

LEGISLATIVE COUNCIL BRIEF

Private Columbaria Bill

INTRODUCTION

At the meeting of the Executive Council on 17 June 2014, the Council ADVISED and the Chief Executive ORDERED that the Private Columbaria Bill (“the Bill”) (at **Annex A**) should be introduced into the Legislative Council (“LegCo”) on 25 June 2014 and that the notification scheme referred to in paragraphs 30 to 33 below should be launched on 18 June 2014.

JUSTIFICATIONS

The Three-Pronged Strategy

2. Currently, the prevailing practice after cremation of human remains is to inter ashes in a columbarium. It is likely that this trend will continue for some time as it takes time to fortify the mindset changes necessary for turning green burials into the mainstream mode for handling human ashes. Whilst the Government is committed to promoting green burials, a robust supply of public niches and regulation of private columbaria form the other two pillars of our three-pronged strategy in the policy on columbaria. **Annex B** sets out the measures that we are taking to (a) promote green burials; and (b) enhance supply of public niches.

Policy Objectives

3. Properly regulated private columbaria could complement public columbaria and serve a useful role in meeting social needs for ancestral worship, in terms of added supply and more importantly choice of niches and related services. One point comes out clearly from our previous two rounds of public consultations (launched in July 2010 and December 2011 respectively) on this subject, namely that the community supports regulating private columbaria through a licensing scheme. We receive diverse views over how best certain

unauthorised columbaria should be handled. Residents who are neighbours of unauthorised columbaria demand stringent regulation that would put an end to the nuisances they cause. On the other hand, others remind us of the value attached to ancestral worship in the Chinese culture. Upsetting the resting place of the deceased should not be contemplated lightly. Against the above backdrop, we propose to introduce a licensing scheme that serves the following policy objectives -

- (a) ensuring compliance with statutory and Government requirements, with suitable grandfathering arrangements for pre-Bill columbaria¹ in tightly ring-fenced circumstances;
- (b) enhancing protection of consumer interests; and
- (c) ensuring a sustainable mode of operation.

From the outset, we have to recognise that the proposed licensing scheme could not offer a panacea to each and every problem inherited from the past. Nor could we offer perfect solutions to some of the unwieldy situations that might eventually come about. We reported progress to LegCo on the outcome of the consultation, the framework of the legislation and the time-line for the exercise in March 2012, December 2012 and November 2013.

Key Features of the Bill

(1) Compliance with statutory and Government requirements

4. Following commencement of the new legislation, all private columbaria which are not exempted or given temporary suspension of liability (“TSOL”) must obtain a licence for operating their columbaria. Without a licence, no operator could offer niches for sale.

5. The following are required of applicants seeking a licence –

- (a) lease conditions and land occupation – the operation of the columbarium on private land must comply with the lease, licence or any other land instrument. In addition, the operation of the columbarium should not involve unlawful occupation of unleased land;

¹ A pre-Bill columbarium means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the Bill announcement time.

- (b) statutory requirements – the premises used for operation as a columbarium must comply with statutory requirements, such as those –
 - (i) under the Town Planning Ordinance (Cap. 131); and
 - (ii) for approval and consent to commencement of building works under the Buildings Ordinance (Cap. 123) and other requirements specified by the Licensing Board² (*except where as stated in paragraph 8 below (on grandfathering arrangements), for a pre-Bill columbarium, this requirement is modified to the extent that structures certifiable for a pre-Bill columbarium³ might be tolerated, subject to certification by AP/RSE to be structurally safe*);

² By this, it also includes a structure that forms the whole, or a part, of a certifiable building, which is certified by an Authorised Persons / Registered Structural Engineers (“AP/RSE”) as structurally safe.

As defined in the Bill, a certifiable building means –

- (a) an New Territories (“NT”) small building erected on or after 16 October 1987 with a certificate of exemption issued;
- (b) an NT small building erected on or after 1 January 1961 and before 16 October 1987; and
- (c) a pre-1961 NT building, if there has been no alteration, addition or reconstruction of the building in contravention of Cap. 123 on or after that date.

A certifiable building is not in contravention of Cap. 123, as the relevant provisions of Cap. 123 do not apply to them.

³ Structures certifiable for a pre-Bill columbarium is defined to mean non-compliant structures that fall within the following description –

- (a) 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
- (b) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium immediately before the Bill announcement time.

In this definition, a building means any building, including a building situated on unleased land at the time the building was erected on that land without a licence (under Cap. 28) or in breach of such a licence.

- (c) right to use the premises – The premises used for operation as a columbarium must be self-owned by the operator (*except where as stated in paragraph 8 below (on grandfathering arrangements), for a pre-Bill columbarium, this requirement is modified to the extent that if it does not run on self-owned premises, the operator must prove that he or she has the right to use the premises for at least five years from the grant of a licence*); and
- (d) management plan – the operator should submit to the Licensing Board, for its approval, a management plan covering, among other things, traffic and crowd control management, in respect of the columbarium.

The above (taken together with the consumer protection measures described in paragraph 15 below as well as the provisions governing the cessation of columbarium operation in paragraphs 16 to 20 below) would lead to better regulation of the trade, thus helping to address some of the problems associated with unauthorised columbaria, provide some degree of consumer protection and choice of service, as well as facilitate sustainable operation.

(2) Grandfathering arrangements for pre-Bill columbaria

6. For pre-Bill columbaria, previous public consultation reveals that the community is prepared to accept some form of grandfathering arrangements for such establishments which do not meet all the statutory and Government requirements, but such arrangements must be premised on tightly ring-fenced grounds. Failing sensitive handling, potentially, interred ashes in as many as 283 000 occupied niches⁴ could be displaced and need to be handled, at a huge cost to society. In addition, there could be other small-scale private columbaria operating without the Government's knowledge.

7. The Bill provides that the **Bill announcement time** (8:00 a.m. on 18 June 2014) would be set as the cut-off time for determining the status of pre-Bill columbarium operation.

8. Such a status allows an operator to apply for –

- (a) temporary suspension of liability (TSOL) status for pre-Bill columbarium operation, under which the columbarium may continue

⁴ This is a conservative estimate, with reference to figures (where available) using DEVB's List as at 28 June 2013 as the basis.

operation (without selling interment rights) whilst action is being taken by the operator to seek regularisation / rectification in order to obtain a licence or exemption.

An application for TSOL cannot be submitted on a stand-alone basis, but must accompany an application for a licence and / or exemption. The future Licensing Board will decide on the period of TSOL in respect of each columbarium after considering each application, but it will be set at no more than three years for the first time, and may be extended for no more than three years if warranted⁵.

We intend to adopt a pragmatic threshold that allows pre-Bill columbaria with prospect of regularisation to apply for TSOL⁶. We will make it clear that the TSOL status conferred does **not** mean that the holder could get a licence or exemption upon expiry of TSOL status or extension of such.

- (b) exemption status for pre-Bill columbarium operation, under which the columbarium may continue operation (without selling interment rights). For as long as the exemption status is in force:
 - (i) unauthorised development as is necessary for, or ancillary to, the operation of the columbarium might be tolerated;
 - (ii) structures certifiable for a pre-Bill columbarium might be tolerated, subject to certification by AP/RSE to be structurally safe;
 - (iii) unlawful occupation of unleased land in existence

⁵ As set out in the Bill, TSOL may not be extended more than once, unless exceptional circumstances exist.

⁶ The Licensing Board may refuse to grant TSOL status –

- (a) where the columbarium is located on unlawfully-occupied unleased land, if the operator -
 - (i) does not apply for lawful authority to occupy the land; or
 - (ii) does not provide a written declaration on no claim to the land based on adverse possession; and
- (b) if the operator fails to prove that the columbarium has been certified as not posing any obvious or imminent danger in terms of building safety and fire safety.

immediately before the Bill announcement time and breach of lease conditions (relating to leased land) might be regularised, upon application.

To be eligible to apply for exemption, the pre-Bill columbarium must have –

- (i) commenced columbarium operation before 1 January 1990. By “Commencement of columbarium operation”, it means by reference to the first set of ashes interred in a niche or the interment right in a niche first sold, whichever was the earlier; and
 - (ii) **ceased sale of new or unoccupied niches as from the Bill announcement time.**
- (c) licence status for pre-Bill columbarium operation, under which the columbarium may continue operation and sell interment rights, provided that planning and land related requirements are complied with. For as long as the licence status is in force, structures certifiable for a pre-Bill columbarium might be tolerated subject to certification by AP/RSE to be structurally safe.

9. To assist the future Licensing Board to determine the pre-Bill columbarium status of the relevant columbarium, we have devised an administrative⁷ notification scheme the details of which are set out in paragraphs 30 to 33 below.

(3) Certain enforcement provisions not applicable

10. To give effect to the grandfathering arrangements in paragraph 8 above, there are also express provisions in the Bill providing that in respect of pre-Bill columbaria, certain tightly ring-fenced enforcement provisions under the land regime against unlawful occupation of unleased land, the planning regime against unauthorised development, and the building regime against structures certifiable for a pre-Bill columbarium, as applicable, do not apply, provided that certain tightly prescribed conditions are fulfilled by the operators.

11. The scope covered by the aforesaid tightly ring-fenced enforcement

⁷ 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.

provisions is set out below –

(a) relevant enforcement provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) do not apply to the relevant proposed licensed or exempted area (as the case may be) in respect of a columbarium conferred with TSOL status, as well as when such status is (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended);

(b) relevant enforcement provisions under the Town Planning Ordinance (Cap. 131) do not apply to –

(i) the relevant proposed licensed or exempted area (as the case may be) in respect of columbaria conferred with TSOL status; or

(ii) the exempted area in respect of columbaria conferred with exemption status,

as well as when such status are (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended); and

(c) relevant enforcement provisions under the Buildings Ordinance (Cap. 123) do not apply to –

(i) the relevant proposed licensed or exempted area (as the case may be) in respect of columbaria conferred with TSOL status;

(ii) the exempted area in respect of columbaria conferred with exemption status; or

(iii) the licensed area in respect of columbaria conferred with licence status,

as well as when such status is (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended).

12. The arrangements in paragraph 11 above are subject to the operators fulfilling the following tightly prescribed conditions –

- (a) the TSOL status is in force, which is in turn subject to fulfilling the following conditions during the TSOL period –
 - (i) no sale of niches, no intensification of use in terms of niches (as well as containers), no additional structures certifiable for a pre-Bill columbarium and no additional unlawfully-occupied unleased land; and
 - (ii) submitting expeditiously applications to the relevant authorities seeking compliance with the planning, land and building related requirements, as applicable.
- (b) the exemption status is in force, which is in turn subject to fulfilling the conditions including no sale of niches, no intensification of use in terms of niches (as well as containers) and no additional structures certifiable for a pre-Bill columbarium during the exemption period.
- (c) the licence status is in force, which is in turn subject to fulfilling the condition of no additional structures certifiable for a pre-Bill columbarium during the licence period.

13. The above approach does **not** legalise / legitimise what remain illegal / unauthorised. Also, it does **not** in any way prejudice the Government's other powers and civil rights and remedies, including taking of enforcement actions after the expiry or revocation of the TSOL, licence or exemption status against any breaches in question thereafter, or the Government's rights at any time to enforce against the areas outside the licensed or exempted areas (or the proposed ones) as shown in the relevant plans. To avoid doubt, enforcement actions already taken before receipt of an application for a regulatory instrument will not be affected⁸.

⁸ It means that enforcement actions already taken under the respective regimes will not be affected –

- (a) if a notice served or prosecution instituted under Cap. 131 is in force;
- (b) if a removal order served or a notice served under section 24 or 24C of Cap. 123 is in force; and
- (c) if a notice issued under Cap. 28 is in force. Upon receipt of an application for regularisation, it will be processed as usual and enforcement actions may not be

14. As regards breach of lease conditions (relating to leased land), upon receipt of an application for regularisation, the enforcement actions against the relevant proposed licensed or exempted area (as the case may be) in respect of a pre-Bill columbarium referred to in paragraph 11(a) will be administratively withheld on a temporary basis similarly. For pre-Bill columbaria confirmed to be eligible for exemption status, D of Lands might, upon application, consider administratively regularising the breach of lease conditions and/or unlawful occupation of unleased land for the proposed exempted area before and during the exemption period, by way of a waiver and / or a short term tenancy (“STT”), with the relevant waiver fees, STT rentals and administrative fees waived, depending on the circumstances and merits of each application. If any interred ashes are removed (such as claimed back by descendants), such vacated niches are not allowed to be “refilled”. We will make it clear that regularisation in respect of the pre-Bill columbarium **cannot** be deemed to grant any exemption from or permit any contravention of any other enactments.

(4) *Consumer protection*

15. Upon commencement of the Bill, a columbarium operator will have to obtain a licence, before he or she can sell (or offer for sale) interment rights. The Bill will mandate the signing of contracts for sale of interment right in a columbarium. To tackle undesirable practices observed in some past cases, we will, through express provisions in the Bill –

- (a) make an agreement unenforceable by the operator (or voidable by the consumers) if such interment rights sold are purported to extend beyond expiry of the term of the lease or land instrument under which the columbarium premises are held (e.g. claiming to be permanent); and
- (b) make it a mandatory requirement for a licensee that a contract for sale of interment rights must –
 - (i) be made in writing, assisting proof and determination of the question of enforceability in case of dispute;
 - (ii) record all information, including that about –
 - the seller’s licence;
 - ownership, tenancy, encumbrances and restrictions on use and disposition;

taken by the Director of Lands during processing of such an application.

- Government lease or land instrument, including the expiry date; and
 - risk involved and other consumer advice, including alerting consumers on the availability or lack of an optional maintenance fund under a separate account and the authorised uses of such fund; and a warning on the financial risks involved if pre-payment upfront is adopted;
- (iii) record all essential terms, including –
- names of parties to the contract;
 - description of the interment right sold and the duration of the contract;
 - a comprehensive list of all fees, charges or other sums payable, future revision mechanism and payment methods;
 - arrangements for renewal of interment right after expiry of the contract;
 - the naming of dedicated nominee(s) and authorised representatives; and
 - the handling of interred ashes in the event of termination of the contract.

Failure to include the above information and essential terms in the contract will make the contract unenforceable by the operator. The consumer may also avoid (or cancel) the contract and get a refund. In addition, before commencement of the licensing scheme, the Licensing Board will, through promulgating a Code of Practice, provide contract templates covering the information and essential terms set out in (b) (ii) and (iii) of this paragraph.

(5) Proper handling of ashes upon cessation of a columbarium operation

16. In the event of cessation of a columbarium operation following confirmation that the private columbarium could not be licensed or exempted or where the operators choose to abscond or fold up⁹ before or after obtaining a regulatory instrument, or where the premises concerned fall into the possession of innocent third parties¹⁰, the Bill provides a skeleton framework for the prescribed

⁹ We have given great care to devising, under the Bill, measures that would help to ensure proper handling of interred ashes by operators prior to ceasing their columbarium operation, as it is their responsibility to do so. Failure to do so is subject to criminal sanction, punishable by a fine and imprisonment.

¹⁰ There may be occasions (such as where the operators fail to pay for their debts or have absconded) whereby innocent third parties, including the Lands Department, the Official

ash disposal procedures for application to FEHD, operators and innocent third parties. The Bill provides that FEHD may apply to the Court for an Occupation Order to occupy the columbarium premises for a period of time to facilitate the removal of the ashes and related items. This is applicable to the case of enforcement actions by the Government; abandonment of a columbarium by the operator; or innocent third parties failing to follow through the ash disposal procedures. As to the claiming back of the items, how the Bill works is explained in paragraphs 17 to 20 below¹¹.

17. Whom the ashes (together with the related item interred with the ashes) (“the items”) are to be returned to depends on whether a claim by the owner of the related item interred together with the ashes based on property rights is made. Should this be made, the rules set in the Bill as mentioned in **Annex C** will not apply. Instead, the items will be dealt with under the general common law.

18. A columbarium operator is required to attend to the return of the items for a period of at least 12 months, during which time the items are to be made available for return to the claimant on site in the columbarium in at least the first 2 months. A purchaser or mortgagee who acquires the columbarium premises¹² from holder of the licence, exemption or TSOL is subject to the same obligation on taking possession of the columbarium premises and thus required to adhere to the 12-month procedures applicable to a columbarium operator. The landlord of an operator who absconds or the operator’s pre-existing mortgagee has the option to make available the items for return for the first 2 months, if he or she does not opt for the full 12-month procedures¹³. After the stipulated

Receiver’s Office (as trustee or liquidator), landlords, mortgagees, receivers, trustees and liquidators become bailees for the ashes and/or belongings (“the items”) passed on to them upon possession of the premises concerned. At common law, a bailee is not entitled to dispose of such chattels unless their owners have shown the intention to abandon and there is certain physical act of relinquishment. Accordingly, the Bill will require the third parties to arrange for return of the items (by publishing notices in newspapers and liaising with persons authorised to claim back the ashes if the contact information is available).

¹¹ Allowing one to claim ashes for the purpose of this Ordinance does not carry any implication on the determination of the claimant's priority of claims to the estates of the deceased.

¹² A certificate of columbarium use is registered in the Land Registry on the issue of a licence, exemption or TSOL in respect of premises owned by the operator, thus notifying potential purchasers or mortgagees of the ash disposal obligations.

¹³ For the scenario applicable to the landlord of an operator who absconds or the operator’s pre-existing mortgagee, after they have discharged their obligations for the first 2 months, FEHD would carry out the remaining obligations for the following 10-month period.

period as applicable expires, they may pass to FEHD the items not returned.

19. The Bill prescribes the period within which a claim may be established for the return of ashes (namely at least 12 months or, if there are contesting claims, 24 months). By the time this period expires, any unclaimed items are to be delivered to FEHD. If the prescribed ash disposal procedures have duly been completed (be this by the ash handler or FEHD) and the items are left unclaimed after a reasonable period, the Director of Food and Environmental Hygiene (“DFEH”) may, at her discretion, arrange for the final disposal of such abandoned ashes and/or belongings in any manner as she sees fit¹⁴.

20. The Bill provides for the alternative of operators and innocent third parties submitting an ash disposal plan to DFEH for approval. DFEH may, on application, approve such a plan if he or she is satisfied that the procedures in the plan are as effective as the prescribed procedures in the Bill. Also, under the Bill, a person who is required but fails to carry the procedures is liable to pay to FEHD all expenses that FEHD incurs in carrying out the procedures¹⁵.

(6) *Exclusions and exemptions*

21. The Bill does not apply to –

- (a) a columbarium that is built, operated, administered or maintained by the Government, including one in a Government crematorium specified in Part 5 of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
- (b) an authorised private crematorium in Part 6 of the Fifth Schedule to Cap. 132 to the extent that the keeping of ashes in it is transient and incidental to its operation as a crematorium;

¹⁴ This could cater for other scenarios requiring exercising discretion, such as handing over to the following after undergoing a due process –

(a) a co-habitee; or

(b) a benevolent NGO; etc.

¹⁵ The Licensing Board may, on application and if satisfied that the procedures have been carried out in respect of the columbarium, issue a certificate that the premises cease to be a columbarium. A person to whom such a certificate of cessation of columbarium use is issued may register the certificate against the premises in the Land Registry.

- (c) a columbarium in a private cemetery specified in Part 2 of the Fifth Schedule to Cap. 132, but it will continue to be regulated under the Private Cemeteries Regulation (Cap. 132 BF);
- (d) a columbarium (if any in future) operated by the Board of Management of Chinese Permanent Cemeteries (“BMCPC”) outside private cemeteries specified in Cap. 132, but it will be made subject to regulation under Cap. 132BF;
- (e) undertakers with their licences not prohibiting storage of ashes in their place of business, but they will continue to be regulated under the Undertakers of Burial Regulations (Cap. 132CB) and will be subject to the provisions in this Bill on proper handling of interred ashes before ceasing their columbarium operation; and
- (f) the keeping of no more than 5 containers of ashes (with each container containing the ashes of one person only) in domestic premises.

22. We deem it appropriate to include the case in paragraph 21(d) in the list of exclusion. Apart from being regulated under Cap. 132BF as other private cemeteries, BMCPC is further governed by the Chinese Permanent Cemeteries Ordinance (Cap. 1112). It is a public or quasi-public body in nature, with their cemeteries (cum columbaria) being more akin to public cemeteries (cum columbaria). The purpose of BMCPC is to provide, maintain and administer cemeteries (inclusive of columbaria) etc. for persons of the Chinese race permanently resident in Hong Kong. Its Board consists of three ex-officio members (with the Secretary for Home Affairs as the Chairman, the Director of Lands and the DFEH as members) and between 8 and 16 other members appointed by the Chief Executive (“CE”). Audited accounts shall be laid before the Board at the annual general meeting. Its fees (at a modest level) are set out in subsidiary legislation subject to negative vetting by LegCo.

23. As regards paragraph 21(e), undertakers are licensed to handle human remains and most of them provide one-stop service for after-death arrangements. At present, there remain 81 undertakers whose licences do not debar temporary storage of ashes within their premises¹⁶. Since these undertakers are already regulated under Cap. 132 CB, and the storage of ashes in their premises is of a temporary nature, they will be exempted from the requirement to obtain a licence under the Bill. We will impose more stringent

¹⁶ As for applications for an undertaker’s licence received since December 2008, even if granted, temporary storage of ashes would not be allowed.

conditions under their undertakers' licences through Cap. 132CB to tighten up our regulation over their temporary storage of ashes (e.g. maximum storage capacity, minimising environmental nuisances that may be caused to the neighbourhood, etc.). Also, they will be made subject to the provisions concerning proper handling of interred ashes upon the cessation of their columbarium operation.

(7) *Proposed Licensing Board*

24. We will set up a statutory licensing authority, the Private Columbaria Licensing Board. With CE as the appointment authority, we will ensure a balanced mix of officials and non-officials in the Board composition. We propose that DFEH should be the chairperson of the Board. FEHD will be the executive arm and enforcement agency of the Licensing Board. In considering an application for a regulatory instrument, the Licensing Board would, among other things, have regard to the public interest. Such public interest considerations may include the overall supply of niches in the territory, views from residents or district bodies, as well as the interests of patrons of columbaria.

(8) *Offences*

25. The Bill proposes making it an offence to operate a columbarium (including sale of interment right) without a licence. However, an exemption or TSOL (available to a pre-Bill columbarium only) suffices if the operation does not involve selling interment right in respect of the columbarium. Improper handling of interred ashes and/or abandoning a columbarium will also be made offences. Sanction will take the form of heavy penalties punishable by a fine and imprisonment. For the offence of operating a columbarium without a regulatory instrument, there will be statutory defences for the person charged to establish that at the time of the alleged offence that –

- (a) the person did not know and could not have reasonably known that the premises were a columbarium; or
- (b) the person believed on reasonable grounds that the person operating, keeping, managing or otherwise having control of the columbarium held, in respect of the columbarium, a licence, exemption or TSOL.

(9) *Commencement and appeals*

26. Most of the provisions in the Bill will commence operation upon the enactment of the Ordinance. These include, for protecting consumer interest –

- (a) restriction on sale of interment right, as there should not be any sale of interment right until and unless the operators have obtained a licence; and
- (b) proper handling of interred ashes upon abandonment of a columbarium, and FEHD applying for an Occupation Order to handle the aftermath of “fly-by-night” cases etc.

