

For information

**LegCo Panel on Food Safety and Environmental Hygiene
List of Follow-up Actions**

PURPOSE

This paper provides, for the Panel's reference, supplementary information furnished by the Administration on matters raised in the list of follow-up actions recorded in LC Paper No. CB(2)1676/13-14(02).

BACKGROUND

2. At its meeting on 19 November 2013, the Panel requested the Administration to provide supplementary information on the following areas :

- (a) at what time was the business impact assessment (BIA) study on the regulation of private columbaria commissioned and the expected time of its completion;
- (b) provision of the BIA study report to the Panel once available; and
- (c) the Administration's response to a number of questions raised by deputations at the special meeting on 19 November 2013, including the following :
 - (i) whether the Administration would require all columbaria to comply with the users restrictions in land leases and the statutory town planning requirements before the new Ordinance came into operation;
 - (ii) whether the Administration would consider the suggestion of shortening the proposed 18-month transitional period;
 - (iii) whether and when the Administration would make public the BIA study report; and if so, whether it would contain information on the number of private columbaria operators (including those not identified on the List published by the Development Bureau (the List)) and the number of niches provided by them (with a breakdown of the numbers of

niches sold and unsold);

- (iv) what were the criteria adopted by the consultant to divide the operators of private columbaria into three categories, namely large, medium and small- sized operators in the BIA study;
- (v) whether the Lands Department would take law enforcement action against the unauthorised occupation of Government land by Gig Lok Monastery for columbarium use; and
- (vi) whether the Town Planning Board (the Board) would consider adopting measures to tackle the delaying tactics of applicants.

3. The information requested is given in paragraphs 4 to 15 below.

The BIA Study

4. The BIA Study commenced in January 2013. The consultant started to conduct interviews with stakeholders in March 2013. The consultant submitted the report to the Government in December 2013. After viewing the report and providing our comments, the Government signed off the report and settled the final payment in July 2014. The Executive Summary of the BIA report is attached (Annex).

Questions raised by Deputations

Whether the Administration would require all columbaria to comply with the users restrictions in land leases and the statutory town planning requirements before the new ordinance came into operation

5. The Government introduced the Private Columbaria Bill (the Bill) into the Legislative Council on 25 June 2014. If the Bill is enacted, private columbaria which are not exempted or given temporary suspension of liability (TSOL) must obtain a licence for operating their columbaria. Private columbaria seeking a licence must comply with various requirements, including those relating to land leases or other land instruments and statutory town planning requirements etc.

6. A pre-Bill columbarium¹ will be eligible to apply for exemption status if:

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.

- (a) it is a dated columbarium (i.e. its operation commenced before January 1, 1990);
- (b) it has frozen its scale of operation and ceased selling (including letting out) new or unoccupied niches from the Bill announcement time (i.e. 8:00 am, 18 June 2014) and
- (c) it could comply with other requirements under the Bill.

7. The operator of a pre-Bill columbarium seeking a licence or exemption may apply to the Licensing Board for TSOL if he or she needs time to work towards meeting the relevant requirements. TSOL would enable the columbarium to continue operating and providing services before a licence or exemption is granted. During the validity period of TSOL, the columbarium could not sell (or let out) any new or unoccupied niches.

Whether the Administration would consider the suggestion of shortening the proposed 18-month transitional period

8. Under our original proposal, we proposed a 18-month transitional period. In response to the suggestions made, we have reviewed the issue and suggested to provide for a grace period of 6 months.

9. Under the Bill, the Private Columbaria Licensing Board (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. The Bill provides that a person who immediately before the enactment date operates a columbarium does not commit the offence of operating a columbarium without a regulatory instrument, by continuing to operate the columbarium in the grace period, but he or she must not sell interment right in the columbarium during that period. The grace period –

- (a) means the 6-month period following enactment; or
- (b) if an application is made for TSOL during that period – ends at the time when the application is finally disposed of or withdrawn.

Whether and when the Administration would make public the BIA study report; and if so, whether it would contain information on the number of operators of private columbaria (including those not identified on the List published by the Development Bureau) and the number of niches they provided (with a breakdown of the numbers of niches sold and unsold)

10. Please refer to paragraph 4 above. The consultant has provided in the study report estimates on the total number of niches provided by private columbaria on the List, including the number of niches sold and available for sale. For private columbaria which fall outside the List, the consultant has made estimates about the number of sets of ashes, based on the limited anecdotal information available to the consultant at the time when the report was compiled.

11. A Licensing Board is to be set up in future. To assist the Licensing Board to determine which columbarium is a pre-Bill columbarium, the Food and Environment Hygiene Department (FEHD) launched a notification scheme on 18 June 2014 inviting private columbaria to submit relevant information (including the number of niches they provided and breakdowns showing the number of niches sold and available for sale). The information collected and verified by FEHD through the notification scheme will serve as a basis for the Licensing Board to determine in future whether a columbarium is a pre-Bill columbarium and its eligibility for applying for various specified instruments under the Bill (i.e. licence, exemption and TSOL). A total of 117 forms have been received from private columbaria under the List representing a participation rate of 97%. Returns from 11 private columbaria outside the List have also been received.

What were the criteria adopted by the consultant to divide the operators of private columbaria into three categories, namely large, medium and small-sized operators in the BIA study

12. In classifying the private columbarium by size, the consultant has adopted the industry norm which suggests that private columbaria having more than 10,000 niches are considered as large-sized columbaria, those having between 5,000 and 10,000 niches are considered as medium-sized columbaria, and those with less than 5,000 niches are considered as small-sized columbaria.

Whether the Lands Department would take law enforcement action against the unauthorised occupation of Government land by Gig Lok Monastery for columbarium use.

13. The Lands Department would continue to take law enforcement action under the Land (Miscellaneous Provisions) Ordinance Cap. 28 against the unlawful occupation of unleased Government land occupied by Gig Lok Monastery as a columbarium. At the time of writing this note, the Administration is considering seeking a court order requiring Gig Lok Monastery to remove the ashes interred on unleased Government land. In order not to prejudice the Government's legal actions, it is not appropriate for us to disclose any further details.

Whether the Board would consider adopting measures to tackle the delaying tactics of applicants

14. As to tackling possible delaying tactics of applicants, the Town Planning Board has, on 23 March 2012, deliberated on the issue and considered that the current guidelines promulgated by the Board were adequate in dealing with such problem.

15. According to the Town Planning Ordinance (TPO), the Board is to consider an application submitted within the statutory time frame stipulated in the TPO. The Board has promulgated Town Planning Board Guidelines No. 33 on Deferment of Decision on Representations, Comments, Further Representations and Applications Made under the TPO. It sets out the procedures and practices of the Board in considering deferment requests on applications. In gist, the Board would not accept any deferment request without reasonable grounds, and the proposed deferment period should not be indefinite. Also, the Board would not accept any deferment request if it affects the right or interest of other concerned parties. For any applicant who submits repeated deferment requests as a delaying tactic, such requests would not be favourably considered by the Board.

SUMMING UP

16. Members are invited to note the above information.

**Food and Health Bureau
Food and Environmental Hygiene Department
July 2014**

Food and Health Bureau

Business Impact Assessment on the Proposed Private Columbaria Bill

Executive Summary

December 2013



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Commercial-in-Confidence

This executive summary has been prepared for, and only for, the Food and Health Bureau (FHB) of The Government of Hong Kong Special Administrative Region in accordance with the terms of the FHB contract of 6 December 2012, and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

1. Introduction

1. The Food and Health Bureau (FHB) of the Government of the Hong Kong Special Administrative Region (Government) has commissioned PricewaterhouseCoopers Advisory Services Limited (PwC) to conduct a study (Consultancy Study) on the business impact assessment (BIA) on the proposed Private Columbaria Bill.
2. The findings and recommendations from this Consultancy Study represent just one of the many considerations that the Government will need take into account when finalising its regulatory proposals. The purpose of the Consultancy Study is to help determine the likely impact of the proposed Bill on private columbarium operators (including any potential unintended consequences), and identify key implementation issues so that effective plans and measures can be put in place to address them.
3. This executive summary of the Final Report gives:
 - The key findings from the stakeholder interviews we conducted as part of the Consultancy Study.
 - An assessment of the business impact of the proposed Bill on the local private columbarium industry, including an estimation of the potential cost of compliance.
 - Recommended changes (where appropriate) to the proposed Bill that aim at striking a better balance between different considerations (e.g. effectiveness of the proposed regulatory measures at achieving their intended objectives, practicality of the proposed regulatory measures, impact on private columbarium operators, consumer protection).

2. Key Findings from Stakeholder Interviews

4. Given that this is a ‘business impact assessment’, emphasis was placed on local private columbarium operators during the information collection process to try and understand the impact of the proposed licensing requirements on them and the challenges they might face on compliance issues. We also interviewed the Consumer Council to collect inputs around general consumer protection issues.
5. We conducted a total of 31 interviews with a cross-section of operators from the local columbarium industry—covering those known to the Government (on Part A and Part B lists) and those not identified in the 2 lists (existing and potential (new) operators); the 2 trade associations; and the Consumer Council. In addition to the views collected from the 31 interviews we conducted, a stakeholder provided written views to us, and another stakeholder gave a short telephone interview (both of them are on the government lists).
6. We segmented local columbarium operators based on their sizes (large operators, and small-and-medium-size operators) and key characteristics (e.g. whether or not operators have unsold niches to sell, whether operators are operating on self-owned premises or leased premises). These were based on our initial understanding (at the start of the Consultancy Study) of the potential

challenges faced by operators in achieving compliance with some of the proposed licensing requirements.

2.1 Key Findings from Stakeholder Interviews

7. We summarise the key points made by the stakeholders below against each key area of regulation. The points reflect the views as expressed by the stakeholders and have not been validated for accuracy. They do not represent the views of the Consultant or the HKSAR Government.

2.1.1 In General

8. In principle, interviewees support regulation of the private columbarium industry, but their views diverged greatly on how to go about regulating, licensing, and exempting private columbarium operators.

