information that the applicant has provided in connection with the application. Members are concerned about what constitutes such a material change. They consider it important to have clarity about the applicable scope of clause 36 given that non-compliance with the clause may be punishable with imprisonment.

38. The Administration has advised that "material" means important, essential and relevant. In determining whether the facts are material, the court will consider whether the facts are related to the parts of the case being argued about, and form part of the reasons for its decision. There are examples of provisions in prevailing legislation which provide that a person shall report a material change in respect of the information furnished, otherwise it would constitute an offence (e.g. regulations 58 and 68(1)(a) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I); and sections 6(3) and 23 of the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 sub. leg. AD)). It is not possible to give an exhaustive list of all possible categories of what constitutes "material change".

39. According to the Administration, it will move a CSA (by adding new subclause (2A) to clause 36) to require the holder of a specified instrument that has been issued, renewed or extended to notify the Licensing Board of the aforesaid material change. The CSA also empowers the Licensing Board to decide on the information it requires and specify the time for furnishing it with such information under clause 36(2A)(b)(ii).

40. Members note that the requirements imposed by the Licensing Board are not provided for in subsidiary legislation and therefore would not be subject to amendment by LegCo. Non-compliance with the Licensing Board's requirements might be punishable with imprisonment and a fine.

41. Given that the requirements so imposed could not be amended by LegCo, members are concerned about the serious consequences (i.e. criminal sanction) for non-compliance. They are, however, also aware that criminal sanction is necessary in order to have sufficient deterrent effect. Members consider that as non-compliance cases will be handled by the court, it could play the role of "gatekeeper" in deciding the penalty to be imposed on the offenders concerned. Taking into account the above factors, the Bills Committee accepts the proposed CSA and suggests that its concerns, factors for consideration and acceptance of the CSA concerned should be covered in the SFH's speech.

Time frame for issuing certificate of columbarium use

42. Clause 38 provides that as soon as the Licensing Board has issued a specified instrument to a person in respect of any premises for which a land register has been kept under the Land Registration Ordinance (Cap. 128), the Licensing Board must issue a certificate of columbarium use. Some members have suggested that a time frame should be set for such issuance. The Administration considers that amendments may not be necessary as the

provision will ensure that the Licensing Board will issue the certificate of columbarium use within a reasonable time frame. Nevertheless, the Administration may consider including a reference time frame in the guidelines to be issued by the Licensing Board.

Validity period of licence

43. Under clause 11B(2), the Licensing Board may, in its discretion, determine the term for which a specified instrument is issued, renewed or extended ("validity period"). Clause 11B(3) further provides that the validity period of a licence must not exceed the shorter of the following:

- (a) where -
 - (i) the columbarium premises are held directly from the Government under a lease, the remainder of the term of the lease; or
 - (ii) the columbarium premises are occupied under a tenancy, the remainder of the term of the tenancy;
- (b) 10 years.

Clause 11B(8) also provides that a licence may be subject to review within its validity period on the dates specified in the licence.

44. Some members including Mr WONG Kwok-hing opine that given operators' upfront investment in seeking compliance with licensing requirements and consumers' preference for ash interment on a long term basis, the maximum validity period of 10 years for a licence is too short. They suggest setting it to be coterminous with the term of the land lease ("land tenure") of the columbarium premises instead. They also float the idea of revoking the licence (if appropriate) upon mid-term review, under a longer licence duration.

45. The Administration has explained that the features (including duration) of different types of licences vary as a function of the objects, activities and/or operations that may be regulated by a licensing system⁶. The Administration has proposed a licence validity period of up to 10 years, having regard to factors including the nature of columbarium operations and the need to ensure continuous compliance with the licensing requirements and licensing conditions in the course of time. In the latter respect, common to other licensing regimes,

⁶ According to the Administration, in Hong Kong, normally, the duration of licences for municipal services (such as restaurants and undertakers) is one year while that for broadcasting (such as televisions and radios) is 12 years.

renewal avails an opportunity for the Licensing Board to review the performance of the licensee and to take necessary follow-up action at appropriate juncture (e.g. variation to licence conditions if appropriate).

46. The Administration has advised that in the course of drafting the Bill, it has conducted research on the land leases of the columbarium premises on the basis of the DEVB's list published on 30 September 2013. Taking into account the research results, the Administration considers 10 years an appropriate interval as it would allow two breakpoints for nearly 80% of the cases (where the land tenure expires in 2047), and one breakpoint for the case with the shortest land tenure (that expires in 2038). Setting it to be coterminous with the land tenure could mean a licence duration as long as around 870 years in the case with the longest land tenure (that expires in 2886). Absence of a breakpoint for such a long licence duration is highly undesirable from the regulatory control perspective.

47. According to the Administration, to protect consumers' interest, clause 41(2)(aa) provides that the agreement for the sale of an interment right in respect of the premises ("agreement") for a term that extends beyond the term of the land lease is not enforceable against the purchaser. Section 1(b)(i)(D) of Schedule 4 provides that an agreement must set out the information about the lease such as the date on which the term of the lease is to end. Section 2(b) of Schedule 4 provides that an agreement must set out, inter alia, the duration of the interment right and particulars about any right of the purchaser to renew the interment right for another term, on the expiry of the term under the agreement. In addition, Part 7 and Schedule 5 provide that an operator must not improperly dispose of the ashes interred in the columbarium (together with the detailed arrangements for complying with such requirements). Failure to do so constitutes an offence punishable by fine and imprisonment upon conviction. In other words, the duration of an agreement does not necessarily have to be limited by the validity period of the licence, and is a matter for agreement between the parties to the agreement. Where the duration of an agreement is longer than the validity period of the licence, consumers should pay attention to the detailed terms in the agreement for protecting their interests (e.g. what arrangements would apply in case of cessation of columbarium operation for any reason, non-renewal of the licence, including whether and if so how a refund or compensation would be made to the consumers and how the interred ashes would be properly disposed of).

48. The Administration has advised that a licence duration of 10 years strikes a reasonable balance between the long-term nature of such transactions and public expectations favouring rigorous control of columbarium operations. The Administration stresses that barring unforeseen circumstances, if no

non-compliance with the requirements and conditions is observed throughout the licence term, such licences would normally be renewed upon application. The suggestion of revoking the licence (if appropriate) upon mid-term review will also bring uncertainty for operators and consumers, thus defeating the original purpose of the suggestion.

Extension of validity period of temporary suspension of liability

49. Clause 11B(5) provides that the validity period of a TSOL must not exceed three years while clause 11B(9) provides that a TSOL may not be extended more than once, unless exceptional circumstances exist. Some members including Mr Albert CHAN and Dr Helena WONG have suggested that a TSOL should only be extended once (for a period of no more than three years) under exceptional circumstances. Dr Helena WONG has indicated that she might consider proposing CSAs to impose such restriction if the Administration does not do so. They consider that extension of a TSOL should only be allowed when the regularization cannot be completed within the validity period of TSOL. Private columbaria which are located in private multi-storey buildings and are not eligible for seeking exemption status should be eradicated.

50. The Administration has explained that, as borne out by experience, the regularization/rectification exercise takes time. Legal proceedings could also complicate matters. The Administration intends to keep clause 11B(9) as it is, as this will give the Licensing Board the necessary flexibility of extending the TSOL for more than once in complicated cases. The Administration reiterates that the provision will be invoked only if the Licensing Board considers that there are exceptional circumstances surrounding the case. For instance, there may be cases where applicants have taken all reasonable endeavours to meet the eligibility requirements for a licence but are still unable to complete the relevant regularization/rectification applications within the two TSOL periods due to circumstances beyond their control. Under such a scenario, the applicants are not at fault and, with additional time allowed, it is still possible for them to fulfil the eligibility requirements for a licence or an exemption (as the case may be). If the Licensing Board is not conferred with the power to extend the TSOL for more than once if exceptional circumstances exist, the relevant columbarium would have to cease operation upon the expiry of the second TSOL period, thereby curtailing the supply of niches from possibly licensable columbarium and giving rise to unnecessary social tension and disruption.

Operation of columbaria

Private columbaria occupying government land or contravening Deeds of Mutual Covenant

51. Some members including Mr LEE Cheuk-yan have called on the Administration to have zero tolerance towards private columbaria which are illegally occupying government land or are in breach of Deeds of Mutual Covenant ("DMC"). They consider that such columbaria should not be granted exemption, and a pre-Bill columbarium, even if it is allowed to continue its operation, should be required to rectify non-compliance within a stipulated time frame.

52. The Administration has advised that there is no room for compromise on matters related to building safety. This has been strictly adhered to in formulating provisions in the Bill. Under clause 13 of the Bill, the Licensing Board may refuse an application for the issue of a licence in respect of a columbarium if the applicant fails to comply with all the land-related, planning-related and building-related requirements. The Administration's explanation of these requirements, which are set out in Schedule 2, are in **Appendix V**. Clause 14 of the Bill provides for modifications of clause 13 for pre-Bill columbaria under strictly-defined criteria. Under the Bill, the Licensing Board may impose conditions on a licence or an exemption in respect of a pre-Bill columbarium such as imposing conditions on measures for minimizing the environmental nuisance caused to the neighbourhood by the columbarium operation as appropriate.

53. Regarding breaches of DMC, the Administration has advised that it has made reference to the approach taken by the Home Affairs Department ("HAD") in its review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), including the proposed amendment to the relevant legislation in the HAD's consultation document on the review. According to its research on existing private columbaria joining the Notification Scheme, the Administration is not aware of any explicit restrictive covenant in the DMC that disallows the operation of columbarium in the buildings concerned. As regards other clauses in the DMC which may be open to interpretation as to whether or not it allows columbarium operation, according to case law, the question of whether an activity can be regarded as a breach of the relevant clause would have to be judged on a case by case basis, having regard to the available evidence on the facts and circumstances of the case. Nevertheless, the Administration will move CSAs to the Bill to:

- (a) enable the Licensing Board to refuse an application for the issue of a licence in respect of a columbarium where a DMC is in force in respect of the columbarium premises if the applicant fails to provide the legal advice as required under clause 18(3) (clause 13(3)); and
- (b) in relation to (a) above, the legal advice should be in writing given by a legal practitioner confirming that there is no express restrictive covenant in the DMC to the effect that any use of the premises as a columbarium is prohibited, any commercial use of the premises is prohibited, or only private residential use of the premises is permitted (clause 18(3)).

The Administration has explained that the above applies to a columbarium (be it a pre-Bill columbarium or not) seeking a licence under the Bill. For those cases where the question of whether or not the DMC contains a restrictive covenant to such effect is open to interpretation, the Administration could continue to count on the existing provision in the Bill, which has been formulated having regard to the experience of other licensing regimes i.e. the application for issue of a licence is to be considered by the Licensing Board on a case by case basis having regard to public interest and other relevant considerations (clause 17 of the Bill). In addition, when granting a licence, it is open to the Licensing Board to include licensing conditions for minimizing the environmental nuisance caused to the neighbourhood, as appropriate.

Enforcement actions against existing non-compliant columbaria

54. Members have enquired about the types of non-compliance found in existing columbaria, the locations of non-compliant columbaria and how the Administration deals with such non-compliance. According to the Administration, at present, private columbaria would need to comply with existing statutory and Government requirements, including those relating to the land, planning and building aspects. Details of these requirements and the follow-up actions taken by the Administration in case of non-compliance are set out in **Appendix III**.

Building-related requirements imposed on private columbaria

55. In response to members' enquiry about the types of buildings or building works that could be covered under a licence/an exemption despite there being some non-compliant structures⁷, the Administration has advised that the

⁷ "Non-compliant structures" is defined in section 4(1) of Part 2 of Schedule 2 to the Bill.

building-related requirements to be fulfilled for seeking a licence or an exemption are set out in clauses 13 to 15 of (as read together with Schedule 2 to) the Bill. Details of such requirements, including those relating to different types of buildings, are set out in Schedule 2 to the Bill. The legal framework and provisions involved as explained by the Administration are set out in **Appendix VI**. Relevant guidelines will be promulgated in due course for the qualified professionals engaged by the operators. This might also be of useful reference for the columbarium sector, professional bodies, consumers and members of the public.