The Licensing Board will undertake preparatory work within the first three months following the enactment of the Ordinance. Applications from pre-Bill columbaria for a licence, exemption and TSOL will have to be submitted within the following three months. Under the Bill, a period of 6 months from the enactment of the Ordinance will be allowed for a columbarium in operation before the commencement date to continue to operate without a regulatory instrument, but the columbarium still must not sell interment right. If a TSOL application is made in respect of the columbarium, the period will be extended until the application is finally disposed of.

27. Any aggrieved applicant could appeal to the Private Columbaria Appeal Board. The chairman and members of the Appeal Board would be appointed by CE. The Licensing Board will have the discretion to withhold enforcement actions pending determination of appeals.

OTHER OPTIONS

28. Short of introducing the Bill, there is no other alternative for implementing a credible licensing scheme for private columbaria.

THE BILL

29. The Bill bears the following long title: “A Bill to provide for the licensing of non-Government columbaria for keeping cremated human remains, the establishment of the Private Columbaria Licensing Board and for incidental and connected matters”. It gives effect to the proposed measures for regulating the private columbarium industry. Under the proposed licensing scheme, a private columbarium is any premises that are used, or intended to be used, for keeping ashes¹⁷. The main provisions of the Bill are –

¹⁷ The term “ashes” means ashes resulting from the cremation of human remains, but excludes materials transformed from ashes, such as synthetic diamonds, jewellery or ornaments.

- (a) clauses 2 and 3 introduce definitions for use under the Private Columbaria Ordinance;
- (b) clauses 4 and 5 set out the scenarios where the Ordinance does not apply (policy explained in paragraphs 21 to 23 above);
- (c) Part 2 (clauses 6 and 7) and Schedule 1 set up the Private Columbaria Licensing Board (policy explained in paragraph 24 above);
- (d) Part 3 (clauses 8 and 9) requires a licence for operating a columbarium but also provides that an exemption or TSOL suffices for operating a columbarium without selling interment rights (policy explained in paragraph 25 above);
- (e) Part 4 (clauses 10 to 39) and Schedules 2 and 3 introduce a regulatory system for private columbaria (policy explained in paragraphs 4 to 7 above);
- (f) Part 5 (clauses 40 to 47) and Schedule 4 set out requirements relating to day-to-day operation of columbaria (policy about the information and terms to be included in a contract for sale of interment rights is explained in paragraph 15 above);
- (g) Part 6 (clauses 48 to 53) provides for the powers to inspect, enter, search and arrest to facilitate DFEH to secure compliance with the legislation. It also provides for the offence of obstruction and for enforcement notices;
- (h) Part 7 (clauses 54 to 68) and Schedule 5 deal with obligations in disposing of ashes generally as well as on a columbarium ceasing operation (policy explained in paragraphs 16 to 20 above);
- (i) Part 8 (clauses 69 to 79) allows aggrieved persons to appeal to the Private Columbaria Appeal Board (policy explained in paragraph 27 above);
- (j) Part 9 (clauses 80 to 94) covers delegation by DFEH, issue of guidelines and a Code of Practice, and other miscellaneous matters;
- (k) Part 10 (clauses 95 to 99) provides that certain provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town

Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) about enforcement actions, as applicable, do not apply to columbaria in respect of which a regulatory instrument is in force or an application for a regulatory instrument is being processed or a refusal of the application is appealed against (policy explained in paragraphs 10 to 13 above);

- (l) Part 11 (clauses 100 to 119) provides for related and consequential amendments made to other Ordinances (including amendments to the Public Health and Municipal Services Ordinance (Cap. 132) to make a columbarium operated by BMCPC a private cemetery) (policy explained in paragraph 22 above); and
- (m) Schedule 6 on prescribed fees (currently left blank) will be filled in by legislative amendments¹⁸.

NOTIFICATION SCHEME

30. As referred to in paragraph 9 above, we have rolled out an administrative notification scheme. SFH has announced the scheme through a press release at 8:00 a.m. and a press conference thereafter on 18 June 2014. Operators taking part in the notification scheme will be required to respond to a notice served by FEHD and provide details of his/her columbarium operation and, within a relevant deadline, allow FEHD to enter and inspect the columbarium premises for the purpose of verifying the information provided.

31. Specifically, the information sought will comprise the following data as at the Bill announcement time –

- (a) in batch 1 on the following niche-related particulars, including:
 - (i) the number of columbarium blocks and the number of outdoor niche walls;
 - (ii) in respect of (i) where niches with interred ashes are in existence, the categories and number of niches, the number of sold and occupied niches, the number of sold but not yet

¹⁸ The exact levels of fees and charges, if incorporated in the Bill at this stage, would become outdated by the time of enactment. Our intention is to reach an understanding with LegCo at the Bills Committee stage for these to be introduced as Committee Stage Amendments, so that these could take effect upon commencement of the licensing scheme.

occupied niches, and the number of niches available for sale;

- (iii) the date of sale of first niche and the date of first interment in a niche,

as well as furnaces (if any) in the columbarium; and

- (b) in batch 2 on any other facilities (if any) in the columbarium that are claimed by the operator to be “necessary for, or ancillary to, the operation of the columbarium”, to the extent that they are not covered in batch 1.

The verification process is to take place as soon as practicable, with batch 1 and batch 2 to be completed by 30 June 2014 and 31 August 2014 respectively. By implication, the land/structures on/in which such facilities are located form part and parcel of the information collected. FEHD will compile a record on the information received and verified by FEHD, including plans marking where such facilities are located. After compilation, a copy will be retained by FEHD and sent to the operator respectively.

32. We wish to make it clear that information collected in paragraph 31 above will not pre-empt the decisions of the Licensing Board, which might draw up relevant criteria for determining what are essential ancillary facilities supporting the purpose of interment of ashes which in turn determine what is “necessary for, or ancillary to, the operation of a columbarium”. Facilities that are not such essential ancillary facilities (and the land/structures on/in which they are located) will be excluded from the approved plan. Once excluded, the grandfathering arrangements would not apply to them.

33. Such information will form the basis for determining the pre-Bill columbarium status of the relevant columbaria and their eligibility for seeking TSOL, a licence and / or exemption in future. When the Licensing Board considers their applications in due course, the information collected and verified by FEHD under the notification scheme is admissible in evidence on its production (e.g. for satisfying the Board that the operator has ceased the sale of niches since the Bill announcement time and is hence eligible for seeking exemption status). For operators who have not participated in the notification scheme, the Licensing Board may, in its sole and absolute discretion, consider their applications, if they prove that they were precluded from participating in the notification scheme by circumstances beyond their control and they produce evidence of comparable probative value.

LEGISLATIVE TIMETABLE

34. The legislative timetable will be –

| | |
|---|----------------|
| Publication in the Gazette | 20 June 2014 |
| First reading and commencement of second reading debate in LegCo | 25 June 2014 |
| Resumption of second reading debate, committee stage and third reading in LegCo | To be notified |

IMPLICATIONS OF THE PROPOSAL

35. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. Generally, the Private Columbaria Bill and its subsidiary legislation do not have binding effect on the Government. The financial, civil service, economic, environmental, sustainability and family implications are set out at **Annex D**.

PUBLIC CONSULTATION

36. The Food and Health Bureau launched the first public consultation in July 2010 for three months on a review of the columbarium policy. A second-round consultation was launched in December 2011 for three and a half months. A Business Impact Assessment study was carried out in 2013 to collect the views of existing and potential operators and assess the impact of the licensing scheme on the trade. Views collected indicated general support for taking forward the licensing scheme but different stakeholders have different views on the level of regulation and the approach for handling pre-Bill columbaria.

PUBLICITY

37. A press release has been issued at 8:00 a.m. on 18 June 2014 to mark the Bill announcement time. The following will also happen on that day –

- (a) a press conference will be held;

- (b) the Development Bureau's List will be issued, reflecting the most up-to-date information on known private columbarium cases¹⁹; and
- (c) an information package on the notification scheme will be delivered by express post / by hand to the operators in (b) above.

A line to take will be prepared and a spokesperson will be available to answer media enquiries. Radio, TV and newspaper announcements of public interests will be produced. Separately, we plan to meet with the relevant LegCo Panel, the Chairmen and Vice-Chairmen of DCs, relevant stakeholders and trade associations to brief them on the Bill, and work with the Consumer Council to prepare third-party advice for consumers.

ENQUIRIES

38. Any enquiries on this brief may be addressed to Miss Diane Wong, Principal Assistant Secretary for Food and Health (Food)2, on 3509 8926.

Food and Health Bureau
18 June 2014

¹⁹ The Development Bureau has published since December 2010 Information on Private Columbaria known to the Government. It is updated every three months. There are two parts to the Information. Part A sets out private columbaria which are compliant with the user restrictions in the land leases and town planning requirements and are not illegally occupying Government land. Part B includes other private columbaria that do not fall under Part A.

Private Columbaria Bill

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A BILL

To

Provide for the licensing of non-Government columbaria for keeping cremated human remains, the establishment of the Private Columbaria Licensing Board and for related and incidental matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Private Columbaria Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on the expiry of 3 months beginning on the day on which this Ordinance is published in the Gazette—
 - (a) Part 4;
 - (b) Division 2 of Part 5;
 - (c) Part 10;
 - (d) Schedules 2 and 3.

2. Interpretation

- (1) In this Ordinance—

approved plans (經批准圖則), in relation to a columbarium, means plans approved under section 20 (as read with section 21(5), if applicable) in respect of the columbarium that are, on the issue of a specified instrument in respect of the columbarium, annexed to the instrument;

ashes (骨灰)—

- (a) means ashes resulting from the cremation of human remains; and
- (b) (except in the definition of **eligible claimant** in section 5(2) of, and sections 9(7) and 11(4) of, Schedule 5) includes any plaque and any other related items interred together with the ashes; but
- (c) excludes synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes;

authorized officer (獲授權人員) means any officer appointed under section 48;

authorized representative (獲授權代表), in relation to an agreement for the sale of an interment right, means a person who is authorized under the agreement to claim for the return of ashes interred under the agreement;

Bill announcement time (草案公布時間) means 8 a.m. on 18 June 2014;

building (建築物) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

building works (建築工程) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

columbarium (骨灰安置所)—

- (a) means any premises that are used, or intended to be used, for keeping ashes; and

- (b) includes furnaces for burning offerings and any other essential ancillary facilities supporting the premises to be so used; but
- (c) excludes premises used or to be used for scattering ashes with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

columbarium premises (骨灰安置所處所) means the premises comprising a columbarium;

dedicated person (受供奉者) means—

- (a) in relation to a niche or any other place in a columbarium in which ashes of a person are interred—the person; or
- (b) in relation to an interment right (whether in respect of a niche or otherwise in a columbarium)—a person whose ashes are to be interred by exercising the interment right, whether or not the person is living and whether or not a specific niche or location is allocated;

Director (署長) means the Director of Food and Environmental Hygiene;

enactment date (刊憲日期) means the day on which this Ordinance is published in the Gazette;

exemption (豁免書) means an exemption issued or renewed under section 11;

inter (安放), in relation to ashes of a person—

- (a) means keep the ashes in, on or at any premises in any manner—
 - (i) whether or not the ashes are kept in a container; and

(ii) whether or not the ashes or container of ashes are or is kept in a niche; but

(b) excludes scatter ashes in, on or at any premises with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

interment right (安放權), in relation to a columbarium, means the right to inter ashes in the columbarium—

(a) whether or not in a niche or a specified location;

(b) whether or not for a definite period;

licence (牌照) (except in the definition of **owner** in this subsection and in sections 4(2), 13(1)(b), 14(3)(where it first appears), 15(1)(h)(i) and 41(2)(c), sections 1(b) and 4(2)(a) of Schedule 2 and sections 1(c) and 2(d) of Schedule 4) means a licence issued or renewed under section 11;

Licensing Board (發牌委員會) means the board established under section 6;

niche (龕位) means a compartment, cubicle or vault that is used, or intended to be used, for keeping ashes of one or more persons usually with the ashes of each person in a container;

non-compliant structures (違規構築物)—see section 4(1) of Schedule 2;

owner (擁有人), in relation to any premises—

(a) means—

(i) a person holding the premises direct from the Government, whether under a lease, licence or otherwise;

(ii) a mortgagee in possession; or

(iii) a person who receives the rent of the premises, solely or with another, on the person's own behalf

or that of another person, or who would receive the rent if the premises were let to a tenant; and

(b) if a person referred to in paragraph (a) cannot be found or ascertained or is absent from Hong Kong or is under a disability—also means the agent of the person; but

(c) except in Part 7 and Schedule 5, excludes the Government;

pre-Bill columbarium (草案前骨灰安置所) means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the Bill announcement time;

premises (處所) includes a place and, in particular, includes—

(a) any land or building;

(b) a vehicle, vessel, aircraft, hovercraft or other conveyance, if stationary;

(c) a structure (whether or not movable or offshore); and

(d) a part of any of the premises described in paragraph (a), (b) or (c);

purchaser (買方), in relation to an interment right in respect of a columbarium, means a person to whom the right is sold, whether or not to the person as dedicated person;

qualified professional (合資格專業人士), in relation to any provision of this Ordinance, means the person or persons specified under section 86 in relation to that provision;

Secretary (局長) means the Secretary for Food and Health;

sell (出售) is to be construed in accordance with section 3;

specified form (指明格式) (except in section 33(2)(f)(ii)) means in the form as specified by the Licensing Board;

specified instrument (指明文書) means—

(a) a licence;

- (b) an exemption; or
 - (c) a temporary suspension of liability;
- structures certifiable for a pre-Bill columbarium** (可就草案前骨灰安置所核證的構築物)—see section 4 of Schedule 2;
- temporary suspension of liability** (暫免法律責任書) means a temporary suspension of liability issued or extended under section 11;
- unauthorized development** (違例發展) has the meaning given by section 1A of the Town Planning Ordinance (Cap. 131);
- unleased land** (未批租土地) has the meaning given by section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).
- (2) In this Ordinance, a reference to an application for a specified instrument is a reference to—
 - (a) an application for the issue or renewal of a licence;
 - (b) an application for the issue or renewal of an exemption; or
 - (c) an application for the issue or extension of a temporary suspension of liability.
 - (3) In this Ordinance, a reference to any of the following is to be construed in accordance with the provisions of Part 1 of Schedule 2—
 - (a) compliance with the land-related requirements;
 - (b) compliance with the planning-related requirements;
 - (c) compliance with the building-related requirements.
 - (4) In this Ordinance, a reference to unlawful occupation of unleased land means the occupation of unleased land in contravention of section 4 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

- (5) In this Ordinance, a reference to occupation of land as is necessary for, or ancillary to, the operation of a columbarium means the occupation of land by—
 - (a) any building or building works containing niches used or intended to be used for the interment of ashes; and
 - (b) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.

Unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of a columbarium is to be construed accordingly.
- (6) In this Ordinance, a reference to unauthorized development undertaken or continued as is necessary for, or ancillary to, the operation of a columbarium means the unauthorized development in the form of—
 - (a) any building or building works containing niches used or intended to be used for the interment of ashes; and
 - (b) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.
- (7) In this Ordinance, a reference to structures necessary for, or ancillary to, the operation of a columbarium means—
 - (a) building or building works that contain niches used or intended to be used for the interment of ashes; or
 - (b) building or building works that are furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.

- (8) In this Ordinance, a reference to non-compliant structures necessary for, or ancillary to, the operation of a columbarium means non-compliant structures that are structures necessary for, or ancillary to, the operation of the columbarium within the meaning of subsection (7).
- (9) If a specified instrument is transferred under section 32, a reference in this Ordinance to the person holding the instrument is to be construed as a reference to the person to whom it has been transferred.

3. **Meaning of sale of interment right**

- (1) For the purposes of this Ordinance—
sell (出售), in relation to an interment right, includes—
 - (a) offer the interment right for sale; and
 - (b) make an agreement for the sale of the interment right to another person.
- (2) For the purposes of this Ordinance, a sale of an interment right in respect of a columbarium includes a disposition of the interment right to a person if the person, directly or indirectly, in connection with the disposition makes payments (whether or not any of the payments are described as donations) in one or more of the following manners—
 - (a) pays a sum periodically during the period for which the interment right lasts;
 - (b) pays a fixed sum, by instalment or otherwise;
 - (c) makes payments in any other manner.
- (3) For the purposes of this Ordinance—
 - (a) a sale of an interment right in respect of a columbarium includes—

- (i) such a sale, even before the columbarium is constructed;
- (ii) such a sale, even if no dedicated person is named; and
- (iii) such a sale to a person for resale; and
- (b) a sale of an interment right in respect of a niche in a columbarium includes a sale of an interment right in respect of—
 - (i) a particular niche, or a niche to be allocated, in the columbarium;
 - (ii) a niche in existence, or a niche to be constructed, in the columbarium.

4. **Ordinance not applicable to Government columbaria, private cemeteries, private crematoria or undertakers of burials, etc.**

- (1) This Ordinance does not apply to any of the following—
 - (a) a columbarium that is built, operated, administered or maintained by the Government, including one that is in a Government crematorium specified in Part 5 of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
 - (b) a columbarium that is in a private cemetery specified in Part 2 of that Schedule;
 - (c) a columbarium under the management and control of a person specified in Part 2A of that Schedule;
 - (d) an authorized private crematorium specified in Part 6 of that Schedule to the extent that the keeping of ashes in it is transient and incidental to its operation as a crematorium.
- (2) This Ordinance (except Part 7 and Schedule 5) does not apply to a columbarium if—

- (a) it is the place of business of a person holding a licence under the Undertakers of Burials Regulation (Cap. 132 sub. leg. CB); and
- (b) that licence does not prohibit the keeping of ashes in that place of business.

5. Ordinance not applicable to domestic keeping of ashes

- (1) This Ordinance does not apply to the keeping of ashes in any domestic premises if—
 - (a) no more than 5 containers of ashes are kept in the premises; and
 - (b) each container contains the ashes of only 1 person.
- (2) In this section—

domestic premises (住宅) means premises used solely or principally for residential purposes and constituting a separate household unit.

Part 2

Private Columbaria Licensing Board

6. Establishment of Licensing Board

- (1) A board is established with the name “Private Columbaria Licensing Board” in English and “私營骨灰安置所發牌委員會” in Chinese.
- (2) Schedule 1 (which makes provisions about the constitution and proceedings of the Licensing Board) has effect.

7. Functions and powers of Licensing Board

- (1) The principal functions of the Licensing Board are—
 - (a) to regulate the operation and management of columbaria and, in particular—
 - (i) to consider and determine applications made to it under this Ordinance;
 - (ii) to issue guidelines and codes of practice about the operation and management of columbaria; and
 - (iii) to handle complaints against, and investigate into irregularities of, operators of columbaria and to exercise the power to revoke or suspend a specified instrument or other disciplinary powers under this Ordinance; and
 - (b) to do any other things that the Licensing Board is required or authorized to do by this Ordinance.
 - (2) The Licensing Board has all ancillary powers that may be necessary to enable it to perform its functions.
-

Part 3**Control on Operation of Columbaria****8. Restriction on operating columbarium**

- (1) A person must not operate, keep, manage or in any other way have control of a columbarium, otherwise than in accordance with a licence.
- (2) Subsection (1) does not prohibit a person from operating, keeping, managing or in any other way having control of a columbarium, otherwise than in accordance with a licence, if—
 - (a) the person does not sell any interment right in respect of the columbarium; and
 - (b) the person holds, in respect of the columbarium—
 - (i) an exemption; or
 - (ii) a temporary suspension of liability.
- (3) A person does not contravene subsection (1) in respect of a columbarium merely by giving an undertaking to carry out the prescribed ash disposal procedures (within the meaning of section 6 of Schedule 5) in respect of the columbarium and actually carrying out the procedures.

9. Offences relating to section 8

- (1) If a person contravenes section 8(1) in respect of a columbarium—
 - (a) the person commits an offence; and
 - (b) each person who is the owner, tenant, lessee or person in charge of the columbarium premises commits an offence.

- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; and
 - (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.
- (3) A person charged with an offence under subsection (1) in respect of any premises has a defence if the person establishes that, at the time of the alleged offence—
 - (a) the person did not know and could not have reasonably known that the premises concerned were a columbarium; or
 - (b) the person believed on reasonable grounds that the person who operated, kept, managed or otherwise had control of the columbarium—
 - (i) did so under a licence; or
 - (ii) did not sell any interment right in respect of the columbarium and held, in respect of the columbarium, an exemption or a temporary suspension of liability.
- (4) A person charged with an offence under subsection (1) is to be taken to have established a fact that needs to be established for the purpose of a defence under subsection (3)(a) or (b) if—
 - (a) there is sufficient evidence to raise an issue as to that alleged fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

- (5) Subsection (1) has effect subject to section 64(1).
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Part 4

Instruments Required for Operating Columbaria

Division 1—General Provisions

10. Interpretation of Part 4

In this Part—

ash interment capacity (骨灰安放容量), in relation to a columbarium in respect of which a licence is applied for or is issued, means the following particulars—

- (a) the maximum number of containers of ashes that may be interred in each niche in the columbarium, and the total maximum number of sets of ashes that may be interred in the niches;
- (b) the total maximum number of sets of ashes that may be interred otherwise than in niches in any area in the columbarium; and
- (c) the total maximum number of sets of ashes that may be interred in the columbarium;

ash interment layout (骨灰安放布局), in relation to a columbarium, means the following particulars—

- (a) the location and serial numbering of niches in the columbarium;
- (b) (if a licence is applied for or is issued in respect of the columbarium) any area in the columbarium in which ashes may be interred otherwise than in niches;

ash interment quantity (骨灰安放數量), in relation to a columbarium, means the following particulars—

- (a) the number of containers of ashes interred in each niche in the columbarium, the total number of sets of ashes interred in the niches and the names of the dedicated persons;
- (b) (if a licence is applied for or is issued in respect of the columbarium) the number of sets of ashes that are interred otherwise than in niches in any area in the columbarium and the names of the dedicated persons; and
- (c) the total number of sets of ashes that are interred in the columbarium.

11. Licence, exemption and temporary suspension of liability

- (1) The Licensing Board may, on application and subject to any conditions that the Licensing Board thinks fit to impose—
 - (a) issue or renew a licence in respect of a columbarium;
 - (b) issue or renew an exemption in respect of a pre-Bill columbarium; and
 - (c) issue or extend a temporary suspension of liability in respect of a pre-Bill columbarium.
- (2) The Licensing Board may, in its discretion, determine the term for which the instrument is issued, renewed or extended (*validity period*).
- (3) The validity period of a licence must not exceed the shorter of the following—
 - (a) if the columbarium premises are occupied under a tenancy, lease or other instrument, the remainder of the term of the tenancy, lease or other instrument;
 - (b) 10 years.
- (4) The validity period of an exemption in respect of columbarium premises occupied under a tenancy, lease or

- other instrument must not exceed the remainder of the term of the tenancy, lease or other instrument.
- (5) The validity period of a temporary suspension of liability must not exceed the shorter of the following—
 - (a) if the columbarium premises are occupied under a tenancy, lease or other instrument, the remainder of the term of the tenancy, lease or other instrument;
 - (b) 3 years.
- (6) Subsection (7) applies if the columbarium premises are occupied under a short term tenancy from the Government that is renewable on a periodic basis and terminable on notice given for a specified period in accordance with the short term tenancy agreement.
- (7) Subject to subsections (3)(b) and (5)(b), the validity period of a specified instrument issued, renewed or extended in respect of the columbarium premises referred to in subsection (6) may be concurrent with the period for which the short term tenancy lasts.
- (8) A licence may be subject to review within its validity period on the dates specified in the licence.
- (9) A temporary suspension of liability may not be extended more than once, unless exceptional circumstances exist.

