

## **LEGISLATIVE COUNCIL BRIEF**

### **CHINESE PERMANENT CEMETERIES (AMENDMENT) BILL 2015**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 9 June 2015, the Council ADVISED and the Acting Chief Executive ORDERED that the Chinese Permanent Cemeteries (Amendment) Bill 2015 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”) on 8 July 2015.

#### **JUSTIFICATIONS**

2. The Board of Management of the Chinese Permanent Cemeteries (“the Board”), chaired by the Secretary for Home Affairs, is a statutory non-profit making organisation established under the Chinese Permanent Cemeteries Ordinance (Chapter 1112) (“the Ordinance”). Its purposes are to provide, maintain and administer cemeteries for persons of Chinese race permanently resident in Hong Kong. The Board may, among other things, make rules in accordance with section 8 of the Ordinance to govern management and use of any CPCs<sup>1</sup>. The Chinese Permanent Cemeteries Rules (Chapter 1112A) (“the Rules”) made under section 8 of the Ordinance is subsidiary legislation under the Ordinance. Having reviewed its operation to meet the increasing community needs for cemetery facilities, the Board has proposed a set of amendments to the Ordinance and the Rules as set out in paragraphs 5-12 below.

#### Broadening the scope of persons who are eligible to be buried or deposited in the CPCs

3. The Rules were first enacted in the 1970s when the mainstream thinking was that married women (外嫁女) were members of their husbands’ families. Hence, a married woman is not eligible to be buried or deposited in a niche, grave space or urn lot (“the facilities”) with members of her paternal family. Further, the remains of the first deceased person’s grandparents, great-grandparents, grandparents-in-law or great-grandparents-in-law are currently not allowed to be buried or deposited together in the facilities. We consider that such limitations are now outdated and unnecessary. By removing such restrictions, more persons will be eligible for the Board’s services and the facilities in the CPCs will be better utilised.

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<sup>1</sup> Section 8(3) of the Ordinance stipulates that such rules shall not derogate from any of the provisions or any by-laws or regulations made under the Public Health and Municipal Services Ordinance (PHMSO) (Chapter 132) which relate to the control of private cemeteries within the meaning of the PHMSO.

4. We propose to remove from the existing Rules the term “close relative” and the eligibility for subsequent burial or deposit will be governed by a single definition of “relative” instead. Any reference to “his wife” will be replaced by “the spouse” and the definition of “relative” will be widened to include grandparents, great-grandparents, grandparents-in-law and great-grandparents-in-law as well as other family members<sup>2</sup>.

#### Allowing subsequent burial of ashes into exhumable lots and paid ossuary niches

5. Grave spaces of the CPCs are divided into two types, non-exhumable lots (無須起回骨殖墓地) and exhumable lots (須起回骨殖墓地). Non-exhumable lots are of a permanent nature whereas exhumable lots have a term of expiry. Under the existing provision, only non-exhumable lots may be used for subsequent burial of close relatives’ ashes. As cremation is more common nowadays, in order to provide the community with greater flexibility and better utilisation of the land in CPCs, we propose that subsequent burial of relatives’ ashes in exhumable lots should be allowed. The relevant provisions in the Rules should therefore be revised to allow for subsequent burial of human remains and ashes in both exhumable and non-exhumable lots, provided that they are those of a relative of the first eligible deceased buried in the grave space. For similar considerations, we also propose to allow the permittee<sup>3</sup> to arrange for the subsequent deposit of ashes into a paid ossuary niche.

#### Allowing cremation of unclaimed human remains

6. Under the current arrangements, if a permittee does not disinter the human remains from an exhumable lot of CPCs after the expiry of the term of use that is not extended or being non-extendible, the Board will publish a notice in the Gazette and in at least two local newspapers its intention to disinter, and will also put notices on the tombstones concerned. The Board may disinter and remove the skeletal human remains in the exhumable lot after a period of six months from the date of such publications<sup>4</sup>. The disinterred human remains will be placed in designated ossuary niches (骨殖龕位) in the CPCs until the permittee claims back the human remains. Under the existing provisions of the Ordinance, the Board is not empowered to cremate the disinterred human remains. Compared with storage of human ashes, the storage of skeletal human remains in ossuary niches will take up more space. It is estimated that the existing ossuary niches will be exhausted in less than ten years if no change in the existing arrangement is made.

7. On the other hand, under section 119A of the Public Health and Municipal Services Ordinance (Chapter 132), human remains in graves inside a public cemetery are subject to a six-year exhumation arrangement. After making public notification, the Food and Environmental Hygiene Department (“FEHD”) is empowered to cremate unclaimed human remains and store the cremated ashes in the Communal Grave at Sandy Ridge Cemetery. Proper written records will be kept so that family members may reclaim the

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<sup>2</sup> See the interpretation of “relative” in clause 10(8) of Annex A.