Policies on land premium for columbarium premises

56. Some members including the Chairman and Mr Albert CHAN have expressed grave concern about whether the Ordinance will be practically enforceable if many private columbarium operators are unable to pay the land premium for their lease modifications for columbarium operations which can be substantial. The Administration is requested to provide information on its policies on land premium for columbarium use.

57. The Administration has advised that under the current policy, any application for land grant/lease modification/land exchange/short term tenancy ("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 premia, waiver fees or STT rentals as well as administrative fees as appropriate by the applicant unless a 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 Bill. For pre-Bill columbaria confirmed to be eligible for exemption status in all other respects, the Director of Lands ("D of Lands") may, upon application, consider administratively regularizing the breach of the relevant lease conditions and/or unlawful occupation of unleased land for the proposed exempted area, by way of a waiver and/or a STT, with the relevant waiver fees, STT rentals and administrative fees before and during the exemption period waived, depending on the circumstances and merits of each application.

Safeguards against abuse of waiver of land premium

58. Mr Albert CHAN has expressed concern that the above waiver arrangements for pre-Bill columbaria could be subject to abuse. He takes the view that operators who have been exempted from paying land premium should be forbidden to charge consumers extortionate fees or to resell niches to make profit. The Administration is requested to consider imposing the aforesaid

prohibitions. The Administration is also requested to provide information on the conditions and criteria for waiving land premium for these columbaria under different situations, e.g. unlawful occupation of government land, of private land or of government land abutting private land.

59. According to the Administration, the D of Lands' waiver arrangements mentioned in paragraph 57 apply to the following in respect of a columbarium which is confirmed to be eligible for exemption status in all other respects:

- (a) ashes interred in the columbarium before BAT;
- (b) ashes interred in the columbarium between BAT and the enactment date in respect of niches sold before BAT; and
- (c) ashes to be interred in the columbarium after obtaining an exemption in respect of niches sold before BAT.

The Administration has plans to impose respective restrictions against changes of ashes interred or to be interred (as the case may be) under the above categories. In addition, it will also take on board members' suggestions to expressly empower the Licensing Board to impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting 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 BAT (a CSA will be moved to add a new clause 31A).

60. Mr Albert CHAN opines that clause 31A cannot preclude operators from charging consumers additional fees, charges or other sums if the terms in the relevant agreements allow them to do so. He has suggested that a mechanism should be put in place to require operators to provide samples of their agreements with consumers when applying for land premium exemption. In considering their applications, the Administration should examine these samples to ensure that the objectives of the new clause 31A can be met. The Administration has advised that given the large number of agreements between operators and consumers, it is impossible to require operators to provide all agreements. That said, it will endeavour to obtain as much information as practicable. Members' concerns and the Administration's response in relation to land premium for columbarium premises will be covered in the SFH's speech.

61. Mr Albert CHAN is gravely concerned about whether the Administration is able to handle ashes interred in private columbaria which are forced to cease

operation due to their inability to pay land premium. The Administration has advised that to address the concern about the possible displacement of ashes arising from the cessation of private columbaria which apply for an exemption, the Lands Department will consider exercising discretion to waive the STT rental/waiver fee for dated private columbaria (i.e. those which had commenced operation before 1 January 1990) that have successfully fulfilled the eligibility criteria for exemption in all other respects (including no sale or letting out of interment right in respect of niches after BAT). In case of cessation of columbarium operation, ashes in the columbaria concerned will be handled according to the ash disposal procedures prescribed in the Bill.

Change in zoning/lease modification to frustrate continued use of premises for columbarium purposes

62. Noting that most if not all consumers of private columbaria are seeking a service (i.e. interment of ashes) that is long-term in nature, some members have expressed concern, in respect of private columbaria that are licensed after the Ordinance has come into operation, that there might be unscrupulous operators who, after pocketing the proceeds received from selling their niches, might seek to apply for change in zoning and/or lease modification for purposes other than columbarium operations during the term of the licence or of the respective land lease. That might frustrate the continued use of the licensed premises for columbarium purposes. These members are concerned that such changes could proceed without the knowledge of the stakeholders, thus adversely affecting the interests of the consumers.

63. According to the Administration, under the existing town planning and land administration mechanisms, safeguards are in place. It is not conceivable that changes in zoning/lease modification/land resumption could have proceeded without the knowledge of the stakeholders, whether or not the changes are initiated by the private columbarium operators themselves or other parties. These safeguards, as explained by the Administration, are outlined in **Appendix VII**. In devising the provisions under the Bill, the Administration has also taken great care to enhance transparency for the purpose of protecting consumer interest. These provisions are set out in **Appendix VIII**.

Protection of consumers with agreements entered into prior to commencement of Ordinance

64. Members have expressed grave concern that consumers with agreements entered into (as well as ancestors' ashes interred) prior to the commencement of the Ordinance in respect of niches in a private columbarium might be affected, if the columbarium eventually fails to obtain a licence or an exemption after the

commencement of the Ordinance. They enquire what protection or assistance is available to such consumers.

65. According to the Administration, in respect of an agreement made before the announcement of the Bill, depending on the facts and circumstances of each particular case, if a columbarium operator fails to obtain a licence/an exemption after the commencement of the Ordinance, it could be a breach of agreement on the part of the columbarium operator (if there is fault on the part of the columbarium operator or the event rendering performance impossible is self-induced) or frustration of agreement (if there is no fault on the part of either party). Where there is a breach of agreement, the remedies for breach of contract are available to the consumers affected, such as suing for damages. Where there is frustration of agreement, section 16(2) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) gives a cause of action to the consumers. On frustration, the amount payable by the consumer before the time of discharge ceases to be payable, and the amount paid by him/her before frustration is recoverable provided that the court may allow the columbarium operator to recover or retain any expenses incurred for the purpose of the agreement before the time of discharge if the court considers it just to do so. That said, where express provisions are provided in the agreements to deal with the frustrating events or events rendering performance impossible, the court will give effects to such provisions. In this regard, consumers are advised to pay attention to the detailed terms in the agreement for protecting their own interests.

66. The Administration has also advised that in respect of an agreement made after the announcement of the Bill, depending on the facts and circumstances of each particular case: (a) the doctrine of frustration may or may not arise; (b) it is also possible that circumstances may give rise to a breach of agreement on the part of the columbarium operator. The ash disposal procedures⁸, including in case of cessation of columbarium operation, apply to the interred ashes of any private columbarium to which the Ordinance applies, irrespective of when the agreement is entered into (i.e. before or after the commencement of the Ordinance).

⁸ Part 7 and Schedule 5 provide for obligations in disposing of ashes and set out the prescribed ash disposal procedures to be carried out, including occupation orders and arrangements for the return of ashes to the concerned parties. After the commencement of the Ordinance, the operators of private columbaria to which the Ordinance applies are required to dispose of interred ashes properly in accordance with the prescribed ash disposal procedures laid down in Part 7 and Schedule 5, including in case of cessation of their columbarium. Failure to do so will render the operators criminally liable, punishable by a fine and imprisonment upon conviction.

Retrospective application of Private Columbaria Ordinance

67. To enhance protection of consumers who have entered into agreements with operators of pre-Bill columbaria before enactment of the Ordinance, some members including Mr Albert CHAN have suggested that the Administration should include provisions in the Bill to override these agreements and bring such agreements into conformity with the provisions in the Bill.

68. The Administration has advised that Article 160 of the Basic Law provides that "documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law." The proposal involves the retrospective application of the Ordinance to transactions before its enactment. Any proposals of retrospective legislation which alter the common law presumption against retrospective operation may have the effect of contravening the Basic Law, including provisions concerning property rights, and therefore requires careful examination.

69. According to the Administration, retrospective legislation is contrary to the general principle that legislation by which the conduct is to be regulated ought to deal with future acts, and ought not to change the character of past transactions, carried out under the then existing law. It is a principle accepted by governments that retrospective application of legislation should be avoided except where necessary. The proposed retrospective provision will inflict a detriment to a class of persons, namely the operators of the columbarium (being a party to the agreement). It is justifiable only if the legislation is reasonable under the circumstances and is fair and just both to the individual and the Government. In this case, the Administration does not see sufficient justifications to deprive the parties to pre-enactment agreements (executed before the enactment of the Bill) of the legal certainty and their entitlements under such agreements. The Administration therefore does not intend to override the agreements for the sale of interment rights entered into before the enactment of the Ordinance. That said, under Part 7 of and Schedule 5 to the Bill, operators of private columbaria to which the Bill applies are required to dispose of interred ashes properly in accordance with the applicable ash disposal procedures. These provisions apply to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date of the Ordinance, whether or not the taking possession of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that date.

70. Some members including Mr WONG Kwok-hing are concerned that

changes of ownership of private columbaria or cessation of columbarium operation after enactment of the Ordinance may bring about displacement of a large number of niches. To avoid such displacement of niches, they have proposed that there should be provisions in the Bill to allow consumers who have entered into agreements with private columbarium operators before enactment of the Ordinance to have the right to inter ashes permanently in the columbaria concerned. To ensure that consumers can exercise the interment right, some other members including Mr James TO have suggested that subject to certain conditions, the Bill should provide for mandatory performance by licensees of the contractual obligations in terms of the interment right (rather than returning the money to consumers), and allow consumers to use the niches permanently unless the period of the interment right is clearly stated in the relevant agreements.

71. The Administration has advised that the proposal to regulate agreements entered into before the enactment of the Ordinance involves the retrospective application of the Ordinance to transactions before its enactment. The aforesaid Administration's stance towards retrospective legislation therefore applies to the proposal. In addition, it may not be feasible practically to implement the two proposals to mandate private columbarium operators to provide consumers with the right to inter ashes permanently, as the operators themselves do not have the entitlements to use the leased land permanently. Under common law, the terms of an agreement must be agreed to by the parties to the agreement. Where the agreement is silent on the period of interment, there are principles under common law which govern whether and if so what terms are implied in the agreement. Each case would have to be decided on its own facts. It would be difficult to conceive how the licensee could sell a niche permanently (i.e. implying the conferment of an interment right beyond the term of the lease).

72. The Administration has further explained that under clause 41(2)(aa), an agreement is not enforceable against the purchaser if the seller purports to sell under the agreement an interment right that the seller is not entitled to sell, ie. by selling an interment right for a term that extends beyond the term of the lease. Requiring mandatory performance by columbarium operators might not be the best solution to consumers affected. Where, for instance, a private columbarium operator has absconded and abandoned the columbarium, indiscriminately demanding that the ashes be interred in the abandoned columbarium premises permanently may not serve the best interest of the purchaser. Instead, a refund of payment would allow the affected purchasers a choice to inter (or re-inter) the ashes elsewhere.

Requirements about agreements for sale of interment rights

73. Some members including Mr Paul TSE consider that information required to be set out in agreements for sale of interment rights under the Bill are too detailed and excessive. For example, the information about ownership, tenancy, encumbrances, and restrictions on use and disposition of columbarium premises required under section 1(b) of Schedule 4 is excessive and far beyond what is required for consumer protection. The Administration is requested to critically look into whether it is practical to include such fine details in an agreement. They are concerned about the appropriateness of and the columbarium sector's adaptability to these requirements.

74. According to the Administration, it is necessary to regulate the terms in the agreements to a reasonable extent in order to enhance consumer protection. To this end, the Administration will move CSAs to clauses 41(3) and 42 and Schedule 4. To facilitate the industry in complying with the relevant requirements in Schedule 4, the Administration will spell out, in more concrete terms, the particulars required to be covered in an agreement for sale of an interment right.

Requirements imposed by Licensing Board in relation to agreements for sale of interment rights

75. Clause 41 imposes requirements that an agreement for the sale of an interment right must meet in order for it to be enforceable against the purchaser. Schedule 4 sets out the information, recommendations and essential terms that should be included in the agreement. Clause 43 sets out the requirements for records to be kept by holders of specified instruments. The legal adviser to the Bills Committee ("the Legal Adviser") has pointed out to the Bills Committee that the Administration has proposed CSAs to the effect that the requirements imposed by the Licensing Board under the relevant provisions mentioned below are not provided in the Bill nor subsidiary legislation and therefore would not be subject to amendment by LegCo. However, non-compliance with the requirement mentioned in paragraph (b) or (c) below constitutes an offence punishable by a fine and imprisonment:

- (a) the agreement is not enforceable against the purchaser unless any other requirements specified by the Licensing Board are met (clause 41(3)(j));
- (b) the particulars of an agreement for the sale for an interment right to be entered into the register of such agreements (clause 43(2)(b)); and

- (c) the time within which entry of such particulars is to be made (clause 43(2)(b)).