2.1.2 Coverage and Exemption

9. Chinese Permanent Cemeteries and other private cemeteries with columbarium facilities (listed in Schedule 5 of the Public Health and Municipal Services Ordinance, Cap 132) to be exempted automatically:
 - Some interviewees pointed out that since the majority of those listed in Schedule 5 belongs to Catholic/Christian groups, there might be concerns about potential discrimination issues against other religious groups (e.g. those belonging to Taoism, other minority religions).
 - Some interviewees disagreed (e.g. unfair to other private columbarium operators, no assurance that there are no structural issues with their columbarium facilities).
10. Undertakers of Burials will need to apply for exemption:
 - Some interviewees thought that by exempting the undertakers of burials it might create a loophole in the legislation that undertakers can then exploit and set up a columbarium business of their own.
 - Interviewees thought that the Government should consider issuing some type of 'temporary licence' and imposing restrictions (e.g. require all cremains to be stored in funeral parlours instead; set a limit on the length of time and the number of cinerary urns or sets/bags of cremains the undertakers can keep/store; only allow the storage of cremains handled by the undertaker in the course of providing burial services).
11. Other private columbaria:
 - 'Dated' (long-standing) private columbaria. Many interviewees thought that it is difficult to define 'dated' (or 'long-standing') (suggestions included: 20 to 30 years; 50 to 60 years; before 1980s; before 1985; before 1990s; before Hong Kong's handover to China on 1 July 1997; before 2005). But some interviewees questioned why being 'dated' should/can be a criteria for exemption, and pointed out that the focus should be on 'performance' (e.g. track record, ability to provide quality service). Other interviewees thought that exemption should only be given based on a few key criteria (e.g. of a religious background/nature, historical value of the premises, number of years of operating a columbarium, etc), and being 'dated' can be one of them.

A few interviewees suggested setting a date and exempting all the private columbaria that existed before the date.

- Private columbarium facilities operated by religious bodies. Some interviewees thought that these columbaria should be exempted because it is part of their long-standing traditions, and most niches are designated for use by their own practitioners (e.g. monks and nuns) and followers.
- Private columbarium facilities operated by not-for-profit organisations. Some interviewees thought that these columbaria should be exempted because they are non-profit making and are offering a service to the community (e.g. a resting place for residents of elderly homes, the homeless, low-income families at a nominal fee), and all the sales proceeds are used for charitable causes.
- ‘Existing’ private columbaria (existed before the proposed Bill comes into effect). Some interviewees thought that all the ‘existing’ private columbaria should be exempted, but they should still register with the Government and can be subject to a more lenient set of requirements (the Government should assist operators in meeting the requirements). Interviewees thought that ‘new’ private columbaria should be required to follow the full set of proposed requirements.

2.1.3 Licensing Requirements

12. Most interviewees thought that the proposed set of requirements is overly stringent and the cost of compliance is significant. It offers great protection to consumers, but at a significant cost to ‘existing’ private columbarium operators. Interviewees believed that implementing the proposed Bill could potentially lead to:
 - Many operators not qualifying for a licence, and likely not even bother to try and apply for one. Some operators might choose to continue their operations ‘without a licence’ until they are stopped by the Government, and some might choose to close down their operations.
 - The Government having difficulties clamping down on ‘unlicensed’ operators given the potential widespread consequences of having to deal with a very large number of cremains if they were forced to close.
 - The supply of private niche spaces being seriously affected, and likely to become a serious social issue that even the Government cannot resolve because there is not even a sufficient supply of public niche spaces (or sufficient land to build them).
13. The Government should ‘map out’ the full spectrum of private columbarium operators in the market to understand their characteristics and numbers, find a way of categorising them based on key characteristics, and apply different sets of requirements to different categories of operators.
14. Most interviewees (these are ‘existing’ private columbarium operators) agreed on the need to ‘operate on self-owned premises’ (greater assurance and better protection for consumers). ‘New’ operators (potential investors, or interested parties), however, thought that given the general shortage of land in Hong Kong and sites earmarked for building and operating columbaria (private and public), this represents a very high threshold. The main concern for them was that they

will need to acquire a piece of land (a significant investment) without knowing for sure whether or not they will be able to obtain the required approvals from the Town Planning Board and Lands Department. The (high commercial) risk involved is likely to discourage them from entering the market.

15. 'Operating on leased premises' is not ideal (because of the uncertainties about future operation), but the Government can allow it if these operators are clearly identified and made known to the public. A minimum of 5 years is too short, some interviewees suggested a minimum of 10 instead. Some interviewees also thought that this should be a transitional measure only, and gradually, all the 'existing' operators should be 'relocated' to self-owned premises, and eventually required to meet the requirement of 'operating on self-owned premises' if they want to continue their operations.
16. Whether it is 'self-owned' or 'leased', compliance with town planning requirements and land lease conditions present big challenges (and involve significant costs) for most of the 'existing' operators and 'new' operators alike:
 - 'Existing' private columbarium operators thought that both Town Planning Board and Lands Department should adopt a more lenient and flexible approach towards them (e.g. by incorporating certain conditions in their land leases to 'regulate' their operations as opposed to requiring them to strictly meet permitted uses; not requiring operators to pay land premium (or full market premium) for changes in the original land use; and not requiring operators to provide proof of 'existing use', which is nearly impossible in most cases).
17. Many interviewees agreed on the need to meet other statutory requirements (e.g. fire safety, building safety, environmental protection, public health and safety, etc). Some interviewees mentioned that relevant government departments should adopt a more flexible approach towards older buildings and historical sites/facilities.
18. Some interviewees questioned the move to include other statutory requirements (e.g. town planning, fire safety, building safety, environmental protection) in the proposed Bill saying that it is unnecessary (supposedly all operators/businesses should be abiding by those existing requirements even without the proposed Bill).
19. Other point(s) raised by interviewees:
 - Many interviewees mentioned that different government departments (e.g. Food and Health Bureau, Lands Department) have different interpretations of what is considered 'human remains'. Some interviewees suggested seeking independent advice and direction from the court.

2.1.4 Application Requirements

20. Interviewees thought that asking operators to produce and submit relevant documents and plans (e.g. building layout plans, site plans) is a reasonable requirement. However, this might present a challenge for some (very) old buildings (e.g. documents lost during the war or in a fire) and village-type houses (e.g. there might not be building layout plans).
21. Submitting a management plan:

- Interviewees found the requirement reasonable, but pointed out that the Government should issue guidelines on coverage (some interviewees suggested including, for example, service offerings and performance pledges, etc).
 - Some interviewees mentioned that bigger, more well established, and better run operators will have little difficulty complying, but smaller operators questioned its usefulness given that they have small and relatively simple setups (and operations), and very few resources.
 - A few interviewees pointed out that there might be a practical need to adjust the details of the plan based on actual operational needs and experience (e.g. changing circumstances, unforeseen events), and asking for approval every time there is a change is simply not practical (and interviewees asked how long will the approval process take).
22. Disclosing information about operators to the public:
- There were concerns about the Government publishing information that might be considered commercially sensitive (e.g. niche prices, rent).
23. Seeking public views about licence applications:
- There were strong views and serious concerns about the process. It was seen as duplicating the process (and effort) that operators would have already gone through when seeking approval from the Town Planning Board (it being one of the licensing requirements).
 - All interviewees thought that it will almost certainly invite unfavourable responses, especially in today's politicised environment. Some operators might also use the process to bash competition by submitting objections (e.g. under assumed identities to make the submissions look 'legitimate').
 - Interviewees pointed out that it could potentially put the Government in a difficult position (e.g. how many objections raised/received would suggest a widespread concern; how much weight should be given to say a single objection received when deciding whether or not to grant a licence, especially in the case where an operator has met all of the licensing requirements, and different people assessing an application may 'weigh' objections differently—all these involve subjective judgement to a large extent, and are often difficult to 'quantify' or evaluate more objectively).
 - Interviewees thought that the Government needs to set out clear and objective guidelines on how it proposes to evaluate public views (and objections) to ensure that application assessments will not be unduly swayed by sentiment (given the sensitive nature of the subject), rather than rational discussion and objective evaluation.
24. The Government should publish clear performance pledges for processing licence applications.

2.1.5 Validity Period of a Licence and Licence Fee

25. A few interviewees considered the proposed validity period reasonable, but many interviewees thought that it should be longer—at least 10 years, or even tied to individual lease periods. This does not prevent the Government from conducting inspections from time to time to ensure compliance with licensing

conditions, and/or requiring operators to submit regular reports to demonstrate compliance; and suspending or even revoking licences if there were non-compliance issues.

26. There were divergent views about the proposed fee level:
- Larger operators found it more acceptable than smaller ones. Some interviewees found it too high. Some interviewees thought that it would be more acceptable if it was kept to approximately HK\$50,000 (or about HK\$10,000 a year). Some interviewees were comparing it to the annual licence fee (about HK\$14,000) of the Undertakers of Burials.
 - Smaller operators, and those run by not-for-profit organisations and religious bodies thought that they should be exempted from having to pay (because they are offering a service to the community, non-profit making, and helping to address the general shortage of public niche spaces in Hong Kong), or required to pay only a nominal fee (e.g. HK\$10,000 to HK\$20,000 for a 5-year licence).
 - There were also suggestions to tie the licence fee to the size of the operator (the larger the operator, the higher the licence fee).
 - However, regardless of the fee level, the cost (together with other costs associated with complying with the proposed licensing requirements) is considered high and is likely to be passed on to the customer, which means that the public can expect prices to go up as a result of the implementation of the proposed Bill. This will affect many people, especially the economically disadvantaged ones.

2.1.6 Licensing Conditions

Cessation of business arrangements:

27. There were concerns about what is meant by ‘satisfactory arrangements’, ‘discharging responsibilities properly’, and ‘to the satisfaction of the Government’. Interviewees thought that the Government will need to provide clear ‘definition(s)’.
28. Some interviewees thought that the Government should lay down clear guidelines in terms of what is expected of operators and ways to evaluate whether an operator has ‘discharged his responsibilities properly’.
29. The majority of interviewees do not have any ‘cessation of business’ arrangements (or plan) in place (or see a need for having them). This is because they say that they do not have plans to cease operation, and consider their operations a long-term (if not ‘eternal’) commitment to the departed and their families. The Government should formulate its own plan to handle cases where operators have absconded from their columbarium operations without fully discharging their responsibilities by winding it down gradually and in an orderly fashion.
30. A couple of interviewees argued that it is unnecessary and not very useful because having a plan in place does not give assurance that an operator will be able to execute it as planned or the plan will work in practice.
31. A couple of interviewees do have policies (and communicate them to customers) about what they plan to do (e.g. contacting relatives to seek permission to

relocate cremains) in the event that they are 'forced' to cease operation (because like the majority of operators, they have no plans to cease operation and consider their operation a long-term (if not 'eternal') commitment to the departed and their families, and if they were to stop operating, it would be due to factors outside their control).

32. Potential impact of an 'Occupation Order':

- A few interviewees agreed that it is a necessary tool for the Government to step in when needed.
- Given that it mainly affects landlords/owners, the potential impact should be clearly communicated to them so that they can assess the potential risks versus the potential benefits of leasing their premises to a columbarium operator, and make an informed decision. Interviewees pointed out that there are, however, advantages of leasing premises to a columbarium operator because: 1) it provides a steady income over the longer term (the stable and long-term nature of the operation); and 2) the landlord/owner might be able to ask for a premium (a higher rent than it is possible if it was leased out for other uses, especially given that most of these premises are in the more remote locations).
- That said, it was pointed out that it is unlikely that there will be a 'pressing need' for a landlord/owner to sell the premises in question because it is difficult to find other uses for the premises. Also, quite often, there are ties between the landlord/owner and the operator, e.g.:
 - The landlord/owner is also the owner (or one of the owners) of the columbarium operation. The landlord/owner may have direct (e.g. being one of the directors of the company that directly owns the columbarium operation) or indirect control (e.g. through one of the subsidiary companies under the landlord's/owner's own parent company), full (e.g. through a wholly owned company) or partial control (e.g. through partly owned company) of the columbarium operation.
 - There are family ties between the landlord/owner and the owners of the columbarium operation.