<sup>3</sup> The permittee is the person to whom the Board has allocated a facility for the purpose of burial or deposit of a deceased person’s human remains or ashes.

<sup>4</sup> The Board usually disinter and remove the skeletal human remains in the exhumable lots during mass exhumation exercises for the sake of efficiency.

cremated ashes before their final disposal in the Communal Grave. The Board intends to make reference to FEHD's arrangements in handling the unclaimed remains. It proposes to amend section 8 of the Ordinance to empower the Board to make rules for cremation of unclaimed disinterred human remains in exhumable lots six years after expiry of the service term. The Board will be required to make public announcement of its intention of cremation beforehand. The human ashes will be stored with proper records made to allow for any future reclaims by permittees. The aforesaid arrangements on cremating unclaimed human remains will only be applicable to permittees who renew their service contracts or are allocated grave spaces after the enactment of the Bill and the arrangements will be included in the terms of service to be signed by the permittees with the Board. The Board will continue to make the best effort in reaching out to the permittees of the exhumable lots concerned. We consider this a reasonable way forward in handling unclaimed human remains in the CPCs.

#### Removing the restriction on the maximum number of sets of ashes that could be deposited in a niche

8. The current provision sets the maximum sets of human ashes that can be deposited into an ordinary niche at two, and a family niche at four. By drawing reference from FEHD's recent relaxation with regard to placing additional cremated ashes into public niches<sup>5</sup>, the Board proposes to remove such restrictions and to empower the Board to determine the maximum number of ashes to be deposited in a niche. This would allow better utilisation of the niches provided in the CPCs because more sets of human ashes may then be deposited in a niche, if the permittees so prefer.

#### Expanding the ambit of the donations that could be made by the Board

9. Section 7(2) of the Ordinance stipulates that the Board may donate to any charity operating for the benefit of "persons of the Chinese race in Hong Kong". To support charitable work in Hong Kong and the advocacy of promoting social inclusion and equal opportunities, we consider that the restrictions on the Board's donation to only "persons of the Chinese race" should be removed so that the Board can support those charitable activities whose beneficiaries are not restricted to Chinese. We therefore propose that the Board may donate to any charity operating for the benefit of "the community of Hong Kong or a particular sector of that community".

#### Other proposed improvements

10. We also agree with the Board's other proposals to improve the Ordinance and the Rules so that they could be clearer and better reflect the changes in the operation of the CPCs over the years. These include amendments to the dimensions of grave spaces and urn lots to follow the dimension requirements as adopted in the Private Cemeteries Regulation (Chapter 132BF); addition or amendments of terms in the Rules for clarity and consistency;

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<sup>5</sup> With effect from 2 January 2014, FEHD has, among others, relaxed the arrangement of placing additional sets of ashes into public niches. If applicant prefers, each standard niche may accommodate more than two sets of cremated ashes, while each large niche may accommodate more than four sets.

and updating the general exemption clause with regard to damage liabilities of the Board.

## **THE BILL**

11. The main provisions of the Bill are as follows –
- (a) Clause 1 sets out the short title and the commencement of the Bill;
  - (b) Clauses 3, 5, 6, 10(8) and 11 provide for the broadened scope of deceased persons eligible to be buried, interred or deposited in the cemetery (policy explained in paragraphs 3 to 4 above);
  - (c) Clauses 14 and 21 provide for the use of the grave spaces and urn lots respectively and to allow subsequent burial of human ashes into exhumable lots and paid ossuary niches (policy explained in paragraph 5 above);
  - (d) Clauses 8 and 16 provide for empowering the Board to make rules for cremating unclaimed human remains (policy explained in paragraphs 6 to 7 above);
  - (e) Clauses 24 and 26 remove the restriction on the maximum sets of ashes that could be deposited in an ordinary niche or a family niche (policy explained in paragraph 8 above); and
  - (f) Clause 7 expands the ambit of donations that could be made by the Board (policy explained in paragraph 9 above).

## **LEGISLATIVE TIMETABLE**

12. The legislative timetable will be –
- |   |                |
|---|----------------|
| Publication in the Gazette  | 26 June 2015   |
| First reading and commencement of second reading debate in the LegCo                | 8 July 2015    |
| Resumption of second reading debate, committee stage and third reading in the LegCo | To be notified |

## **IMPLICATIONS OF THE PROPOSAL**

13. The proposal has environmental, sustainability, family and gender implications as set out at **Annex B**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the Ordinance. It has no financial, civil service, economic, competition or productivity implications.