12. No specified instrument issued if columbarium subject to specified law enforcement action

- (1) Subsections (2) and (3) have effect despite section 11(1).
- (2) The Licensing Board may not grant an application for the issue of a specified instrument in respect of a columbarium if—
 - (a) the operation of the columbarium, or any part of it, constitutes an unauthorized development in

contravention of section 20(7) or 21(1) of the Town Planning Ordinance (Cap. 131); and

- (b) in respect of the unauthorized development—
 - (i) proceedings for prosecution of an offence under section 20(8) or 21(2) of that Ordinance have been instituted, whether against the applicant or any other person, before the making of the application; or
 - (ii) a notice—
 - (A) has been served, whether on the applicant or any other person, under section 23(1) or (2) of that Ordinance before the making of the application; and
 - (B) has not been complied with or withdrawn.
- (3) The Licensing Board may not grant an application for the issue of a specified instrument in respect of a columbarium if—
 - (a) any building or building works in, on or at the columbarium, or any part of it, have been completed or carried out in contravention of section 14(1) of the Buildings Ordinance (Cap. 123); and
 - (b) in respect of the building or building works, an order under section 24(1) of that Ordinance—
 - (i) has been served, whether on the applicant or any other person, before the making of the application; and
 - (ii) has not been complied with or withdrawn.

Division 2—Eligibility Criteria

Subdivision 1—Licence for Operating Columbaria (Including Selling Interment Rights)

13. Licence—eligibility based on legal compliance, premises held from Government and management plan

- (1) The Licensing Board may refuse an application for the issue of a licence in respect of a columbarium if—
 - (a) the applicant fails to prove to the satisfaction of the Licensing Board that the columbarium complies with all of the following—
 - (i) the land-related requirements;
 - (ii) the planning-related requirements;
 - (iii) the building-related requirements; or
 - (b) the applicant fails to prove to the satisfaction of the Licensing Board that the applicant holds the columbarium premises directly from the Government, whether under a lease, licence or otherwise.
- (2) Despite section 11(1), the Licensing Board may grant an application for the issue of a licence in respect of a columbarium only if a management plan, prepared by the applicant and covering matters required under section 85, has been approved by the Licensing Board.

14. Modifications of section 13 for pre-Bill columbarium

- (1) In relation to an application for the issue of a licence in respect of a pre-Bill columbarium, section 13 is modified in the manner specified in subsections (2) and (3) if the applicant proves to the satisfaction of the Licensing Board—

- (a) that the ash interment layout is limited in extent to that as at the Bill announcement time;
 - (b) that the ash interment capacity is limited to that as at the Bill announcement time; and
 - (c) that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time.
- (2) The Licensing Board may decide not to refuse the application under section 13(1)(a)(iii), even if the pre-Bill columbarium does not comply with the building-related requirements, if—
- (a) the non-compliant structures necessary for, or ancillary to, the operation of the columbarium are structures certifiable for a pre-Bill columbarium; and
 - (b) the requirements applicable to the structures (specified in section 4(3) of Schedule 2) are complied with.
- (3) The Licensing Board may decide not to refuse the application under section 13(1)(b), even if the applicant does not hold the columbarium premises directly from the Government, whether under a lease, licence or otherwise, if—
- (a) the Licensing Board is of the opinion that it would have granted the application but for that section; and
 - (b) the applicant proves to the satisfaction of the Licensing Board that the applicant has the right to continue to use the columbarium premises for at least 5 years beginning on the date on which the licence, if issued, is to take effect.

Subdivision 2—Instruments for Pre-Bill Columbaria to Continue Operation, without Selling Interment Rights

15. Exemption for pre-Bill columbarium—eligibility based on datedness, legal compliance and premises held from Government or right to occupation

- (1) The Licensing Board may refuse an application for the issue of an exemption in respect of a pre-Bill columbarium if the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following—
- (a) that the ash interment layout is limited in extent to that as at the Bill announcement time;
 - (b) that the ash interment quantity is limited to that as at the Bill announcement time;
 - (c) that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time;
 - (d) that the columbarium commenced operation before 1 January 1990;
 - (e) that no interment right in respect of the columbarium has been sold since the Bill announcement time;
 - (f) the columbarium complies with the land-related requirements;
 - (g) either—
 - (i) the columbarium complies with the building-related requirements; or
 - (ii) 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 applicable to the structures

(specified in section 4(3) of Schedule 2) are complied with;

(h) either—

- (i) the applicant holds the columbarium premises directly from the Government, whether under a lease, licence or otherwise; or
- (ii) (if the Licensing Board is of the opinion that it would have granted the application but for subparagraph (i)) the applicant has the right to continue to use the columbarium premises for at least 5 years beginning on the date on which the exemption, if issued, is to take effect.

(2) For the purposes of subsection (1)(d), the operation of a columbarium commenced on the earlier of the following—

- (a) the first time when a set of ashes was interred in a niche in the columbarium;
- (b) the first time when an interment right in respect of a niche in the columbarium was sold.

16. Temporary suspension of liability for pre-Bill columbarium—eligibility based on accompanying application for licence or exemption, etc.

- (1) The Licensing Board may refuse an application for the issue of a temporary suspension of liability in respect of a pre-Bill columbarium unless the applicant has also made in respect of the columbarium either or both of the following—
 - (a) an application for the issue of a licence;
 - (b) an application for the issue of an exemption.
- (2) The Licensing Board may refuse an application for the issue of a temporary suspension of liability in respect of a pre-Bill columbarium if—

(a) the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following—

- (i) that the ash interment layout is limited in extent to that as at the Bill announcement time;
- (ii) if the applicant also applies for the issue of a licence in respect of the columbarium—that the ash interment capacity is limited to that as at the Bill announcement time;
- (iii) if the applicant also applies for the issue of an exemption in respect of the columbarium—that the ash interment quantity is limited to that as at the Bill announcement time;
- (iv) that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time; or

(b) the Director of Lands considers that the occupation of land as is necessary for, or ancillary to, the operation of the columbarium includes unlawful occupation of unleased land but the applicant—

- (i) does not apply to the Director of Lands for lawful authority to occupy the unleased land; or
- (ii) does not provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land, whether based on possession of the unleased land before, on or after the date of application or on any other ground.

(3) The Licensing Board may refuse an application under subsection (1) if the applicant fails to prove to the satisfaction of the Licensing Board that the columbarium has been

certified, by a qualified professional, as not posing any obvious or imminent danger in terms of building safety and fire safety.

Subdivision 3—Miscellaneous

17. Considerations relevant to determination of applications

- (1) This section applies to the determination by the Licensing Board of an application for a specified instrument in respect of a columbarium.
- (2) The Licensing Board—
 - (a) must have regard to the public interest; and
 - (b) may have regard to any other relevant considerations.

Division 3—Application for Specified Instrument

Subdivision 1—General Provisions

18. Form of, and information required for, application

An application for a specified instrument in respect of a columbarium—

- (a) must be made, in writing, to the Licensing Board in the specified form and in the manner determined by it; and
- (b) must be accompanied by—
 - (i) for an application for the issue of a licence—a management plan for the Licensing Board’s approval for the purposes of section 13(2);
 - (ii) the plans of the columbarium; and
 - (iii) the information, certificates and other documents specified in the application form or otherwise required by the Licensing Board.

19. Requirements about plans accompanying application

- (1) For the purposes of section 18(b)(ii), the plans of a columbarium that are to accompany an application for a specified instrument in respect of a columbarium must comply with the requirements in this section.
- (2) The plans must include a site plan, layout plan and floor plans, each of which must be in the number of copies, and drawn to the scale, that the Licensing Board requires.
- (3) The plans must show the following particulars to be authorized or permitted by the specified instrument under application—
 - (a) the ash interment layout;
 - (b) (for an application for the issue or renewal of a licence) the ash interment capacity;
 - (c) (for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability, in respect of a pre-Bill columbarium) the ash interment quantity;
 - (d) the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium;
 - (e) the structures necessary for, or ancillary to, the operation of the columbarium.
- (4) A qualified professional must certify that the current site situation of the columbarium premises conforms to the plans in all respects.

20. Approved plans to be endorsed

- (1) The Licensing Board may approve plans of a columbarium for the purposes of an application for a specified instrument only if—

- (a) it is satisfied that the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); and
 - (b) having regard to sections 12, 13, 14, 15 and 16, the Licensing Board decides to grant the application and authorize or permit the particulars specified in subsection (2) as shown in the plans.
- (2) The particulars are—
- (a) the ash interment layout;
 - (b) (for an application for the issue or renewal of a licence) the ash interment capacity;
 - (c) (for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability, in respect of a pre-Bill columbarium) the ash interment quantity;
 - (d) the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium; and
 - (e) the structures necessary for, or ancillary to, the operation of the columbarium.
- (3) On approving the plans, the Licensing Board—
- (a) must endorse the approval on each plan in each set of the plans to that effect;
 - (b) must return 1 set of the plans to the applicant; and
 - (c) may retain the remaining sets of plans.

Subdivision 2—Applications in respect of Pre-Bill Columbaria

- 21. Application concerning pre-Bill columbarium—time limit, evidence of ash interment layout and ash interment quantity as at Bill announcement time and plans**
- (1) An application for the issue of a specified instrument in respect of a pre-Bill columbarium must be made to the Licensing Board at any time—
 - (a) after the expiry of 3 months beginning on the enactment date; but
 - (b) before the expiry of 6 months beginning on the same date.
 - (2) Despite subsection (1), the Licensing Board may consider an application that is made out of time if—
 - (a) the applicant has a reasonable excuse for failing to make the application within time; and
 - (b) in all the circumstances of the case, the Licensing Board considers that it is just and equitable to consider the application.
 - (3) An application for a specified instrument in respect of a pre-Bill columbarium, to which section 14, 15 or 16 or section 4 of Schedule 2 (each is called an *eligibility-related provision*) is relevant, must be accompanied by evidence of the following particulars (each is called an *eligibility-related particular*)—
 - (a) the ash interment layout as at the Bill announcement time;
 - (b) (for an application for the issue or renewal of a licence) the ash interment capacity as at the Bill announcement time;
 - (c) (for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary

- suspension of liability) the ash interment quantity as at the Bill announcement time;
 - (d) the extent of occupation of land as was necessary for, or ancillary to, the operation of the columbarium as at the Bill announcement time;
 - (e) the fact that any structures necessary for, or ancillary to, the operation of the columbarium existed as at the Bill announcement time;
 - (f) (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.
- (4) In addition to the plans required under section 19, an application for a specified instrument in respect of a pre-Bill columbarium must also be accompanied by a set of plans that meet the following requirements—
- (a) they must show the eligibility-related particulars;
 - (b) they must identify the extent (if any) to which the particulars to be authorized or permitted as referred to in section 19(3) differ from those as referred to in paragraph (a).
- (5) On approving the plans in accordance with section 20 for the purposes of an application for a specified instrument in respect of a pre-Bill columbarium, the Licensing Board must decide on, and identify, the following in the plans—
- (a) for a temporary suspension of liability—the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium and covered by the temporary suspension of liability; and

- (b) structures certifiable for a pre-Bill columbarium in, on or at the columbarium as are covered by the specified instrument.

22. Notification scheme: proof of particulars about pre-Bill columbarium

- (1) In this section—
- (a) operator, in relation to a columbarium, means a person who operated, kept, managed or in any other way had control of the columbarium;
 - (b) eligibility-related provision has the same meaning as in section 21(3);
 - (c) notifiable particulars mean batch 1 particulars or batch 2 particulars;
 - (d) batch 1 particulars mean any of the eligibility-related particulars referred to in section 21(3)(a), (b), (c) or (f) or the particulars of furnaces for burning offerings existing in the columbarium concerned as at the Bill announcement time;
 - (e) batch 2 particulars mean the particulars of any other facilities (whether or not they are building or building works) existing in the columbarium concerned as at the Bill announcement time that the operator intended to claim to be relevant to the eligibility-related particulars referred to in section 21(3)(d) and (e);
 - (f) the notification scheme is the administrative scheme that was announced by the Secretary at the Bill announcement time—
 - (i) for the Director or a public officer authorized to act for the purposes of the scheme (either is called a *scheme officer*) to ascertain the notifiable

- particulars in the manner described in subsections (2), (3) and (4); and
- (ii) for facilitating, in the manner described in subsections (5), (6), (7) and (8), the determination of whether any notifiable particulars are proved for the purposes of an application for a specified instrument in respect of a pre-Bill columbarium.
- (2) Under the notification scheme, an operator of a pre-Bill columbarium was—
- (a) to provide to a scheme officer, in the number of copies and prepared in the manner as the scheme officer determined—
- (i) a statement of the notifiable particulars; and
- (ii) any other records relating to the notifiable particulars as the scheme officer determined; and
- (b) to give consent to the scheme officer to enter into the columbarium during the following periods to verify the statement and records provided by the operator to ascertain the notifiable particulars—
- (i) for batch 1 particulars, the period beginning at the Bill announcement time and ending on 30 June 2014; and
- (ii) for batch 2 particulars, the period beginning at the Bill announcement time and ending on 31 August 2014.
- (3) On entering into the columbarium and verifying the statement of the notifiable particulars and records provided by the operator and being satisfied with their accuracy, the scheme officer might take photographs and make any other records.

- (4) After compiling the records, the scheme officer might, if he or she so desired, prepare the following in duplicate and might retain 1 set and provide the other set to the operator—
- (a) a statement of the notifiable particulars;
- (b) a set of photographs taken and other records made as the scheme officer thought fit, relating to the notifiable particulars (including plans to indicate the location of any facilities).
- (5) Subsections (6), (7), (8) and (9) apply to an application for a specified instrument in respect of a pre-Bill columbarium.
- (6) For the purposes of the eligibility-related provisions, a statement of the notifiable particulars prepared, the photographs taken and other records (including plans) made, under the notification scheme by the scheme officer under subsection (4) is evidence of the notifiable particulars in the absence of evidence to the contrary.
- (7) To avoid doubt, for the purposes of section 21(3)(d) and (e)—
- (a) subsection (6) relates only to proof of the existence of the furnaces for burning offerings or any other facilities in the columbarium as at the Bill announcement time and the occupation of land by the facilities as at that time; and
- (b) subsection (6) does not affect the Licensing Board's determination of whether the facilities fall within the essential ancillary facilities referred to in—
- (i) section 2(1) (definition of *columbarium*) or section 2(5)(b), (6)(b) or (7)(b); or
- (ii) paragraph (a)(ii) of the definition of *structures certifiable for a pre-Bill columbarium* in section 4(1) of Schedule 2.

- (8) The Licensing Board may treat the applicant as having failed to prove to its satisfaction any notifiable particulars in respect of the columbarium for the purposes of an eligibility-related provision unless the applicant proves them by producing a copy of the statement of the notifiable particulars, photographs and other records (including plans) prepared under subsection (4).
- (9) For the purposes of an application for a specified instrument in respect of a columbarium that is alleged to be a pre-Bill columbarium, the Licensing Board may, in its sole and absolute discretion, consider evidence of the notifiable particulars other than evidence referred to in subsection (4) if—
 - (a) the applicant satisfies the Licensing Board that the applicant was precluded from participating in the notification scheme by circumstances beyond the applicant's control; and
 - (b) the applicant produces evidence of probative value comparable to the evidence referred to in subsection (4).

Division 4—Form and Conditions of Specified Instruments

Subdivision 1—Licence for Operating Columbarium (Including Selling Interment Rights)

23. Licence—form

- (1) A licence in respect of a columbarium—
 - (a) must be in the specified form; and
 - (b) must have annexed to it a set of the approved plans.
- (2) The licence must state—

- (a) that the person to whom it is issued is authorized to operate, keep, manage or in any other way have control of the columbarium; and
- (b) that, subject to section 33, the authorization includes an authorization to sell interment rights in respect of the columbarium.
- (3) The licence must specify—
 - (a) the conditions to which it is subject; and
 - (b) its validity period.

24. Licence—conditions about ash interment, non-compliant structures and management plan

The licence is subject to the following conditions—

- (a) that the number of sets of ashes kept in the columbarium must be limited to the ash interment capacity specified in the approved plans;
- (b) for a pre-Bill columbarium—that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-Bill columbarium shown in the approved plans;
- (c) that the licence holder must operate and manage the columbarium in accordance with the management plan approved for the purposes of section 13(2) in respect of the columbarium.

25. Licence—further conditions

Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on a licence in respect of a columbarium—

- (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;
- (b) requiring that the requirements for enforceability of an agreement for the sale of an interment right under section 41 be met in respect of each agreement for the sale of an interment right in respect of the columbarium;
- (c) on measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and
- (d) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

Subdivision 2—Exemption

26. Exemption—form

- (1) An exemption in respect of a pre-Bill columbarium—
 - (a) must be in the specified form; and
 - (b) must have annexed to it a set of the approved plans.
- (2) The exemption must state—
 - (a) that the person to whom it is issued remains prohibited under section 8 from selling any interment right in respect of the columbarium; and
 - (b) that, subject to the prohibition referred to in paragraph (a), the person is exempted from the requirement under that section for obtaining a licence for operating, keeping, managing or in any other way having control of the columbarium.

- (3) The exemption must specify—
 - (a) the conditions to which it is subject; and
 - (b) its validity period.

27. Exemption—conditions about ash interment and non-compliant structures

An exemption in respect of a pre-Bill columbarium is subject to all of the following conditions—

- (a) that the ashes interred in the columbarium must be limited to the ash interment quantity as shown in the approved plans;
- (b) that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-Bill columbarium shown in the approved plans.

28. Exemption—further conditions

Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on an exemption in respect of a pre-Bill columbarium—

- (a) on measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and
- (b) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

Subdivision 3—Temporary Suspension of Liability**29. Temporary suspension of liability—form**

- (1) A temporary suspension of liability in respect of a pre-Bill columbarium—
 - (a) must be in the specified form; and
 - (b) must have annexed to it a set of the approved plans.
- (2) A temporary suspension of liability must state—
 - (a) that the person to whom it is issued remains prohibited under section 8 from selling any interment right in respect of the columbarium; and
 - (b) that, subject to the prohibition referred to in paragraph (a), the person's liability under that section for operating, keeping, managing or in any other way having control of the columbarium without a licence is suspended temporarily.
- (3) The temporary suspension of liability must specify—
 - (a) the conditions to which it is subject; and
 - (b) its validity period.

30. Temporary suspension of liability—conditions about unleased land and non-compliant structures

- (1) A temporary suspension of liability in respect of a pre-Bill columbarium for which an application for the issue of a licence is pending is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards—
 - (a) meeting the requirements referred to in section 13 (whether or not as modified under section 14); and

- (b) procuring the issue of the licence before the expiry of the temporary suspension of liability.
- (2) A temporary suspension of liability in respect of a pre-Bill columbarium for which an application for the issue of an exemption is pending is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards—
 - (a) meeting the requirements referred to in section 15; and
 - (b) procuring the issue of the exemption before the expiry of the temporary suspension of liability.
- (3) A temporary suspension of liability is subject to all of the following conditions—
 - (a) that the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium must be limited to that as shown in the approved plans;
 - (b) that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-Bill columbarium shown in the approved plans.

31. Temporary suspension of liability—further conditions

Without limiting section 11(1), the Licensing Board may as it thinks fit impose conditions on a temporary suspension of liability in respect of a columbarium—

- (a) on measures relating to building safety, fire safety and other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and

- (b) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

Division 5—Supplementary Provisions about Specified Instruments and Related Applications

32. Transfer of specified instrument

- (1) Except as provided in this section, none of the following instruments is transferable—
 - (a) a licence;
 - (b) exemption;
 - (c) a temporary suspension of liability together with one or both of the following—
 - (i) an application for the issue of a licence;
 - (ii) an application for the issue of an exemption.
- (2) Subject to subsections (3), (4) and (5), the Licensing Board may, on application, approve the transfer from a person in respect of whom an instrument referred to in subsection (1) is in force to another person. The fact of the transfer must be endorsed on the instrument.
- (3) The application—
 - (a) must be made, in writing, to the Licensing Board in the specified form; and
 - (b) must be accompanied by the information, certificates and other documents—
 - (i) specified in the application form; or
 - (ii) otherwise required by the Licensing Board.

- (4) On approving the transfer of an instrument referred to in subsection (1), the Licensing Board may vary the conditions to which the instrument is subject or impose new conditions.
- (5) Subsection (2) does not apply to an instrument referred to in subsection (1) if—
 - (a) a notice of revocation or suspension has been given under section 33 in respect of the instrument; or
 - (b) an application for the renewal or extension of the instrument has been refused.
- (6) If the Licensing Board refuses an application made under this section, the Licensing Board must notify the applicant of its decision, in writing, setting out the reasons for the refusal.
- (7) The holder of a specified instrument who purports to transfer the instrument without the Licensing Board's approval under this section commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

33. Revocation, suspension, refusal to renew or extend and variation of conditions

- (1) Subject to subsection (2), the Licensing Board may—
 - (a) revoke, or suspend for a period the Licensing Board thinks fit—
 - (i) a licence; or
 - (ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;
 - (b) revoke, or suspend for a period the Licensing Board thinks fit, an exemption or temporary suspension of liability;
 - (c) refuse to renew a licence or exemption or refuse to extend a temporary suspension of liability;

- (d) vary any conditions to which any of the following is subject or impose additional conditions on it—
 - (i) a licence;
 - (ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;
 - (iii) an exemption;
 - (iv) a temporary suspension of liability.
- (2) The Licensing Board may exercise the powers under subsection (1)—
 - (a) if, at the time when the Licensing Board considers exercising the powers in respect of the columbarium, circumstances exist that would have entitled the Licensing Board to refuse an application for the issue of the specified instrument under section 13 (whether or not as modified under section 14), section 15 or 16 had it been necessary to determine such an application at that time;
 - (b) if the person holding the specified instrument (*instrument holder*) has failed to comply with—
 - (i) a condition to which the instrument is subject; or
 - (ii) an enforcement notice served under section 54;
 - (c) if the application on the basis of which the specified instrument has been issued, renewed or extended, or a plan submitted in connection with such an application, contains information that is false or misleading in a material particular;
 - (d) if the instrument holder has been convicted of an offence under this Ordinance;
 - (e) if it appears to the Licensing Board that—

- (i) the columbarium has ceased to be operated as such or to exist; or
- (ii) the instrument holder has ceased to operate the columbarium;
- (f) if the instrument holder is a company and—
 - (i) a resolution for voluntary winding up as defined by section 228(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is passed or resolved by the company;
 - (ii) a statement in the specified form in respect of the company pursuant to section 228A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is made by the director of the company and delivered to the Registrar of Companies;
 - (iii) a winding-up order under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is made against the company;
 - (iv) the company is dissolved otherwise than in consequence of such an order; or
 - (v) the company's name has been struck off the Companies Register under section 798 of the Companies Ordinance (Cap. 622); or
- (g) if a natural person who is the instrument holder, or is a partner in the partnership that is the instrument holder—
 - (i) dies and no application for succession of the specified instrument is received;
 - (ii) is, in accordance with the Mental Health Ordinance (Cap. 136), found by the court to be of unsound mind and incapable of managing himself or herself and his or her affairs; or

(iii) is adjudicated bankrupt within the meaning of the Bankruptcy Ordinance (Cap. 6) or has entered into a composition or arrangement with his or her creditors without paying the creditors in full.