Signing written agreements with customers:

33. Most interviewees found the requirement reasonable. Many 'existing' operators (especially the 'newer' columbaria) already do (drafted with the help of a lawyer), and some operators allow it to be signed in the presence of a lawyer if requested.
34. Some 'existing' operators also offer a 'cooling-off' period (e.g. 1 to 2 weeks) after a customer has signed the contract. Depending on the practice of individual operators, some offer a full refund if a customer decides to bow out of their contracts during the 'cooling-off' period.
35. Some operators include an end date for the 'right to use', and conditions for 'continue use' (after the end date) if any (e.g. sharing and paying the land premium after 2047 if needed), and the rights of the operator in terms of handling (and if needed disposing) of the cremains after the land lease expires in 2047.

36. Interviewees thought that it will be helpful if the Government can issue some guidelines on key terms and conditions to include, but give flexibility to operators to tailor contracts to their individual circumstances.

Having a ‘dedicated nominee’ for each niche:

37. Interviewees pointed out that not all niches have a ‘dedicated nominee’ at the time when they are sold. Some customers buy niche spaces in advance and in numbers (e.g. for family members, for residents of elderly homes), and will only provide a name when a death occurs.
38. Interviewees mentioned that transfer of sold niches, occupied or not, is often discouraged (or even forbidden) by operators. This is mainly to prevent speculation in niche spaces in the second-hand market.
39. ‘Existing’ columbarium operators tend to allow transfer of ‘sold but unoccupied’ niche spaces if there is a legitimate reason for doing so (e.g. a person bought a niche space for his mother, but his father ended up passing away first). Some operators, however, do not allow transfers under any circumstances. Some operators might charge an ‘administration’ fee for change of ‘dedicated nominee’, and anecdotal information suggests that it could be up to a few thousand Hong Kong dollars.
40. Interviewees pointed out that transfer of ‘occupied’ niche spaces is not common. This is because in Chinese culture people do not want to buy or use niche spaces that were previously occupied by others (an exception might be in the case of public niche spaces). Nor do people want to sell their niche spaces and relocate the cremains (considered an act of ‘disturbing’ the dead, and not letting them rest in ‘eternal’ peace) unless there is a strong reason for doing so (e.g. emigrating to another country and wanting to take the cremains of their ancestors and loved ones with them).

Having a ‘Register of Patrons’:

41. Many interviewees mentioned that they already keep records of their patrons and contact information of relatives or designated/authorised representatives, and some interviewees have regular (typically half-yearly or yearly) communications with them (mostly to market services, e.g. burning of incense).
42. But regardless of how well operators keep their records, based on common experience, it becomes progressively more difficult to contact relevant people after 5 to 10 years. Also, relatives or descendants from the third generation onwards (e.g. grandchildren, great grandchildren) usually stop visiting altogether (and many of the contacts get lost). Based on actual experience of some of the ‘existing’ operators who have been operating for more than 30 years, typically less than a third of the designated contact persons can still be reached for niche spaces that were sold a long time ago.

Providing a ‘Performance Bond/Upfront Deposit’:

43. All interviewees did not think that providing a ‘performance bond/up-front deposit’ will deter operators from absconding, if this is Government’s intention/aim, regardless of the amount levied. For-profit operators will certainly pass on all of the cost to customers, while some of the not-for-profit operators and the smaller operators will be struggling to come up with the amount.

44. Most of the interviewees also questioned the suggested amounts and basis of calculation citing that:
 - It is unfair to apply a ‘uniform’ rate across the whole spectrum of operators because they price their niches very differently (e.g. for profit versus not for profit).
 - Instead, some interviewees suggested that the Government should ‘map out’ the full spectrum of ‘existing’ private columbarium operators in the market to understand the ‘distribution of operators’ (numbers and sizes, and characteristics), and apply some sort of sliding scale based on number of niches.
 - The future value/worth of those amounts becomes very small if say an operator runs away after 20 or 30 years in operation, and not useful for any purpose—whether it is to compensate affected customers, or to recover the costs incurred by the Government for having to deal with the consequences of an operator who had absconded.
45. Instead, interviewees thought that the Government should consider imposing harsher punishment (e.g. imprisonment for the director(s) of the licensed columbarium). This is considered a much more effective deterrent. Some interviewees, however, thought that this is too harsh, especially given that no other industry has such a heavy penalty for breaching licensing conditions. A couple of interviewees mentioned that the ‘malevolent’ operators will always find a way to cheat the system (e.g. paying someone else to take the blame).
46. If the aim is to protect customers in the event an operator ceases operation without discharging its responsibilities fully by winding down the operation gradually and in an orderly fashion, some interviewees suggested establishing an insurance scheme by collecting a percentage of the purchase price of niches from customers (e.g. similar to how the Travel Industry Compensation Fund works).
47. In any case, most interviewees thought that the money collected should be pooled together and used to compensate customers, and not to recover the costs incurred by the Government. This is because it could potentially and inadvertently send a wrong message to some operators suggesting that it is ‘alright’ to abandon operations because the Government will always step in and help deal with the consequences. It could also give customers the wrong impression that the Government will do more to help affected customers (e.g. find alternative niche spaces or locations for the cremains of their ancestors and loved ones, if needed) as opposed to merely contacting them and asking them to claim back the cremains.
48. All interviewees thought that if and when the ‘unimaginable’ (from their point of view) does occur, most—if not all—customers would prefer an alternative location/niche space for the cremains of their ancestors and loved ones, and not some form of monetary compensation. There were suggestions for the Government to help find an operator who is willing to take up the operation and continue to run it. Affected customers and the Government, however, might need to provide some ‘incentives’ to the incoming operator (e.g. affected customers may need to pay management fees to allow the operation to continue to run, the Government may need to allow the operator to expand the operation—where conditions permit—and have a source of income).

Setting up a separate ‘Maintenance Fund’:

49. While many interviewees agreed with the idea of having to allocate money for facility maintenance purposes, they thought that all types of maintenance work should be done as part of their ongoing operation (and not necessarily in the form of a separately managed ‘fund’).
50. Some interviewees considered the requirement to be too heavy-handed citing that not even real estate developers are required to do this when (in theory) their developments could pose an even greater risk to the public (e.g. a high-rise building housing thousands of occupants) than columbarium facilities (a low-rise building housing the ‘dead’).
51. Many interviewees questioned the ‘15% of future sales proceeds’ saying that the amount could be too large (if there are still many niches yet to be sold) or too small (if there are very few niches left to be sold) for the purposes of maintaining structural safety alone. Some interviewees mentioned that those columbaria that have been around for a long time are likely to be located in older buildings/facilities, but are likely to be the ones with very few niches left to sell, whereas the ‘newer’ columbaria are likely to be located in newer buildings/facilities and have many more niches left to sell. Other factors should also be considered and included when determining the size of the maintenance fund (e.g. condition of the building/facilities), and the amount should be levied on both sold and unsold niches (given that the fund is meant to be used to maintain the entire premises, not just parts of it).
52. It was also pointed out that there are no measures to ensure ongoing sustainability, the fund can potentially be depleted faster than it can be replenished.
53. Some interviewees asked what would be the use of the maintenance fund if an operator is operating on leased premises, where the responsibility for maintaining the overall structural safety of a building rests with the landlord/owner.
54. While some interviewees agreed that there is a need to monitor its use, all are concerned about the additional costs involved in hiring Authorised Persons (AP) and auditors, especially for smaller operators.
55. Some interviewees also thought that submitting a certified maintenance report every 2 years is too frequent (if Government’s focus is mainly on structural safety) as it depends on the condition of individual building and what other facilities are at a site. They argued that unless a building is very old or was not ‘built properly’, the condition of the structure should/will not wear down or deteriorate so quickly in just a couple of (or few) years. Some interviewees mentioned that, currently, Buildings Department requires an AP-certified maintenance report that includes an assessment of structural safety only every 5 years for buildings older than 40 years.
56. Instead, all interviewees found that submitting regular AP-certified reports to be a more reasonable requirement, but the frequency of submission should not be too often (e.g. every 5 years during licence renewal, aligned with the requirements of the Buildings Ordinance, or by considering the condition of individual building/facilities).

Adhering to a ‘Code of Practice’:

57. Interviewees thought that the Government should consult different stakeholders from the industry about the contents and details of the ‘Code of Practice’ before publishing it for operators to follow. Some interviewees even suggested forming a committee with representation from the columbarium industry, including representatives from religious bodies/organisations, to develop the ‘Code of Practice’ based on good practices.
58. There was also a suggestion to keep the Code focused on principles only, and give operators some flexibility in terms of how best to achieve them depending on their individual circumstances (e.g. business model, operating model, etc).
59. Smaller operators, however, were concerned about the administrative burden associated with having to abide by the ‘Code of Practice’ because they have very simple setups and very few resources.

Other Potential Licensing Conditions:

60. There was a suggestion for the Government to also monitor the financial situation of the operators on an ongoing basis by asking them to submit annual audited accounts and reviewing them to identify potential issues (this can potentially help identify operators that might be at (a higher) risk of closure).

2.1.7 Freezing Sales Activities

61. All interviewees agreed that ‘new’ operators should not be allowed to sell niches until they have obtained a valid licence from the Licensing Authority.
62. Many interviewees thought that ‘existing’ operators should be allowed to continue to sell niches while they are applying for a licence. Only a few interviewees thought that it is reasonable to ask operators to stop selling niches until after they have obtained a licence. Many interviewees argued that:
 - ‘Existing’ operators have been selling niches long before any form of regulation existed, and there were not any problems to date (and the potential risks are no greater or less before and after the proposed Bill is implemented).
 - ‘Existing’ operators need the income to sustain their operations.
 - There are other practical difficulties (e.g. a sale could take as long as 2 months to finalise, and some interviewees asked whether or not they will be allowed to provide niche spaces to customers who have already paid a deposit before the selling freeze was imposed on them).
 - For these reasons, the measure may have some unintended consequences (e.g. some ‘existing’ operators may choose to sell all the niche spaces and then abscond before the proposed Bill comes into effect, some might be forced to close their operations because of potential issues with cash flow).
63. Most interviewees thought that it would be reasonable to ask ‘existing’ operators to stop selling niche spaces if they cannot meet all of the licensing requirements and obtain a licence (after the Licensing Authority has assessed their applications, not before). But some interviewees thought that they should only be required to stop their sales activities after they had been given a period of time to try and rectify whatever non-compliance issues they have.