## **PUBLIC CONSULTATION**

14. The LegCo Panel on Home Affairs was consulted on 17 February 2014 and Members were generally supportive of the proposed amendments to provide more flexibility in the use of the existing grave spaces and niches, thus contributing to the overall objective of better utilisation of the valuable land resources of the CPCs.

## **PUBLICITY**

15. A press release will be issued on the date of Gazettal. A spokesperson will be made available to handle media enquiries.

## **ENQUIRY**

16. In case of enquiries about this Brief, please contact Mrs Susanne Wong, Principal Assistant Secretary for Home Affairs (Civic Affairs)3, at 3509 8120.

**HOME AFFAIRS BUREAU**

**24 June 2015**

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**A BILL****To**

Amend the Chinese Permanent Cemeteries Ordinance and the Chinese Permanent Cemeteries Rules to broaden the scope of eligible deceased persons to be interred, buried or deposited in a cemetery specified in the First Schedule to the Rules; to allow the burials of human ashes in an exhumable lot; to provide for the power to cremate unclaimed human remains; to amend the purposes and powers of the Board of Management of the Chinese Permanent Cemeteries; to provide for related matters; and to make technical amendments.

Enacted by the Legislative Council.

**Part 1****Preliminary****1. Short title and commencement**

- (1) This Ordinance may be cited as the Chinese Permanent Cemeteries (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

**Part 2****Amendments to Chinese Permanent Cemeteries Ordinance****2. Chinese Permanent Cemeteries Ordinance amended**

The Chinese Permanent Cemeteries Ordinance (Cap. 1112) is amended as set out in sections 3 to 8.

**3. Long title amended**

The long title, after “Hong Kong”—

**Add**

“and their relatives,”.

**4. Preamble amended**

- (1) Preamble, paragraph (f)—

**Repeal the colon****Substitute a semicolon.**

- (2) Preamble, after paragraph (f)—

**Add**

- “(g) subsequent to the events mentioned in paragraphs (a), (d) and (f), the pieces or parcels of land referred to in paragraphs (a) and (d) and other pieces or parcels of land were appropriated or granted to the Board established under section 3 (**Board**) for use as cemeteries;
- (h) after modifications to the documents effecting the appropriation or grant of all of the pieces or parcels of land appropriated or granted to the Board, all those pieces or parcels of land are now permitted to be used in



accordance with this Ordinance and the rules made under it.”.

**5. Section 2 amended (interpretation)**

- (1) Section 2, definition of *Chinese Permanent Cemetery*—

**Repeal**

“or burial ground”.

- (2) Section 2, English text, definition of *permanently resident in Hong Kong*—

**Repeal the full stop**

**Substitute a semicolon.**

- (3) Section 2—

**Add in alphabetical order**

“*relative* (親屬) has the meaning given by rule 3 of the Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A).”.

**6. Section 6 amended (purposes of the Board)**

Section 6—

**Repeal**

everything after “Board”

**Substitute**

“are to provide, maintain and administer cemeteries for persons of the Chinese race permanently resident in Hong Kong and their relatives.”.

**7. Section 7 amended (powers of the Board)**

Section 7(2)—

**Repeal**

“persons of the Chinese race in Hong Kong”

**Substitute**

“the community of Hong Kong or a particular sector of that community”.

**8. Section 8 amended (power of the Board to make rules)**

- (1) Section 8(2)(a)—

**Repeal**

everything after “grave space”

**Substitute**

“, an urn lot or a niche;”.

- (2) Section 8(2)(c)—

**Repeal**

“spaces”

**Substitute**

“spaces, urn lots and niches”.

- (3) Section 8(2)(d)—

**Repeal**

“; and”

**Substitute a semicolon.**

- (4) Section 8(2)(e)—

**Repeal**

“and removal of human remains.”

**Substitute**

“, removal and cremation of human remains; and”.

- (5) After section 8(2)(e)—

**Add**

“(f) provide for the disinterment and removal of human ashes.”.

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### Part 3

#### Amendments to Chinese Permanent Cemeteries Rules

##### 9. Chinese Permanent Cemeteries Rules amended

The Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A) are amended as set out in sections 10 to 33.

##### 10. Rule 3 amended (interpretation)

(1) Rule 3, definition of *Board*—

**Repeal**

everything after “Management of”

**Substitute**

“the Chinese Permanent Cemeteries established by section 3 of the Ordinance;”.