Members have requested the Administration to consider whether these requirements could be spelt out in the Bill or subsidiary legislation.

76. According to the Administration, a purchaser under an agreement that is not enforceable under clause 41(3)(j), amongst others, may cancel the agreement within six months (not at any time) after the date of the agreement (clause 42(1A)). It would not be possible nor desirable at this stage to spell out in an exhaustive list the requirements that the Licensing Board may deem fit to specify. The Administration prefers providing the necessary flexibility to the Licensing Board under that clause. According to clause 43(2)(b), a person holding a licence in respect of a columbarium must enter the specified particulars of each of the agreements for the sale of interment rights into a register within a period of time to be specified by the Licensing Board. The Administration proposes to leave the provision as presently drafted, rather than stipulating a time frame in clause 43.

77. As the issues arising from the aforesaid CSAs are similar to those mentioned in paragraph 40 (apart from clause 41(3)(j)), the Bills Committee accepts these CSAs based on the same rationale explained in paragraph 41.

Authorized representative in relation to agreements for sale of interment rights

78. Noting that the Bill does not preclude a seller of an interment right from recommending any organization or anyone, including his/her legal representatives, to become authorized representatives of purchasers, some members including the Chairman and Dr Kenneth CHAN consider that there might be possible conflict of interests or conflict of roles if sellers' representatives are allowed to act as authorized representatives of purchasers. These members are also concerned about the possibility of a seller coercing the purchaser to nominate the former as the latter's authorized representative in relation to an agreement for the sale of an interment right. The Bill should therefore provide for restrictions on appointment of authorized representatives.

79. The Administration has advised that to address the aforesaid concerns, it will amend the definition of "authorized representative" in clause 2 to the effect that the person who operates, keeps, manages or in any other way has control of the columbarium in which the ashes are, or are to be, interred or an agent of such a person is not allowed to be an authorized representative.

Niches already sold but ashes not yet interred at Bill Announcement time

80. Some members consider that if operators of private columbaria intending to seek exemption have signed agreements with consumers for sale of interment rights before BAT, these operators should be allowed to honour the interment of the number of sets of ashes as stated in the agreements, even though the niches have not yet been occupied at that stage. In the light of the shortage of supply of niches, the Administration is requested to study whether there is room to relax the number of sets of ashes in a niche for exempted columbaria, taking into account possible implications on stakeholders' interests. In this connection, Mr James TO has suggested allowing interment of ashes of deceased persons from the same family in a niche so as to relieve the shortage of supply for niches, thereby lowering the prices of niches. He has also indicated that he might consider proposing CSAs to relax the restrictions on the number of sets of ashes to be interred in a niche if the Administration does not do so.

81. According to the Administration, the regulatory regime under the Bill seeks to strike a fine balance amongst competing interests of different stakeholders:

- (a) the wider community interest, including meeting society's needs for provision of columbaria;
- (b) the sentiment of the descendants, in particular their wish not to upset the resting place of the deceased as far as practicable;
- (c) minimizing the nuisance caused by such columbaria to their neighbouring community; and
- (d) the sustainable development of the trade in the long run.

82. The Administration has advised that according to the Bill, in granting an exemption for a dated columbarium meeting the eligibility requirements, the Licensing Board will control the exempted area by way of the relevant approved plans. For a columbarium granted an exemption, its scale of operation would be frozen. For places outside the exempted area in the columbarium, if the relevant niches are in stand-alone and separated premises, it is open to operators meeting the eligibility requirements for a licence in all respects (including paying premium for such niches) to seek a licence in respect of such area that is separate from the exempted area. The Administration will move CSAs (new clauses 15(1A), 16(4), 46A and 46B) to handle cases where niches were sold before BAT, but ashes are yet to be interred before BAT, with safeguards

against possible abuse.

Interment of ashes in religious ash pagodas

83. Some members including Miss CHAN Yuen-han agree with some deputations' suggestion that interment of ashes of monks should be exempted from the licensing scheme, subject to prescribed criteria and conditions.

84. According to the Administration, it will put forward a new clause 46C to allow interment of ashes of religious practitioners in religious ash pagodas in exempted columbaria of Chinese temples specified by the Secretary for Home Affairs ("SHA"), subject to restrictions on the number of sets of ashes interred and prohibition of fees, charges or other sums for such interment, as well as other conditions imposed by SHA.

85. Given that both the Licensing Board and SHA have a role to play in relation to those columbaria in Chinese temples where religious ash pagodas in columbaria are located, Dr Kenneth CHAN takes the view that it might be necessary to establish a communication channel between the Licensing Board and SHA in relation to interment of ashes in religious ash pagodas of Chinese temples.

86. The Legal Adviser has pointed out to the Bills Committee that the new clause empowers SHA to specify, through a notice published in the Gazette, the columbaria of Chinese temples, the location of the religious ash pagodas therein, the number of sets of ashes of religious practitioners that may be interred in these pagodas, as well as the location and serial numbering of the niches concerned (clause 46C(2)) and decide that a columbarium is to cease to be so specified. Under new clause 46C(8), the Gazette notice is not subsidiary legislation and therefore not subject to amendment by LegCo.

87. According to the Administration, SHA should be given the flexibility to make the specifications and decisions according to different circumstances. Requiring them to be made in the form of subsidiary legislation would not help efficient regulation of interment of ashes in religious ash pagodas. In addition, the Home Affairs Bureau ("HAB") is considering establishing the appropriate arrangements for handling appeals in relation to the specifications and decisions.

88. While the majority of members raise no objection to the Administration's proposal of prescribing that the Gazette notices are not subsidiary legislation, some members, however, take the views that it is undesirable to make known to the public the specifications and decisions only by publishing a notice in the

Gazette. Making of subsidiary legislation for these matters and consultation with the Licensing Board should also be considered. In this connection, members have suggested that the regulation of interment of ashes in religious ash pagodas under clause 46C and the issue of establishing the appeal mechanism should be covered by the SFH's speech.

89. Members note that the scope of appeal provided for in the Bill does not cover clause 46C which concerns interment of ashes in religious ash pagodas and HAB is considering the appropriate arrangements for handling appeals in respect of such interment of ashes. Whilst considering it appropriate for HAB to handle the aforesaid appeals, members have suggested that the SFH's speech should provide a clear policy statement on the mechanism in respect of the interment of ashes of religious practitioners in religious ash pagodas (including the appeal mechanism).

Duty to maintain columbarium

90. Clause 47 of the Bill requires an instrument holder to keep the columbarium concerned clean and in good repair. Failure to do so will incur criminal liability. Some members have asked about the policy reasons for such imposition of criminal liability. They are concerned whether instrument holders will be regarded as having contravened the clause if there are pest (e.g. mosquitoes and cockroaches) or rodent problems in their columbaria. These members have called on the Administration to state expressly in the Bill situations in which a columbarium will be regarded as not complying with the requirements set out in the clause.

91. According to the Administration, there are similar provisions in other legislation, whereby it is an offence with penalties, if a licensee fails to keep the premises concerned "clean and in good repair". Similar formulation appears in section 27(b) of the Slaughterhouses Regulation (Cap. 132 sub. leg. BU). The Administration's 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.

92. The Administration has advised that it proposes 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:

- (a) "clean" include: proper handling of burning of offerings (say inside furnaces) to minimize 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.

93. According to the Administration, whether or not 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 the Administration seeks to define such terms by way of examples, the list of examples may not be exhaustive. The Administration prefers to keep the statutory provision as it is. The Administration 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.

Liabilities of employees for failing to provide assistance and information required under clause 49(2)

94. Clause 49(1A) and (1) empower DFEH or an authorized officer to, among others, enter and inspect a columbarium in respect of which a specified instrument is in force. A person holding the relevant specified instrument, the employees, servants or agents of the person are required under clause 49(2) to provide the assistance and information required for the exercise of such powers. The Administration has once proposed that non-compliance with clause 49(2) constitutes an offence. Some members including Miss CHAN Yuen-han and Ms Cyd HO take the view that the requirement should not be imposed on employees and have requested the Administration to amend the clause to the effect that only a holder of a specified instrument (the employer of people who work in the columbarium concerned) who fails to comply with clause 49(2) is held criminally liable. On revisiting the proposal, the Administration is of the view that the provision itself is meant to apply to employers and employees alike on an equal footing. The compliance of both the employers and employees is necessary to ensure that DFEH is able to secure the assistance and information sought. The Administration has therefore decided not to put forward such proposal. According to the Administration, it could count on the remaining provisions in clause 52 (read together with clause 49(1) which deals with power to inspect columbaria) for the purpose.

95. Miss CHAN Yuen-han has expressed concern that as employees are required to provide assistance and information to DFEH as required under

clause 49(2), blames will still be put on the employees for failing to comply with clause 49(2). She has suggested amending clause 49(2) to the effect that employees will not be required to provide the required assistance or information. The majority of members, however, consider the Administration's proposal acceptable, provided that it should review and propose amendments, in a timely manner, to the relevant provisions as and when necessary.

Inter-departmental cooperation to implement Private Columbaria Ordinance

96. Some members including Mr Albert CHAN have raised concern about whether the relevant government departments have drawn up suitable measures and are ready to complement each other's efforts at administrative level upon enactment of the Ordinance. The Administration has advised that it will strive to secure additional resources for the relevant government departments to implement the Ordinance. The Administration is in the process of drawing up an inter-departmental protocol for processing applications for specified instruments. Besides, upon establishment, the Licensing Board will prepare and publish guidelines for the reference of prospective applicants seeking different kinds of specified instruments. This will help ensure transparency of the process.

Ash disposal procedures

Ash disposal upon unsuccessful licence applications by existing columbaria

97. Some members including Mr WONG Kwok-hing and Mr LEUNG Kwok-hung have expressed concern that there might be a large volume of ashes being displaced from existing columbaria if licence applications for such columbaria were unsuccessful. They have called for the Administration to formulate policies to handle these ashes.

98. The Administration has advised that under Part 7 of and Schedule 5, operators of private columbaria to which the Bill applies are required to dispose of interred ashes properly in accordance with the applicable ash disposal procedures. These provisions apply to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date of the Ordinance, whether or not the taking possession of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that date.

99. Section 5(2) of Schedule 5 provides, inter alia, a definition of "relative" of a deceased person for the purposes of claiming for the return of the ashes of that deceased person. Mr LEUNG Kwok-hung has suggested the inclusion of

fiancée and fiancé of the deceased in the definition. The Administration is also requested to advise whether a person who is married to a person of the same sex at a place outside Hong Kong has the right to claim for the ashes of his or her same-sex spouse under the Bill. In this connection, Ms Cyd HO has suggested the inclusion of the same-sex partner of a deceased person in the definition. She has indicated that she will propose a CSA for such inclusion if the Administration does not do so.

100. According to the Administration, as the term "spouse" is not defined in the Bill or in the Interpretation and General Clauses Ordinance (Cap. 1), it should be given its ordinary dictionary meaning. According to the Concise Oxford Dictionary, a spouse means husband or wife. Whether a person is husband/wife should then be determined according to the applicable law in force in Hong Kong at the time. 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 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. In the circumstances provided for in section 14 of Schedule 5, namely that the ashes are in the possession of DFEH and no legal proceedings in respect of the ashes are pending, DFEH may, by exercising her discretion and having regard to the eligibility to claim for return of ashes as stipulated in Schedule 5, hand the ashes to a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong, etc. as she deems appropriate. 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. The Administration therefore does not intend to amend the definition of "relative" under section 5(2) of Schedule 5. The Administration considers that Ms Cyd HO's amendment is more an issue related to equality before the law between heterosexual and homosexual partners. This controversial issue should not be introduced to the Bill, which primarily does not deal with matrimonial matters, without a full consultation and thorough consideration on the implication to the community.