64. Some interviewees, however, thought that the requirement might provide an incentive to ‘existing’ operators (only the ‘good’ ones, but not the ‘malevolent’ ones) to do what they can to try and meet all of the licensing requirements as quickly as possible.

2.1.8 Transition and Temporary Suspension of Liability

65. There were suggestions for the Government to issue some type of ‘provisional licence’ to allow/enable ‘existing’ operators to continue their operations and gradually transition to a ‘regulated/licensed’ environment. Interviewees agreed that there can be conditions attached (e.g. implement improvement measures within a reasonable period of time, obtain approval from Town Planning Board and Lands Department).
66. There were also suggestions to extend the transitional period to 2-2.5 or even 4-5 years (given that preparing and lodging an application with the Town Planning Board takes approximately 24 months or longer, and this is just one of the licensing requirements). ‘Existing’ operators should be allowed to continue to sell niche spaces during this period.

2.1.9 Appeal Mechanism

67. There were questions about whether or not there would be a way for operators to appeal against some of the decisions of the Licensing Authority, the likely composition of an ‘appeal board/committee’ if there was one, and how the process would work.

2.1.10 Other Points Raised by Interviewees

68. Some interviewees suggested that the Government should do more to prevent speculation in niche spaces.
69. All interviewees mentioned that Government’s move to categorise ‘existing’ operators into Part A and Part B has created a lot of confusion in the market—both among operators and consumers. The Government should have done so only after licensing the operators:
 - It has given some ‘existing’ operators an unfair advantage over others (e.g. being used by some operators on Part A in their marketing materials to suggest that they are ‘licensed’ or ‘legitimate’, while those operators on Part B are not), and allowed them to increase prices and make a significant profit.
 - The information is difficult for the average person/consumer to follow, read and understand (especially when ‘existing’ operators can move from Part B to Part A, or vice versa—this makes it all the more confusing).

3. Business Impact Assessment

70. This section provides a summary assessment of the potential impact of the proposed Bill on private columbarium operators. There are two parts to this assessment:

- **A qualitative assessment** – where we offer our observations and assessment based on the information collected from the stakeholders we interviewed as part of the Consultancy Study about market structure and dynamics, general business practices, and the issues raised.
- **A quantitative assessment** – where we estimate total cost of compliance using Economic Analysis and Business Facilitation Unit’s Business Cost of Compliance Framework.

3.1 Assessment of Business Impact

3.1.1 Overview

71. Regulation will no doubt help raise industry standards and enhance the image of the industry (e.g. columbarium operators will be seen as even more professional). This is because those private columbaria that can qualify for—and successfully obtained—a licence will likely operate to higher standards and be better operated.
72. Clearly, regulation will also bring benefits to the consumer through better managed columbaria, more professional services, and greater protection (e.g. through clearer terms and conditions, greater transparency about services and prices, etc).
73. In addition, regulation will benefit the community at large by providing a ‘reliable’ alternative to public niche spaces (especially given the current general shortage of supply of public niche spaces in Hong Kong).
74. The stakeholders we interviewed agreed in principle about the need to regulate the private columbarium industry, and the benefits that regulation will bring. Their hope is that it can be done in a way that will not affect their long-standing traditions (in the case of religious bodies offering niche spaces as part of their customs and practices), services (in the case of not-for-profit organisations who are doing the community a service by providing a resting place for the residents of elderly homes, the homeless, low-income families, and the disadvantaged people), and businesses (in the case of for-profit businesses operating columbarium facilities).
75. Despite the benefits, regulation will inevitably bring about changes to the industry and impact all those involved—columbarium operators and customers. It will also have implications for the Government. We describe these impacts and implications in the following paragraphs.
76. But before describing the impact of regulation, it is worth pointing out that despite the fact that the proposed set of regulatory requirements represents a very high threshold for many of the ‘existing’ private columbaria—large and small alike, the biggest challenges, burdens and costs to columbarium operators come from meeting the statutory requirements of some of the existing ordinances (e.g. town planning, land, buildings, fire safety, environmental protection), and not from meeting the licensing requirements of the proposed Bill (e.g. formulating a management plan, having a ‘register of patrons’, putting in place cessation of business arrangements, or even providing a ‘performance bond/upfront deposit’ and setting up a separate ‘maintenance fund’). The proposed Bill is merely stating that compliance with the requirements of the existing ordinances is a prerequisite for application of a private columbarium

licence. All the 'existing' private columbaria (or businesses in general for that matter, where applicable) should be abiding by those existing requirements even without the proposed Bill.

3.1.2 Key Impact

77. The changes brought on by regulation are likely to be seen as a burden (from an administration point of view) and a significant cost to 'existing' private columbarium operators.
78. It is anticipated that only a small percentage of the 'existing' private columbaria are likely to be able to qualify for a licence. Of these, it is anticipated that the majority will be the larger columbaria, and a small percentage will be the smaller columbaria.
79. It is anticipated that the great majority of 'existing' private columbaria are unlikely to be able to qualify for a licence in full. Of these, it is anticipated that the majority will be the smaller columbaria, and a small percentage will be the larger columbaria. There are approximately 140,136 sold niches (out of the total of 416,100 niches from Part B operators), and of these, approximately 102,022 are occupied. Our broad estimates also show that there could be approximately 128,404 sets of cremains (or niches) from small operators outside Part A and Part B. These figures could give a rough indication of the potential size of the problem (approximately 268,540 (140,136 plus 128,404), which is the number of cremains that might need to be dealt with if (many of) these 'existing' private columbaria operators do not qualify for a licence and are forced to close their operations. All the customers who bought niches in 'unqualified' columbaria will be affected (regardless of whether the 'sold niches' are occupied or not).
80. The ones most affected are those (unfortunately, there is no fool-proof way of distinguishing the genuine not-for-profit organisations from other operators):
 - who are simply trying to uphold their long-standing traditions (some religious bodies)
 - who are trying to do the community a service (some not-for-profit organisations)
 - even those run by for-profit organisations, some have a strong conviction for their work (a service to the community) and a clear commitment to the dead and their families, and are not focusing solely on profits.
81. Even if some of the private columbarium operators were being exempted from having to obtain a licence, it will not be the end of their 'struggle' and problems. Operators will still be required by the Lands Department to pay a potentially sizeable land premium for operating a columbarium (because it is considered a commercial and profit-making activity), or subject to enforcement actions for breaching land use conditions. This alone will force many of them to close down their operations.
82. Given the general shortage of land in Hong Kong and sites earmarked for building and operating columbaria (private and public), potential private columbarium operators (investors, or interested parties) are concerned about having to acquire a piece of land (which is a significant investment) without knowing with certainty whether or not they will be able to obtain the required

approvals from the Town Planning Board and Lands Department. The (high commercial) risk involved is likely to discourage potential private columbarium operators (investors, or interested parties) from entering the market.

83. Given that the Government's proposal is to ask all private columbaria to freeze all of their sales activities while operators are applying for a licence (regardless of whether or not they will, in the end, be able to obtain a licence), this means that it is likely that the supply of private niche spaces will essentially drop to zero (not counting the supply of niche spaces from existing private cemeteries with columbarium facilities—however, approximately 90% of the currently available niche spaces in these facilities (around 28,989 out of 31,403, based on figures of 30 June 2013 collected by the Food and Environmental Hygiene Department) belong to Christian and Catholic cemeteries, which means these niche spaces are not really 'open or accessible to' the general public, except followers, and there are approximately 843,000¹ of these followers in Hong Kong comprising mainly of Protestants and Roman Catholics, or only about 12%² of the Hong Kong population) immediately after the licensing process has started. Also, customers will unlikely want to buy from the 'existing' private columbaria that are not applying for a licence.
84. The time needed to meet town planning and land lease requirements is likely to be longer than the currently planned 18 months, or possibly even longer than the proposed 18 months plus the proposed 2.5 years of temporary-suspension-of-liability period.
85. Given that it is anticipated that the majority of 'existing' private columbaria (many of those on Part B, and those outside the 2 government lists) will unlikely be able to meet the proposed licensing requirements in full and qualify for a licence, the effective supply of private niche spaces in Hong Kong shortly after the implementation of the proposed Bill will be seriously affected. In fact, this situation has, to some extent, started to happen. As many stakeholders we interviewed pointed out, Government's move to categorise 'existing' columbaria into Part A and Part B has drawn new customers towards buying private niche spaces from the columbaria on Part A (there are only about 31 columbaria as at 28 June 2013 out of the potentially hundreds of private columbaria—large and small—in the market based on guesstimates provided by stakeholders we interviewed). This is because these Part A private columbaria are seen as good as 'being licensed' by the Government to operate, and therefore, offer greater assurance to customers. The 2 lists have (perhaps unintentionally and inadvertently) already caused the effective supply of private niche spaces to (start to) 'shrink'.
86. Given that the great majority of 'existing' private columbaria will unlikely be able to qualify for a licence and the overall supply of private niche spaces is likely to be seriously affected, this might end up stressing the public niche system even further (given that there is already insufficient public niche spaces to meet demand) because:
 - Some new customers who would prefer private niche spaces might choose public niche spaces instead (because there might be a shortage of private

¹ Chapter 18 'Religion and Custom', 2012 Government Yearbook (<http://www.yearbook.gov.hk/2012/en/pdf/E18.pdf>).

² Chapter 20 'Population and Immigration', 2012 Government Yearbook (<http://www.yearbook.gov.hk/2012/en/pdf/E20.pdf>).

niche spaces in the market, or prices might have increased to such a level that either they can no longer afford or do not think it is worth paying that kind of money for niche spaces).