(3) If the Licensing Board exercises any power under this section in respect of a specified instrument held by a person, the Licensing Board must notify the person of its decision, in writing, setting out—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) the date on which the decision is to take effect.

34. Variation of condition on application by holder of specified instrument

(1) The Licensing Board may, on application by the holder of a specified instrument in writing to it showing sufficient cause to its satisfaction, vary any conditions to which the instrument is subject, by an endorsement on the instrument.

(2) The application—

- (a) must be made, in writing, to the Licensing Board in the specified form; and
- (b) must be accompanied by—
 - (i) plans that comply with the requirements in section 19 and, if applicable, section 21(4); and
 - (ii) the information, certificates and other documents—
 - (A) specified in the application form; or
 - (B) otherwise required by the Licensing Board.

(3) If the Licensing Board refuses an application made under this section, the Licensing Board must notify the applicant of its decision, in writing, setting out the reasons for the refusal.

35. Licensing Board's decision may be suspended from operation

(1) If a person in respect of whom the Licensing Board made a decision under section 33(1) appeals against the decision under section 72, the Licensing Board—

- (a) may, on application by the person, suspend the operation of the decision, pending the determination of the appeal; or
- (b) may, on its volition, suspend the operation of the decision, pending the determination of the appeal.

(2) An application under subsection (1)(a)—

- (a) must be made, in writing, to the Licensing Board within 7 days of the lodging of the notice of appeal by that person; and
- (b) must set out the grounds of the application.

(3) The decision in respect of which an application under subsection (1) is made is suspended in its operation until the Licensing Board determines the application.

36. Notification of changes

(1) If—

- (a) a person has made an application for a specified instrument; and
- (b) a change occurs that materially affects the accuracy of the information that the person has provided in connection with the application,

the person must notify the Licensing Board of the change, in writing, within 14 days of the change.

(2) A change in subsection (1)(b) includes (but is not limited to) a change of the proprietor, partner or director of the applicant.

- (3) If the holder of a specified instrument in respect of a columbarium decides to cease operating the columbarium, the holder must notify the Licensing Board of the decision, in writing, within 14 days of the decision.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

37. Further provisions on applications relating to specified instruments

Schedule 3 (which contains further provisions on applications relating to specified instruments under this Part) has effect.

Division 6—Certificate and Register

38. Certificate of columbarium use

- (1) As soon as the Licensing Board has issued a specified instrument to a person (*instrument holder*) 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.
- (2) The certificate—
 - (a) must state—
 - (i) that the premises are a columbarium to which this Ordinance applies;
 - (ii) that a specified instrument is issued in respect of the columbarium; and
 - (iii) the name of the instrument holder; and
 - (b) must state that the provisions of Part 7 and Schedule 5 on obligations to carry out the prescribed ash disposal procedures and the power of a specified officer, as

defined by section 65(1), to apply for an occupation order under section 65 apply to the premises.

- (3) As soon as reasonably practicable after the certificate is issued, the Licensing Board must register the certificate against the premises in the Land Registry.

39. Register of private columbaria

- (1) The Licensing Board must keep a register of columbaria, listing each columbarium in respect of which a specified instrument is in force.
- (2) The register is to be kept in the form, and containing the particulars, that the Licensing Board considers appropriate.
- (3) The Licensing Board may keep separate parts under the register in respect of different types of columbaria.
- (4) The register—
 - (a) must be kept at a place determined by the Licensing Board; and
 - (b) must be available for inspection by the general public during normal office hours free of charge.

Part 5

Operation of Columbaria

Division 1—Requirements about Agreement for Sale of Interment Rights

40. Interpretation of Part 5

In this Part and Schedule 4—

purchaser (買方)—see section 41(1);

seller (賣方)—see section 41(1).

41. Certain agreement for sale of interment right unenforceable by seller

- (1) This section applies if a person (*seller*) enters into an agreement with another person (*purchaser*) for the sale, to the purchaser, of an interment right in respect of a columbarium.
- (2) The agreement is not enforceable by the seller against the purchaser if the seller purports to sell under the agreement an interment right that the seller is not entitled to sell—
 - (a) for columbarium premises occupied under a short term tenancy from the Government that is renewable on a periodic basis and terminable on notice given for a specified period in accordance with the short term tenancy agreement—by selling an interment right in respect of the premises otherwise than for payment payable on the same periodic basis;
 - (b) for columbarium premises occupied under a tenancy or lease—by selling an interment right in respect of the premises for a term that extends beyond the term of the tenancy or lease; or

- (c) by selling an interment right for a term that extends beyond the term of the lease, licence or other instrument under which the land on which the columbarium is situated is held from the Government.
- (3) The agreement is not enforceable by the seller against the purchaser unless—
- (a) the seller held a licence in respect of the columbarium at the time when the agreement was entered into and still holds the licence at the time of enforcing the agreement;
 - (b) the agreement is in writing and was signed by both the seller and the purchaser;
 - (c) the agreement sets out, in clear language—
 - (i) the information and recommendations specified in Part 1 of Schedule 4; and
 - (ii) a comprehensive description of the rights and obligations of the seller and the purchaser under the agreement including (but not limited to) the matters specified in Part 2 of that Schedule;
 - (d) the agreement sets out the purchaser's cancellation rights under section 42;
 - (e) the agreement includes a term on whether and, if so, on what conditions the purchaser's cancellation rights under section 42 may be exercised after the interment right has been exercised;
 - (f) before the purchaser entered into the agreement, the seller has explained to the purchaser the information, recommendations, rights and obligations, as set out in the agreement;
 - (g) the seller obtained the purchaser's acknowledgement, in writing, that the explanation referred to in paragraph (f) was given to the purchaser;

- (h) the seller delivered to the purchaser a copy of the agreement as signed by the purchaser at the time the purchaser signed it;
 - (i) the seller delivered to the purchaser a copy of the agreement as soon as possible after it was signed by all parties, which delivery must be effected—
 - (i) by personal delivery to the purchaser;
 - (ii) by registered post to the purchaser; or
 - (iii) in another manner if the seller can prove receipt of the copy by the purchaser; and
 - (j) any other requirements prescribed by the Licensing Board are met.
- (4) A purchaser under an agreement that does not meet the requirements of subsection (3)(b), (c), (d), (e) or (j), or in respect of which the seller has not complied with the requirements of subsection (3)(a), (f), (g), (h) or (i), may bring an action in a court to recover any amounts paid under the agreement together with costs if—
- (a) the purchaser has given the seller notice of cancellation under section 42(1); and
 - (b) the seller has refused to pay the purchaser the amount payable under section 42(2).

42. Cancellation of unenforceable agreement

- (1) A purchaser under an agreement that is not enforceable by the seller under section 41(2) or (3) may cancel the agreement at any time after it is made by giving the seller a written notice of cancellation.
- (2) A seller who receives a notice of cancellation under subsection (1) must, within 30 days of receiving the notice,

refund to the purchaser all money received under the agreement.

- (3) If the interment right has been exercised, subsections (1) and (2) apply subject to the term of the agreement referred to in section 41(3)(e).

43. Record keeping

- (1) A person holding a licence in respect of a columbarium must keep copies of all agreements for the sale of interment rights in respect of the columbarium (including agreements avoided or cancelled) until the expiry of 6 years beginning on the date the agreement is fully performed or is avoided or cancelled.
- (2) A person holding a licence in respect of a columbarium—
 - (a) must keep a register of agreements for the sale of interment rights in respect of the columbarium; and
 - (b) must enter the prescribed particulars of each of the agreement into the register within the prescribed period.
- (3) A person holding a licence in respect of a columbarium must make the copies of agreements, and the register, kept in respect of the columbarium under this section available for inspection, on request, by the Director or an authorized officer.
- (4) A person holding a specified instrument in respect of a columbarium must keep a record—
 - (a) on interment and disinterment of ashes in and from the columbarium; and
 - (b) of the contact details of authorized representatives in respect of ashes interred in the columbarium.
- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Division 2—Duties to Exhibit Instruments and Notices, not to Deviate from Approved Plans, etc.

44. Instruments and notices to be exhibited

- (1) A person who holds a specified instrument in respect of a columbarium must exhibit it at a conspicuous place in the columbarium.
- (2) A person who holds an exemption or temporary suspension of liability in respect of a columbarium must exhibit at a conspicuous place in the columbarium a notice, in both English and Chinese, to the effect that any sale of an interment right in respect of the columbarium is an offence under section 8.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.
- (4) A person must not—
 - (a) alter, deface or make any erasure on a specified instrument; or
 - (b) use, or have in the person's possession with a view to using, a specified instrument on which an erasure has been made or which has been wilfully altered or defaced in any way.
- (5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

45. No alteration or addition in material deviation from approved plans, etc.

- (1) Except with the written permission of the Licensing Board, a person holding a specified instrument in respect of a

columbarium must not cause or permit any alteration or addition to the columbarium premises that would result in material deviation from the approved plans in respect of the columbarium.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) An application for permission for the purposes of subsection (1) must be accompanied by plans that comply with the requirements in section 19 and, if applicable, section 21(4).

46. Number of sets of ashes interred restricted

- (1) The holder of a licence in respect of a columbarium must ensure that the number of sets of ashes kept in niches, and the number of those kept otherwise than in niches, are limited to the respective maximum numbers specified in the approved plans.
- (2) The holder of an exemption or temporary suspension of liability in respect of a columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the material time, as specified in the approved plans.
- (3) In subsection (2)—

material time (關鍵時間) means—

- (a) in relation to an exemption—the Bill announcement time; or
- (b) in relation to a temporary suspension of liability—
 - (i) if an application for the issue of a licence (but no application for the issue of an exemption) is

pending in respect of the columbarium—the enactment date;

- (ii) if an application for the issue of an exemption is pending in respect of the columbarium—the Bill announcement time.

- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

47. Duty to maintain columbarium

- (1) A person holding a specified instrument in respect of a columbarium must keep the columbarium clean and in good repair.
 - (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.
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Part 6

Enforcement

48. Authorized officers

The Director may appoint a public officer as an authorized officer for the purposes of this Ordinance.

49. Power to inspect columbaria, etc.

- (1) For the purposes of this Ordinance, the Director or an authorized officer has power to do all or any of the following things—
 - (a) to enter and inspect at all reasonable times a columbarium in respect of which a specified instrument is in force;
 - (b) to require a person taking part in the operation or management of the columbarium—
 - (i) to produce a book, document or any other article in the person's possession that relates to the operation or management of the columbarium or to any other activity in respect of the columbarium; or
 - (ii) to furnish any information in the person's possession that relates to the operation, management or activity;
 - (c) to inspect, remove and impound for the purpose of examination for so long as the Director or authorized officer may consider necessary, and to examine and copy, any such book, document or article;
 - (d) to conduct any examination and inquiry that may be necessary for ascertaining whether any or all of the following is being, or has been, complied with—

- (i) this Ordinance;
 - (ii) the conditions of a specified instrument; or
 - (iii) the management plan approved for the purposes of section 13(2) in respect of the columbarium;
 - (e) to exercise any other powers that may be necessary for giving effect to the provisions of this Ordinance.
- (2) A person holding a specified instrument and the employees, servants or agents of the person must provide the assistance and information required by the Director or an authorized officer for exercising the powers under this section.

50. Power to enter and search, etc.

- (1) If satisfied by information on oath that there are reasonable grounds for suspecting that there is in any premises anything which is or contains, or which is likely to be or to contain, evidence of an offence under this Ordinance, a magistrate may issue a search warrant in respect of the premises.
- (2) The search warrant may authorize the Director or an authorized officer to—
 - (a) break into and forcibly enter the premises and search the premises;
 - (b) seize, remove or impound anything which appears to the Director or authorized officer to be or to contain, or to be likely to be or to contain, evidence of an offence under this Ordinance;
 - (c) remove by force a person or thing obstructing the Director or authorized officer in the exercise of a power conferred on the Director or authorized officer by this section; and
 - (d) detain a person found in the premises until the premises have been searched.

- (3) The Director or an authorized officer may exercise any of the powers referred to in subsection (2) in respect of any premises without a search warrant issued under subsection (1) if—
 - (a) there are reasonable grounds for suspecting that there is in the premises anything which is or contains, or which is likely to be or to contain, evidence of an offence under this Ordinance; and
 - (b) the delay necessary to obtain a search warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a search warrant.
- (4) If the Director or an authorized officer seizes, removes or impounds any thing under subsection (2)(b)—
 - (a) the Director or authorized officer must post at a conspicuous place outside the premises a notice, written in the Chinese language, declaring the seizure, removal or impoundment; and
 - (b) the notice must state that the owner of the thing may, under section 53, apply to the Director for the thing to be returned to the owner within the time specified in that section.

51. Power of arrest

- (1) If the Director or an authorized officer reasonably suspects that a person has committed or is committing an offence under this Ordinance, the Director or authorized officer may arrest the person without a warrant.
- (2) The Director or an authorized officer may use all reasonable means necessary to make the arrest if the person—
 - (a) forcibly resists the attempt of the Director or authorized officer to arrest the person; or

(b) attempts to evade the arrest.

- (3) If the Director or an authorized officer arrests a person under this section, the Director or authorized officer must immediately take the person to the nearest police station or hand the person over to the custody of a police officer, to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

52. Offence of obstruction of entry, inspection, arrest, etc.

- (1) A person commits an offence if the person—
- (a) wilfully obstructs the exercise of a power under section 49, 50 or 51;
 - (b) without reasonable excuse, fails to produce a book, document or article required to be produced under section 49(1)(b) or furnish information required to be furnished under that section; or
 - (c) furnishes the Director or an authorized officer with information knowing that it is false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

53. Disposal of thing seized, removed or impounded

- (1) If any thing seized, removed or impounded under section 50(2)(b) is required, or likely to be required, for production in evidence in any proceedings under this Ordinance, the Director may retain the thing until the proceedings are abandoned or determined.
- (2) Within 60 days after the proceedings are abandoned or determined, the owner of the thing seized, removed or

impounded may apply to the Director for the thing to be returned to the owner.

- (3) If the owner of the thing has not acted as provided under subsection (2), the thing—
- (a) is to become the property of the Government, free from all liens, claims or encumbrances; and
 - (b) may be sold or otherwise disposed of in a manner that the Director thinks fit.

54. Enforcement notice

- (1) The Director may, by notice (*enforcement notice*), require the holder of a specified instrument in respect of a columbarium (*recipient*) to do one or more of the following—
- (a) to end a contravention of a condition to which the instrument is subject;
 - (b) to remedy the consequences of the contravention;
 - (c) to prevent the recurrence of the contravention.
- (2) The enforcement notice must state—
- (a) the particulars of the contravention concerned and the time within which the contravention must end;
 - (b) if applicable, the action that the recipient must take to remedy the consequences of the contravention and the time within which the action must be taken;
 - (c) any action that the recipient must take to prevent the recurrence of the contravention and the time within which the action must be taken;
 - (d) that a failure, without reasonable excuse, to comply with the notice is an offence; and
 - (e) if paragraph (b) or (c) applies—

- (i) that, if the recipient fails to take the action referred to in that paragraph within the stated time, the Director may arrange for action to be taken to remedy the consequences of the contravention or to prevent the recurrence of the contravention; and
 - (ii) that the recipient will be liable for the expenses of taking the action.
- (3) The recipient of an enforcement notice who, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 3.
 - (4) If the recipient of an enforcement notice fails to take the action stated in the notice for remedying the consequences of a contravention stated in the notice or preventing the recurrence of the contravention, the Director may arrange for any action to be taken that the Director considers necessary or desirable to remedy the consequences or prevent the recurrence.
 - (5) The expenses of any action taken under subsection (4) are recoverable as a civil debt from the recipient of the enforcement notice.
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Part 7

Ash Disposal and Cessation of Columbaria

55. Interpretation of Part 7

In this Part—

- (a) a reference to carrying out the prescribed ash disposal procedures is to be construed in accordance with section 6 of Schedule 5; and
- (b) a reference to carrying out the on-site portion of the procedures is to be construed in accordance with section 7 of that Schedule.

56. Application of Part 7

This Part applies to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date, whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that day.

57. General principles

A person disposing of ashes interred in a columbarium must do so having regard to the respect for, and the dignity of, the deceased persons concerned.

58. Operator's obligations in disposal of ashes

- (1) A person who has operated, kept, managed or in any other way had control of a columbarium must not improperly dispose of ashes interred in the columbarium.

- (2) For the purposes of subsection (1), a person who disposes of ashes interred in a columbarium does so improperly unless—
- (a) the person holds a specified instrument in respect of the columbarium and—
 - (i) the ashes are disposed of not because of cessation of operation of the columbarium;
 - (ii) the ashes are disposed of in accordance with the terms of any agreement for the sale of an interment right in respect of the ashes; and
 - (iii) the particulars of disposal are entered into the record of interment kept under section 43(4), including—
 - (A) any breach of the agreement for the sale of an interment right on the part of the purchaser or authorized representative; or
 - (B) other reason for the disposal; or
 - (b) the person carries out the prescribed ash disposal procedures.

59. Abandonment of columbarium operated without specified instrument issued

- (1) A person abandons a columbarium in respect of which no specified instrument has been issued if—
 - (a) the person has operated, kept, managed or in any other way had control of the columbarium; and
 - (b) despite the Director's notice about a suspected abandonment in respect of the columbarium, the person fails to give a specified response.
- (2) For the purposes of the Director's notice about a suspected abandonment under subsection (1), the Director or an

- authorized officer must once in each of 2 consecutive months—
- (a) publish a notice in the Gazette; and
 - (b) post a notice at a conspicuous place outside the columbarium.
- (3) The notice must warn any person who has operated, kept, managed or in any other way had control of the columbarium and any other persons having an interest in the columbarium that, unless within 1 month after the date of the notice a person gives a specified response—
- (a) a person who has operated, kept, managed or in any other way had control of the columbarium is liable to be prosecuted for an offence under section 63; and
 - (b) a specified officer, as defined by section 65(1), may apply for an occupation order under section 65 to enable the specified officer to carry out the prescribed ash disposal procedures in respect of the columbarium.
- (4) A person who, without lawful authority or reasonable excuse, removes or defaces a notice posted under subsection (2)(b) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (5) In this section—
- specified response* (指明回應) has the meaning given by section 61.

60. Abandonment of columbarium if specified instrument issued

- (1) A person (*instrument holder*) whose specified instrument in respect of a columbarium is in force, has expired without being renewed or extended or is revoked or suspended, abandons a columbarium if, despite the Director's notice about a suspected abandonment in respect of the

- columbarium, the instrument holder fails to give a specified response.
- (2) For the purposes of the Director's notice about a suspected abandonment under subsection (1)—
- (a) the Director or an authorized officer must send a notice to the instrument holder, by registered post addressed to the instrument holder's last known address; and
 - (b) the notice must warn the instrument holder that, unless within 1 month after the date on which the notice is sent, the instrument holder gives a specified response—
 - (i) the instrument holder is liable to be prosecuted for an offence under section 63; and
 - (ii) a specified officer, as defined by section 65(1), may apply for an occupation order under section 65 to enable the specified officer to carry out the prescribed ash disposal procedures in respect of the columbarium.
- (3) If, despite the warning under subsection (2), the instrument holder fails to give a specified response, the Director must give a further warning to the instrument holder and any other persons having an interest in the columbarium that, unless within 1 month after the date on which the further warning is given, the instrument holder gives a specified response—
- (a) the instrument holder is liable to be prosecuted for an offence under section 63; and
 - (b) a specified officer, as defined by section 65(1), may apply for an occupation order under section 65 to enable the specified officer to carry out the prescribed ash disposal procedures in respect of the columbarium.
- (4) The further warning under subsection (3) must be given—
- (a) by notice published in the Gazette;

- (b) by registered post addressed to the instrument holder's last known address; and
 - (c) by notice posted at a conspicuous place outside the columbarium.
- (5) A person who, without lawful authority or reasonable excuse, removes or defaces a notice posted under subsection (4)(c) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (6) In this section—
- specified response* (指明回應) has the meaning given by section 61.

61. **Meaning of *specified response***

A person gives a specified response for the purposes of section 59 or 60 if—

- (a) (if the person has been issued with a specified instrument in respect of the columbarium but it has expired without having been renewed or extended) the person applies for the renewal or extension of the instrument;
- (b) (if the person's specified instrument is in force in respect of the columbarium) the person informs the Director or authorized officer, in writing, that the person continues to operate the columbarium; or
- (c) the person gives to the Director or authorized officer a written undertaking to carry out the prescribed ash disposal procedures in respect of the columbarium, specifying the particulars that the Director or authorized officer requires.

62. Breach of undertaking to carry out prescribed ash disposal procedures**(1) If—**

- (a) the Director's notice about a suspected abandonment has been given under section 59 or 60; and
- (b) a person has given a specified response within the meaning of section 61 by giving an undertaking to carry out the prescribed ash disposal procedures,

the person must comply with the undertaking, whether or not the person has ever operated, kept, managed or in any other way had control of the columbarium.

(2) A person referred to in subsection (1)(b) fails to comply with the undertaking referred to in that subsection if the person—

- (a) fails to give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after giving the undertaking; or
- (b) fails to take a step specified in the notice at the time specified in the notice for taking that step and in accordance with Part 2 of that Schedule.

63. Offence for contravention of section 58, 59, 60 or 62

A person who contravenes section 58, 59, 60 or 62 commits an offence and is liable—

- (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; and
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

64. Obligations of landlord, mortgagee, etc. taking possession of columbarium premises

- (1) A person (*person in possession*) who, whether or not as landlord, mortgagee or based on any other interest in any premises that are a columbarium, takes possession of those premises does not commit an offence under section 8 merely by taking possession if the person notifies the Director, in writing, of that fact within 7 days after taking possession.
- (2) The person in possession must carry out the prescribed ash disposal procedures as soon as reasonably practicable after taking possession if the person in possession acquired the premises subject to the obligation to carry out the prescribed ash disposal procedures.
- (3) Except where subsection (2) applies, the person in possession must as soon as reasonably practicable after taking possession—
 - (a) carry out the prescribed ash disposal procedures; or
 - (b) carry out the on-site portion of the procedures.
- (4) A person in possession is regarded as having contravened subsection (2) or (3) (as the case requires) if the person—
 - (a) fails to give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after giving the notice under subsection (1); or
 - (b) fails to take a step specified in the commencement of ash disposal notice at the time specified in that notice for doing so and in accordance with Part 2 of that Schedule.
- (5) For the purposes of subsection (2), a person acquired premises subject to the obligation to carry out the prescribed ash disposal procedures if—
 - (a) the person in possession acquired the premises in the following circumstances—

- (i) at the time of the acquisition—
 - (A) a certificate of columbarium use was registered under section 38 against the premises in the Land Registry; but
 - (B) no certificate was registered under section 68 against the premises; and
 - (ii) the person from whom the premises were acquired was named in the certificate of columbarium use as having been issued with a specified instrument; or
 - (b) the person in possession is a successor or assign of another person who acquired the premises in circumstances specified in paragraph (a).
- (6) This section does not affect a right that the person in possession may have, as landlord, mortgagee or based on any other interest in the premises, to claim compensation against another person for—
- (a) that other person's failure to deliver vacant possession in accordance with the terms of a tenancy, lease or mortgage in respect of the premises; or
 - (b) that other person's other violation of the interest of the person in possession.