Restriction on entry into columbarium subject to occupation order

101. The Bills Committee notes that the Administration has proposed to delete section 3(3) of Schedule 5 under which an occupation order will not operate to prevent the part of the columbarium concerned from being used for residential purpose or affect the use of any common area in a building or public place so as to cause obstruction to public passage or fire escape. The Legal Adviser has

pointed out to the Bills Committee that removal of section 3(3) of Schedule 5 might infringe on the rights of people who live in a columbarium which are protected under Article 29 of the Basic Law ("BL29") (which provides that the homes and other premises of Hong Kong residents shall be inviolable, and arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited). Dr Priscilla LEUNG is concerned about the housing arrangements for residents of columbarium affected by the enforcement actions of an occupation order. A magistrate should not be given too much discretion and it should be clearly stated in the Bill that the residential part of the columbarium would not be affected by the enforcement actions of an occupation order. Mr WU Chi-wai takes the view that retention of section 3(3) of Schedule 5 would make it clearer that the residential part and the common area of the columbarium concerned would not be affected by the enforcement actions. Mr Alan LEONG considers that section 3(3) of Schedule 5 could restrict the powers of a magistrate and clause 65(3) could serve the purpose of section 3(3) of Schedule 5 as a magistrate might make an occupation order after having considered relevant factors. The Administration is therefore requested to consider adding to clause 65(3) a proviso to address these concerns and view.

102. According to the Administration, on further deliberations, it is of the view that section 3(3) of Schedule 5 should be deleted. In hearing the submission of a specified officer (seeking an occupation order) and the views of those who may be affected by the restriction placed on entry into the premises that may be subject to the occupation order, the magistrate will consider all relevant factors. Depending on the facts and circumstances of each case, this could be a fine balancing act, including weighing up BL 29 and the justifications put up by the specified officer (e.g. need to properly take stock of the ashes and related items to be vacated from the premises, possible difficulties in ensuring that the ashes and related items kept in the premises would not be tampered with, if entry into the premises is not restricted).

103. The Administration considers that room should be allowed for the magistrate to make a decision on whether the occupation order sought should be granted and, if so, the extent to which the order should apply, rather than prescribing in the Bill a provision which expressly states that an occupation order does not operate to prevent that part of the columbarium from being so used if, on the date of application for the occupation order, any part of the columbarium is used for residential purpose. Where an occupation order has been granted, under section 3(4)(a) of Schedule 5, the specified officer may permit, in writing, any person to enter and remain on the columbarium premises (or any part of them) for a purpose specified in the permit. In other words, the specified officer may consider each case on its individual merits, and allow an applicant to enter and remain in a certain part of the premises subject to an

occupation order. The owner of the premises may, under section 4 of Schedule 5, apply for a variation or cancellation of the occupation order.

104. Taking into account the Administration's explanation, members consider that their concerns about the deletion can be addressed by amending clause 65(3) to provide that a specified officer may occupy the entire columbarium premises or part of them under an occupation order. The Administration has agreed to do so.

Provisions on ash disposal not subsidiary legislation but incur criminal sanction for non-compliance

105. Under Schedule 5, an ash handler will be subject to criminal sanction for non-compliance with, among others, the following:

- (a) delivering ashes, which are not returned to an eligible claimant, to DFEH in a manner specified by DFEH (proposed new section 6(2)(b) of Schedule 5);
- (b) the commencement of ash disposal notice must contain the particulars relating to the intended handling of the ashes (section 8(4)(b)(iii) of Schedule 5); and
- (c) an ash handler must keep a record of the prescribed ash disposal procedures carried out, which must contain the information that the Licensing Board requires about ashes and claims handled in carrying out the procedures (section 11(1)(b) of Schedule 5).

106. The Legal Adviser has pointed out to the Bills Committee that notwithstanding criminal sanction for non-compliance, the DFEH's specifications mentioned in (a) above will not be provided for in subsidiary legislation and therefore will not be subject to amendment by LegCo. Both the particulars mentioned in (b) above and the information mentioned in (c) above are also not spelt out in the Bill nor will be provided in subsidiary legislation.

107. The Administration has advised that in relation to the proposed new section 6(2)(b) of Schedule 5, since the details of the steps required to be taken for proper ash disposal may depend on the particular facts and circumstances of each case, its considered view is that it is not possible or desirable to set out, in the legislation, an exhaustive list of all the detailed steps governing the conduct of the ash disposal procedures. It is considered not desirable to prescribe the details through subsidiary legislation because the time required for going through the legislative process is such that it would frustrate timely response to

circumstances where, for instance, the ash disposal procedures would have to be triggered immediately after the Bill is enacted or where the facts of an individual case justifiably warrants variation to the guidelines promulgated by the Licensing Board. For the purpose of providing greater clarity (such that a person would know what he is required to do in order to comply with the procedures), the Administration would make an undertaking that the Licensing Board will promulgate guidelines (or codes of practice) on the proper disposal of ashes. More specifically, the guidelines may contain requirements to the effect that the ashes to be delivered to DFEH should be contained in a proper container with clear identification, with a record of the ashes delivered (including the name and address of the columbaria, the location and serial number of the niche and the name of the deceased person), etc. The proposed new section 6(2)(b) of Schedule 5 gives sufficient flexibility to DFEH to impose requirements or conditions as may be reasonably necessary in the circumstances of each case.

108. The Administration has further explained that the scope of this discretion is sufficiently circumscribed by the application of administrative law principles. The above undertaking will be covered in the SFH's speech. As regards section 11(1)(b) of Schedule 5, guidelines will be prepared in respect of, among other things, the record keeping requirements under the provision for public reference. The Administration does not propose to spell out, in the Bill or subsidiary legislation, the list of information that the Licensing Board may require under the provision.

109. As the issues arising from these provisions are similar to those mentioned in paragraph 40, the Bills Committee accepts these CSAs based on the rationale explained in paragraph 41. At members' request, the Administration has undertaken to brief the relevant Panel of the sixth LegCo after the implementation of the Ordinance on the difficulties encountered, if any, in enforcing section 11(1)(b) of Schedule 5 and on the information referred to therein. The Administration has also agreed that such undertaking will be covered in the SFH's speech.

Private Columbaria Licensing Board

Quorum at a meeting of Licensing Board

110. Under section 4(2) of Schedule 1, a quorum at a meeting of the Licensing Board is formed by four members of the Licensing Board, one of whom must be the Chairperson of the Licensing Board, or, if the Chairperson is absent or is otherwise unable to act, the Deputy Chairperson of the Licensing Board. The Legal Adviser has pointed out to the Bills Committee that no provision has been

made to deal with the situation where the Chairperson is absent and the Deputy Chairperson has to be disregarded for the purposes of constituting the quorum pursuant to section 4(7) of Schedule 1, or where both the Chairperson and Deputy Chairperson have to be so disregarded for the purposes of constituting the quorum.

111. According to the Administration, it will move CSAs to Schedule 1 to the effect that:

- (a) if the Chairperson of the Licensing Board is absent or is otherwise unable to act, the Deputy Chairperson will act as the Chairperson;
- (b) if the Chairperson and the Deputy Chairperson of the Licensing Board are absent or are otherwise unable to act, a member of the Licensing Board named by SFH is to act as the Chairperson; and
- (c) if the Chairperson and the Deputy Chairperson of a committee are absent or are otherwise unable to act, a member of the committee named by DFEH will act as the Chairperson.

Nature of interest to be disclosed and transparency of information disclosed

112. Section 5 of Schedule 1 to the Bill provides that a member of the Licensing Board or its committee who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Board or the committee is required to disclose his interest to the Licensing Board or that committee. The Legal Adviser has pointed out to the Bills Committee that the setting of threshold at direct or indirect pecuniary interest is different from the threshold at a direct or indirect interest set under clause 73(5) in the case for the Private Columbaria Appeal Board ("the Appeal Board"). The Administration has advised that it will align section 5 of Schedule 1 and clause 73 in this regard.

113. Some members take the view that disclosure of interests of members of the Licensing Board should be more transparent. According to the Administration, the Licensing Board may determine its practice and procedures at its meetings (section 4(1) of Schedule 1). This includes any appropriate arrangements in making disclosure of the interests of members of the Licensing Board more transparent. The Administration will reflect members' views to the Licensing Board. In addition, under section 5(a) of Schedule 1 as revised by the Administration's proposed CSA, a member of the Licensing Board or a committee who has a direct or indirect interest in any matter under consideration at a meeting of the Licensing Board or committee must disclose to the Licensing Board or committee the nature of the interest:

- (a) before the meeting begins; or
- (b) if it comes to the notice of the member after the meeting begins that he or she has such an interest, as soon as practicable after the meeting begins.

Transaction of business by way of circulation of papers

114. Section 4(5) of Schedule 1 to the Bill provides that business of the Licensing Board or any of its committees may be transacted by way of meetings or circulation of papers. Some members including Mr Tommy CHEUNG consider that the Licensing Board should not be provided with the flexibility to determine an application relating to specified instruments by way of circulation of papers as applications for specified instruments should be handled carefully. The provision allowing the Licensing Board to transact business by way of circulation of papers should therefore be removed from the Bill. Some other members including the Chairman take the view that circulation of papers by the Licensing Board should be a guideline rather than a provision in the Bill. The Administration should consider removing section 4(5) of Schedule 1 from the Bill.

115. The Administration has explained that the Licensing Board may transact its business by way of circulation of papers when, for instance, a trivial matter requires an early decision. This provides flexibility in easing the operation of the Licensing Board. In fact, it is common for other statutory boards to allow transaction of business by way of circulation of papers. Examples include the Liquor Licensing Board (regulation 13(2) of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B), the Town Planning Board (section 2B(1) of the Town Planning Ordinance (Cap. 131)), the Communications Authority (section 11(1) of the Communications Authority Ordinance (Cap. 616)), the Medical Council of Hong Kong (section 4(4A) of the Medical Registration Ordinance (Cap. 161)), and the Hong Kong Trade Development Council (section 15 of the Hong Kong Trade Development Council Ordinance (Cap. 1114)). The Administration intends to keep section 4(5) of Schedule 1 as presently drafted.

Holding a Licensing Board meeting in private

116. Under section 4(6) of Schedule 1, a meeting of the Licensing Board or its committees may be held in private if the Board has a good reason to do so. In response to members' enquiry about what constitutes such a good reason, the Administration has explained that under certain circumstances (e.g. where

confidential information or personal data (such as the financial or business affairs of the applicant) is involved, where candid exchange of views may be affected; or where sensitive matters or matters regarding internal administration may be disclosed prematurely), it may not be advisable to open such meetings to the public. Hence, the Administration considers section 4(6) of Schedule 1 appropriate, so as to allow flexibility for the Licensing Board/committees to consider whether a meeting should be held in private on a case by case basis. It is neither possible nor desirable to set out an exhaustive list of circumstances that constitute a good reason for holding a meeting of the Licensing Board/committees in private. In fact, some legislation also contains provisions providing exceptions for the relevant statutory boards to hold a meeting in private, such as section 23 of the Land Survey Ordinance (Cap. 473), regulation 9 of the Building (Appeal) Regulation (Cap. 123 sub. leg. L), section 6ZI of the Betting Duty Ordinance (Cap. 108), section 50 of the Unsolicited Electronic Messages Ordinance (Cap. 593).

Opportunity to be heard

117. Under clause 7, the functions of the Licensing Board include considering and determining applications (clause 7(1)(a)(i)), handling complaints against columbarium operators, conducting investigations into irregularities and disciplining columbarium operators (clause 7(1)(a)(iii)). Some members take the view that the applicants and the operators concerned should be given an opportunity to make representations in relation to matters under the two subclauses.

118. According to the Administration, for applications seeking specified instruments, the applicants might be invited by the Licensing Board to attend its meetings to provide information. In view of the need to ensure the smooth and efficient operation of the Licensing Board, the Administration considers that allowing the applicant to attend a Licensing Board's meeting (rather than to make representations at a Licensing Board's hearing) when his/her application is first considered by the Licensing Board would best attain the balance between enhancing transparency and ensuring efficiency. In any case, if any applicant is aggrieved by the decision of the Licensing Board, the applicant would have an opportunity to be heard under clause 74(3) if an appeal is lodged in accordance with clause 72(1)(a) (relating to a decision to refuse an application for the issue of a specified instrument) and clause 72(1)(c) (relating to a decision to revoke or suspend a specified instrument). At the end of the day, an appellant who is dissatisfied with the decision of the Appeal Board may resort to judicial review when all other avenues have been exhausted.