- Some of the existing customers who have bought niche spaces in unlicensed private columbaria may want to relocate the remains of their ancestors and loved ones to licensed private columbaria or to public columbaria.
 - This will lengthen the overall waiting time even further because there would be more people queuing and waiting for public niche spaces. Also, this is likely going to exacerbate the current issue of people having to store remains 'temporarily' in places such as shops/offices of licensed undertakers of burials, coffin shops, etc.
87. Given the significant costs of complying with the proposed licensing requirements (when considering the combined total cost of compliance for complying with all the existing ordinances and the proposed Private Columbaria Bill), it is expected that (as many stakeholders we interviewed have pointed out) most, if not all, of the costs will be passed on to the customer (but for private columbaria with very few or no available niches to sell, the additional cost will be a burden because they will not be able to recover it from 'future sales'), which means that the public can expect prices to go up as a result of the implementation of the proposed Bill. This will affect the entire community given that this is an essential 'service' that everyone will need at some point.
88. Depending on the severity of the shortage of supply issue resulting from the implementation of the proposed Bill, prices may potentially increase to 'unaffordable' levels for most people. Also, this could potentially fuel speculation activities (unless the private columbaria that remain in the market continue to discourage or forbid transfer of niches as many private columbarium operators currently do to prevent speculation in niche spaces).
89. Given that this is an essential 'service' that everyone will need at some point, it means that the impact will not be limited to just a particular group of consumers but will affect the entire community—potentially, for a number of years to come after the introduction of the proposed Bill. Not only that, it is likely to have an unintended ripple effect and affect some of the other sectors/segments of the society. From our discussions with private columbaria operated by religious bodies and not-for-profit organisations, they mentioned that they may have to downsize the scale of some of their existing not-for-profit operations and activities (e.g. size of their elderly homes, size of their schools, amount of donations to or number of support programmes for the needy) in order to channel more money into their private columbarium operations simply to keep them going and maintain them the way it is (let alone making any kind of improvement plans, or planning for any kind of expansion, even where conditions permit).
90. The Government will find itself facing a dilemma of its own too after the implementation of the proposed Bill—whether or not to take enforcement action against 'existing' private columbaria that do not qualify for a licence but choose to continue operation or existence:
- If the Government decides to take enforcement action, it will have to deal with potential issues brought forward by operators (e.g. potential complaints/grievances, protests, or possibly even law suits against the

Government to fight for the right to continue to operate on their current premises) and the large number of cremains stored in these columbarium facilities (even though the Government does not want to, in the end, it might have very little choice but to have to step in because there are not any other feasible alternatives for private columbarium operators and their customers). This could potentially become a (serious) 'social issue' for the Government.

- If the Government decides not to take enforcement action (or to delay taking action), it will likely face criticisms (e.g. from the public, politicians) for not regulating the market (or not being able to regulate the market), despite having implemented the proposed Bill (which gives the Government the powers to do so). It will also face criticism for not anticipating the impact, and putting in place effective plans and arrangements to deal with the potential consequences.

3.2 Estimated Cost of Compliance

91. We have estimated the impact of the proposed Bill in terms of approximate total cost to the local private columbarium industry for complying with the proposed licensing requirements (the cost of compliance). These are broad estimates, and are based on a set of key assumptions set out in the Final Report.
92. The estimated cost of compliance only covers those private columbarium operators who have been identified in the 2 government lists (Part A and Part B) because there is no information about the private columbarium operators outside the 2 government lists.
93. The business cost of compliance can be classified under three main categories³:
 - **Administrative** – these are marginal internal staff costs associated with preparing the paperwork and submitting them to the Government (or regulatory body(ies)), keeping records (for inspection by the Government), trying to understand and clarify regulatory requirements, and liaising with the Government during licensing/registration, renewal and updating processes. An example is costs associated with preparing and reviewing application.
 - **Substantive** – these are marginal costs associated with commissioning professional or non-professional services, conducting staff training, recruiting staff, purchasing new equipment, carrying out building works and renovations, and paying relevant fees and expenses to third parties (other than the Government) for services/goods needed. An example is costs associated with engaging external service providers.
 - **Financial** – these are marginal costs associated with paying relevant fees to the Government or other regulatory body(ies) involved if any, and costs that are directly related to such activities or transactions. An example is costs associated with application and licence fees.
94. Our estimates indicate that the total cost of compliance to the entire private columbarium industry (again, covering only those operators that have been identified in the 2 government lists) for complying with the proposed set of

³ Information and framework from the Economic Analysis and Business Facilitation Unit.

requirements is approximately HK\$167.3 million (for the total one-off cost) and HK\$7.6 million (for the total recurrent cost on an annualised basis).

95. In terms of estimated one-off costs, the three largest contributors are:
- The estimated cost of providing a ‘performance bond/upfront deposit’ by private columbarium operators is the largest contributor (HK\$113.1 million, which accounts for approximately 67.6% of the estimated total one-off cost of compliance).
 - The estimated cost of preparing a licence application (HK\$22.3 million, which accounts for approximately 13.3% of the estimated total one-off cost of compliance).
 - The estimated cost of engaging qualified professionals (e.g. Authorised Persons, Registered Structural Engineers) to certify that the premises are in compliance with statutory requirements (HK\$15.8 million, which accounts for approximately 9.4% of the estimated total one-off cost of compliance).
96. In terms of estimated recurrent costs (on an annualised basis⁴), the three largest contributors are:
- The estimated cost of preparing facilities maintenance reports by qualified professionals (HK\$4.0 million, which accounts for approximately 52.7% of the estimated total recurrent cost of compliance).
 - The estimated cost of renewing licences (HK\$2.5 million, which accounts for approximately 33.4% of the estimated total recurrent cost of compliance).
 - The estimated cost of preparing annual audited accounts of the ‘maintenance fund’ by certified auditors (HK\$1.0 million, which accounts for approximately 13.7% of the estimated total recurrent cost of compliance).
97. The estimated cost per affected operator is:
- For a large operator, approximately HK\$2.7 million for the one-off marginal cost, and approximately HK\$0.13 million for the annualised recurrent marginal cost.
 - For a medium-size operator, approximately HK\$2.0 million for the one-off marginal cost, and approximately HK\$0.093 million for the annualised recurrent marginal cost.

⁴ The recurrent cost figures shown are annualised in order to present a snapshot of the estimated business compliance cost for a given year after the proposed Bill has been implemented. In reality, operators incur different types of recurrent costs at different times (e.g. the cost of renewing a licence is incurred every 5 years; the cost of engaging a qualified professional (e.g. Authorised Persons, Registered Structural Engineers) to prepare and certify a maintenance report to demonstrate that the premises are in compliance with statutory requirements is incurred every 2 years), and the ‘actual’ cost incurred for different types of recurrent costs at the point in time when they are ‘due’ (or expected to take place) is the respective cost figure shown in the Final Report times the relevant cycle period (e.g. the ‘true’ cost of renewing a licence every 5 years say for a large operator is HK\$24,400.0 x 5 = HK\$122,000 at every 5-year point).

- For a small operator, approximately HK\$1.2 million for the one-off marginal cost, and approximately HK\$0.052 million for the annualised recurrent marginal cost.
 - For an undertaker of burials, approximately HK\$0.002 million for the one-off marginal cost, and no annualised recurrent marginal cost.
98. To help put things into perspective, we tried to demonstrate the impact by showing the compliance cost as a percentage of the total operating expenses, and then the impact of the 'increased' total operating expenses on the total operating profits of a 'typical' large private columbarium operator, medium-size private columbarium operator, small private columbarium operator, and undertaker of burials. The former (showing the cost of compliance as a percentage of total operating expenses demonstrates the impact from a cost point of view), and the latter (showing the impact of the 'increased' total operating expenses on total operating profits) can give an indication of whether private columbarium operators and undertakers of burials will be able to recover the additional cost from their respective profits (and how much it will eat into their profit margins). But unfortunately, the information (operating expenses and operating profits) is not available either through official or non-official sources (because costs, sales, and profit figures are considered commercially sensitive information), and there is no adequate basis for estimating them.
99. It is worth repeating that despite the fact that the proposed set of regulatory requirements represents a very high threshold for many of the 'existing' private columbaria—large and small alike, the biggest challenges, burden and costs to columbarium operators come from meeting the statutory requirements of some of the existing ordinances (e.g. town planning, land, buildings, fire safety, environmental protection), and not from meeting the licensing requirements of the proposed Bill (e.g. formulating a management plan, having a 'register of patrons', putting in place cessation of business arrangements, or even providing a 'performance bond/upfront deposit' and setting up a separate 'maintenance fund'). The proposed Bill is merely stating that compliance with the requirements of the existing ordinances is a prerequisite for application of a private columbarium licence. All the 'existing' private columbaria (or businesses in general for that matter, where applicable) should be abiding by those existing requirements even without the proposed Bill. Given that these other requirements do not fall within the remit of the proposed Bill, our calculations (following internationally accepted standards of estimating costs of compliance) therefore exclude the associated costs.

4. Recommendations

100. Based on our findings and assessment, we recommend some changes to the proposed licensing requirements. Again, when formulating our recommendations, we aimed to strike a balance between different considerations (e.g. effectiveness of the proposed regulatory measures at achieving their intended objectives, practicality of the proposed regulatory measures, impact on private columbarium operators, consumer protection).

101. The findings and recommendations from this Consultancy Study represent just one of the many considerations that the Government will need take into account when finalising its regulatory proposals.
102. For each requirement, we follow a similar 2-part framework to describe our recommendations:
 - **Key Considerations**—we begin by giving the main considerations that led us towards making our recommendations.
 - **Recommended Changes (or Measures)**—with those key considerations in mind, we then put forward our recommendations.

4.1 Licensing Requirements

4.1.1 Operating on Self-Owned Premises

Key Considerations:

103. While it represents a high threshold for both ‘existing’ and ‘new’ private columbarium operators, as many interviewees pointed out operating on self-owned premises will give greater assurance and better protection for consumers, and we agree.
104. For ‘existing’ private columbarium operators, they can still operate on leased premises as long as they can secure a tenancy that is at least 5 years long.
105. However, for ‘new’ private columbarium operators, as interviewees pointed out, buying and operating on their own premises is not the main concern. The issue is finding land in Hong Kong that meets town planning requirements and land use conditions—this is a challenge that is nearly impossible to overcome for most private columbarium operators, ‘existing’ and ‘new’ alike. This is because it is common knowledge that: 1) there is a general shortage of land in Hong Kong; 2) there is also a general shortage of sites earmarked for the development of columbaria (private and public); and 3) more importantly, there is strong opposition by the public to any plans to build and operate columbarium facilities (private or public) in their neighbourhoods. This limits the options that are available to potential private columbarium operators (investors, or interested parties) seeking suitable premises for private columbarium operations. This is likely to discourage potential private columbarium operators (investors, or interested parties) from entering the market. This means that there will be no supply of ‘new’ private niche spaces in Hong Kong, which will make addressing the issue with ‘existing’ private columbaria that do not qualify for a licence and handling the cremains involved even more difficult. Also, in the longer run, it might affect overall industry development and market competition, but the exact long-term impact remains to be seen.
106. Unfortunately, this is an issue that goes beyond Government’s policy area of private columbaria regulation and development, and is linked to the broader issue of land use (which is a challenging subject on its own, given the general scarcity of land in Hong Kong). It is highly dependent on how the Government balances all the different social, economic, and political considerations and priorities. This means that there is no one ‘neat, right’ (or simple) solution. Different people and stakeholder segments of the community (as it will impact the whole society, not just those within the private columbarium industry or the

broader death care industry) will inevitably have different views about the subject, and each will have their own interests to look after.