65. Power to carry out prescribed ash disposal procedures; occupation order

- (1) In this section—

specified officer (指明人員) means the Director, an authorized officer or a public officer.

- (2) A specified officer may take any steps that may be necessary for carrying out the prescribed ash disposal procedures in respect of a columbarium if the procedures or any step in them are or is not carried out.

- (3) On an application by a specified officer and on being satisfied that section 58, 59, 60, 62 or 64(2) or (3) has been contravened in respect of a columbarium, the court may make an order (*occupation order*) empowering the specified officer—
 - (a) to enter the columbarium premises and occupy the premises for a period specified in the order; and
 - (b) to carry out the prescribed ash disposal procedures in respect of the columbarium.
- (4) An order may be made under subsection (3), whether or not a person—
 - (a) is identified as having contravened section 58, 59, 60, 62 or 64(2) or (3); or
 - (b) is prosecuted for an offence under section 63.
- (5) This section does not affect any person's liability for failing to carry out the prescribed ash disposal procedures or the on-site portion of the procedures as required by section 58, 62 or 64(2) or (3).
- (6) Part 1 of Schedule 5 (which provides for the making of an occupation order and the effect of such an order) has effect.

66. Further provisions on ash disposal procedures

Part 2 of Schedule 5 (which contains further provisions on ash disposal procedures and the recovery of expenses incurred in connection with the procedures) has effect.

67. Discharge of obligation in respect of ashes

- (1) Subject to section 69, a person to whom an ash disposal requirement applies in respect of a columbarium is discharged from all obligations in respect of the disposal of ashes interred

in the columbarium if the person complies with the requirement.

- (2) In subsection (1)—

ash disposal requirement (骨灰處置規定) means—

- (a) the requirement under section 58, 62 or 64(2) to carry out the prescribed ash disposal procedures; or
 - (b) the obligation under section 64(3) to carry out either the prescribed ash disposal procedures or the on-site portion of the procedures.
- (3) A specified officer, as defined by section 65(1), who carries out the prescribed ash disposal procedures in respect of a columbarium under section 65 is discharged from all obligations in respect of the disposal of ashes interred in the columbarium.

68. Certificate of cessation of columbarium use

- (1) The Licensing Board may, on application and if satisfied the prescribed ash disposal procedures or the on-site portion of the procedures have been carried out in respect of any premises against which a certificate of columbarium use is registered, issue a certificate that the premises cease to be a columbarium.
- (2) An application for the purposes of subsection (1) must be made by—
 - (a) the owner of the premises;
 - (b) the holder of a specified instrument in respect of the premises; or
 - (c) a specified officer, as defined by section 65(1).
- (3) A person to whom a certificate is issued under subsection (1) in respect of any premises may register the certificate against the premises in the Land Registry.

69. Contractual obligations not affected

Neither this Part nor Schedule 5 affects any claim for compensation arising out of an agreement for the sale of an interment right in respect of a columbarium for a breach of the seller's obligation in connection with the handling of ashes.

Part 8**Appeal****70. Interpretation of Part 8**

In this Part—

appeal (上訴) means an appeal under section 72;

Appeal Board (上訴委員會) means the body established under section 71(1);

appellant (上訴人) means a person lodging an appeal;

Chairperson (主席) means the Chairperson of the Appeal Board appointed under section 71(3);

Deputy Chairperson (副主席) means a Deputy Chairperson of the Appeal Board appointed under section 71(3);

legally qualified (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);

panel member (委員團成員) means a member of the panel of persons appointed under section 71(2);

party (方)—

- (a) in relation to an appeal against a decision of the Licensing Board—means the appellant or the Licensing Board;
- (b) in relation to an appeal against a decision of the Director—means the appellant or the Director;

presiding officer (審裁官), in relation to an appeal, means the presiding officer referred to in section 73(1)(a).

71. Establishment of Appeal Board

- (1) A body is established with the name “Private Columbaria Appeal Board” in English and “私營骨灰安置所上訴委員會” in Chinese.
- (2) The Chief Executive may appoint a panel of persons each of whom—
 - (a) is neither a member of the Licensing Board nor a public officer; and
 - (b) is considered by the Chief Executive to be suitable to serve on an Appeal Board to hear an appeal.
- (3) The Chief Executive may—
 - (a) appoint a panel member who is legally qualified to be the Chairperson of the Appeal Board; and
 - (b) appoint other panel members who are legally qualified to be Deputy Chairpersons of the Appeal Board.
- (4) To avoid doubt, in subsection (2)(a)—
public officer (公職人員) does not include—
 - (a) a judge of the Court of First Instance;
 - (b) a recorder of the Court of First Instance;
 - (c) a deputy judge of the Court of First Instance; or
 - (d) a District Judge.
- (5) An appointment under subsection (2) or (3) must be notified in the Gazette.
- (6) The Secretary may appoint a public officer to be the secretary of the Appeal Board.
- (7) The Secretary may appoint a legal adviser to advise the Appeal Board on legal matters relating to an appeal.

72. Appeals

- (1) A person aggrieved by any of the following decisions under this Ordinance may appeal to the Appeal Board—
 - (a) a refusal of an application for a specified instrument;
 - (b) a refusal of an application for—
 - (i) the transfer of a licence or exemption; or
 - (ii) the transfer of a temporary suspension of liability together with one or both of the following—
 - (A) the related application for the issue of a licence;
 - (B) the related application for the issue of an exemption;
 - (c) a decision to revoke or suspend a specified instrument;
 - (d) a decision to vary the conditions to which a specified instrument is subject or a decision to impose new conditions;
 - (e) a refusal to vary the conditions to which a specified instrument is subject;
 - (f) a decision of the Director under section 54 to serve an enforcement notice.
- (2) A person who wishes to appeal under subsection (1) must lodge a notice of appeal, in the specified form, with the Appeal Board within 21 days after the notice, in writing, of the decision under appeal is given to the person.
- (3) The notice of appeal must—
 - (a) set out the grounds of the appeal and the facts on which the appeal relies;
 - (b) be accompanied by a copy of every document that the appellant intends to rely on; and

- (c) include particulars of every witness whom the appellant intends to call at the hearing.
- (4) The secretary to the Appeal Board must, as soon as practicable, give a copy of the notice of appeal—
 - (a) if subsection (1)(a), (b), (c), (d) or (e) applies—to the Licensing Board; or
 - (b) if subsection (1)(f) applies—to the Director.

73. Composition of Appeal Board for purposes of appeal

- (1) For the purposes of an appeal, the Appeal Board consists of—
 - (a) a presiding officer, who is to preside at the hearing of the appeal; and
 - (b) 4 panel members selected by the presiding officer.
- (2) Subject to subsections (3), (4) and (5), the Chairperson or, if the Chairperson is absent or is otherwise unable to act, a Deputy Chairperson (according to the order of appointment) is to act as presiding officer.
- (3) The Chairperson must not act as presiding officer if the Chairperson has a direct or indirect interest in the appeal.
- (4) A Deputy Chairperson must not act as presiding officer if the Deputy Chairperson has a direct or indirect interest in the appeal.
- (5) If the Chairperson and each Deputy Chairperson has a direct or indirect interest in an appeal, the Secretary may select a panel member who is legally qualified, and who does not have a direct or indirect interest in the appeal, to act as presiding officer.
- (6) The presiding officer must not select a panel member to hear an appeal if the panel member has a direct or indirect interest in the appeal.

- (7) If the term of appointment of the Chairperson or a Deputy Chairperson who is the presiding officer at an appeal or a panel member selected under subsection (1)(b) for the purposes of an appeal expires during the hearing of the appeal, the Chairperson, Deputy Chairperson or panel member may continue to hear the appeal until the appeal is determined.

74. Hearing and determination of appeals

- (1) The presiding officer and 4 other panel members constituting the Appeal Board for hearing an appeal are to be present to hear and determine the appeal.
- (2) However, if after the commencement of the hearing of an appeal, one or more panel members (other than the presiding officer) are unable to continue hearing the appeal, the remaining panel members (so long as their number, including the presiding officer, is not less than 3) may, with the consent of the parties, continue to hear and determine the appeal.
- (3) Each party to an appeal may—
 - (a) appear and be present at the hearing of the appeal; and
 - (b) make representations during the hearing or be represented by another person, authorized by the party, in writing, during the hearing.
- (4) If a party to an appeal fails to appear on a date set for the hearing of an appeal without showing reasonable cause for the failure, an Appeal Board may—
 - (a) proceed to hear any other party entitled to appear; and
 - (b) make its decision without hearing the absent party.
- (5) A legal adviser may be present at any hearing before the Appeal Board or deliberations of the Appeal Board to advise the Appeal Board on legal matters.

- (6) When the legal adviser advises the Appeal Board on legal matters relating to an appeal, the legal adviser must do so in the presence of every party to the appeal (or the party's representative).
- (7) However, if the advice is tendered after the Appeal Board has commenced to deliberate on its findings, every such party or representative must be informed afterwards of the advice that the legal adviser has tendered.
- (8) In any case where the Appeal Board does not accept the advice of the legal adviser on a legal matter relating to an appeal, every party to the appeal (or the party's representative) must be informed of this fact.
- (9) Except for a question of law—
 - (a) every question before the Appeal Board is to be determined by a majority of the members hearing the appeal; and
 - (b) if there is an equality of votes in respect of a question to be determined in an appeal, the presiding officer of the Appeal Board hearing the appeal is to have a casting vote in addition to the presiding officer's original vote.
- (10) A question of law to be determined in an appeal is to be determined by the presiding officer of the Appeal Board hearing the appeal.
- (11) In determining an appeal, an Appeal Board may—
 - (a) confirm, reverse or vary the decision appealed against;
 - (b) substitute its own decision for the decision appealed against;
 - (c) make any other order that it thinks fit.
- (12) The decision of an Appeal Board on any appeal is final.

- (13) The Appeal Board must notify the parties to an appeal of its decision, in writing, setting out—
 - (a) the decision;
 - (b) the reasons for the decision; and
 - (c) the date on which the decision is to take effect.
- (14) The secretary to the Appeal Board is to serve a copy of the Appeal Board's decision and reasons on the parties to the appeal.

75. Powers of Appeal Board

- (1) Subject to section 76 and section 80, in the hearing of an appeal, the Appeal Board may—
 - (a) subject to subsection (2), receive and consider any material—
 - (i) whether by way of oral evidence, written statements, documents or otherwise; and
 - (ii) whether or not it would be admissible in a court;
 - (b) by notice in writing signed by the presiding officer, summon a person—
 - (i) to produce to the Appeal Board any document (including material and information referred to in section 82) that is relevant to the appeal and is in or under the custody or control of the person; or
 - (ii) to appear before the Appeal Board and to give evidence relevant to the appeal;
 - (c) administer oaths and affirmations;
 - (d) require evidence to be given on oath or affirmation; and
 - (e) make an order prohibiting a person from publishing or otherwise disclosing any material the Appeal Board receives.

- (2) Subsection (1)(a) does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made.
- (3) Any notice or order of an Appeal Board hearing an appeal is to be issued by the presiding officer of the Appeal Board.

76. Privileges against disclosure

For the purposes of an appeal, the appellant, the Licensing Board, the Director and any other person summoned under section 75(1)(b) are each to have the same privileges in respect of the disclosure of any material as if the proceedings before the Appeal Board were proceedings before a court.

77. Case may be stated for Court of Appeal

- (1) The Appeal Board may, before determining an appeal, refer a question of law arising in the appeal to the Court of Appeal for determination by way of case stated.
- (2) On hearing the case, the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment in a manner that the Court of Appeal orders.
- (3) The Appeal Board is to comply with the order.

78. Offences relating to appeals

- (1) In relation to an appeal, a person commits an offence if the person—
 - (a) without reasonable excuse, refuses or fails—
 - (i) to attend and give evidence when required to do so by the Appeal Board;
 - (ii) to answer truthfully and completely questions put to the person by the Appeal Board;

- (iii) to produce a document that the person is required by the Appeal Board to produce; or
 - (iv) to comply with any other lawful order, requirement or direction made or given by the Appeal Board or the presiding officer of the Appeal Board; or
- (b) disturbs or otherwise interferes with the proceedings of the Appeal Board.
- (2) A person commits an offence if the person publishes or otherwise discloses any material in contravention of an order under section 75(1)(e).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine at level 5.
- (4) It is a defence to a charge for an offence under subsection (2) for the person charged to prove that the person did not know, and had no reason for knowing, that the Appeal Board had made an order under section 75(1)(e) prohibiting the publication or other disclosure of the material concerned.
- (5) A person charged with an offence under subsection (2) is to be taken to have established a fact that needs to be established for the purpose of a defence under subsection (4) if—
 - (a) there is sufficient evidence to raise an issue as to that alleged fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

79. Chairperson of Appeal Board may make rules and determine practice or procedure

- (1) The Chairperson of the Appeal Board may make rules—
 - (a) to provide for the lodging of appeals; and
 - (b) generally for regulating the practice and procedure of the Appeal Board.

- (2) Rules made under this section are not subsidiary legislation.
- (3) The Chairperson may determine any matter of practice or procedure relating to the hearing of appeals if no provision governing the matter is made in this Ordinance or in rules made under subsection (1).

80. Privileges and immunities of Appeal Board members and witnesses

- (1) The Chairperson, Deputy Chairpersons or a panel member of the Appeal Board performing any functions under this Ordinance is to have the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A witness appearing before the Appeal Board is to have the same privileges or immunities of a witness in civil proceedings in the Court of First Instance.

Part 9

Miscellaneous

81. Delegation

The Director may, in writing, delegate to a public officer any of his or her functions or powers under this Ordinance, other than this power of delegation.

82. Consultation with other authorities and persons

(1) In this section—

specified person (指明人士) means—

- (a) the Licensing Board; or
- (b) the Director.

(2) If, for the purpose of a specified person's performance of a function under this Ordinance, a columbarium's compliance with another Ordinance is relevant and a person (*other enforcement authority*) is conferred with the function to enforce that other Ordinance—

- (a) the specified person may consult the other enforcement authority and may, for this purpose, present to the other enforcement authority any statement, photographs, records (including plans) and other material prepared, taken, made or obtained under the notification scheme referred to in section 22;
- (b) the other enforcement authority may present information that it has in connection with the enforcement of that other Ordinance to the specified person; and
- (c) the specified person may, when performing the function under this Ordinance, consider and use the information

including producing the information before the Appeal Board hearing an appeal under Part 8.

- (3) A specified person may consult any other enforcement authority or any other person if the expertise of the authority or person is necessary for or relevant to the performance of a function under this Ordinance.

83. Guidelines

(1) The Licensing Board may issue guidelines—

- (a) indicating the manner in which it proposes to perform its functions under this Ordinance; and
- (b) providing guidance on the operation of any provision of this Ordinance.

(2) Without limiting subsection (1), the Licensing Board may issue guidelines—

- (a) indicating the considerations it proposes to take into account in making a decision under this Ordinance; and
- (b) providing guidance on compliance with a provision of this Ordinance.

(3) The guidelines are not subsidiary legislation.

84. Codes of practice

- (1) For providing practical guidance in respect of this Ordinance or conditions imposed under it, the Licensing Board may issue a code of practice setting out principles, procedures, guidelines, standards and requirements in relation to columbaria.
- (2) A failure on the part of any person to observe a code of practice issued under subsection (1) does not of itself render that person liable to criminal proceedings of any kind. However, in any civil or criminal proceedings (including

proceedings for an offence under this Ordinance), evidence about the failure may be relied on as tending to establish or to negative any liability that is in question in those proceedings.

- (3) A code of practice is not subsidiary legislation.

85. Management plan

- (1) The Licensing Board may require a management plan, submitted for approval for the purposes of section 13(2) in respect of a columbarium, to cover matters that the Licensing Board specifies.
- (2) Without limiting subsection (1), the Licensing Board may require the management plan to cover in respect of the columbarium concerned—
- (a) the holding capacity for visitors and admission control;
 - (b) the traffic and public transport arrangement or management;
 - (c) crowd management;
 - (d) security management;
 - (e) manpower deployment on peak grave sweeping days or periods and other days or periods;
 - (f) a contingency plan in the event of fire or other emergency situations; and
 - (g) measures to ensure compliance with guidelines and codes of practice issued under sections 83 and 84.

86. Qualified professional

- (1) The Licensing Board may by notice in writing specify, either generally or in a particular case or class of cases, either or both of the following to be a qualified professional for the purposes of giving certification, or doing any other thing, as required by a provision of this Ordinance—

- (a) an authorized person;
 - (b) a registered structural engineer.
- (2) The notice is not subsidiary legislation.
- (3) In this section—

authorized person (認可人士) and *registered structural engineer* (註冊結構工程師) have the meanings given by section 2(1) of the Buildings Ordinance (Cap. 123).

87. Offence of providing false or misleading information

- (1) A person commits an offence if the person provides information that is false or misleading in a material particular in, or in connection with, an application the person makes under this Ordinance in respect of a columbarium.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 3 and to imprisonment for 6 months.

88. Liability of directors, partners, etc. for offences

- (1) If—
- (a) a body corporate commits an offence under this Ordinance; and
 - (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate,
- the director, manager, secretary or other similar officer commits the like offence.
- (2) If—
- (a) a partner in a partnership commits an offence under this Ordinance; and

- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other partner in the partnership or any other person concerned in the management of the partnership,

the other partner or the other person concerned in the management of the partnership commits the like offence.

- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

89. Time limit for prosecution

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence, other than an indictable offence, under this Ordinance within 12 months after the offence is discovered by, or comes to the notice of, the Licensing Board or the Director.

90. Fees

- (1) The fee for an item specified in column 2 of Schedule 6 is payable at the time specified in column 3 of that Schedule in the amount specified in column 4 of that Schedule opposite to that item.
- (2) A fee paid under this section is not refundable.

91. Amendment of Schedules

- (1) The Licensing Board may, with the approval of the Secretary, by notice published in the Gazette, amend Schedule 3 or 4 or Part 2 of Schedule 5.

- (2) The Secretary may, by notice published in the Gazette, amend Schedule 6 or 7.

92. Regulations

- (1) The Secretary may make regulations—
- (a) providing for any matter required or permitted to be prescribed under this Ordinance; or
 - (b) providing for matters that are necessary or expedient to give effect to the provisions of this Ordinance.
- (2) Without limiting subsection (1), the Secretary may make regulations—
- (a) providing for principles, procedures, guidelines, standards or requirements about the operation and management of a columbarium, including additional duties required of an applicant for or holder of a specified instrument;
 - (b) restricting any subletting or assignment of the columbarium premises, or any part of it, in a manner that is inconsistent with the operation of a columbarium;
 - (c) requiring that the requirements for enforceability of an agreement for the sale of an interment right under section 41 be met in respect of each agreement for the sale of an interment right in respect of the columbarium;
 - (d) providing for measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals;
 - (e) providing for measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of a columbarium; and

- (f) providing for any principles, procedures, guidelines, standards or requirements relevant to any provisions of this Ordinance.
- (3) Regulations made under this Ordinance may—
 - (a) be of general application or make different provisions for different cases or classes of cases;
 - (b) contain any incidental, consequential, evidential, transitional, saving or supplementary provisions that the Secretary thinks fit.
- (4) Regulations under this section may provide that a contravention of a regulation is an offence and may prescribe penalties for it of a fine not exceeding level 6 and imprisonment not exceeding 2 years.

93. **Licensing Board not servant or agent of Government**

The Licensing Board is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

94. **Immunity from civil liability**

- (1) A person to whom this subsection applies is not civilly liable for an act done or omitted to be done by the person in good faith—
 - (a) in performing or purportedly performing a function of the person under this Ordinance; or
 - (b) in exercising or purportedly exercising a power of the person under this Ordinance.
- (2) Subsection (1) applies to—
 - (a) a member of the Licensing Board;
 - (b) a member of a committee of the Licensing Board;

- (c) an officer of the Licensing Board; and
- (d) the Director, an authorized officer or any other public officer.
- (3) An act referred to in subsection (1) includes taking possession of, breaking open, seizing, removing, impounding or disposing of property.
- (4) Subsection (1) does not in any way affect any liability of the Government in respect of an act or omission of a public officer.

95. **Transitionals**

The transitional provisions as set out in Schedule 7 have effect.

Part 10**Implications on Land (Miscellaneous Provisions)
Ordinance, Town Planning Ordinance, Buildings
Ordinance and other Ordinances****96. Other Ordinances, law and liabilities not affected, unless expressly provided otherwise**

- (1) Subsections (2), (3) and (4) apply, except as expressly provided to the contrary in this Part.
- (2) The requirements under this Ordinance are in addition to and do not derogate from any requirement under any other Ordinance or law.
- (3) A specified instrument—
 - (a) has effect solely for the purposes of this Ordinance;
 - (b) does not, to any extent, negate liability of any description for any contravention of any other Ordinance or law; and
 - (c) does not, to any extent, negate liability of any description arising—
 - (i) under an instrument affecting land, whether or not the Government is a party to the instrument;
 - (ii) from an agreement, whether or not the Government is a party to the agreement;
 - (iii) in tort, whether or not the tort is committed against the Government; or
 - (iv) in any other manner.
- (4) That any function is conferred on or performed by a person under this Ordinance does not, to any extent, affect any

function conferred on or performed by a person under any other Ordinance or law.

97. Effect of Land (Miscellaneous Provisions) Ordinance modified

- (1) Section 6(1), (2) and (3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) does not apply in respect of the unlawful occupation of unleased land during a period if—
 - (a) the occupation is necessary for, or ancillary to, the operation of a pre-Bill columbarium; and
 - (b) during the period—
 - (i) the instrument-related condition is met in the manner specified in subsection (2), (3) or (5); and
 - (ii) the extent of breach condition specified in subsection (6) is met.
- (2) The instrument-related condition is met if a temporary suspension of liability is in force in respect of the pre-Bill columbarium.
- (3) The instrument-related condition is met if an application for the issue of a temporary suspension of liability in respect of the pre-Bill columbarium—
 - (a) has been made but has not been determined; or
 - (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.
- (4) Subsection (3) does not apply if, before the making of the application and in respect of the unleased land referred to in subsection (1), or any part of it—
 - (a) a notice—
 - (i) has been given under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28),

- whether against the applicant or any other person; and
- (ii) has not been complied with or withdrawn; or
- (b) a power has been exercised under section 6(2) or (3) of that Ordinance, whether against the applicant or any other person.
- (5) The instrument-related condition is met if an application for the extension of a temporary suspension of liability in respect of the pre-Bill columbarium—
- (a) has been made but has not been determined; or
- (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.
- (6) The extent of breach condition is that any unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the pre-Bill columbarium is limited to—
- (a) if a temporary suspension of liability is issued in respect of the columbarium—the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium, as shown in the approved plans annexed to the temporary suspension of liability; or
- (b) in any other case—the extent of unlawful occupation of unleased land as was necessary for, or ancillary to, the operation of the columbarium as at the Bill announcement time.
- (7) This section does not affect any civil liability in respect of the unlawful occupation of unleased land.
- (8) Subsection (7) does not affect the operation of section 96.