119. Some members have suggested that applicants whose interests are

affected by the Licensing Board's decisions should be given the opportunity to be heard (i.e. to make representations to the Licensing Board for non-renewal, non-extension, revocation and suspension of the specified instruments which they hold).

120. According to the Administration, as a matter of principle, under the general common law position on procedural fairness, a party whose interest is affected should be availed an opportunity to be heard, e.g. when a licence is refused, not renewed, or is revoked or suspended. The Administration will reflect the suggestion to the Licensing Board, so that it can consider setting out, in the practice and procedures of the Licensing Board made pursuant to section 4(1) of Schedule 1, the opportunity to be heard before the Licensing Board, in order to be in line with the common law position.

Amendments to Schedule 1

121. Members note that amendments to Schedule 1 (which sets out administrative provisions relating to the Licensing Board, including the constitution of the Board, staffing, committees, and disclosure of interests, etc.) are to be made by subsidiary legislation subject to negative vetting. While the Chairman considers it acceptable, Dr Kenneth CHAN considers that positive vetting of such subsidiary legislation is more appropriate so as to allow sufficient time for scrutiny. According to the Administration, the provisions are operational in nature. Having made reference to the legislation of other statutory licensing authorities (e.g. the Liquor Licensing Board established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B), and the Estate Agents Authority established under the Estate Agents Ordinance (Cap. 511)), the Administration considers it appropriate for such subsidiary legislation to be subject to negative vetting by LegCo.

Private Columbaria Appeal Board

Membership of a panel

122. Clause 71(2)(a) of the Bill provides, inter alia, that a panel member of the Appeal Board cannot be a public officer. Clause 71(4), however, provides that to avoid doubt, "public officer" in clause 71(2)(a) does not include a judge, deputy judge, recorder of the Court of First Instance or a District Judge. In the light of the Legal Adviser's enquiry, the Administration is requested to give the reason for such exclusion and whether a Justice of Appeal or other judicial officers as defined in the Judicial Officers Recommendation Commission Ordinance (Cap. 92) are also excluded.

123. The Administration has explained that according to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), a "public officer" is defined to mean "any person holding an office of emolument under the Government, whether such office be permanent or temporary". In *Mutual Luck Investment Ltd v Attorney General & Another* [1997] HKLRD 1097, the High Court held that a Justice of Appeal is clearly a public officer within the meaning of section 3 of Cap. 1. Unless expressly provided for in the legislation to be otherwise, the judicial offices (which include "a Justice of Appeal") listed in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) may not be appointed as a panel member of the Appeal Board as they are public officers. Clause 71(4), when read together with 71(2)(a), implies that the aforesaid judge, deputy judge or recorder may be appointed as a panel member of the Appeal Board. There are similar provisions in respect of the Appeal Board panel (town planning) and the Appeal Board panel (urban renewal) (see section 17A(2A) of the Town Planning Ordinance (Cap. 131) and section 27(3) of the Urban Renewal Authority Ordinance (Cap. 563) respectively). In addition, for the Appeal Board panel (town planning), there is an express provision on not appointing a Justice of Appeal (see section 17A(2) of Cap. 131). With the advice from the Judiciary Administrator's Office, the Administration will remove the exclusion so that the aforesaid judge, deputy judge or recorder may not be appointed as a panel member of the Appeal Board as well.

Term of appointment

124. Clause 71(2) and (3) empowers the Chief Executive to appoint panel members, Chairperson and Deputy Chairperson of the Appeal Board. In the light of the Legal Adviser's enquiry, the Administration is requested to provide certain information about the term of such appointments. The Administration has explained that some Ordinances expressly provide for the term of appointment while some Ordinances do not. Where there is no express provision for the term of appointment, reference may be made to section 42(c) of Cap. 1, "where any Ordinance confers a power or imposes a duty upon any person to make any appointment or to constitute or establish any board, tribunal, commission, committee or similar body, then the person having such power or duty shall also have the power ... to specify the period for which any person appointed in exercise of such power or duty shall hold such appointment ...". The usual practice is to stipulate the term in the appointment letter.

125. Notwithstanding the Administration's explanation, members consider it more appropriate to expressly provide in the Bill the term of such appointment and resignation arrangements. The Administration has advised that it will amend the Bill to provide that a panel member is to hold and vacate office in

accordance with the panel member's terms of appointment; and on ceasing to be a panel member, is eligible for reappointment (clause 71(4)).

Request for change of Presiding Officer or member for hearing appeals

126. Under clause 73, a person with direct or indirect interest in an appeal must not preside the relevant Appeal Board or hear the appeal. Some members are concerned whether an appellant can request for changing the Presiding Officer or Panel member on the ground of conflicts of interest or other reasons. According to the Administration, requests for changing the Presiding Officer or member(s) for hearing appeals will usually be made on the ground of bias or conflicts of interest. Disclosure of interests is necessary to ensure that the presiding officer or members constituting the Appeal Board will not be biased or have any conflict of interest with the parties to the appeal. The relevant test for apparent bias is whether, in the light of all the circumstances, a fair-minded and informed observer would conclude that there is a real possibility or apprehension that the Tribunal/Board is biased. The Appeal Board may also ask the parties to the appeal to see if they have any objection to the constitution of the Appeal Board before hearing an appeal.

Appealable decisions of the Licensing Board

127. In response to the observations of some members and the Legal Adviser about appealable decisions of the Licensing Board, the Administration has advised that the appealable decisions are listed in clause 72(1). It will amend the subclause to clarify what decisions of the Licensing Board would be appealable.

Appeals by residents

128. Some members are concerned whether residents who are not satisfied with the Licensing Board's decisions can lodge appeals to the Appeal Board. The Administration has explained that in accordance with section 4 of Schedule 3 to the Bill, the Licensing Board may publish a notice of an application for the issue of a licence through the Internet, in the newspaper or at a conspicuous place outside the columbarium. Members of the public who wish to voice out their views regarding the licence application may send their views to the Licensing Board accordingly. The Licensing Board would take into account all relevant factors, including the views from the public, in determining the relevant applications. In any case, members of the public who are dissatisfied with the Licensing Board's decision may resort to judicial review.

Eligibility to lodge appeals

129. Clause 72(1) provides that a person aggrieved by decisions set out in the clause made under the Bill may appeal to the Appeal Board. Some members consider that to avoid ambiguity and future disputes, the policy intent should be made clear by spelling out the persons intended to be covered by the term "a person aggrieved". The Administration has advised that it will move a CSA stipulating that only the applicants and holders of specified instruments may lodge appeals to the Appeal Board. Other parties aggrieved by a decision of the Licensing Board might resort to judicial review against the decisions of the Licensing Board.

Rules, practice and procedure of Appeal Board not subsidiary legislation

130. Clause 79(1) empowers the Chairperson of the Appeal Board to make rules and determines its practice and procedure. In the light of the Legal Adviser's enquiry, the Administration is requested to provide justifications for providing, under clause 79(2), that the rules so made are not subsidiary legislation.

131. According to the Administration, there is a need for flexibility to allow operational practices and procedures to be made or revised in a timely manner to cater for changing circumstances. The Appeal Board is a quasi-judicial body. For the effective exercise of its jurisdiction, it would be within its implied ancillary power to devise an instrument prescribing its practice and procedure to facilitate the smooth operation of the Appeal Board. An instrument, which is not to be subsidiary legislation, would not have the force of law and its object may simply be increasing the efficiency and productivity of the Appeal Board. There are similar provisions in the Telecommunications Ordinance (Cap. 106) which empower the Telecommunications Authority to make rules which are not subsidiary legislation.

Public access to information in relation to appeals

132. In response to the enquiry by the Legal Adviser about public access to rules, practice and procedure of the Appeal Board, the Administration has advised that it would make reference to the relevant provisions in the Telecommunications Ordinance (Cap. 106) in considering how to disseminate information on the rules, practice and procedure of the Appeal Board to the public.

133. Some members including the Chairman and Mr Albert CHAN have

suggested that there should be provisions in the Bill about giving public access to information on appeals, e.g. the name of an appellant, the status and results of appeals. The Administration has advised that it will consider the means of publishing the information on appeal administratively, such as publishing on the Internet, having regard to the practice of other statutory appeal boards including the Administrative Appeals Board and the Municipal Services Appeal Board.

No criminal liability for non-compliance with rules of Appeal Board

134. Clause 78 provides for offences relating to appeals and given that the rules made by the Chairperson of the Appeal Board are not subsidiary legislation, some members are concerned about whether a person might be held criminally liable for failing to comply with certain rules of the Appeal Board. The Administration has confirmed that a person would be held criminally liable for performing the acts stipulated in clause 78(1) or (2), but would not be held criminally liable by reason of non-compliance with the rules made under clause 79(1).

Immunity from civil liability

135. Clause 94 covers immunity for an act done or omitted to be done in good faith by the Licensing Board's member, a member of its committee, its staff member or DFEH, an authorized officer or any other public officer in, among others, performing functions under the Bill. Some members are concerned about whether the immunity for the acts referred to in clause 94(3) (i.e. taking possession of, breaking open, seizing, removing, impounding or disposing of property) is only given to DFEH, an authorized officer or any other public officer. Noting that clause 94(4) preserves the liability of the Government in respect of an act or omission of a public officer, these members are concerned whether an officer of the Licensing Board is also covered by the subclause. Some other members take the view that there should be more stringent requirements for giving public officers immunity from civil liability.

136. According to the Administration, it is clear that the acts referred to in clause 94(3) would only be relevant to the scenario of public officers referred to in clause 94(2)(d) (i.e. DFEH, an authorized officer or any other public officer). The Administration will amend clause 94 to avoid any doubt in construing the applicability of clause 94(1) to the relevant parties concerned under different context. Clause 94(1) provides the persons specified therein with an immunity from civil liability when they have acted in good faith in the course of, among others, performing a function or exercising a power under the Ordinance. That said, clause 94(4) preserves the liability of the Government in respect of an act or omission of the public officer, and hence the aggrieved person may still have

an effective remedy by bringing an action against the Government.

Temporary storage of ashes at premises of licensed undertakers of burials

137. Some members including Dr Kenneth CHAN and Dr Helena WONG opine that there might be loopholes in regulating operation of undertakers as some parts of the Bill are not applicable to them. They are concerned that storage of ashes in undertakers' premises might become long term and thus cause nuisance to the local community if there are no clear guidelines for such temporary storage. The Administration is requested to consider whether it is necessary to restrict or revoke an undertaker licence following the introduction of the Bill.

138. According to the Administration, it has sought to contain the problem of storage of ashes in undertakers' premises by capping the number of undertaker licences without restriction on temporary storage of ashes within their premises at 81. It will impose stringent renewal requirements and licensing conditions on an undertaker licence, including setting a cap on the capacity for temporary storage of ashes. It will review, at a suitable juncture, the provision of service by undertakers for temporary storage of ashes and further tighten the renewal requirements and licensing conditions on an undertaker licence, if necessary. Undertakers are currently required to keep a register of the particulars of the deceased under section 10 of the Undertakers of Burials Regulation (Cap. 132CB) and the Food and Environmental Hygiene Department ("FEHD") inspects the registers every three months and collects information on the amount of ashes kept half-yearly to ensure that the cap has not been exceeded and ashes are not kept for an unnecessarily long duration. The arrangement for keeping registers of ashes deposited for inspection by FEHD will be enhanced. As at end-June 2015, there were 21 238 sets of ashes being kept in undertakers' premises and their average storage time was one year and eight months. The Administration has also increased the capacity of FEHD's temporary storage facilities for ashes. The capacity of such facilities is set out in **Appendix IX**.

Supply of public niches

139. Members note that whilst the Administration is committed to promoting green burials, a robust supply of public niches and regulation of private columbaria form the other two pillars of the Administration's three-pronged strategy in its policy on columbaria. In response to members' enquiries about the supply of public niches, the Administration has advised that there are currently eight columbaria managed by FEHD. The total number of niches and number of unallocated new niches by these eight public columbaria are set out in **Appendix X**. Under the district-based columbarium development

scheme, 24 potential sites have been identified in 18 districts for columbarium development. The Administration has advised that subject to the outcome of the traffic impact assessment, engineering feasibility studies (if applicable) and technical feasibility studies as well as support of the District Councils and LegCo for columbarium developments in the pipeline, and taking into account the supply of the Chinese Permanent Cemeteries, the supply of new niches is estimated to cumulatively increase to hundreds of thousands by 2031. The Administration has so far obtained support from the relevant District Councils on eight projects (about 452 000 niches in total, which account for more than half of the aggregate number of niches in the 24 projects). The number of niches that may be made available in the eight sites are set out in **Appendix XI**. Tentatively, the Administration plans to consult five District Councils on six projects in 2016-2017.