Recommended Changes (or Measures):

107. Going forward, to increase the options that are available to potential private columbarium operators seeking premises (land and facilities) for their private columbarium operations, if feasible (knowing that land in Hong Kong is scarce in general), the Government should consider putting forward more land(s) that is (are) zoned for ‘columbarium development’ for interested parties (‘new’ and ‘existing’ private columbarium operators) to bid, especially if the Government is interested in attracting more new operators to enter the market (e.g. as a way of increasing the overall supply of private niche spaces in Hong Kong, and promoting healthy competition).
108. Whether it is for building and operating private or public columbaria, the Government will need to find (additional) land and facilities (and earmark them for columbarium use) to deal with: 1) the cremains that need to be relocated as a result of ‘existing’ private columbaria being forced to close down their operations because of the introduction of the proposed Bill; and/or 2) the shrinkage of the private niche market resulting in more people having little choice but to opt for public niche spaces.

4.1.2 Operating on Leased Premises

Key Considerations:

109. While we agree with interviewees that operating on leased premises is not ideal, we understand that the Government is providing this ‘option’ to cater to the many ‘existing’ private columbarium operators who are operating on leased premises, and many of them have been doing so for long periods of time. It would be difficult, if not impossible, to ask all of them to move to self-owned premises (if they want to continue to operate), or take a heavy-handed approach and force all of them to close (as there will be serious and widespread consequences that will impact the entire society).
110. Given that the typical customer expects ‘permanence/eternity’ when it comes to the storage of cremains, and the potential risk of it being used by ‘malevolent’ operators to make money and then abscond if the tenancy period is ‘seen’ as (too) short, there is scope for lengthening the proposed tenancy period.

Recommended Changes (or Measures):

111. The Government should consider lengthening the minimum tenancy period requirement from 5 to 10 (or even 20) years for private columbarium operators operating on leased premises that are privately owned (as opposed to government owned). This should not present a big challenge for private columbarium operators. This is because, as interviewees pointed out, it is difficult for landlords to sell or find other uses for the premises that have been used to store cremains and quite often there are ties between the landlord/owner and the private columbarium operator.
112. The Government should consider making an exception and allowing private columbarium operators operating on leased premises that are government owned on a Short Term Tenancy (STT) basis to meet a shorter tenancy period requirement (e.g. 7 years). This is because we understand that currently the

longest STT (according to Lands Department's records) is 7 years, and after the end of the tenancy period, leases can be extended for another 7 years or for a shorter period of time depending on individual cases (and provided that the short-term use of the piece of land in question will not impact Government's longer term development plans, if any, for that piece of land).

4.2 Application Requirements

4.2.1 Providing Documentation

Key Considerations:

113. This is a reasonable requirement.

Recommended Changes (or Measures):

114. The Licensing Authority should consider issuing guidelines on key areas to cover in the management plan, and providing a simple 'template' to private columbarium operators (especially smaller ones) to help them prepare their management plans.

4.2.2 Disclosing Information about Operators to the Public

Key Considerations:

115. This is a reasonable requirement.

Recommended Changes (or Measures):

116. The Licensing Authority should try and reach an understanding with private columbarium operators about what might be considered commercially sensitive and personal information, and determine the type of information it should disclose to the public. Needless to say, the Government should also follow applicable requirements and standards (e.g. Personal Data (Privacy) Ordinance, Cap 486) when determining the type of information to collect and disclose to the public.

4.2.3 Seeking Public Views about Licence Applications

Key Considerations:

117. We appreciate that there is a need for the Licensing Authority to operate with greater transparency, especially on the more controversial issues, to match rising expectations of the community.

118. However, we agree with interviewees that:

- It is duplicating the process and effort that private columbarium operators would have already gone through when seeking approval from the Town Planning Board (it being one of the licensing requirements), especially if an operator has gone through the process of obtaining approval from the Town Planning Board more recently.
- It will almost certainly invite unfavourable responses, especially in today's politicised environment and given the general opposition by nearby residents to columbarium facilities because residents do not want these facilities to be next to or close to their homes (the so called 'not-in-my-

backyard syndrome’). This will inevitably put the Government in a difficult position (e.g. how much weight should be given to say a single objection received when deciding whether or not to grant a licence, especially in the case where an operator has met all of the licensing requirements, different people assessing an application may ‘weigh’ objections differently—all these involve subjective judgement to a large extent, and are often difficult to ‘quantify’ or evaluate more objectively).

- It is likely that the process will be used by some private columbarium operators to bash competition by submitting objections (under assumed identities, or paying people to do so in their names) to make it (more) difficult for other operators (especially those columbaria operating in their neighbourhoods) to obtain a licence. It is also likely to give some people an opportunity to solicit bribes from private columbarium operators for not raising objections to their licence applications.

Recommended Changes (or Measures):

119. The Licensing Authority should consider publishing information about:
 - All the licence applications received (e.g. on Government’s website) to make the process transparent (and people can always write to the Licensing Authority and give views if they wish to do so).
 - The measures taken by private columbarium operators to address concerns raised by members of the public, if any.
120. When evaluating public views collected (and objections raised), the Licensing Authority should do so in an objective way and ensure that application assessments will be based on rational discussion and objective evaluation, and not be unduly swayed by public sentiment (given the sensitive nature of the subject).

4.3 Validity Period of a Licence and Licence Fee

4.3.1 Validity Period of a Licence

Key Considerations:

121. Given the stable and long-term nature of the columbarium operation and that the typical customer expects ‘permanence/eternity’ when it comes to the storage of cremains, there is scope for lengthening the validity period of the licence. This will help reduce the administrative burden on private columbarium operators, and match consumer expectations and perceptions that a private columbarium has the intention to remain in operation for the longer term.
122. As interviewees pointed out and we agree, lengthening the validity period of the licence does not prevent the Government from conducting inspections from time to time to ensure compliance with licensing conditions, and/or requiring private columbarium operators to submit regular reports to demonstrate compliance; and if there were non-compliance issues and depending on the nature and severity of these issues, the Government can determine whether it would be appropriate to give operators time to rectify those issues, take enforcement actions against them, or suspend or even revoke their licences.

Recommended Changes (or Measures):

123. The Government should consider extending the validity period of the licence to 10 years instead. For private columbarium operators operating on leased premises, they will need to provide proof that they have secured the right to use the relevant premises for at least 10 years under fixed lease terms, otherwise, the Licensing Authority may issue a licence with a shorter validity period (if they have met all the other licensing requirements).
124. Ideally though, we believe that the Government can even consider tying the validity period of the licence to the duration of:
 - The land lease period (e.g. until 2047) for private columbaria operating on self-owned premises.
 - The tenancy period (e.g. 10 years or longer/shorter if an operator can provide proof that it has secured the right to use the relevant premises for that period under fixed lease terms) for private columbarium operating on leased premises.
125. To monitor compliance with licensing conditions, an option would be (similar to the 'restaurants licensing system' that the Government has put in place) to adopt a 'warning letter system' where the Licensing Authority will issue formal warnings to private columbarium operators every time an operator breaches or fails to comply with licensing conditions as a way of compelling the operator to take effective remedial action(s). If not, it can/will result in the Government eventually suspending or even revoking their licences.

4.3.2 Licence Fee

Key Considerations:

126. While we agree with the general principle of recovering the cost of regulation (e.g. reviewing and issuing licences, conducting inspections from time to time, reviewing and approving changes to licences) fully from regulated industries (this is in line with the latest set of instructions issued by the Financial Secretary during the 2013 Budget Speech asking all government bureaux and departments to review their fees and charges and submit plans for their revision in order to recover fully/more fully the cost of providing relevant public services), we appreciate that there is a balance to be struck between the benefits and the costs of regulation, and there are often other factors to consider when setting fee levels (e.g. impact on operators/businesses and affordability from an operation/business point of view; proportionality in terms of the cost of compliance in relation to the service fees charged by operators/businesses, etc).
127. However, given that the proposed set of licensing requirements represents a heavy burden and a significant cost to 'existing' private columbaria (when considering the combined total cost of compliance for complying with all the existing ordinances and the proposed Private Columbaria Bill), and will have a serious impact on the hundreds of small-and-medium-size columbaria, especially the smaller ones run by religious bodies and not-for-profit organisations, the Government should consider implementing measures to help these small-and-medium-size operators.

Recommended Changes (or Measures):

128. The Government should consider whether there is room for adjusting the proposed fee level downwards to reduce the cost of compliance and minimise the impact on private columbarium operators given that, when looked at in totality (when considering the combined total cost of compliance for complying with all the existing ordinances and the proposed Private Columbaria Bill), the total cost of compliance is already significant. If this is not possible, as a measure to help the small-and-medium-size private columbarium operators, the Government should consider levying a discounted fee rate on these operators for their licences.

4.4 Licensing Conditions

4.4.1 Cessation of Business Arrangements

Key Considerations:

129. Given the potential impact, we agree that it is sensible to require operators to put in place proper termination and handover/transitional arrangements given the potential impact on consumers in the event an operator ceases operation (regardless of the reason). This is no different from requiring certain businesses to formulate a 'business recovery plan' and 'handover and termination procedures' to guard against operation disruptions (e.g. failure of critical equipment, natural disasters, handover of operations say between an outgoing operator and an incoming operator where this happens), especially if the risk of occurrence can be high and the potential impact can be serious. Planning for these situations is simply regarded as good business sense, and should be done as part of their normal business activities.

Recommended Changes (or Measures):

130. The Licensing Authority should consider issuing clear guidelines on what is expected of private columbarium operators, and key areas to cover in their 'cessation of business plans'.

4.4.2 'Occupation Order' for the Government

Key Considerations:

131. As some interviewees pointed out and we agree that it is necessary for the Government to gain entry and take control of the premises in the event that the Government will need to step in when a private columbarium operator has absconded without fully discharging its responsibilities by winding down the operation gradually and in an orderly fashion.
132. We also agree that given that it mainly affects landlords/owners, the potential impact should be clearly communicated to landlords/owners so that they can assess the potential risks versus benefits of leasing premises to columbarium operators, and make informed decisions.

Recommended Changes (or Measures):

133. The Government should communicate (e.g. through advertisements, publishing information on Government website) the impact clearly to landlords/owners so

that they can assess the potential risks versus benefits of leasing premises to columbarium operators, and make informed decisions.

4.4.3 Signing Written Agreements with Customers

Key Considerations:

134. This is a reasonable requirement.

Recommended Changes (or Measures):

135. The Licensing Authority should consider issuing general guidelines on key terms and conditions to include in written agreements, but give flexibility to private columbarium operators to tailor contracts to their individual circumstances.
136. If there are specific terms and conditions that are considered essential to consumer protection and there is indication that private columbarium operators are exploiting the grey areas or even avoiding those terms and conditions, the Licensing Authority can provide the exact terms and conditions for private columbarium operators to include in their written agreements with their customers.