98. Effect of Town Planning Ordinance modified

- (1) Sections 20(8), 21(2) and 23(1) and (2) of the Town Planning Ordinance (Cap. 131) do not apply in respect of an unauthorized development undertaken or continued on any land during a period if—
- (a) the development is necessary for, or ancillary to, the operation of a pre-Bill columbarium; and
- (b) the condition specified in subsection (2), (3) or (5) is met during the period.
- (2) The condition is that either of the following instruments is in force in respect of the pre-Bill columbarium—
- (a) an exemption;
- (b) a temporary suspension of liability.
- (3) The condition is that an application for the issue of an exemption, or the issue of a temporary suspension of liability, in respect of the pre-Bill columbarium—
- (a) has been made but has not been determined; or
- (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.
- (4) Subsection (3) does not apply if, before the making of the application and in respect of an unauthorized development undertaken or continued on the land referred to in subsection (1), or any part of it—
- (a) proceedings for the prosecution of an offence under section 20(8) or 21(2) of the Town Planning Ordinance (Cap. 131) have been instituted, whether against the applicant or any other person; or
- (b) a notice—

- (i) has been served under section 23(1) or (2) of that Ordinance, whether on the applicant or any other person; and
 - (ii) has not been complied with or withdrawn.
- (5) The condition is that an application for the renewal of an exemption, or the extension of a temporary suspension of liability, in respect of the pre-Bill columbarium—
 - (a) has been made but has not been determined; or
 - (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.

99. Effect of Buildings Ordinance modified

- (1) Sections 24(1) and 24C(1) of the Buildings Ordinance (Cap. 123) do not apply in respect of any non-compliant structures existing during a period merely because the structures have been completed or carried out in contravention of section 14(1) of that Ordinance if—
 - (a) the structures are necessary for, or ancillary to, the operation of a pre-Bill columbarium; and
 - (b) during the period—
 - (i) the instrument-related condition is met in the manner specified in subsection (2), (3) or (5); and
 - (ii) the extent of breach condition specified in subsection (6) is met.
- (2) The instrument-related condition is met if a specified instrument is in force in respect of the pre-Bill columbarium.
- (3) The instrument-related condition is met if an application for the issue of a specified instrument in respect of the pre-Bill columbarium—

- (a) has been made but has not been determined; or
 - (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.
- (4) Subsection (3) does not apply if, before the making of the application, an order or notice—
 - (a) has been served under section 24(1) or 24C(1) of the Buildings Ordinance (Cap. 123) in respect of the non-compliant structures referred to in subsection (1), or any part of them, whether on the applicant or any other person; and
 - (b) has not been complied with or withdrawn.
- (5) The instrument-related condition is met if an application for the renewal of a licence or exemption, or the extension of a temporary suspension of liability, in respect of the pre-Bill columbarium—
 - (a) has been made but has not been determined; or
 - (b) has been refused, which refusal has been appealed against and is suspended from operation under section 35.
- (6) The extent of breach condition is that the non-compliant structures necessary for, or ancillary to, the operation of the pre-Bill columbarium are limited to—
 - (a) if a specified instrument is issued in respect of the columbarium—the structures certifiable for a pre-Bill columbarium in, on or at the columbarium, as shown in the approved plans annexed to the instrument; or
 - (b) in any other case—the structures certifiable for a pre-Bill columbarium in, on or at the columbarium as at the Bill announcement time.

100. Provisions inapplicable because of section 97, 98 or 99 to resume application

- (1) Even if, because of the operation of section 97, 98 or 99, any provision of an Ordinance referred to in that section does not apply in respect of a pre-Bill columbarium during a specified period, that fact does not in any way affect the application of the provision in respect of the columbarium after the period.
 - (2) In subsection (1), a specified period means the period during which the conditions referred to in section 97(1), 98(1) or 99(1) (as the case requires) are met in respect of the pre-Bill columbarium.
 - (3) Subsection (1) does not affect the operation of section 96.
-

Part 11**Related and Consequential Amendments****Division 1—Amendment to Land (Miscellaneous Provisions) Ordinance****101. Land (Miscellaneous Provisions) Ordinance amended**

The Land (Miscellaneous Provisions) Ordinance (Cap. 28) is amended as set out in this Division.

102. Section 6 amended (unlawful occupation of unleased land)

After section 6(5)—

Add

“(6) Subsections (1), (2) and (3) have effect subject to section 97 of the Private Columbaria Ordinance (of 2014).”.

Division 2—Amendments to Buildings Ordinance**103. Buildings Ordinance amended**

The Buildings Ordinance (Cap. 123) is amended as set out in this Division.

104. Section 24 amended (order for demolition, removal, or alteration of building, building works (other than minor works commenced under simplified requirements) or street works)

At the end of section 24—

Add

“(6) Subsection (1) has effect subject to section 99 of the Private Columbaria Ordinance (of 2014).”.

105. Section 24C amended (notice for demolition or alteration of building or building works)

After section 24C(6)—

Add

“(7) Subsection (1) has effect subject to section 99 of the Private Columbaria Ordinance (of 2014).”.

Division 3—Amendments to Town Planning Ordinance**106. Town Planning Ordinance amended**

The Town Planning Ordinance (Cap. 131) is amended as set out in this Division.

107. Section 20 amended (development permission area plans)

After section 20(8)—

Add

“(9) Subsection (8) has effect subject to section 98 of the Private Columbaria Ordinance (of 2014).”.

108. Section 21 amended (offence of unauthorized development)

After section 21(2)—

Add

“(3) Subsection (2) has effect subject to section 98 of the Private Columbaria Ordinance (of 2014).”.

109. Section 23 amended (enforcement on land within a development permission area)

After section 23(12)—

Add

“(13) Subsections (1) and (2) have effect subject to section 98 of the Private Columbaria Ordinance (of 2014).”.

Division 4—Amendments to Public Health and Municipal Services Ordinance**110. Public Health and Municipal Services Ordinance amended**

The Public Health and Municipal Services Ordinance (Cap. 132) is amended as set out in this Division.

111. Section 113 amended (public and private cemeteries)

(1) After section 113(2)—

Add

“(2AA) A columbarium that is under the management and control of a person specified in Part 2A of the Fifth Schedule is a private cemetery.”.

(2) Section 113(3), after “Schedule”—

Add

“(except its Part 2A)”.

(3) After section 113(3)—

Add

“(4) The Chief Executive in Council may by order amend, or add a person to, or delete a person from, Part 2A of the Fifth Schedule.”.

112. Section 113A added

After section 113—

Add

“113A. Columbarium managed and controlled by person specified in Part 2A of Fifth Schedule

(1) In this section—

specified person (指明人士) means a person specified in Part 2A of the Fifth Schedule.

(2) No ashes may be interred in a columbarium that is under the management and control of a specified person, nor may an interment right in respect of the columbarium be sold, unless—

(a) the specified person has provided to the Authority information on the name and location of the columbarium; and

(b) at least 6 months have lapsed since the information was so provided.

(3) The Authority must, by notice in the Gazette, publish the information within 3 months after receiving it.

(4) The notice is not subsidiary legislation.

(5) A specified person must provide to the Authority, on request, a list setting out the name, location and other particulars of each columbarium that is under the specified person's management and control.

(6) This section does not apply to a columbarium in a private cemetery specified in Part 2 of the Fifth Schedule.”.

113. Third Schedule amended (designated authorities)

Third Schedule, after the entry relating to section 112A—

Add

“113A Secretary for Food and Health”.

114. Fifth Schedule amended (cemeteries, crematoria and gardens of remembrance)

(1) Fifth Schedule—

Repeal

“[ss. 2, 113”

Substitute

“[ss. 2, 113, 113A”.

(2) Fifth Schedule, after Part 2—

Add**“Part 2A****Persons Specified for Purposes of Section 113A
(so that Columbaria under the Persons’
Management and Control are Private Cemeteries)**

1. The Board of Management of the Chinese Permanent Cemeteries, established under the Chinese Permanent Cemeteries Ordinance (Cap. 1112)”.

Division 5—Amendment to Private Cemeteries Regulation**115. Private Cemeteries Regulation amended**

The Private Cemeteries Regulation (Cap. 132 sub. leg. BF) is amended as set out in this Division.

116. Section 2 amended (interpretation)

Section 2—

Repeal the definition of *private cemetery***Substitute**

“*private cemetery* (私營墳場) means—

- (a) a cemetery specified in Part 2 of the Fifth Schedule to the Ordinance; or
- (b) a columbarium that is under the management and control of a person specified in Part 2A of that Schedule.”.

Division 6—Amendment to Prevention of Bribery Ordinance

117. Prevention of Bribery Ordinance amended

The Prevention of Bribery Ordinance (Cap. 201) is amended as set out in this Division.

118. Schedule 1 amended (public bodies)

Schedule 1—

Add

“128. Private Columbaria Licensing Board established under section 6 of the Private Columbaria Ordinance (of 2014).

129. Private Columbaria Appeal Board established under section 71 of the Private Columbaria Ordinance (of 2014).”.

Schedule 1

[s. 6]

Private Columbaria Licensing Board

1. Constitution

- (1) The Licensing Board consists of not less than 7 members and not more than 9 members appointed by the Chief Executive. Any one or more of the members may be public officers.
- (2) The Chief Executive may appoint a member of the Licensing Board, either ex officio or personally, as the Chairperson of the Licensing Board.
- (3) The Chief Executive may appoint another member of the Licensing Board as the Deputy Chairperson of the Licensing Board.
- (4) Subject to this Schedule, a member of the Licensing Board—
 - (a) is to hold and vacate office in accordance with the member’s terms of appointment; and
 - (b) on ceasing to be a member, is eligible for reappointment.
- (5) An appointment under this section must be notified in the Gazette.

2. Staff

- (1) The Secretary may appoint a secretary to the Licensing Board.
- (2) The Secretary may appoint a legal adviser to the Licensing Board.
- (3) The legal adviser may be present at any meeting, hearing or deliberation of the Licensing Board to advise the Licensing Board on legal matters.

- (4) The Secretary may appoint other staff to the Licensing Board as the Secretary considers necessary.

3. Committees

- (1) The Licensing Board may appoint committees to perform any of the functions of the Licensing Board.
- (2) The Licensing Board—
- (a) may appoint either the Chairperson or Deputy Chairperson of the Licensing Board to be the Chairperson of a committee; and
 - (b) may appoint a member of the Licensing Board to be a member of a committee.

4. Meetings of Licensing Board and committees

- (1) The Licensing Board or a committee may determine its practice and procedures at its meetings.
- (2) A quorum at a meeting of the Licensing Board is formed by 4 members of the Licensing Board, one of whom must be—
- (a) the Chairperson of the Licensing Board; or
 - (b) if the Chairperson is absent or is otherwise unable to act, the Deputy Chairperson of the Licensing Board.
- (3) One-third of the members of a committee, one of whom must be the Chairperson of the committee, are to form a quorum at a meeting of the committee.
- (4) The Chairperson of the Licensing Board or a committee (as the case requires) is to have a casting vote in case of an equality of votes for and against a motion at a meeting of the Licensing Board or committee.
- (5) Business of the Licensing Board or any committee may be transacted by way of meetings or circulation of papers.

- (6) A meeting of the Licensing Board or a committee is to be open to the public unless the Licensing Board or committee determines that there is a good reason for it to be held in private.
- (7) If a member of the Licensing Board or a committee is disqualified from taking part in a decision or deliberation in respect of a matter under section 5 of this Schedule, the member must be disregarded for the purposes of constituting the quorum for deciding or deliberating on that matter.

5. Disclosure of interests of member

If a member of the Licensing Board or a committee has a pecuniary interest, whether direct or indirect, in any matter under consideration at a meeting of the Licensing Board or committee (as the case requires), the member—

- (a) must, before or as soon as practicable after the meeting begins, disclose to the Licensing Board or committee (as the case requires) the nature of the interest;
- (b) must withdraw from the meeting while the Licensing Board or committee (as the case requires) is considering the matter if so required by the meeting; and
- (c) must not participate in any deliberation or be involved in any decision regarding the matter.

Schedule 2

[ss. 2, 14, 15, 21
& 22]

Requirements Relevant to Eligibility for, or Conditions Imposed on, Specified Instruments

Part 1

General Provisions

1. Compliance with land-related requirements

A columbarium complies with the land-related requirements only if—

- (a) the operation of the columbarium does not involve unlawful occupation of unleased land; and
- (b) the lease, licence or other instrument under which the land on which the columbarium is situated is held from the Government, is complied with.

2. Compliance with planning-related requirements

A columbarium complies with the planning-related requirements only if the columbarium complies with every requirement under the Town Planning Ordinance (Cap. 131).

3. Compliance with building-related requirements

(1) A columbarium complies with the building-related requirements only if—

- (a) the columbarium complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap.

123) and every other requirement specified by the Licensing Board including requirements relating to design, construction, structure, fire precautions, health, sanitation or safety; or

(b) the following requirements are met in respect of every building or building works in, on or at the columbarium—

- (i) the building or building works form the whole, or a part, of a certifiable building;
- (ii) the certifiable building is certified to be structurally safe by a qualified professional, to the satisfaction of the Licensing Board;
- (iii) any works that the Licensing Board may require in respect of the certifiable building have been carried out in accordance with the requirements that the Licensing Board thinks fit to impose.

(2) The specification of requirements under subsection (1)(a) is not subsidiary legislation.

(3) In this section—

certifiable building (可核證建築物) means a building to which the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) do not apply because it is—

- (a) an NT small building that came into existence on or after 16 October 1987 and in respect of which a certificate of exemption has been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
- (b) an NT small building that—
 - (i) came into existence on or after 1 January 1961 and before 16 October 1987; and

- (ii) complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection; or
 - (c) a pre-1961 NT building.
- (4) For the purposes of this section—
- New Territories** (新界) does not include New Kowloon;
- NT small building** (新界小型建築物) means a building in the New Territories that is a small building within the meaning of section 5 of this Schedule;
- pre-1961 NT building** (1961 年前新界建築物) means 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;
- repealed Buildings Ordinance (Application to the New Territories) Ordinance** (已廢除的《建築物條例(新界適用)條例》) means the Buildings Ordinance (Application to the New Territories) Ordinance that came into operation on 1 January 1961 and was repealed and replaced by the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

Part 2

Special Provisions for Pre-Bill Columbaria

4. **Requirements applicable to structures certifiable for a pre-Bill columbarium**
- (1) In this section—

- non-compliant structures** (違規構築物) means any building or building works that do not meet the conditions in section 3(1) of this Schedule;
- structures certifiable for a pre-Bill columbarium** (可就草案前骨灰安置所核證的構築物) means non-compliant structures existing immediately before the Bill announcement time that—
- (a) 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
 - (b) 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 (as defined by section 3(4) of this Schedule)—
 - (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).
- (2) In paragraph (b) of the definition of *structures certifiable for a pre-Bill columbarium* in subsection (1), a building—
- (a) 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
- (b) 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 that Ordinance.
- (3) Requirements applicable to structures certifiable for a pre-Bill columbarium for the purposes of sections 14(2) and 15(1)(g)(ii) of this Ordinance are—
- (a) a qualified professional must certify, to the satisfaction of the Licensing Board, that—
- (i) if paragraph (b)(i) of the definition of *structures certifiable for a pre-Bill columbarium* in subsection (1) applies—the on-grade outdoor structures with niches are structurally safe; or
- (ii) if paragraph (b)(ii), (iii) or (iv) of that definition applies—the building referred to in that paragraph is structurally safe;
- (b) any works that the Licensing Board may require in respect of on-grade outdoor structures with niches or the building (as the case requires) have been carried out in

- accordance with the requirements that the Licensing Board thinks fit to impose.
- (4) For the purposes of this section—
- ground storey* (地面樓層) means—
- (a) the storey in which an entrance from a street to the building is situated; or
- (b) if—
- (i) a building fronts or abuts on more than one street; and
- (ii) due to a difference in street levels there are 2 or more entrances serving different streets and situated in different storeys,
- each of those storeys.

Part 3

Interpretative Provisions

5. Meaning of *small building*

- (1) For the purposes of sections 3 and 4 of this Schedule—
- small building* (小型建築物) means a building that meets the descriptions in subsection (2).
- (2) The building is of not more than 3 storeys and is—
- (a) of a height of more than 7.62 m but not more than 8.23 m and with a roofed-over area not exceeding 65.03 m², and in respect of which each load-bearing wall is of a thickness as follows—
- (i) in the case of a load-bearing reinforced concrete wall, not less than 175 mm;

- (ii) in the case of a load-bearing brick wall of the lowest storey, not less than 340 mm;
- (iii) in the case of a load-bearing brick wall of any higher storey, not less than 225 mm; or
- (b) of a height of not more than 7.62 m with a roofed-over area not exceeding 65.03 m².

6. **Meaning of *height*, *roofed-over area*, *building*, etc. in section 5 of this Schedule**

- (1) This section applies for the purposes of the construction of section 5 of this Schedule.
- (2) ***Height*** (高度) means the perpendicular height of the building measured from the level of its lowest point at ground level to the level of the highest point of its roof.
- (3) In determining the highest point of a roof, no account is to be taken of—
 - (a) 1 stairhood if it has a roof area of not more than 7.44 m², a height of not more than 2.14 m and is erected and used solely to provide protection from rain and sun for a stairway used to gain access to the roof of the building;
 - (b) any parapet on the roof if the height is not more than 1.22 m; or
 - (c) 1 water storage tank if it has a roof area of not more than 2 m², a height of not more than 1.22 m and is installed at any point on the roof other than on a stairhood.
- (4) ***Roofed-over area*** (有蓋面積) means the area of a building enclosed within the exterior faces of the external walls (which includes any party wall) of that building together with the area of any balcony, stairway, verandah, porch, canopy or any other projection from the building. For the purpose of

calculating the roofed-over area of any building, the area of not more than 2 balconies and 1 canopy is to be excluded if—

- (a) they all project from the same side of the building for a distance of not more than 1.22 m; and
 - (b) they are not enclosed.
- (5) If a building is divided into separate units by means of one or more party walls, each such unit is to be considered to be a separate building for the purposes of section 5 of this Schedule, if any such party wall meets the following descriptions—
- (a) if that building is of a height of not more than 7.62 m, is a load-bearing brick wall of not less than 225 mm thick;
 - (b) if that building is of a height of more than 7.62 m but not more than 8.23 m—
 - (i) for the lowest storey, is a load-bearing brick wall of not less than 340 mm thick; and
 - (ii) for any higher storey, is a load-bearing brick wall of not less than 225 mm thick; or
 - (c) is a load-bearing reinforced concrete wall of not less than 175 mm thick.

7. **Meaning of undefined word or phrase**

For the purposes of this Part, a word or phrase not defined in this Part has the meaning (if any) given by—

- (a) section 2 of the Buildings Ordinance (Cap. 123); or
- (b) section 2 of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

Schedule 3

[ss. 37 & 91]

Further Provisions on Applications Relating to Specified Instruments

1. Applications to which Schedule 3 applies

This Schedule applies to—

- (a) an application for a specified instrument under section 11 of this Ordinance;
- (b) an application for the transfer of a specified instrument under section 32 of this Ordinance; and
- (c) an application for varying a condition of a specified instrument under section 34 of this Ordinance.

2. Who may make application

- (1) An application to which this Schedule applies may only be made by a person who operates, keeps, manages or in any other way has control of a columbarium.
- (2) The application must be signed—
 - (a) if the applicant is a natural person—by the applicant;
 - (b) if the applicant is a partnership—by a partner;
 - (c) if the applicant is a body corporate—by a director or other officer concerned in the management of the body corporate.

3. Certification as to building safety, fire safety, etc.

For the purposes of an application to which this Schedule applies, the Licensing Board may require—

- (a) certification as to building safety and compliance with the prevailing building safety and fire safety standards as well as structural, drainage and sewage requirements by a qualified professional; and
- (b) certificates of fire service installations and equipment to prove that they are in efficient working order.

4. Publication of licence applications and consideration of public views

- (1) If the Licensing Board considers it appropriate to do so in relation to an application for the issue of a licence in respect of a columbarium, the Licensing Board may do any one or more of the following—
 - (a) publishing a notice of the application through the internet or a similar electronic network or in any other manner that the Licensing Board considers appropriate;
 - (b) causing a notice of the application to be published at the expense of the applicant in an English language newspaper and a Chinese language newspaper in general circulation in Hong Kong determined by the Licensing Board;
 - (c) posting a notice of the application at a conspicuous place outside the columbarium.
- (2) A notice published under subsection (1) must state the place or places where the particulars of the application may be inspected.

5. Notification of decision about application for specified instrument

On determining an application for a specified instrument, the Licensing Board must notify the applicant of its decision, in writing, setting out—

- (a) the decision; and
 - (b) (if the application is refused) the reasons for the refusal.
-

Schedule 4

[ss. 2, 40, 41 &
91]

**Prescribed Information, Recommendations and
Essential Terms in Agreement for Sale of Interment
Right**

Part 1

Information and Recommendations

1. An agreement for the sale of an interment right must set out the following information and recommendations—
 - (a) information about the seller's licence (licence number and the validity period of the licence);
 - (b) information about ownership, tenancy, encumbrances and restrictions on use and disposition—
 - (i) whether the seller is the only owner, one or 2 or more joint owners or co-owners of the columbarium premises and, if so, the particulars of the seller's interest in the columbarium premises;
 - (ii) whether the seller occupies the columbarium premises under a tenancy or lease or any other capacity and, if so, the particulars of the tenancy, lease or right to occupy including the date on which the tenancy, lease or right is to end;
 - (iii) whether mortgage or any other encumbrance subsists in the columbarium premises that may jeopardize the purchaser's interest;

- (iv) whether the columbarium premises are prevented, by an instrument registered in the Land Registry, from being used or disposed of in a manner that may jeopardize the purchaser's interest and, if so, particulars of the instrument;
- (c) the term for which the land on which the columbarium is situated is held from the Government under a lease, licence or any other instrument;
- (d) information about financial risks involved with lump sum prepayment for an interment right for a long period;
- (e) a recommendation that the purchaser should carefully consider whether the purchaser's interest is protected against the financial risks;
- (f) 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.

Part 2

Essential Terms

2. An agreement for the sale of an interment right must set out—
 - (a) the names of the parties to the agreement;
 - (b) a full description of the interment right sold—
 - (i) if the interment right relates to a niche—the particulars of the niche (including the serial number, location and dimensions of the niche);
 - (ii) if the interment right relates to a niche—the nature of the right or interest that the interment right comprises, whether it is—

- (A) an interest in land;
- (B) a right under a tenancy or service agreement to use the niche; or
- (C) a right or interest of any other nature;
- (iii) particulars of any other services to be provided under the agreement;
- (iv) particulars of the duration of the interment right; or
- (v) particulars about any right of the purchaser to renew the interment right for another term, on the expiry of the term under the agreement;
- (c) a comprehensive list of all fees, charges or other sums payable by the purchaser (whether recurrent or non-recurrent), specifying—
 - (i) the precise purposes for which the fees, charges and sums are payable under the agreement;
 - (ii) the amounts of the fees, charges and sums and the mechanism for any future revision of the fees, charges and sums; and
 - (iii) payment methods (whether periodic payments during the period for which the interment right lasts, or payment by instalments payable on the commencement of each validity period of the seller's licence, or any other payment method);
- (d) without limiting paragraph (c) and if the interment right includes a right to renew the interment right on the seller being granted a renewed term of the lease, licence or other instrument 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—
- (i) arrangements for naming a dedicated person and effecting changes of the dedicated person;
 - (ii) arrangements for appointing and replacing authorized representatives;
 - (iii) the circumstances and the manner in which the operation of the agreement may be temporarily suspended or the agreement may be terminated otherwise than on the expiry of the term of the interment right; and
- (f) the arrangements for handling interred ashes in the event of—
- (i) the temporary suspension of operation of the agreement; or
 - (ii) the termination of the agreement (whether on expiry of the term of the interment right or not).
-

Schedule 5

[ss. 2, 4, 8, 38,
55, 62, 64, 65,
66, 69 & 91]

Occupation Order and Ash Disposal Procedures**Part 1****Occupation Order****1. Interpretation of Part 1 of Schedule 5**

In this Part—

instrument holder (文書持有人) means a person to whom a specified instrument has been issued, whether the instrument is still in force, has expired without being renewed or extended or is revoked or suspended;

specified officer (指明人員) means the Director, an authorized officer or a public officer.