Regulation of agents of operators of private columbaria

140. To protect consumer interests, some members and deputations have suggested that the agents of operators of private columbaria should be regulated. According to the Administration, the Bill does not provide for such regulation. In its view, this issue should be dealt with at a later stage if required. The introduction of the Bill is already a big step forward. It will be more appropriate for the Administration to focus on the licensing scheme, rather than diverting attention at this stage to exploring the suggestion of regulating these agents. Practically speaking and in the interest of the sellers of interment rights, the agreements for sale of interment rights will have to be entered into by the sellers (rather than their agents) with the purchasers, if the various requirements in the Ordinance are to be complied with (what is to be contained in the agreements is set out in Schedule 4). This will also apply to resale, which is covered in the meaning of sale of an interment right under clause 3(3)(a)(iii).

Committee stage amendments

CSAs proposed by the Administration

141. Apart from the CSAs mentioned in paragraphs 7, 14, 25, 34, 36, 39, 53, 74, 75, 79, 82, 84, 104, 111, 112, 123, 125, 127 and 136 above, the Administration has agreed to move numerous CSAs in response to other concerns and views of members and advice of the Legal Adviser. Subject to revisions to a small number of CSAs as agreed at the last Bills Committee meeting on 13 June 2016, the Bills Committee raises no objection to these CSAs. Apart from the revised CSAs, the Administration has also put forward

a number of new CSAs after the meeting. These CSAs have not been examined by the Bills Committee. A paper explaining all the Administration's CSAs will be issued to Members when it is received from the Administration.

CSAs proposed by individual Members

142. The Bills Committee takes note that Ms Cyd HO will move CSAs to the Bill as detailed in paragraph 99 above.

Follow-up actions by the Administration

143. The Administration has undertaken:

- (a) 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 enactment (paragraph 11);
- (b) to consider putting in place a mechanism for requiring operators of private columbaria to provide samples of their agreements with consumers when applying for land premium exemption. In considering these applications, the samples of agreements would be examined to ensure that the objectives of proposed new clause 31A could be met (paragraph 60);
- (c) to provide a clear policy statement on the mechanism in respect of the interment of ashes of religious practitioners in religious ash pagodas (including the regulation of interment of ashes in religious ash pagodas and the appeal mechanism) (paragraphs 88 and 89);
- (d) that guidelines (or codes of practice) on the proper disposal of ashes would be promulgated by the Licensing Board (paragraph 107);
- (e) to brief the relevant Panel of the sixth LegCo on the difficulties encountered, if any, in enforcing section 11(1)(b) of Schedule 5 and on the information referred to therein after the implementation of the Ordinance (paragraph 109); and
- (f) to include the following in the SFH's speech:

- (i) the Administration's undertaking mentioned in items (a) to (e) above;
- (ii) the Bills Committee's concerns about the Administration's proposals of imposing requirements (which are not provided for in subsidiary legislation and therefore would not be subject to amendment by LegCo) and non-compliance with such requirements would incur criminal sanction as well as the rationale of the Bills Committee's acceptance of these proposals (for example, paragraphs 41, 77 and 109); and
- (iii) members' concerns and the Administration's response in relation to land premium for columbarium premises (paragraph 60).

Resumption of Second Reading debate

144. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 6 July 2016.

Consultation with the House Committee

145. The Bills Committee reported its deliberations to the House Committee on 17 June 2016.

Council Business Division 2
Legislative Council Secretariat
29 June 2016

Bills Committee on Private Columbaria Bill

Membership List

Chairman	Hon IP Kwok-him, GBS, JP
Deputy Chairman	Dr Hon Kenneth CHAN Ka-lok
Members	Hon LEE Cheuk-yan Hon James TO Kun-sun Hon Tommy CHEUNG Yu-yan, GBS, JP Hon WONG Kwok-hing, BBS, MH Hon Cyd HO Sau-lan, JP Hon CHAN Hak-kan, BBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon CHEUNG Kwok-che Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon Albert CHAN Wai-yip Hon WONG Yuk-man Hon Steven HO Chun-yin, BBS Hon WU Chi-wai, MH Hon CHAN Han-pan, JP Hon CHAN Yuen-han, SBS, JP Hon LEUNG Che-cheung, BBS, MH, JP Hon Alice MAK Mei-kuen, BBS, JP Dr Hon Helena WONG Pik-wan Dr Hon Elizabeth QUAT, JP Hon Christopher CHUNG Shu-kun, BBS, MH, JP Hon Tony TSE Wai-chuen, BBS

(Total : 25 Members)

Clerk Mr Colin CHUI

Legal Adviser Ms Wendy KAN

Date 4 July 2016

Bills Committee on Private Columbaria Bill

List of deputations/individuals which/who have made oral representation to the Bills Committee

1. Alliance against to Chung Woo Ching Sai's Columbarium in Ma Wo
2. Civic Party
3. Democratic Party
4. Doctoral Exchange
5. Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy)
6. Lo Wai Columbarium Concern Group
7. Mr KWOK Chung-man
8. Mr Pius YUM Kwok-tung, Member of Kowloon City District Council
9. Mr TANG Wing-cheong, Member of Sha Tin District Council
10. Mr TSE Shing-kong
11. Mr WONG Yue-hon, Member of Sha Tin District Council
12. Po Lam Chan Monastery Co. Ltd.
13. 新峰大聯盟反對政府縱容違規龕場小組
14. 要求立法規管私營骨灰龕大埔聯盟
15. 新峰大聯盟立法規管骨灰龕政策倡議組
16. 新峰大聯盟取締違規龕場關注組
17. 關注仁孝宗祠違規龕場行動組
18. 友愛之友
19. 道風之友
20. 抗議食衛局推卸責任行動組
21. 上禾輦村民
22. 道風山環境關注組
23. 青山村反對骨灰龕關注組
24. 明月山索償大聯盟
25. 要求即規即管即立法骨灰龕大聯盟
26. 抗議極樂寺違規骨灰龕行動組

List of deputations/individuals which/who have provided written submissions to the Bills Committee only

1. Civil Force
2. Consumer Council
3. Lok Sang Lin Sher
4. Mr Davis CHAN Ying-keung
5. Mr YEUNG Wai-sing, Member of Eastern District Council

6. New People's Party
7. Puguangming Temple
8. The Law Society of Hong Kong
9. 任國棟先生
10. 祥光苑
11. 新界鄉議局研究新界區安置骨灰龕政策
12. 管理及運作專責小組
13. 一群使用骨灰龕消費者
14. 善終設施關注組
15. 殯儀業業界

**Statutory and Government Requirements Applicable to Private Columbarium Operators and
the Follow-up Actions Taken by the Government in case of Non-compliance**

	Land-related requirements	Planning-related requirements	Building-related requirements
Statutory and Government requirements	No unlawful occupation of unleased land. Compliance with lease, short term tenancy, licence or other instrument under which land is held from the Government.	Compliance with the Town Planning Ordinance (Cap. 131).	Compliance with the Buildings Ordinance (Cap. 123).
Current status on non-compliance (according to Part B of DEVB's List (124 private columbaria) as at December 2015)	83: columbarium use not permitted under the user restrictions of the relevant lease / licence / tenancy and / or involving unlawful occupation of unleased land. 31: breach of the user restrictions of the relevant lease / licence / tenancy not yet established or cases under litigation or investigation. 10: columbarium use may be permitted under the user restrictions of the relevant lease / licence / tenancy.	109: not in compliance with town planning requirements. 15: in compliance with town planning requirement or not covered by statutory plans.	Not Available.

<p>Enforcement actions by departments under existing legislation</p>	<p>According to a stock-taking exercise of the notices issued under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) between 2011 and 2015, LandsD has issued a total of 70 section 6(1) notices involving 34 columbaria. Amongst the notices issued –</p> <p>(a) 22 notices have been compiled with, the Government land has been repossessed, or the unauthorised structures have been removed; and</p> <p>(b) for 9 cases, the Government has taken prosecution actions.</p>	<p>According to a stock-taking exercise of the notices issued under section 23(1) of the Town Planning Ordinance (Cap. 131) between 2010 and 2015, the unauthorised development –</p> <p>(a) in 1 columbarium has fully ceased; and</p> <p>(b) in 1 columbarium has yet to cease.</p> <p>[Note: During the said period, there is another columbarium with the unauthorised development fully ceased. This case is no longer on DEVB's List.]</p>	<p>According to Buildings Department's records, there are 6 private columbaria subject to enforcement actions in respect of orders issued under section 24(1) of Cap. 123 against structures erected without approval / consent under section 14(1) of Cap. 123.</p> <p>The Buildings Department has been taking enforcement actions against non-compliance with the orders by initiating prosecutions. As at 31.12.2015, the progress of the removal of the unauthorised building works is as follows –</p> <p>(a) completed in 1 columbarium;</p> <p>(b) partly completed in 1 columbarium and second prosecution is being arranged;</p> <p>(c) works in progress in 2 columbaria; and</p> <p>(d) to be commenced in 2 columbaria.</p>
<p>Follow-up actions by operators</p>	<p>Of the 83 columbaria, regularisation applications from 13 received are under processing.</p>	<p>Of the 109 columbaria, the planning applications from 4 received are under processing.</p>	<p>See above.</p>

Documents and information to be provided in an application for a specified instrument for a pre-Bill columbarium

According to the Administration, an application for a specified instrument should comprise the following for a pre-Bill Columbarium:

- (a) a completed application form;
- (b) for an application for a licence, a management plan;
- (c) for an application for a licence, where a deed of mutual covenant is in force in respect of the columbarium premises, must be accompanied by a written legal advice of a legal practitioner (who is qualified to practise as counsel or to act as a solicitor in Hong Kong) confirming that there is no express restrictive covenant in the deed to the effect that:
 - (i) any use of the premises as a columbarium is prohibited;
 - (ii) any commercial use of the premises is prohibited; or
 - (iii) only private residential use of the premises is permitted.
- (d) plans of the columbarium certified by a qualified professional, including a site plan, layout plan and floor plans;
- (e) documentary proofs showing that the applicant has the right to use the premises under application for a licence or exemption;
- (f) evidence of:
 - (i) the ash interment layout as at the Bill announcement time ("BAT");
 - (ii) (for an application for the issue/renewal of a licence) the ash interment capacity as at BAT;

- (iii) (for an application for the issue/renewal/extension of an exemption or a temporary suspension of liability ("TSOL")) the ash interment quantity;
 - (iv) the extent of occupation of land as was necessary for or ancillary to, the operation of the columbarium as at BAT;
 - (v) the fact that any structures necessary for, or ancillary to, the operation of the columbarium existed as at BAT; and
 - (vi) (for an application for the issue of an exemption) the first date on which a set of ashes was interred in a niche in the columbarium or the first date on which an interment right in respect of a niche in the columbarium was sold;
- (g) for an application for the issue of an exemption in respect of a pre-Bill columbarium (if any interment right in respect of any niche in the columbarium was sold before BAT, but has not been exercised or has only been exercised partially)—the following two registers -
- (i) a register on the niches in the columbarium in respect of which the interment rights were sold before BAT but have not been exercised; and
 - (ii) a register on the niches in the columbarium in respect of which the interment rights were sold before BAT but have only been exercised partially.
- (h) if the columbarium premises that are under application for a TSOL involve unlawful occupation of unleased land, the applicant has to submit an application for lawful authority to occupy the unleased land and provide a written declaration that the applicant has no claim to the unleased land based on adverse possession or any other ground;
- (i) if the columbarium premises are under application for a TSOL, it has to be certified by qualified professional(s) as not posing any obvious or imminent danger in terms of building safety and fire safety; and

- (j) any other information, certificates and documents specified in the application form or otherwise reasonably¹ required by the Licensing Board, such as a report on the Traffic Impact Assessment of the columbarium operation if the same has not been considered by the Town Planning Board, etc.

¹ The Administration will move a Committee stage amendment to insert "reasonably" as suggested by the Office of the Privacy Commissioner for Personal Data, Hong Kong.