4.4.4 Having a Dedicated Nominee for Each Niche

Key Considerations:

137. While we agree that it is sensible to ask private columbarium operators to provide the name of the 'occupant' for each of the niches sold, there might be practical difficulties given the current buying behaviours of some customers. Some customers buy niche spaces in advance and in numbers (e.g. for a few members of their families in the case of individual buyers, for residents of their elderly homes in the case of some not-for-profit organisations), and will only provide a name for a niche space when a death occurs. It might be easier for individual buyers to provide names of their few family members, but not so for 'group/corporate buyers' (e.g. not-for-profit organisations buying for residents of their elderly homes), especially if fees are involved whenever there is a transfer (assuming that transfers are allowed by the private columbarium operator in question).

Recommended Changes (or Measures):

138. The Licensing Authority should consider asking operators to encourage customers to provide the name of the 'occupant' for each of the niche spaces sold when customers pay their deposits to 'reserve' niche spaces (e.g. by including this practice in the to-be-published 'Code of Practice'), but a name must be provided by the time a niche space is being occupied.
139. For 'group/corporate buyers' (e.g. not-for-profit organisations buying for residents of their elderly homes), the Licensing Authority should consider allowing these buyers to provide a list of potential 'occupants' instead:
- The number of potential 'occupants' on the list should be equal to or greater than the number of niche spaces that a 'group/corporate buyer' is purchasing.

- The potential ‘occupants’ should be residents of their elderly homes, or ‘registered members’.
140. As we mentioned earlier, it is good to know that even without regulation many ‘existing’ private columbarium operators are already taking effective measures to try and prevent speculation in niche spaces. The practice (allowing transfers only when there is genuine reason or justification for doing so) should be encouraged and promoted, and included in the to-be-published ‘Code of Practice’ for all private columbarium to follow. This is because it has been proven in many cases (e.g. properties, stocks, commodities and consumer products) that (excessive) speculation can be damaging (e.g. to the proper functioning of a market) and non-constructive, and in the end, detrimental to everyone involved.

4.4.5 Having a ‘Register of Patrons’

Key Considerations:

141. This is a reasonable requirement.

Recommended Changes (or Measures):

142. The Licensing Authority should consider issuing general guidelines on key information to capture in the ‘register of patrons’ for ‘sales transactions’ that take place after the proposed Bill comes into effect.

4.4.6 Providing a ‘Performance Bond/Upfront Deposit’

Key Considerations:

143. We understand that it is Government’s intention/aim to use this measure to deter private columbarium operators from closing down their operations and absconding (without discharging their responsibilities fully by winding down their operations gradually and in an orderly fashion).
144. However, based on our own commercial experience and this is validated by the findings from our stakeholder interviews, the cost will certainly be passed on to consumers (but for private columbaria with very few or no available niches to sell, the additional cost will be a burden because they will not be able to recover it from ‘future sales’), and private columbarium operators will still be able to maintain desirable levels of profit. This is especially true given the general shortage of niche spaces in Hong Kong, which means that private columbarium operators are in a strong position to set and influence (market) fee levels. This means that the proposed measure will have very little to no deterrent effect on private columbarium operators.

Recommended Changes (or Measures):

145. The Government should consider removing the requirement for private columbarium operators to provide a ‘performance bond/upfront deposit’.
146. Instead, as some interviewees suggested and we agree, the Government should consider imposing harsher punishment (e.g. imprisonment for the director(s) of a licensed columbarium). This will be a more effective deterrent.

4.4.7 Setting Up a Separate 'Maintenance Fund'

Key Considerations:

147. As we pointed out at the beginning of the Consultancy Study and later validated by our findings from our discussions with stakeholders, the 'maintenance fund' concept may not be a good way of ensuring that private columbarium operators maintain the structure of their premises in good condition. This is because:
- It is very difficult to determine an appropriate percentage or amount that can be applied to all private columbarium operators and all of their individual situations and circumstances. As many interviewees pointed out and we agree, the amount (e.g. the proposed 15% of future sales proceeds) could be too large (if there were many niches left to be sold) or too small (if there were very few niches left to be sold) for the purposes of maintaining structural safety alone. Those columbaria that have been around for a long time are likely to be located in older buildings/facilities (and expected to require to set aside a larger fund for maintenance purposes), but are likely to be the ones with very few niches left to sell. Whereas the 'newer' columbaria are likely to be located in newer buildings/facilities (and expected to require to set aside a smaller fund for maintenance purposes), but have many more niches left to sell.
 - Also, it is considered not very 'cost effective' (when we look at the costs, benefits, and the potential risks for all the stakeholders involved), in addition to being too heavy handed (designed to monitor inputs and processes, and the way operators perform facilities upkeep).

Recommended Changes (or Measures):

148. The Government should consider removing the requirement for private columbarium operators to set up a separate 'maintenance fund'.
149. Instead, as we suggested and subsequently validated by our findings from our discussions with stakeholders, the Licensing Authority should consider adopting an 'outcome-based approach' to ensuring that operators achieve long-term building/structural integrity for their columbarium facilities by submitting regular structural maintenance reports that are certified by Authorised Persons and/or other certified professionals, and leave it to the operators to decide how best to achieve the 'desired outcome'. The frequency of submission should not be too often, and we suggest aligning it with the requirements of the Buildings Ordinance, and considering the condition of individual buildings or facilities.
150. If there are key areas (or key risks) that the Licensing Authority wants private columbarium operators to pay particular attention to when performing facilities upkeep, the Licensing Authority can include a schedule in the proposed 'Code of Practice' that sets out the kinds of maintenance works (or areas that require special attention) that are expected to be carried out by the private columbarium operators.
151. The Licensing Authority, with the support of its executive arms and relevant professionals, can conduct its own sample inspections as it sees fit. Similar approaches are already being adopted by other government departments (e.g. Buildings Department for the monitoring of buildings maintenance).

152. This would be a more cost effective approach to monitoring a private columbarium operator's fulfilment of their maintenance obligations (compared to the more resource intensive approach proposed by the Government that monitors the way operators perform facilities upkeep).

4.4.8 Adhering to a 'Code of Practice'

Key Considerations:

153. This is a reasonable requirement.

Recommended Changes (or Measures):

154. The Licensing Authority should consider issuing/publishing a draft first and collect feedback and comments about the draft from different stakeholder groups from the industry (e.g. by organising focus groups on designated dates and times, and inviting stakeholders to participate and give their views) before finalising the Code of Practice.
155. As a general principle, it should not be too onerous for private columbarium operators to follow. Where possible, it should focus on principles and outputs/outcomes (evidently, these will need to be clearly defined to minimise potential debates or even arguments about achievement of those principles, outputs or outcomes), and less on specifying inputs and processes to give some flexibility to private columbarium operators to determine how best to achieve them based on their individual circumstances (e.g. business model, operating model, etc). That said, the Licensing Authority can specify some inputs and processes under certain circumstances (e.g. to manage higher risk areas, to set minimum standards), as it might be counter-productive to leave it to the interpretation of the private columbarium operators.
156. As we mentioned earlier, it is good to know that even without regulation many 'existing' private columbarium operators are already taking effective measures to try and prevent speculation in niche spaces. The practice (allowing transfers only when there is genuine reason or justification for doing so) should be encouraged and promoted, and included in the to-be-published 'Code of Practice' for all private columbaria to follow. This is because it has been proven in many cases (e.g. properties, stocks, commodities and consumer products) that (excessive) speculation can be damaging (e.g. to the proper functioning of a market) and non-constructive, and in the end, detrimental to everyone involved.
157. Also, the practice of asking operators to encourage customers to provide the name of the 'occupant' for each of the niche spaces sold when customers pay their deposits to 'reserve' niche spaces should be included in the to-be-published 'Code of Practice', but a name must be provided by the time a niche space is being occupied. For 'group/corporate buyers' (e.g. not-for-profit organisations buying for residents of their elderly homes), allow these buyers to provide a list of potential 'occupants' instead. The number of potential 'occupants' on the list should be equal to or greater than the number of niche spaces that a 'group/corporate buyer' is purchasing; and the potential 'occupants' should be residents of their elderly homes, or 'registered members'.
158. Again, if there are key areas (or key risks) that the Licensing Authority wants private columbarium operators to pay particular attention to when performing facilities upkeep, the Licensing Authority can include a schedule in the proposed 'Code of Practice' that sets out the kinds of maintenance works (or

areas that require special attention) that are expected to be carried out by the private columbarium operators.

4.5 Freezing Sales Activities

Key Considerations:

159. For ‘existing’ private columbarium operators who are applying for a licence, as some of the interviewees pointed out and we agree, it might not be totally practical to ask operators to freeze their sales activities because of:
- Business viability considerations (e.g. potential cash flow issues). Private columbarium operators will need a means to ensure business viability during the period (especially if this period is anticipated to be fairly long, e.g. in months) when they are waiting for their applications to be processed and licences to be issued.
 - The supply of private niche spaces in Hong Kong. Supply will essentially drop to zero (not counting the supply of niche spaces from existing private cemeteries with columbarium facilities—this is because approximately 90% of the currently available niche spaces (around 28,989 out of 31,403, based on figures of 30 June 2013 collected by the Food and Environmental Hygiene Department) belong to Christian and Catholic cemeteries, which means these niche spaces are not really ‘open or accessible to’ the general public, except followers, and there are approximately 843,000⁵ of these followers in Hong Kong comprising mainly of Protestants and Roman Catholics, or only about 12%⁶ of the Hong Kong population) immediately after the licensing process has started. Also, customers will unlikely want to buy from any ‘existing’ private columbaria that are not applying for a licence.
 - Potential risk(s) posed by ‘existing’ private columbarium operators. ‘Existing’ private columbaria have been selling niches long before any form of regulation existed, and the potential risks are really no greater or less before and after the proposed Bill is implemented.

Recommended Changes (or Measures):

160. If there is a widespread business viability issue, the Government may need to consider exercising discretionary powers by allowing the private columbarium operators to rent (but not sell) ‘new or unsold’ niche spaces with the understanding that these ‘rentals’ can be ‘converted’ into sales after the operators have obtained a licence. The Government can consider imposing certain conditions on this ‘rental arrangement’: 1) a written ‘rental’ agreement must be signed between the operator and the customer (there must be a dedicated nominee for every rented niche space at the time when the niche space is rented out even if a niche space is not being occupied immediately at that point—this means that renting a number of niches and without dedicated nominees will not be allowed during this period); 2) the ‘rental’ agreement should be renewed on a yearly basis at the longest; 3) the operator can only accept payment from customers for these ‘rented’ niche spaces for up to 3

⁵ Chapter 18 ‘Religion and Custom’, 2012 Government Yearbook (<http://www.yearbook.gov.hk/2012/en/pdf/E18.pdf>).