2. Making of occupation order

- (1) The court may not make an occupation order under section 65 of this Ordinance in respect of any premises that are a columbarium unless, at least 30 days before the hearing of the application—
- (a) the Director or an authorized officer—
 - (i) has given a notice of the hearing of the application—
 - (A) to the owner of the premises; and
 - (B) to the instrument holder (if any) in respect of the columbarium; and

- (ii) has posted a notice of the hearing at a conspicuous place outside the columbarium; and
 - (b) each of the notices states the date, time and venue of the hearing and invites any person who has an interest in the application to attend the hearing and make submission to the court about the application.
- (2) If an occupation order is made in respect of a columbarium, the Director or an authorized officer must do both of the following within 7 days after the day the order is made—
 - (a) give notice of the order to every person who made a submission under subsection (1)(b) and advise the person of the person's right of appeal;
 - (b) post a copy of the order at a conspicuous place outside the columbarium.
- (3) Unless there is an appeal against the order, an occupation order takes effect on the latest of—
 - (a) 7 days after the last day on which notice was given in respect of the order under subsection (2)(a);
 - (b) 7 days after a copy of the order was posted under subsection (2)(b); or
 - (c) the day set out in the order.
- (4) A person who, without lawful authority or reasonable excuse, removes or defaces a copy of an occupation order posted under subsection (2)(b) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

3. Restriction on entry into premises subject to occupation order

- (1) Subject to subsection (3), when an occupation order in respect of any columbarium comes into force, a specified officer may

- lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the columbarium.
- (2) Subject to subsection (4), a person may not enter or remain on any columbarium subject to an occupation order unless the person is—
 - (a) a specified officer acting in the course of his or her duty; or
 - (b) a specified officer's agent acting in connection with performance of the duty.
- (3) An occupation order does not operate—
 - (a) if, on the date of application for the order, any part of the columbarium is used for residential purpose—to prevent that part of the columbarium from being so used; or
 - (b) to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.
- (4) While a columbarium is subject to an occupation order, the specified officer may—
 - (a) permit, in writing, any person to enter and remain on the columbarium for a purpose specified in the permit;
 - (b) impose on the permit conditions that the specified officer thinks fit;
 - (c) revoke the permit if the specified officer thinks that the purpose for which the permit was granted no longer exists or any condition imposed under paragraph (b) has been breached;
 - (d) request any person found on the columbarium to leave, and, if the person refuses to leave, remove the person from the columbarium, with any assistance of police officers and using any force that is reasonably necessary.

- (5) A person who, without lawful authority or reasonable excuse, breaks or interferes with any lock or seal made under subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (6) A person who, without lawful authority or reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 12 months.

4. Variation of occupation order

- (1) The owner of the premises subject to an occupation order may apply to the court for a variation, or the cancellation, of the order.
- (2) The applicant must serve a copy of the application on the Director, who is entitled to be heard on the application.

Part 2

Ash Disposal Procedures

5. Interpretation of Part 2 of Schedule 5

- (1) In this Part—
 - (a) a reference to arranging for the return of the ashes interred in a columbarium on-site means making available the ashes for return, to an eligible claimant to whom the ashes relate, at the columbarium at reasonable hours during a period (which period is referred to as an *on-site claim period*); and
 - (b) a reference to arranging for the return of the ashes interred in a columbarium off-site means making available the ashes for return, to an eligible claimant to whom the ashes relate, at a place other than the

columbarium at reasonable hours during a period (which place and period are referred to as an *off-site claim venue* and *off-site claim period* respectively).

- (2) In this Part—

eligible claimant (合資格申索人), in relation to the ashes of a deceased person, any plaque or any other related items interred together with the ashes, means—

- (a) unless paragraph (b) applies, a prescribed claimant;
- (b) the owner of the item or ashes (as the case requires) as determined in accordance with any law applicable to item or ashes (as the case requires) apart from section 9(3), (4), (5) and (6) of this Schedule;

instrument holder (文書持有人) means a person to whom a specified instrument has been issued, whether the instrument is still in force, has expired without being renewed or extended or is revoked or suspended;

overall claim period (整體申索期間), in relation to a columbarium in respect of which the prescribed ash disposal procedures are carried out, means—

- (a) if section 6(2) or (3) of this Schedule applies—the on-site claim period; or
- (b) if section 6(4) of this Schedule applies—the aggregate of the on-site claim period and the off-site claim period;

personal representative (遺產代理人) means—

- (a) a personal representative within the meaning of section 2 of the Probate and Administration Ordinance (Cap. 10); or
- (b) if the Official Administrator gets in and administers an estate in a summary manner under section 15 of that Ordinance—the Official Administrator;

prescribed claimant (訂明申索人), in relation to the ashes of a deceased person, means an authorized representative, personal representative or relative;

relative (親屬), in relation to the ashes of a deceased person, means—

- (a) the deceased's spouse;
- (b) the deceased's father, mother, grandfather or grandmother (whether natural or adoptive);
- (c) the deceased's step-father, step-mother, step-grandfather or step-grandmother;
- (d) the deceased's father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the deceased's spouse;
- (e) the deceased's grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the deceased's spouse;
- (f) the deceased's son, daughter, grandson or granddaughter (whether natural or adoptive);
- (g) the deceased's step-son, step-daughter, step-grandson or step-granddaughter;
- (h) the deceased's son-in-law or daughter-in-law who is the spouse of the deceased's natural child, adoptive child or step-child;
- (i) the deceased's grandson-in-law or granddaughter-in-law who is the spouse of the deceased's natural grandchild, adoptive grandchild or step-grandchild;
- (j) the deceased's brother or sister (whether of full or half blood or by virtue of adoption);
- (k) the brother or sister (whether of full or half blood or by virtue of adoption) of the deceased's spouse;

- (l) the deceased's step-brother or step-sister;
- (m) the step-brother or step-sister of the deceased's spouse;
- (n) the deceased's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);
- (o) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the deceased's spouse; or
- (p) the spouse of any person mentioned in paragraph (j), (k), (l), (m), (n) or (o).

6. Prescribed ash disposal procedures

- (1) A person who is required under section 58, 62 or 64(2) or (3) of this Ordinance to carry out the prescribed ash disposal procedures in respect of a columbarium (*columbarium A*) does so if the person—
 - (a) gives a commencement of ash disposal notice stating the person's intention—
 - (i) to handle the ashes interred in the columbarium in the specified manner within the meaning of subsection (2), (3) or (4); and
 - (ii) to handle claims for the return of ashes in accordance with section 9 of this Schedule;
 - (b) handles the ashes and claims in accordance with the intention stated in the notice;
 - (c) complies with the requirement under section 11 of this Schedule for the delivery of a record of disinterment to the Director.
- (2) The person handles the ashes in the specified manner for the purposes of subsection (1)(a)(i) if the person—

- (a) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 12 months; and
 - (b) delivers to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant.
- (3) The person handles the ashes in the specified manner for the purposes of subsection (1)(a)(i) if the person—
- (a) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 2 months; and
 - (b) on the expiry of the on-site claim period—
 - (i) arranges for the removal from columbarium A of the ashes that are not returned to an eligible claimant; and
 - (ii) (whether or not after arranging also for the return of ashes off-site, allowing for an off-site claim period) arranges for the reinterment of the ashes—
 - (A) in a columbarium (*columbarium B*) in respect of which a licence is in force or to which this Ordinance does not apply because of section 4 of this Ordinance; and
 - (B) on terms no less favourable than the terms governing interment of the ashes in columbarium A.
- (4) The person handles the ashes in the specified manner for the purposes of subsection (1)(a)(i) if the person—
- (a) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 2 months;
 - (b) on the expiry of the on-site claim period—

- (i) arranges for the removal from columbarium A of the ashes that are not returned to an eligible claimant; and
 - (ii) arranges for the return of the ashes off-site, allowing for an off-site claim period, where the aggregate of the on-site claim period and the off-site period is at least 12 months; and
- (c) delivers to the Director, on the expiry of the off-site claim period, the ashes that are not returned to an eligible claimant.
- (5) Subsections (2)(b) and (4)(c) have effect subject to section 9(6) and (8) of this Schedule.

7. On-site portion of prescribed ash disposal procedures

- (1) A person who is required under section 64(3) of this Ordinance to carry out the on-site portion of the prescribed ash disposal procedures in respect of a columbarium does so if the person—
- (a) gives a commencement of ash disposal notice;
 - (b) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 2 months, and handles claims for the return of ashes in accordance with section 9 of this Schedule; and
 - (c) delivers to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant.
- (2) Subsection (1)(c) has effect subject to section 9(6) and (8) of this Schedule.

8. Commencement of ash disposal notice

- (1) For the purposes of sections 6(1)(a) and 7(1)(a) of this Schedule, a person who is required to carry out the prescribed ash disposal procedures or the on-site portion of the procedures must before opening sealed niches in the columbarium or otherwise starting to handle the ashes in the columbarium—
 - (a) publish a notice stating the person's intention regarding disposal of the ashes in 3 newspapers (of which 1 must be in English and 1 must be in Chinese) in general circulation in Hong Kong at least once in each of 2 consecutive weeks;
 - (b) post a like notice at a conspicuous place outside the columbarium;
 - (c) serve a like notice on the Licensing Board; and
 - (d) serve a like notice on each specified addressee.
- (2) For ashes interred under an agreement for the sale of an interment right entered into on or after the enactment date, specified addressee means each authorized representative named in the agreement.
- (3) For ashes that do not fall within subsection (2), specified addressee means—
 - (a) if the person giving the notice is an instrument holder—an authorized representative whose name and address are recorded in a record kept by the person under section 43 of this Ordinance; or
 - (b) in any other case—each authorized representative whose name and address can be ascertained on reasonable enquiry.
- (4) A notice required to be published and served under subsection (1) must contain—

- (a) the name and address of the columbarium in respect of which the prescribed ash disposal procedures or the on-site portion of the procedures are to be carried out;
- (b) a statement of the intentions of the person giving the notice with respect to the manner of ash disposal specifying—
 - (i) whether the person is to carry out the prescribed ash disposal procedures or the on-site portion of the procedures;
 - (ii) if the prescribed ash disposal procedures are to be carried out, which of section 6(2), (3) or (4) of this Schedule are the ashes to be handled in accordance with;
 - (iii) the particulars relating to the intended handling of the ashes including—
 - (A) the dates on which the on-site claim period begins and ends;
 - (B) if applicable—the dates on which the off-site claim period begins and ends and the address of the off-site claim venue;
 - (C) if applicable—the date by which the ashes, if not returned to an eligible claimant, are to be reinterred and the address of the columbarium in which the ashes are to be reinterred and the terms of reinterment;
 - (D) if sub-subparagraph (C) does not apply—the date by which the ashes, if not returned to an eligible claimant, are to be delivered to the Director and that the ashes are to be finally disposed of in a manner that the Director thinks fit;

- (c) a statement about the liability for expenses incurred for carrying out the prescribed ash disposal procedures or the on-site portion of the procedures under section 10 of this Schedule;
 - (d) a statement that the carrying out of the prescribed ash disposal procedures or the on-site portion of the procedures does not affect any person's right to compensation under an agreement for the sale of an interment right.
- (5) The particulars specified in the notice must conform to the requirements of section 6(2), (3) or (4) of this Schedule (as the case requires) about the handling of ashes.

9. Handling claims for ashes

- (1) In this section—

ash handler (骨灰處理者), in relation to ashes in respect of which the prescribed ash disposal procedures or the on-site portion of the procedures are being carried out, means the person carrying out the procedures.

- (2) The ashes of a deceased person may only be returned on the expiry of the first 2 months (*the first 2 months*) of the overall claim period.
- (3) On the expiry of the first 2 months, the ash handler must return the ashes of a deceased person—
 - (a) if the ash handler receives only 1 claim for the return of the ashes from a prescribed claimant—to the prescribed claimant; or
 - (b) if the ash handler receives competing claims for the return of the ashes from 2 or more prescribed claimants—

- (i) to the prescribed claimant whose claim has the highest priority under subsection (5); or
 - (ii) if the competing claims are of equal priority—in accordance with subsection (6).
- (4) If, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the ashes of a deceased person from a person who is a prescribed claimant—
- (a) the ash handler must return the ashes to a prescribed claimant who first makes a claim in the remainder of the overall claim period; or
 - (b) if competing claims are received from 2 or more prescribed claimants before the ashes are returned under paragraph (a)—
 - (i) the ash handler must return the ashes to the prescribed claimant whose claim has the highest priority under subsection (5); or
 - (ii) if the competing claims are of equal priority—the ash handler must return the ashes in accordance with subsection (6).
- (5) The following rules apply in determining the priority of competing claims among prescribed claimants for the return of the ashes of a deceased person—
- (a) among competing claims from 2 or more authorized representatives—
 - (i) the order of priority follows that stated in the agreement for the sale of the interment right concerned; or
 - (ii) if no order of priority is stated, the claims have equal priority;
 - (b) an authorized representative's claim has priority over that of a personal representative or relative;

- (c) a personal representative's claim and a relative's claim have equal priority.
- (6) If the ash handler receives competing claims as referred to in subsection (3)(b)(ii) or (4)(b)(ii), the ash handler—
 - (a) must keep the ashes until a prescribed claimant obtains a court order for their return to the prescribed claimant and must return the ashes as ordered; or
 - (b) if no court order is made by the expiry of 12 months after the overall claim period, must deliver the ashes to the Director.
- (7) Subsection (8) applies if—
 - (a) the ash handler is in possession of an item as one related to the ashes of a deceased person; and
 - (b) before the ashes (together with the item) are returned to a prescribed claimant under this section, a person claims to be the owner of the item (the item (together with the ashes, if the person also claims for the return of the ashes) is called *specified item*).
- (8) In the circumstances specified in subsection (7)—
 - (a) subsections (3), (4), (5) and (6) do not apply to the specified item;
 - (b) the court may determine competing claims for the specified item in accordance with any law applicable to it apart from subsections (3), (4), (5) and (6); and
 - (c) the ash handler—
 - (i) must keep the specified item until a person obtains a court order for return of the item to the person and must return the item as ordered; or

- (ii) if no court order is made by the expiry of 12 months after the overall claim period, must deliver the specified item to the Director.

10. **Half share of expenses of ash disposal procedures to be reimbursed**

- (1) The reasonable expenses incurred by a person (*ash handler*) for carrying out the prescribed ash disposal procedures or the on-site portion of the procedures (as the case requires) are to be apportioned equally among the sets of ashes in the columbarium as at the date of the commencement of ash disposal notice.
- (2) Subject to any rights and obligations that may subsist between the parties under an agreement for the sale of an interment right, a person to whom a set of ashes are returned by the ash handler under this Part must on that return pay to the ash handler half of the expenses attributable to that set of ashes.

11. **Record**

- (1) A person who carries out the prescribed ash disposal procedures or the on-site portion of the procedures in respect of a columbarium (*ash handler*) must keep a record of the procedures carried out, which—
 - (a) must be in the specified form; and
 - (b) must contain the information that the Licensing Board requires about ashes and claims handled in carrying out the procedures.
- (2) Subject to subsections (3) and (4), the ash handler, not being the Director, must deliver the record to the Director within 30 days after the expiry of the overall claim period.
- (3) If section 9(6) of this Schedule applies to the ashes of a deceased person, the period within which the ash handler must

deliver the part of the record, relating to the ashes of the deceased person, to the Director is 30 days after the earlier of the following—

- (a) the return of the ashes of the deceased under that section;
 - (b) the expiry of 12 months after the overall claim period.
- (4) If section 9(8) of this Schedule applies to the ashes of a deceased person and any items interred together with the ashes, the period within which the ash handler must deliver the part of the record, relating to the ashes of the deceased person and the items, to the Director is 30 days after the earlier of the following—
- (a) on the claims for the ashes and items being finally disposed of in accordance with the law referred to in that section;
 - (b) the expiry of 12 months after the overall claim period.

12. Further steps to facilitate return of ashes

The Director or an authorized officer may, by notice in writing, require a person required under section 58, 62 or 64(2) or (3) of this Ordinance to carry out the prescribed ash disposal procedures or the on-site portion of the procedures to take any steps that the Director or authorized officer considers necessary to facilitate the return of ashes to their eligible claimants or the reinterment of ashes.

13. Director completing prescribed ash disposal procedure

- (1) Subsections (2) and (3) apply if the Director has taken possession of ashes, in respect of which the prescribed ash disposal procedures have not been completely carried out, whether or not—
 - (a) after a contravention of section 58, 59, 60, 62 or 64(2) or (3) of this Ordinance; or

- (b) after a person has done the following, as the person is required to do under section 64(3) of this Ordinance—
 - (i) has carried out the on-site portion of the prescribed ash disposal procedures in respect of the columbarium concerned; and
 - (ii) has delivered to the Director ashes in the columbarium that are not returned to an eligible claimant on the expiry of the on-site claim period.
- (2) The Director must carry out the steps in the prescribed ash disposal procedures to the extent to which they have not been carried out.
- (3) Sections 6, 8, 9 and 11 of this Schedule apply, with any necessary modifications, to the Director as a person carrying out the prescribed ash disposal procedures in respect of the ashes to the extent to which those sections provide for the steps that the Director must carry out.

14. Director's power to dispose of abandoned ashes

- (1) Any ashes in the Director's possession in respect of which the prescribed ash disposal procedures have been carried out (whether or not by the Director) may be disposed of by the Director in any manner that the Director thinks fit.
- (2) Subsection (1) does not apply to any ashes in respect of which proceedings are pending in the court and a person has, by written notice, informed the Director of the proceedings.

15. Director recovering expenses of prescribed ash disposal procedures

- (1) A person is liable to pay to the Director all expenses that the Director incurs in carrying out the prescribed ash disposal procedures, or the on-site portion of the procedures, in respect of a columbarium to the extent to which the person—

- (a) is required under section 58, 59, 60, 62 or 64(2) or (3) of this Ordinance to carry out the procedures or the portion in respect of the columbarium; but
- (b) has failed to do so.
- (2) The Director may certify the expenses incurred in respect of a columbarium as mentioned in subsection (1).
- (3) Without limiting the general meaning of *expenses*, the expenses may include supervision and departmental charges.
- (4) The Director must serve a copy of the certificate on each person whom the Director believes to be liable to pay the expenses.
- (5) Interest is recoverable as part of the expenses from a person who is liable for the expenses under subsection (1) at the annual rate of 10% commencing 1 month after the date of service of the certificate on the person.
- (6) Payment of the expenses by any person is without prejudice to the person's right to recover the payment from any other person who is liable to pay for the expenses.
- (7) The expenses due from a person to the Director under this section are recoverable as a civil debt due to the Government.
- (8) A certificate purporting to be signed by the Director under subsection (2) is on its production admissible in any proceedings without further proof.
- (9) The certificate is presumed, in the absence of evidence to the contrary, to be proof of the signature of the Director and of the amount of expenses due from a person referred to in subsection (1).

16. Director to provide information on ash disposal by columbaria

- (1) The Director may keep—
 - (a) a list setting out—

- (i) each columbarium in respect of which the prescribed ash disposal procedures are being carried out; and
- (ii) each columbarium in respect of which the prescribed ash disposal procedures have been carried out;
- (b) in respect of each columbarium referred to in paragraph (a), a copy of the commencement of ash disposal notice published under section 8 of this Schedule;
- (c) in respect of each columbarium referred to in paragraph (a)(ii), a copy of the record of the prescribed ash disposal procedures delivered to the Director under section 11(2) of this Schedule.
- (2) The Director may make available for public inspection on payment of the prescribed fee—
 - (a) the information kept under subsection (1); and
 - (b) to the extent to which the Director has carried out the prescribed ash disposal procedures in respect of a columbarium under section 65 of this Ordinance—a copy of the record of the procedures kept by the Director under section 11(1) of this Schedule.

17. Alternative ash disposal procedures

- (1) A person is treated as having carried out the prescribed ash disposal procedures in respect of a columbarium if the person has carried out, in respect of the columbarium, the procedures specified in an ash disposal plan approved by the Director in respect of the columbarium.
- (2) The Director may, on application, approve an ash disposal plan in respect of a columbarium if it is satisfied that the procedures specified in the plan are as effective as the

prescribed ash disposal procedures in facilitating the return of the ashes interred in the columbarium to an eligible claimant.

- (3) Subject to any necessary modifications, the other provisions of this Ordinance apply to a person who is treated as having carried out the prescribed ash disposal procedures under subsection (1) in the same manner as they apply to a person who has carried out the prescribed ash disposal procedures.

Schedule 6 [ss. 90 & 91]

Fees

| Column 1 | Column 2 | Column 3 | Column 4 |
|----------|------------|--------------|----------|
| Item | Particular | When payable | Fee |
| | | | \$ |

Schedule 7

[ss. 91 & 95]

Transitionals

1. Grace period for columbarium to continue operation without selling interment right

- (1) This section applies to a person who immediately before the enactment date was operating, keeping, managing or in any other way having control of a columbarium.
- (2) The person does not commit an offence under section 8 of this Ordinance by continuing to operate the columbarium in the grace period in so far as the person does not sell any interment right in respect of the columbarium in that period.
- (3) The grace period means the period beginning on the enactment date and ending—
 - (a) at the expiry of 6 months beginning on the enactment date; or
 - (b) if an application is made for a temporary suspension of liability by the expiry of those 6 months—at the time when the application is finally disposed of or withdrawn.
- (4) If an application referred to in subsection (3)(b) is refused, it is finally disposed of at the later of the following—
 - (a) at the expiry of the period within which an appeal may be lodged under section 72 of this Ordinance against the refusal expires without an appeal having been lodged; or
 - (b) if an appeal has been lodged within time, at the time the appeal is finally disposed of or withdrawn.

2. Cancellation rights not apply to pre-existing agreement

The cancellation rights under section 42 of this Ordinance do not apply to an agreement made before the enactment date.

3. Record keeping requirement not apply to pre-existing agreement

The requirement under section 43 of this Ordinance to keep records of agreements for the sale of interment rights does not apply to an agreement made before the enactment date.

Explanatory Memorandum

The main purpose of this Bill is to provide for the licensing of non-Government columbaria.

2. The Bill contains 11 Parts and 7 Schedules.

Part 1

3. Part 1 contains preliminary provisions. Clause 1 sets out the short title and provides for commencement. Clause 2 defines *Bill announcement time*, *columbarium*, *enactment date*, *inter*, *interment right*, *pre-Bill columbarium* and other expressions for the interpretation of the Bill. Clause 3 explains the meaning of *sale of interment right* used in the Bill. Clauses 4 and 5 exclude from application of the Bill—

- (a) a columbarium that is built, operated, administered or maintained by the Government;
- (b) private crematoria, private cemeteries (which will include columbaria operated by the Board of Management of the Chinese Permanent Cemeteries), a place of business of an undertaker of burial, all of whom are or will be regulated under the Public Health and Municipal Services Ordinance (*Cap. 132*);
- (c) the keeping of no more than 5 containers of ashes in domestic premises.