Appendix V

**Main eligibility criteria required to be fulfilled, before a decision is taken by
the Private Columbaria Licensing Board (Licensing Board) on an application for the issue of a specified instrument
[updated on 13 January 2016]**

Instrument applied for	Type of columbarium	Aspects of eligibility criteria					
		Not subject to specified enforcement action (before the making of the application)	Land	Planning	Building	Interest in Premises	Management Plan
Licence	Any columbarium	<p>No proceeding for prosecution of an offence under section 20(8) or 21(2) of the Town Planning Ordinance (Cap. 131) has been instituted (whether against the applicant or any other person).</p> <p>No notice served (whether on the applicant or any other person) under section 23(1) or (2) of the Town Planning Ordinance (Cap. 131) is in force.</p> <p>No order served (whether on the applicant or any other person) under section 24(1) of the Buildings Ordinance (Cap. 123) is in force.</p>	<p>No unlawful occupation of unleased land.</p> <p>Compliance with lease, short term tenancy, licence or other instrument under which land is held from the Government.</p>	Compliance with the Town Planning Ordinance (Cap. 131) (TPO).	<p>No contravention of section 14 of the Buildings Ordinance (Cap. 123) –</p> <p>(a) compliance with requirements for approval and consent to commencement of building works under section 14 of Cap. 123; or</p> <p>(b) comprising certifiable building(s)³ (whole or part), to which section 14 of Cap. 123 does not apply.</p> <p>As a regulatory requirement under the Bill, in some cases of (a) and all cases of (b), these buildings are required to be certified by authorized persons/registered structural engineers (AP/RSE) to be structurally safe, and fulfil other requirements specified/required by the Licensing Board.</p>	Holding the columbarium premises directly from the Government under lease.	Approval of a management plan submitted by the applicant.

Licence (cont'd)	Pre-Bill columbarium	Same as above.	Same as above.	Same as above.	Same as above, except that for a pre-Bill columbarium, this requirement is modified to the extent that if it does not comply with the building-related requirements, the non-compliant structures necessary for, or ancillary to, the operation of the pre-Bill columbarium have to be structures certifiable for a pre-Bill columbarium ⁴ and comply with the requirements (certified by AP/RSE to be structurally safe and fulfilling other requirements specified/required by the Licensing Board).	Same as above, except that for a pre-Bill columbarium, this requirement is modified to the extent that if it does not hold the columbarium premises directly from the Government under lease, the operator must prove that he/she has the right to continue to use the premises for at least five years from the grant of the relevant instrument.	Same as above.
Exemption	Pre-Bill columbarium ¹	Same as above.	Same as above.	Not applicable.	Same as pre-Bill columbarium applying for a licence.	Same as pre-Bill columbarium applying for a licence.	Not applicable.

Temporary Suspension of Liability (TSOL)	Pre-Bill columbarium ²	Same as above.	If the case involves unlawful occupation of unleased land, the applicant must make an application to the Director of Lands for lawful authority to occupy the unleased land and provide a written declaration that the applicant has no claim to the unleased land, whether based on adverse possession or any other ground.	Not applicable.	Certified by AP/RSE as not posing obvious or imminent danger in terms of building safety and fire safety.	Not applicable, as a TSOL is temporary in nature.	Not applicable.
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Notes

- ¹ To seek an exemption, a pre-Bill columbarium needs to prove that it (a) commenced columbarium operations before 1.1.1990 and (b) ceased sale of interment rights since 18.6.2014 8:00 a.m.
- ² To seek a TSOL, a pre-Bill columbarium also needs to make an application for the issue of a licence and/or an application for the issue of an exemption.
- ³ A certifiable building means—
- (a) an New Territories (NT) small building erected on or after 16 October 1987 with a certificate of exemption issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
 - (b) an NT small building erected on or after 1 January 1961 and before 16 October 1987 that complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection;
 - (c) a pre-1961 NT building,
- where *NT small building* and *pre-1961 NT building* are defined by section 3(4) of Schedule 2 to the Bill and *pre-1961 NT building* is limited to a building in the New Territories built before 1 January 1961 if there has been no alteration, addition or reconstruction of the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date.
- ⁴ Structures certifiable for a pre-Bill columbarium essentially cover structures that—
- (a) do not comply with requirements for approval and consent to commencement of building works under section 14 of the Buildings Ordinance (Cap. 123), and do not form the whole, or a part, of a certifiable building; but
 - (b) fall within the following description—
 - (i) they contain niches used or intended to be used for the interment of ashes where at least a niche in the structures was so used immediately before the Bill announcement time;
 - or

- (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium; and
- (c) fall within the following description—
 - (i) they are an on-grade outdoor structures with niches;
 - (ii) they form the whole, or a part, of a single-storey building;
 - (iii) they form the whole, or a part, of the ground storey of a multi-storey building but do not form the whole, or any part, of any other storey of the building; or
 - (iv) they form the whole, or a part of, a multi-storey building that is an NT small building—
 - (A) that came into existence on or after 16 October 1987; and
 - (B) in respect of which a certificate of exemption has not been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).
- (d) in (c), a building—
 - (i) means any building including a building situated on land that was unleased land referred to in section 41(1)(ba) of the Buildings Ordinance (Cap. 123) at the time the building was erected on that land without a licence issued under section 5 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or in breach of the licence; but
 - (ii) excludes a building situated in or on another building that complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123).

The Legal framework and relevant provisions in relation to building-related requirements imposed on private columbaria

1. According to the Administration, having regard to the feedback received during the past two public consultation exercises, it is particularly conscious of the need to adopt a pragmatic approach in resolving the problems inherited from the past. In drawing up the arrangements for handling compliance or otherwise with the building-related requirements, the Administration has borne in mind the pragmatic need to avoid massive displacement of interred ashes. Upsetting the resting place of the deceased could result in social tensions arising from descendants having to relocate their ancestors' ashes.

2. In the interest of upholding the prevailing standards of building safety under a risk-based approach, the eligibility requirements for a licence/an exemption are underpinned by a system of certification by Authorised Persons/Registered Structural Engineers (AP/RSE)¹, where:

- (a) the Buildings Ordinance (Cap. 123) does not apply;
- (b) section 14 of Cap. 123 applies but has been contravened; or
- (c) the Licensing Board sees fit to specify under the Private Columbaria Bill ("the Bill").

3. As defined in section 3(1) of Schedule 2 to the Bill, compliance with the building-related requirements means:

- (a) the columbarium complies with the requirements for approval and consent to the commencement of building works under section 14 of Cap. 123 and every other requirement specified by the Licensing Board²; or

¹ Authorised Persons/Registered Structural Engineers ("AP/RSE") have the meanings given by section 2(1) of Cap. 123.

"Certification by AP/RSE" is a short-hand expression for the following:

- (a) certification by AP/RSE to be structurally safe to the satisfaction of the Licensing Board; and
- (b) carrying out of works that may be required by the Licensing Board in accordance with the requirements imposed by it.

² These may include certification by AP/RSE.

- (b) the following requirements are met in respect of every building or building works in, on or at the columbarium:
 - (i) these form the whole or a part of a certifiable building³;
 - (ii) certification by AP/RSE.

4. Under clauses 13 and 14 of the Bill, among the requirements to be fulfilled for seeking a licence, the columbarium must comply with statutory requirements, such as compliance with the aforesaid building-related requirements (except where for a pre-Bill columbarium, this requirement is modified to the extent that if it does not comply with the building-related requirements, the non-compliant structures necessary for or ancillary to the operation of the columbarium are structures certifiable for a pre-Bill columbarium⁴ and the requirements of certification by AP/RSE are complied with.

5. Under clause 15 of the Bill, among the requirements to be fulfilled

³ A certifiable building means a building to which the requirements for approval and consent to the commencement of building works under section 14 of Cap. 123 do not apply because it is:

- (a) a New Territories ("NT") small building that came into existence on or after 16 October 1987 with a certificate of exemption issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
- (b) an NT small building that came into existence on or after 1 January 1961 and before 16 October 1987 and complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection; or
- (c) an NT building built before 1 January 1961, if there has been no alteration, addition or reconstruction of the building in contravention of Cap. 123 on or after that date.

⁴ By structures certifiable for a pre-Bill columbarium, the Administration means building or building works that do not meet the building-related requirements, but existed immediately before the Bill announcement time, meeting the control under paragraph 16(a) and falling within the following description:

- (a) on-grade outdoor structures with niches;
- (b) single-storey building;
- (c) ground storey of a multi-storey building; or
- (d) an NT small building that came into existence on or after 16 October 1987 without a certificate of exemption issued under Cap. 121.

In connection with (a) to (d) above, a building:

- (a) includes one situated on unleased land at the time of its erection without a land licence referred to in the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or in breach of a land licence; but
- (b) excludes one situated in or on another building that complies with section 14 of Cap. 123.

for seeking an exemption, either the pre-Bill columbarium must comply with the building-related requirements or the non-compliant structures necessary for or ancillary to the operation of the columbarium are structures certifiable for a pre-Bill columbarium and the requirements of certification by AP/RSE are complied with.

6. Under clause 20 of the Bill, the Licensing Board may approve plans of a columbarium for the purposes of an application for a licence/an exemption etc. only if, inter alia, that it decides to grant the application and authorize or permit the particulars as shown in the plans. Such particulars include the structures necessary for, or ancillary to, the operation of the columbarium.

7. For a licence/an exemption, if granted:

- (a) it is subject to the condition that (for the pre-Bill columbarium) the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to structures certifiable for a pre-Bill columbarium shown in the approved plans (see, under the Bill, clause 24(b) in relation to a licence and clause 27(b) in relation to an exemption); and
- (b) it may be subject to the condition on measures relating to building safety, amongst others, including requiring certificates or reports by AP/RSE to be submitted to the Licensing Board at regular intervals (see, under the Bill, clause 25(c) in relation to a licence and clause 28(a) in relation to an exemption).

8. Against the above background, it should be noted that stringent controls are exercised by way of the following:

- (a) structures certifiable for a pre-Bill columbarium are confined to those existing immediately before the Bill announcement time that:
 - (i) contain niches used or intended to be used for the interment of ashes where at least a niche was so used immediately before the Bill announcement time;
 - (ii) form the whole or a part of any essential ancillary facilities supporting the operation of the columbarium;

- (b) with the non-compliant structures necessary for, or ancillary to, the operation of the columbarium being limited to structures certifiable for a pre-Bill columbarium shown in the approved plans (see paragraph 7(a)), there are safeguards against aggravation of such structures beyond what is indicated on the approved plans.

9. Guidelines on this subject area would be promulgated in due course for reference by the columbarium sector, professional bodies, consumers and members of the public.

The Administration's safeguards against changes in zoning/lease modification/land resumption without the knowledge of stakeholders

(1) Town Planning Mechanism

1. According to the Administration, town planning is an ongoing process. The land use zonings of sites on statutory plans may be subject to review from time to time if so required to cater for changing planning circumstances and development needs of society, with a view to promoting health, safety, convenience and general welfare of the community.

2. Under the Town Planning Ordinance (Cap. 131) ("TPO"), any developments must conform to the requirements of the relevant statutory plans¹. Applicants making planning applications under section 16 of TPO and rezoning applications under section 12A of TPO must comply with the relevant statutory requirements under TPO. The public will be consulted in respect of such applications as provided for under the provisions of TPO. Members of the public may submit comments in respect of the applications to the Town Planning Board ("TPB"). In considering the applications, TPB will take into account all relevant planning considerations, including location of the site under the application, land use compatibility, traffic, visual, landscape, drainage and environmental impacts, views from relevant government departments as well as public comments received in respect of the applications.

¹ Where a site is intended to be developed for a certain use:

- (a) if the use is listed under column 1 in the Notes of the relevant zoning or specified in the covering Notes of the statutory plan, it is permitted as of right and planning permission from the Town Planning Board ("TPB") is not required;
- (b) if the use is listed under column 2 in the Notes of the relevant zoning, planning permission from TPB under section 16 of the Town Planning Ordinance ("TPO") should be obtained; and
- (c) if the use is not included under column 1 or column 2 in the Notes of the relevant zoning, a rezoning application may be submitted to TPB for consideration under section 12A of TPO. If TPB agrees to the proposal, the proposed amendment will be incorporated into a draft plan for exhibition in the normal plan-making process.