⁶ Chapter 20 ‘Population and Immigration’, 2012 Government Yearbook (<http://www.yearbook.gov.hk/2012/en/pdf/E20.pdf>).

months at a time; 4) operators will need to submit a list of their rented niche spaces to the Government every month (the Government should consider issuing a template for operators to provide this information in a standard format)—after the first submission, the list should be refreshed/updated every month (new additions and updates to previously submitted information should be separated). This can help address both the business viability issue, and the supply of private niche spaces (during the transitional period) issue.

161. The Government should consider putting in place measures to handle/store (in sufficient quantity in terms of niche spaces, and at least temporarily, if not on a longer or even more permanent basis):
 - Cremains that need to be relocated because ‘existing’ private columbaria are being forced to close down their operations as a result of the introduction of the proposed Bill.
 - Cremains resulting from the shrinkage of the private niche market and more people having little choice but to opt for public niches.

4.6 Exemption from Licensing

Key Considerations:

162. Chinese Permanent Cemeteries and other private cemeteries with columbarium facilities (listed in Schedule 5 of the PHMS Ordinance) to be exempted automatically:
 - This is a sensible step given that these facilities and operators are already being regulated by an existing piece of legislation.
163. Undertakers of Burials will need to apply for exemption, but the Government may impose conditions for their exemptions (specific conditions yet to be determined by the Government):
 - This is a sensible step in principle given that there is a genuine need for the undertakers of burials to store cremains on a temporary basis in the course of providing burial services. We agree with the Government that there is a need to impose conditions to prevent the undertakers of burials from, in effect, running a columbarium business ‘on the side’.
164. ‘Existing’ private columbaria that existed before the proposed Bill came into effect:
 - Providing exemption is a sensible measure, but as many stakeholders mentioned, it is difficult to define ‘dated’ (or ‘long-standing’).
 - However, exempting these ‘dated’ private columbaria from having to obtain a licence will not mean the end of their ‘struggle’ according to stakeholders we spoke to. They will still be required by the Lands Department to pay a potentially sizeable land premium for operating a columbarium (because it is considered a commercial and profit-making activity), or subject to enforcement actions (e.g. for breaching land use conditions). This alone will force many of them to close down their operations. In order to avoid/minimise the potential fallout that comes with facing a large number of closures, the Government may need to consider providing say policy support, and taking the lead in working closely and collaboratively with other relevant government bureaux and departments to find effective ways

of addressing the situation. Again, this is not an attempt to try and find a way to 'legalise' 'unqualified' operators (although we believe there is good reason and grounds for helping the genuine not-for-profit ones operated by religious bodies and not-for-profit organisation, so long their facilities do not pose any immediate or grave danger to visitors or the public), but because we think that Hong Kong as a whole will not be able to deal with the potential consequences.

Recommended Changes (or Measures):

165. Chinese Permanent Cemeteries and other private cemeteries with columbarium facilities (listed in Schedule 5 of the PHMS Ordinance) to be exempted automatically:

- None.

166. Undertakers of Burials will need to apply for exemption, but the Government may impose conditions for their exemptions (specific conditions yet to be determined by the Government):

- None.

167. 'Existing' private columbaria that existed before the proposed Bill came into effect:

- For 'dated' (or 'long-standing') private columbaria (whether they are operated by religious bodies, not-for-profit organisations, or commercial entities), the Government should consider finding ways of helping these organisations and providing a 'way out' for these organisations (e.g. by not requiring these organisations to meet permitted uses strictly; not requiring operators to provide proof of 'existing use'; and/or not levying land premium on these operators, or offering premium concession for changes in the original land use).
- As many interviewees pointed out it is difficult to define 'dated' and there is no one 'right definition'. To aid the Government in making a decision, we have conducted some analysis (using available information) on the number of private columbaria that could potentially be exempted under the various potential 'definitions' mentioned by stakeholders (20 to 30 years; 50 to 60 years; before 1980s; before 1985; before 1990s; before Hong Kong's handover to China on 1 July 1997; and before 2005).

Number of Private Columbaria	Number of Niches			
	Total	Sold	Occupied	Available
Total (Part A and Part B)				
104	757,111	432,010 [†]	329,131 [‡]	325,101 [†]

Source: PwC analysis based on the information provided by the Government.

[†] These figures include the estimated number of sold niches, estimated number of occupied niches, and estimated number of available niches of two of the private columbarium operators (referred to as Operator 1 and Operator 2 below) on Part A because the information is not available:

- Operator 1 has a total of approximately 71,100 niches. The estimated number of sold niches is based on anecdotal information (guesstimates only) collected from a funeral services agent, which suggests that this Operator has approximately 2,000 to 3,000 niches available for sale plus another 6,000 niches that the operator is planning to release/make available to the market ‘in the near future’. This gives a total of approximately 9,000 niches that are still available for sale, if we consider the upper end of the guesstimates. By subtracting this estimated number of available niches (9,000) from the total number of niches (71,100), we can estimate that the operator has already sold approximately 62,100 niches.
- Operator 2 has a total of approximately 2,023 niches. To estimate their number of sold niches, we made an assumption based on the fact that approximately 44.7% of all the niches of all the small private columbaria on Part A and Part B are sold. To estimate their number of available niches, we made an assumption based on the fact that approximately 55.3% of all the niches of all the small private columbaria on Part A and Part B are available.

[‡] The figure includes approximately 246,183 occupied niches in large private columbaria, approximately 44,845 occupied niches in medium-size private columbaria, and approximately 38,104 in small private columbaria:

- To estimate the number of occupied niches of Operator 1, we assumed that approximately 70% of the sold niches are occupied given that there is no other basis for assuming otherwise or estimating it. The assumption is based on the fact that approximately 75.68% of all the sold niches are occupied for all the large private columbaria on Part A and Part B; approximately 79.61% of all the sold niches are occupied for all the medium-size private columbaria on Part A and Part B; approximately 75.61% of all the sold niches are occupied for all the small private columbaria; and the average of approximately 76.18% of all the sold niches are occupied for all the private columbaria on Part A and Part B.
- To estimate the number of occupied niches of Operator 2, we made an assumption based on the fact that approximately 75.61% of all the sold niches of all the small private columbaria on Part A and Part B are occupied.

Estimated Number of Private Columbaria Potentially Qualifying for Exemption Under Different ‘Dated’ Definitions:

Number of Private Columbaria	Number of Niches			
	Total	Sold	Occupied	Available
(Percentages of the relevant totals are shown in parentheses)				
1953 or Before (60 or more years old)				
19 (18%)	165,944 (22%)	64,709 (15%)	48,519 (15%)	101,235 (31%)
1963 or Before (50 or more years old)				
28 (27%)	205,177 (27%)	84,745 (20%)	64,479 (20%)	120,432 (37%)
1980 or Before (33 or more years old)				
53 (51%)	481,444 (64%)	318,912 (74%)	252,332 (77%)	162,532 (50%)
1983 or Before (30 or more years old)				
56 (54%)	487,256 (64%)	321,765 (74%)	254,726 (77%)	165,491 (51%)
1985 or Before (28 or more years old)				
58 (56%)	489,824 (65%)	322,768 (75%)	255,623 (78%)	167,056 (51%)
1990 or Before (23 or more years old)				
60 (58%)	503,135 (66%)	332,372 (77%)	263,024 (80%)	170,763 (53%)
Before 1 July 1997 (16 or more years old)				
64 (62%)	593,126 (78%)	405,691 (94%)	312,713 (95%)	187,435 (58%)
2005 or Before (8 or more years old)				
73 (70%)	617,197 (82%)	418,163 (97%)	320,477 (97%)	199,034 (61%)

Source: PwC analysis based on the information provided by the Government.

4.7 Transition and Temporary Suspension of Liability

Key Considerations:

168. Given that for some of the existing private columbaria there might be land use, town planning and building's deed of mutual covenant issues involved, the reality is that the time needed to meet the proposed regulatory and licensing requirements will likely be longer than the suggested 18-month transitional period (or possibly even longer than the proposed 18 months plus the proposed 2.5 years of temporary-suspension-of-liability period).
169. Given the potential consequences associated with the 'existing' private columbaria (see Section 3 'Business Impact Assessment'), there is a need to find a way to ascertain more clearly the size of the 'problem' (mainly the number of private columbarium operators in the market and their characteristics, and the number of niches involved—especially the number of niches that are occupied or the number of cremains involved), and then formulate a plan to address the situation at hand.

Recommended Changes (or Measures):

170. For the transition, the Government (and the Licensing Authority) should consider:
 - making provisions for a longer transitional period, if possible (it might also mean having to extend the duration of the ‘temporary suspension of liability’ measure); or
 - extending the duration of the ‘temporary suspension of liability’; or
 - putting in place a mechanism to review—on a case by case basis—individual licence applications, and where justified, give (individual) columbarium operators more time to apply for/obtain a licence and extend the period of suspension of temporary liability.
171. Again, whether it is for building and operating private or public columbaria, the Government will need to find (additional) land and facilities (and earmark them for columbarium use) to deal with: 1) the cremains that need to be relocated as a result of ‘existing’ private columbaria being forced to close down their operations because of the introduction of the proposed Bill; and 2) the cremains resulting from the shrinkage of the private niche market and more people having little choice but to opt for public niche spaces.
172. The Government (the Licensing Authority) should publish clear performance pledges for the licensing process, and where appropriate, different activities/tasks within the process.

4.8 Appeal Mechanism

Key Considerations:

173. As stakeholders pointed out and the Government suggested, we agree that there should be an appeal mechanism and having an ‘appeal board’ as part of that mechanism is common among many of the statutory organisations in Hong Kong.
174. The Government’s current proposal suggests setting up a ‘licensing board’ to review and approve licence applications, and an ‘appeal board/committee’ to handle appeals. For appeals, the Government is proposing to make use of the existing Municipal Services Appeals Board, which is an independent statutory body established under the Municipal Services Appeals Board Ordinance (Cap 220), which we believe is a sensible thing to do.
175. To be consistent with good governance practices, there should not be any overlaps between the membership of the ‘licensing board’ and that of the ‘appeal board/committee’ (and the existing Municipal Services Appeals Board if the Government decides to adopt this channel).

Recommended Changes (or Measures):

176. Ideally, both ‘boards’ should be made up of independent members selected from a cross-section of relevant and interested parties, including representatives from the trade—which is an approach commonly adopted by many statutory organisations in Hong Kong.
177. If the Government intends to make use of the existing Municipal Services Appeals Board, the Government can consider inviting other relevant

stakeholders to attend Board meetings to provide input (e.g. industry practices) when needed.

178. Again, to be consistent with good governance practices, there should not be any overlaps between the membership of the 'licensing board' and that of the 'appeal board/committee' (or the existing Municipal Services Appeals Board, if the Government decides to adopt this channel).
179. Needless to say, there should be proper conflict of interest checks, disclosures and approval processes to screen and vet potential candidates for both the 'licensing board' and the 'appeal board/committee'.