Part 2

4. Clause 6 establishes a Private Columbaria Licensing Board (*Licensing Board*). Schedule 1 contains the constitutional and administrative provisions relating to the Licensing Board. Clause 7 empowers the Licensing Board to determine applications for a licence, exemption or temporary suspension of liability (*specified*

instrument) in respect of a columbarium, to issue guidelines and codes of practice about the operation and management of columbaria, to conduct investigation into irregularities and discipline operators, and to exercise powers that are ancillary to its functions.

Part 3

5. Part 3 controls the operation of columbaria. Under clause 8, a person must have a licence to operate a columbarium (including selling interment rights). However, operation without selling interment rights is permitted under an exemption or temporary suspension of liability. Contravention of the prohibition is an offence (clause 9).

Part 4

6. Part 4 provides for the issue of specified instruments for operating columbaria. This Part is divided into 6 Divisions.
7. Division 1 contains general provisions. Clause 11 empowers the Licensing Board to issue, renew or extend a specified instrument. But a columbarium subject to certain enforcement actions under the Town Planning Ordinance (Cap. 131) or the Buildings Ordinance (Cap. 123) may not be issued with a specified instrument (clause 12).
8. Division 2 (as read with Schedule 2) prescribes the matters that affect the grant or refusal of an application for a specified instrument (*eligibility criteria*) and is presented in table form below.

Main Eligibility Criteria for Specified Instruments

| Columbarium to which the eligibility criterion applies | Instrument applied for | Aspects of eligibility criteria | | | |
|--|------------------------|--|---|--|---|
| | | Land | Planning | Building | Interest in premises |
| Any | Licence | No unlawful occupation of unleased land and compliance with lease, licence or other instrument under which land is held from the Government. | Compliance with the Town Planning Ordinance (Cap. 131). | Compliance with requirements for approval and consent to commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) and other requirements specified by the Licensing Board. Alternatively, if the columbarium | Holding the columbarium premises from the Government. |

| Columbarium to which the eligibility criterion applies | Instrument applied for | Aspects of eligibility criteria | | | |
|--|------------------------|---------------------------------|----------------|---|--|
| | | Land | Planning | Building | Interest in premises |
| | | | | comprises structures that forms the whole, or a part, of a certifiable building ^{(Note (1))} and the building is certified ^{(Note (2))} as structurally safe. | |
| Pre-Bill columbarium ^{(Note (3))} | Licence | Same as above. | Same as above. | Same as above. Alternatively, if non-compliant structures in the pre-Bill columbarium are structures | Same as above. Alternatively, a right to use the columbarium premises for a |

| Columbarium to which the eligibility criterion applies | Instrument applied for | Aspects of eligibility criteria | | | |
|--|-----------------------------------|---------------------------------|-----------------|--|---|
| | | Land | Planning | Building | Interest in premises |
| | | | | certifiable for a pre-Bill columbarium ^(Note 4) and the building concerned is certified ^(Note 2) as structurally safe. | further period of at least 5 years from the grant of the instrument. |
| | Exemption ^(Note 5) | Same as above. | Not applicable. | Same as eligibility criteria for pre-Bill columbarium applying for licence. | Same as eligibility criteria for pre-Bill columbarium applying for licence. |
| | Temporary suspension of liability | If the case involves unlawful | Not applicable. | Certified ^(Note 2) as not posing obvious or | Not applicable. |

| Columbarium to which the eligibility criterion applies | Instrument applied for | Aspects of eligibility criteria | | | |
|--|------------------------|---|----------|--|----------------------|
| | | Land | Planning | Building | Interest in premises |
| | | occupation of unleased land, the applicant must make an application for lawful authority to occupy the land and declares that the applicant has no claim to the land based on adverse possession. | | imminent danger in terms of building safety and fire safety. | |

Notes:

(1) A certifiable building means—

- (a) an NT small building erected on or after 16 October 1987 with 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 law at that time;
- (c) a pre-1961 NT building,

where *NT small building* and *pre-1961 NT building* are defined by section 3 of Schedule 2 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.

(2) Certified means certified by an authorized person or registered structural engineer (or both of them) as specified by the Licensing Board.

(3) A pre-Bill columbarium may be treated as such if it is proved—

- (a) that the ash interment layout is limited in extent to that as at the Bill announcement time;
- (b) (for an application for the issue of a licence) that the ash interment capacity is limited to that as at the Bill announcement time;
- (c) (for an application for the issue of an exemption or an accompanying application for the issue of a temporary suspension of liability) that the ash interment quantity is limited to that as at the Bill announcement time; and

- (d) that the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium is limited to that as was necessary for, or ancillary to, its operation as at the Bill announcement time.

(4) Structures certifiable for a pre-Bill columbarium essentially covers 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).
- (5) A pre-Bill columbarium's eligibility for an exemption depends on meeting the following conditions—
 - (a) the columbarium commenced operation before 1 January 1990; and
 - (b) no interment right in respect of the columbarium has been sold since the Bill announcement time.

- 9. Division 3 provides for the form of, and plans and other information required for, an application for a specified instrument. An application in respect of a pre-Bill columbarium must be made at any time after the expiry of 3 months beginning on the enactment date, but before the expiry of 6 months beginning on that date. Under clause 22, the ash interment layout and ash interment quantity of the columbarium as at the Bill announcement time must be proved by a statement prepared by the Director of Food and Environmental Hygiene (*Director*) under the notification scheme announced by the Secretary for Food and Health at the Bill announcement time. The Licensing Board has a discretion to consider other evidence of comparable probative value.
- 10. Division 4 provides for the form of a specified instrument and the conditions that may be imposed on a specified instrument—
 - (a) The main conditions include those about ash interment and continued compliance with the eligibility criteria referred to in Division 2.
 - (b) A temporary suspension of liability, if issued, will be subject to conditions requiring its holder to take steps, with reasonable expedition, towards meeting the eligibility criteria for a licence or exemption and procuring the issue of a licence or exemption before the expiry of the temporary suspension of liability.
- 11. Division 5 contains supplementary provisions about specified instruments and related applications.
- 12. Clause 32 specifies the circumstances in which a specified instrument may be transferred. Clause 33 specifies the circumstances under which the Licensing Board may revoke or suspend a specified instrument, or vary its conditions. Under clause 34, the holder of a specified instrument may also apply for the variation of its conditions. Clause 35 provides for suspension of operation of the decision if it is appealed against.

13. Clause 36 requires an applicant for a specified instrument or a holder of a specified instrument to notify the Licensing Board of certain matters (including a change in the information provided in connection with the application concerned, and cessation of the columbarium). Clause 37 (as read with Schedule 3) provides for the procedural aspects of applications for specified instruments.
14. In Division 6, clause 38 provides for the issue of a certificate of columbarium use in respect of the columbarium premises on the issue of a specified instrument. The Licensing Board must register the certificate against the premises in the Land Registry. Clause 39 requires the Licensing Board to keep a register of columbaria issued with specified instruments and to make it available for public inspection.

Part 5

15. Part 5 provides for the requirements and duties relating to the operation of a columbarium. This Part is divided into 2 Divisions.
16. Division 1 (as read with Schedule 4) relates to an agreement for the sale of an interment right. Clause 41 imposes requirements that such an agreement must meet in order for it to be enforceable by the seller. Among other things, it must not purport to sell an interment right for a term extending beyond the term of the lease, licence or other instrument under which the columbarium is held from the Government. It must contain essential information, recommendations and terms specified in Schedule 4. Under clause 42, if an agreement for the sale of an interment right is not enforceable by the seller, the purchaser may cancel the agreement by giving the seller written notice and obtain a refund of any purchase price paid. Clause 43 sets out the requirements for records to be kept by holders of specified instruments.
17. Division 2 provides for the ongoing obligations on a holder of a specified instrument, including—

- (a) exhibition of the instrument at the columbarium (clause 44(1));
- (b) for a columbarium operated under an exemption or temporary suspension of liability, exhibition of a notice that a sale of interment right in respect of the columbarium is an offence (clause 44(2));
- (c) prohibition on alteration or addition to a columbarium premises in material deviation from the approved plans (clause 45);
- (d) compliance with the limit on the number of sets of ashes in the columbarium as specified in the approved plans (clause 46); and
- (e) keeping the columbarium in good repair (clause 47).

Failure to comply with any of the requirements constitutes an offence.

Part 6

18. Part 6 contains enforcement provisions—
 - (a) Clause 48 provides for appointment of an authorized officer by the Director.
 - (b) Clauses 49, 50 and 51 set out the powers of the Director and the authorized officers—
 - (i) to enter, inspect and search a columbarium in respect of which a specified instrument is in force;
 - (ii) to exercise these powers against other premises on obtaining a search warrant; and
 - (iii) to arrest a person who commits (or is suspected of having committed) an offence under the Bill.
 - (c) Clause 52 contains related offences.

(d) Clause 53 provides for disposal of things seized, removed or impounded.

19. Clause 54 empowers the Director to issue an enforcement notice to require the holder of a specified instrument to end and remedy any contravention of a condition of the instrument. Failure to comply with the notice is an offence. Further, the Director is empowered to take necessary remedial action and recover the expenses from the holder.

Part 7

20. Part 7 provides for obligations in disposing of ashes.
21. Clauses 59 and 60 state that a person who has operated a columbarium must not abandon the columbarium. This applies whether the columbarium is issued with a specified instrument or is illegally operated and even if the person operated the columbarium only before the enactment date. Such a person also must not improperly dispose of ashes (clause 58). Contravention of any of the obligations is an offence (clause 63).
22. Schedule 5 sets out the prescribed ash disposal procedures to be carried out and provides for contribution, by a person to whom ashes are returned, towards expenses incurred in carrying out the procedures.
23. A landlord, mortgagee and another person who take possession of a columbarium must notify the Director within 7 days after taking possession (clause 64(1)).
24. A purchaser or mortgagee who acquires the columbarium premises against which a certificate of columbarium use is registered must also carry out the prescribed ash disposal procedures (clause 64(2)). Other third parties taking possession of a columbarium must carry out the on-site portion of the procedures (clause 64(3)).

25. Clause 65 empowers the Director, an authorized officer or a public officer (each is called a *specified officer*) to carry out the prescribed ash disposal procedures in respect of a columbarium. For this purpose, the specified officer may apply for a court order for occupying the premises concerned. The specified officer may recover the expenses from a person who is required to carry out the procedures but has failed to do so.

Part 8

26. Part 8 provides for appeals against decisions of the Licensing Board and of the Director under the Bill. Clauses 71, 72 and 73 provide for the right of appeal and for the establishment and composition of the Private Columbaria Appeal Board (*Appeal Board*).
27. Clauses 74 to 80 deal with procedures for hearing an appeal, create related offences and provide for immunity of members of an Appeal Board and witness appearing before it.

Part 9

28. Part 9 contains miscellaneous provisions. Clause 81 provides for delegation of powers by the Director. Clause 82 enables the Licensing Board or the Director to consult other law enforcement authorities and persons, and obtain information from them, when performing functions under the Bill.
29. Clauses 83 and 84 empower the Licensing Board to issue guidelines and codes of practice. Under clause 85, the Licensing Board may impose requirements on the matters to be covered in a management plan that must accompany a licence application. Clause 87 makes it an offence to provide false or misleading information in an application under the Bill. Clause 88 provides for liability of a director of a body corporate or a partner in a partnership for an offence by the body corporate or another partner.

30. Clause 90 introduces Schedule 6, which is to set out the fees payable for matters under the Bill. The Schedule is currently left blank.
31. Clauses 91 and 92 provide for the powers to amend the Schedules and to make regulations. Clause 94 covers immunity for anything done or omitted to be done in good faith by the Licensing Board's member, a member of its committee, its officer or the Director, an authorized officer or any other public officer in performing functions under the Bill. Clause 95 introduces Schedule 7, which contains transitional provisions.

Part 10

32. Part 10 deals with the implications of the Bill on other legal requirements.
33. In general, the requirements of the Bill are in addition to and do not derogate from other legal requirements unless otherwise stated in the Bill. A specified instrument does not negate any liability under any other Ordinance (clause 96).
34. Clauses 97, 98 and 99 modify the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123)—
 - (a) The modifications apply to certain breaches of these Ordinances by a pre-Bill columbarium if—
 - (i) a specified instrument specified in the relevant provision is in force or is being applied for or refusal of the instrument is under appeal and is suspended from operation; and
 - (ii) the breach is limited to the extent that is necessary for, or ancillary to, the operation of the columbarium and does not exceed the extent as at the Bill announcement time.

- (b) The effects of the modifications are that certain provisions of these Ordinances do not apply during the period the conditions are met.

Part 11

35. Part 11 contains related and consequential amendments—

- (a) Clauses 101 to 109 are amendments to the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) consequential to clauses 97, 98 and 99.
- (b) Clauses 110 to 116 amend Cap. 132 and the Private Cemeteries Regulation (Cap. 132 sub. leg. BF) so that—
 - (i) columbaria operated by the Board of Management of Chinese Permanent Cemeteries (other than the private cemeteries currently listed in Cap. 132) will be private cemeteries under Cap. 132; and
 - (ii) they will be regulated under the Private Cemeteries Regulation.
- (c) Clauses 117 and 118 amend the Prevention of Bribery Ordinance (Cap. 201) so that the Licensing Board and the Appeal Board are regulated as public bodies under that Ordinance.

**Measures to promote green burials
and enhance public supply of niches**

Green Burials

Green burials, which include scattering of human ashes in gardens of remembrance (“GoRs”) or at sea and paying tribute to the deceased through internet memorial service (“IMS”), is a more sustainable and environmentally friendly way of disposal of ashes.

2. There are currently thirteen GoRs, with eleven operated by the Food and Environmental Hygiene Department (“FEHD”), one by the Board of Management of the Chinese Permanent Cemeteries (“BMCPC”) and one by the Hong Kong Chinese Christian Church Union. FEHD and BMCPC have been encouraging the public to scatter ashes in GoRs. To encourage wider use of GoRs and allow more choices –

- (a) new and bigger GoRs have been constructed by FEHD. GoRs have been or will be planned for future public columbarium sites, wherever feasible (large enough and free of physical constraints); and
- (b) BMCPC, in consultation with FHB, has been actively taking forward the “Silent Teacher” and “Silent Mentor” Ashes Scattering Programmes under the Chinese University of Hong Kong and the University of Hong Kong respectively in its GoR.

3. To encourage the scattering of ashes at sea, FEHD has streamlined the application procedures and provided free ferry service for the public. Since January 2012, FEHD has further enhanced the free ferry service by employing a bigger vessel which can accommodate over 300 passengers per sail. As the free ferry service for scattering ashes at sea has become popular, since January 2013, FEHD has further increased the number of sails to four times per month. To enable users to pay tribute at any time and from anywhere, FEHD has launched the memorial website since June 2010 and the mobile version of the IMS website since September 2012.

4. FEHD has also stepped up publicity and educational programmes to enhance public awareness and acceptance of sustainable alternatives of handling ashes as well as paying tribute to the deceased. Major publicity efforts include participation at the annual Hong Kong Senior Fair, cooperation with government departments and non-government organisations, publication of handbooks and promotion materials on green burials and production of announcements in the public interest, etc.

Public Supply of Niches

Latest Position

5. The Government has identified 24 potential sites across the 18 districts for columbarium development. Whether these 24 potential sites could eventually be used for developing columbarium facilities will depend on the results of the technical feasibility studies or traffic impact assessments or engineering feasibility studies (where applicable). Upon completion of the relevant studies, we will consult the relevant District Councils (“DCs”) before going firm on developing the sites for columbarium use.

6. The feasibility studies are by large either completed or at an advanced stage by now, and we have been consulting the respective DCs since the second quarter of 2012. So far, the outcome of consultation with DCs is set out below –

(a) supported

(i) Wong Tai Sin DC: the Diamond Hill project;

(ii) Islands DC: the Cheung Chau project;

(iii) Kwai Tsing DC: the Tsing Tsuen Road project;

(b) supported in principle, with requests calling upon the Government to explore enhancement in road infrastructure works before seeking funding support from the Legislative Council (“LegCo”)

(iv) North DC: support undertaking detailed design and

site investigation works of the site formation and associated infrastructural works for the Sandy Ridge project. Some Members have asked us to explore enhancement of road links from Liantang/Heung Yuen Wai;

(v) North DC:

- support Phase 1 of the Wo Hop Shek project, subject to widening of the footbridge at Fanling Station. Some Members have suggested that the footbridge should be widened by the time niches are made available for allocation
- note Phases 2 and 3 of the Wo Hop Shek project. Some Members have asked us to explore complementary road improvement works; and

(vi) Tuen Mun DC: support proceeding with zoning of the Tsang Tsui site for columbarium development (even to a larger scale), subject to widening of the Lung Kwu Tan Road and, in particular, enhancement of Nim Wan Road up to Lau Fau Shan in Yuen Long.

We have required the design consultants to explore the possibility of and justifications for the enhancement of road links mentioned in (iv), and are following up the footbridge widening project mentioned in the first item under (v), a feasibility study on road widening roads for Phases 2 and 3 development mentioned in the second item under (v), and the first road widening project mentioned in (vi). As regards the second road project mentioned in (vi), it is, strictly speaking, more related to the overall development in the North West New Territories. As the Environment Bureau / Environmental Protection Department are involved in a number of strategic projects in this area and have indeed established a liaison working group with Tuen Mun DC for the purpose, they have agreed to take on a study to examine this road project.

(c) Uncertain as to whether support is forthcoming

- (vii) Shatin DC: the possibility of securing the support of Shatin DC for the Shek Mun site remains uncertain.

We plan to consult a number of DCs in 2014.

7. The new public columbarium facilities at Wo Hop Shek Columbarium (outside the 24 potential sites) and Diamond Hill Columbarium (one of the 24 potential sites), which provide about 43 710 and 1 540 new niches respectively, have been completed and are opened for allocation in three phases. The first and second phases of the allocation exercise have been completed. The third phase is expected to start soon, providing about 24 000 new niches. Furthermore, the construction of 1 000 new niches at the Cheung Chau Cemetery has been completed by end 2013.

8. Columbaria developed by private cemeteries help meet some of the public demand. BMCPC is expected to provide 35 600 new niches in the three years between 2013 and 2015, while there are around 28 400 unallocated niches in private cemeteries operated by religious groups including the Catholics, Christians and Buddhists. The Chinese Christian Cemetery and the Buddhist Cemetery are expected to provide 47 000 and 3 200 new niches respectively in the coming two to three years.

9. Subject to the support of DCs and LegCo for the projects currently under planning, the supply of new niches will cumulatively increase to hundreds of thousands by 2031.

New Measures to be explored

10. While the Government is making every effort to increase columbarium facilities, we are also mindful of the numerous challenges we face in seeking to build columbaria in individual districts, including topographical conditions, land use compatibility, infrastructural support, traffic and environmental implications, and last but not least, the concern and objection of residents in the vicinity of the proposed sites. We need to be realistic about the long term prospects of identifying yet more land for building public columbaria. We feel that sooner or later the community as a whole must come to terms with the need to even out the traffic impact that may be brought by columbarium developments during the two peak seasons in grave sweeping. New measures such as

designating different worship periods for different blocks of niches, limiting access during one or both of the grave sweeping seasons etc. will need to be actively explored. To relieve the shortage and increase the supply, we may need to consider time-limited occupation of new niches, with post-occupation re-use through renewal or re-allocation.

Rules governing the ash disposal procedures

If paragraph 17 of the LegCo Brief does not apply, the Bill sets out the following rules—

- (a) a period of at least 2 months will be allowed for eligible persons to make a claim;
- (b) by the end of those 2 months—
 - (i) if there is only 1 claim from an authorised representative (AR)¹, the items will be returned to the AR;
 - (ii) if competing claims from ARs where their respective priority is already indicated in the agreement for sale of the interment right, the items will be returned to the AR with the highest priority;
 - (iii) if competing claims from ARs with equal priority are received, the ARs will have to resolve the matter in the court;
 - (iv) if there is no claim from AR, a personal representative (PR)² or a relative who has equal priority will also be eligible to claim back the items –
 - (1) if there is only 1 claim from this group (PRs and relatives), the items will be returned to this claimant;
 - (2) if competing claims from this group are received,

¹ An authorised representative means, in relation to a contract for sale of interment right, a person who is authorised under the contract to claim for the return of ashes interred, or to be interred, under the contract.

² A personal representative (of the estate of the deceased) means an executor of the will or the administrator for one dying intestate.

these competing claimants will have to resolve the matter in the court;

- (c) after those 2 months—
 - (i) the items will be returned to any of the AR, PR or relative who makes the first claim in the remainder of the overall claim period;
 - (ii) if there are concurrent competing claims before the items are returned to a claimant, the items will be returned to the claimant with the highest priority if this can be established³; and
 - (iii) if the concurrent competing claims are from persons of equal priority (be these amongst ARs themselves or amongst the group of PRs and relatives), the persons concerned will have to resolve the matter in the court.

³ AR enjoys higher priority than PRs or relatives, while PRs and relatives are of equal priority.

Implications of the proposal

Financial and Civil Service Implications

The additional resource implications required by bureaux / departments concerned, including those for the Licensing Board and the Appeal Board would need to be assessed having regard to the implementation details and timetable. Bureaux and departments will endeavour to absorb the workload within existing resources. Should additional financial or staffing resources be eventually required, this would be justified and sought in accordance with the established mechanism. In line with the usual funding arrangements between the Judiciary and the Administration, the Administration should provide the Judiciary with the necessary manpower and financial resources should such needs arise in future. The proposed waiver of waiver fees, STT rentals and administrative fees for regularisation from columbaria eligible for exemption will result in revenue forgone. Fees and charges arising from the licensing scheme for private columbaria will be determined and prescribed in the Bill at a later stage. The revenue to be generated from such fees and charges cannot be estimated at this stage.

Economic Implications

2. The licensing scheme would help regulate the development of private columbaria, enhance protection of consumer interest, and provide certainty to enable potential operators to make informed investment decisions. It would also help avoid the closing down of some private columbaria upon their meeting certain conditions, thereby minimising service disruptions for consumers, though the waiving waiver fees, STT rentals and administrative fees for columbaria conferred with exemption might result in certain revenue forgone.

Environmental Implications

3. Regarding the environmental implications, the columbaria will still be subject to the control of relevant environmental legislation. Conditions to be set by the future Licensing Board for licences and

exemptions to be granted will also encompass measures to improve the environment surrounding the relevant columbarium.

Sustainability Implications

4. Regarding the sustainability implications, under the proposal, some existing unauthorised private columbaria, which should otherwise be subject to enforcement actions, will be allowed to continue to exist. As the Licensing Board would be able to impose conditions on private columbaria including, inter alia, plans to control nuisance, on crowd management and to prevent any potential environmental problems that may arise, the impact on the living environment of the neighbourhood by the continued operation of these private columbaria would be put under control under the licensing scheme. Views and sentiments of different stakeholders should be handled with care.

Family Implications

5. From the family perspective, effective regulation of columbarium operations would reduce tension and anxiety on the part of family members in handling post-death matters of the deceased. This would help promote greater harmony in families and society.