3. Similarly, amendments to a statutory plan will be exhibited for public inspection for a period of two months under section 5 or section 7 of TPO, as the case may be. During the public inspection period, any person could make representations/comments in respect of the proposed amendments to TPB. TPB has to consider all representations and comments before making a decision. Upon completion of the representation consideration process, the statutory plan, together with the representations and comments, will be submitted to the Chief Executive in Council for approval.

4. Views from different stakeholders (including, where applicable, private columbarium operators whose interest in the land and persons whose interest in the niches (i.e. consumers or descendants) would be affected by the planning permissions or amendments to statutory plan under consideration) would be taken into account as appropriate.

(2) Land Administration Mechanism

5. Under the land administration mechanism, virtually all private land in Hong Kong is leased or otherwise held from the Administration. For leased land intended for use or development in compliance with the prevailing planning requirements that are different from certain conditions specified in the respective land lease, the lessee is required to apply to the Director of Lands for lease modification. A premium equivalent to the difference in land value between the development permitted under the existing lease and that permissible under the new lease terms (if any) is normally payable for any lease modification granted.

6. The land use specified as a condition in a land lease could not be changed during its term, unless with the agreement of both parties, i.e. the Administration and the lessee. The Administration would agree to a lease modification only if it is appropriate and in compliance with the prevailing planning requirements and all Administration requirements. As this should be consistent with the planning requirements of the site, it would mean that where planning applications or amendments to statutory plan are applicable, members of the public, including relevant stakeholders, would have, as a matter of course, an opportunity to air their views by virtue of the process described in paragraphs 2 to 3 above.

7. By way of land resumption, the Administration may exercise statutory power under various Ordinances to resume private land for various public purposes². Such decisions are made by the relevant authority, e.g. the Chief Executive or the Chief Executive in Council, as the case may be. The rights to compensation and the procedures for compensation claims when the legal interest in land is extinguished or affected are stipulated in the respective Ordinances.

8. In undertaking public works projects, the Administration is guided by the principle of minimising the extent of land acquisition. Generally, the project proponent would consult the relevant District Council on the relevant scheme/project and, with such information released in the public domain, affected parties could air their concerns with the project proponent and the relevant government department(s). The relevant authority will consider such feedback received before making a decision on the land resumption. In some cases, there are statutory procedures with stipulated timeframe set out in the Ordinances (e.g. Cap. 370 and Cap. 519), whereby affected parties may make objections and the relevant authority will consider all representations, comments and efforts made by the project proponent to resolve the objections, before making a decision.

(3) Summing Up

9. Any change in land use would need to be carried out in accordance with the relevant legislation and procedures. This applies equally to all business operations, which include columbarium operations.

10. The following added feature will come into play after commencement of the Ordinance: If and when any of the following is under departmental circulation:

² The Administration may acquire private land by resumption for the implementation of public projects, such as public housing development, an urban renewal project, a road scheme, railway development, a drainage improvement project, public open space, a school etc. Depending on the circumstances, resumption proceedings may be instituted under the provisions of the relevant Ordinances, e.g.:

- (a) the Lands Resumption Ordinance (Cap. 124);
- (b) the Urban Renewal Authority Ordinance (Cap. 563);
- (c) the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (d) the Railways Ordinance (Cap. 519);
- (e) the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); and
- (f) the Land Drainage Ordinance (Cap. 446).

- (a) a planning application;
- (b) amendment to a statutory plan;
- (c) a lease modification application; or
- (d) a project proposal/feasibility study,

the Food and Environmental Hygiene Department, as the executive arm of the Private Columbaria Licensing Board, will assess each case on its own merits and convey its feedback to the relevant authority as to whether acceding to such an application/a proposal could give rise to non-compliance with the licensing requirements (including the planning-related requirement or the land-related requirement under clause 13 of the Private Columbaria Bill ("the Bill")) and the licensing conditions (e.g. restriction on subletting or assignment in a manner inconsistent with the operation of the columbarium under clause 25 of the Bill) in respect of a licence.

**Measures for protecting the interests of consumers
provided under the Private Columbaria Bill**

1. According to the Administration, provisions in the Private Columbaria Bill ("the Bill") which help enhance transparency and protect consumer interests are set out below.
2. Under clause 13(1)(a)(i) and (ii) of the Bill, for an application for a licence in respect of any columbarium under clause 13 or 14 of the Bill, the private columbarium must comply with the planning-related requirements and land-related requirements.
3. Clause 25 of the Bill empowers the Private Columbaria Licensing Board ("Licensing Board") to impose, as it thinks fit, licensing conditions:
 - (a) restricting any subletting or assignment of the columbarium premises, or any part of it, in a manner that is inconsistent with the operation of the columbarium; and
 - (b) requiring that the requirements for enforceability of an agreement for the sale of an interment right under clause 41 be met in respect of each agreement for the sale of an interment right in respect of the columbarium.
4. Clause 31A further empowers the Licensing Board to impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting 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 the interment right entered into before the Bill announcement time.
5. Clause 32(6) provides that a transferee is liable for all debts and obligations (including all outstanding, subsisting and future liabilities) in relation to each agreement for sale of an interment right entered into before the transfer. A purchaser may therefore enforce such agreement against the transferee.
6. Division 1 of Part 5 of the Bill imposes requirements that an agreement for sale of an interment right must meet in order for it to be enforceable by the seller against the purchaser. Among other things, he/she must not purport to sell under an agreement an interment right that the seller is not entitled to sell, e.g. for a term extending beyond the term of lease under which the land on which the columbarium is situated is

held from the Government and the agreement must contain certain essential terms.

7. Part 1 of Schedule 4 to the Bill provides for the prescribed information and recommendations that are required to be contained in an agreement, including:

- (a) information about ownership, tenancy, encumbrances and restrictions on use and disposition;
- (b) a recommendation that the purchaser should carefully consider whether the purchaser's interest is protected against the financial risks involved with lump sum prepayment for an interment for a long period; and
- (c) a recommendation that the purchaser should seek legal advice if the purchaser does not understand any part of the information, recommendations or terms in the agreement.

8. Part 2 of Schedule 4 to the Bill provides for the essential terms that are required to be contained in an agreement, including:

- (a) a full description of the interment right sold;
- (b) any other services to be provided under the agreement;
- (c) a comprehensive list of all fees, charges and other sums payable by the purchaser (whether recurrent or non-recurrent) and the payment methods;
- (d) if the interment right includes a right to renew the interment right on the seller being granted a renewed term of the lease, under which the land on which the columbarium is situated is held, any contribution due from the purchaser to the seller towards the premium payable by the seller to the Government, expressed as a share of the premium;
- (e) other essential terms as set out in section 2(e) of Schedule 4; and
- (f) the arrangement for handling interred ashes in the event of temporary suspension of operation of the agreement or the termination of the agreement (whether on expiry of the term of the interment right or not).

9. Depending on the grounds of enforceability, the agreement is not enforceable by the seller, and the purchaser may cancel the agreement at

any time or within six months after it is made by giving the seller a written notice of cancellation. Upon cancellation of the agreement, the private columbarium operator must refund to the purchaser all money received under the agreement if the interment right has not been exercised¹.

10. Part 7 and Schedule 5 provide that after commencement of the Private Columbaria Ordinance ("the Ordinance"), the operators of private columbaria to which the Ordinance applies are required to dispose of interred ashes properly in accordance with the prescribed ash disposal procedures, including in the event of cessation of their columbarium operation. These provisions apply to the interred ashes of any private columbarium to which the Ordinance applies, irrespective of when the agreement is entered into (i.e. including those entered into before or after commencement of the Ordinance).

11. In addition, the Administration has put in place measures to inform potential buyers of columbarium premises of the responsibility to properly handle interred ashes. Clause 38 of the Bill enables the Licensing Board to issue a certificate of columbarium use (certificate (use)) as soon as a specified instrument is issued and register it in the Land Registry against the premises for which a land register has been kept. Such a certificate (use) must state, among others, the name of the instrument holder and that the provisions of Part 7 of and Schedule 5 to the Bill (relating to the prescribed ash disposal procedures) apply to the premises. Any potential successor or assign who acquires such premises from the instrument holder would thus be made aware that the subject premises are being used for columbarium operation.²

12. According to clause 63 of the Bill, if the relevant person fails to follow the prescribed ash disposal procedures to dispose of the interred ashes properly, he/she would be criminally liable, on summary conviction, to a fine of \$2 million and imprisonment for three years, and on conviction on indictment, to a fine of \$5 million and imprisonment for seven years. The Administration believes such penalties should carry sufficient deterrence.

¹ If the interment right has been exercised, the purchaser and seller may refer to the terms of the agreement with a view to ascertaining whether, and the conditions upon which, the purchaser's cancellation rights under the Bill may be exercised after the interment right has been exercised.

² The relevant party referred to in clause 68 of the Bill may apply to the Licensing Board for a certificate of cessation of columbarium use (certificate (cessation)). The Licensing Board may, if satisfied that the prescribed ash disposal procedures as applicable have been carried out in respect of the premises referred to in paragraph 9, issue a certificate (cessation) that the premises cease to be a columbarium. The person to whom the certificate (cessation) is issued may register it against the premises in the Land Registry.

Food and Environmental Hygiene Department -
Provision of Temporary Storage Facilities for Human Ashes
(December 2015)

I For cremated ashes from crematoria		
<u>Location</u>	<u>Storage Capacity</u>	<u>Status</u>
Ex-staff quarter at Kwai Chung Crematorium	10,000 bags or 3,000 urns	In use
Sub-total of I	10,000 bags or 3,000 urns	
II For displaced cremains resulting from the introduction of the Private Columbarium Bill		
<u>Location</u>	<u>Storage Capacity</u>	<u>Status</u>
(i) WHS Columbarium Phase III	5,040 urns	Ready
(ii) Kiu Tau Road Columbarium, Phase V	15,280 urns	Ready
(iii) Declassified Staff quarters at Cape Collinson Crematorium	2,040 urns	To be ready by Q2 2016
(iv) Declassified Staff quarters at Hong Kong Cemetery	3,240 urns	To be ready by Q2 2016
(v) Old Kwai Chung Crematorium	23,000 urns	Conversion work to be completed by early 2017
Sub-total of II	48,600 urns	
Grand total of I + II	51,600 urns or 48,600 urns + 10,000 bags	

Eight Public Columbaria under the Management of
Food and Environmental Hygiene Department
(As at 30 November 2015)

	Name of Columbaria	Total No. of Niches	Unallocated New Niches
1.	Cape Collinson Columbarium	61 615	0
2.	Diamond Hill Columbarium	63 351	0
3.	Fu Shan Columbarium	9 625	0
4.	Kwai Chung Columbarium	9 276	0
5.	Wo Hop Shek Columbarium	66 000	5 069
	Gallant Garden	120	107
	Tribute Garden	30	30
6.	Cheung Chau Columbarium	3 335	524
7.	Lamma Columbarium	490	405
8.	Peng Chau Columbarium	490	91
Total		214 332	6 226

Appendix XI

Nine Columbarium Projects under the District-based Columbarium Development Scheme for which Support from the Relevant District Councils has been Obtained

	District	Columbarium Project	Anticipated Supply of New Niches
1.	Wong Tai Sin	Diamond Hill Columbarium Extension	1 540
2.	Islands	Cheung Chau Cemetery extension	2 250
3.	Wan Chai	The Hong Kong Cemeteries and Crematoria Office (part) of the Food and Environmental Hygiene Department at Wong Nai Chung Road	855
4.	Tuen Mun	Part of the Tsang Tsui ash lagoon next to Black Point Power Station	160 000
5.	North	Surplus coffin burial grounds and other land within the Wo Hop Shek Cemetery (Phase I Development)	44 000
6.	Kwai Tsing	A site on Tsing Tsuen Road near Tsuen Wan Chinese Permanent Cemetery	20 000
7.	Eastern	A site on Cape Collinson Road, opposite Chai Wan Chinese Permanent Cemetery Columbarium	25 000
8.	North	Surplus coffin burial grounds and other land within the Wo Hop Shek Cemetery	200 000
9.	Shek Mun	A site on On Hing Lane, Shek Mun, next to Shatin Refuse Transfer Station	40 000
Total			493 645