(2) Rule 3, definition of *cemetery*—

**Repeal**

everything after “any”

**Substitute**

“of the cemeteries specified in the First Schedule;”.

(3) Rule 3, definition of *exhumable lot*—

**Repeal**

everything after “allocated”

**Substitute**

“under rule 13;”.

(4) Rule 3, definition of *family niche*—

**Repeal**

everything after “a niche”

**Substitute**

“for the deposit of ashes allocated under rule 21A;”.

- (5) Rule 3, definition of *human remains*—

**Repeal**

everything after “being”

**Substitute**

“at any stage of decomposition, including parts of the dead body or skeletal remains, but does not include ashes;”.

- (6) Rule 3, definition of *ordinary niche*—

**Repeal**

everything after “a niche”

**Substitute**

“for the deposit of ashes allocated under rule 20A;”.

- (7) Rule 3, definition of *permittee*—

**Repeal**

“urn space, or niche”

**Substitute**

“an urn lot, or a niche”.

- (8) Rule 3—

**Repeal the definition of *relative***

**Substitute**

“*relative* (親屬), in relation to a person (*relevant person*) (whether deceased or not), means—

- (a) the relevant person’s spouse;

- (b) a father, mother, grandfather, grandmother, great-grandfather or great-grandmother of the relevant person or of the relevant person’s spouse;

- (c) a brother or sister of—

(i) the relevant person;

(ii) the relevant person’s spouse; or

(iii) a person referred to in paragraph (b);

- (d) a spouse of a person referred to in paragraph (c);

- (e) a descendant of—

(i) the relevant person;

(ii) a person referred to in paragraph (a), (c) or (d); or

(iii) a person referred to in paragraph (b), other than the relevant person; or

- (f) a spouse of a person referred to in paragraph (e);”.

- (9) Rule 3, English text, definition of *subscriber lot*—

**Repeal the full stop**

**Substitute a semicolon.**

- (10) Rule 3—

**Repeal the definition of *close relative*.**

- (11) Rule 3—

**Add in alphabetical order**

“*allocated place* (獲分配位置) includes a grave space, an urn lot and a niche that may be allocated by the Board under these rules;

*ashes* (骨灰) means ashes resulting from the cremation of human remains;

*eligible deceased* (合資格死者) has the meaning given by rule 4(2);

*expiry of the term* (年期屆滿), in relation to an exhumable lot, means—

- (a) if the initial term of an allocation of the lot is not extended—the expiry of the initial term of 10 years; or
- (b) if the initial term of an allocation of the lot is extended—the termination or expiry of the extended term;

*first* (首次), in relation to an interment, a burial or a deposit of human remains or ashes in an allocated place, means the first interment, burial or deposit in the place after the most recent allocation of the place by the Board;

*grave space* (墳墓用地) means a space for the burial of human remains and ashes, whether allocated as an exhumable lot, an ordinary lot or a subscriber lot;

*ossuary niche* (骨殖龕位) means a niche for the deposit of skeletal remains and ashes allocated under rule 20;

*spouse* (配偶) includes a concubine taken by a person before 7 October 1971;

*urn lot* (金塔墓地) means a lot for the burial of skeletal remains and ashes allocated under rule 18A.”.

#### 11. Rule 4 substituted

Rule 4—

**Repeal the rule**

**Substitute**

#### “4. Eligibility

- (1) The first interment, burial or deposit in an allocated place must only be that of the human remains or ashes of an eligible deceased.
- (2) An eligible deceased is a deceased person who, immediately before the person’s death, was—
  - (a) a person of Chinese race permanently resident in Hong Kong;
  - (b) a spouse of the person referred to in paragraph (a); or
  - (c) a child of the person referred to in paragraph (a).
- (3) The Board’s decision on whether a deceased person met the description in subrule (2)(a), (b) or (c) is final.”.

#### 12. Rule 5 amended (consent of Board for burials, deposits and removals)

- (1) Rule 5, Chinese text, heading—

**Repeal**

“存放”

**Substitute**

“安放”.

- (2) Rule 5, English text—

**Repeal**

“Board no person shall”

**Substitute**

“Board, no person may”.

- (3) Rule 5—

**Repeal**

“or human”

**Substitute**

“or”.

- (4) Rule 5, Chinese text—

**Repeal**

“存放”

**Substitute**

“安放”.

**13. Rule 7 amended (allocation use and dimension of grave spaces)**

- (1) Rule 7, heading—

**Repeal**

“use”.

- (2) Rule 7(1)—

**Repeal**

“Not more than one grave space shall be allocated”

**Substitute**

“Only 1 grave space may be allocated by the Board”.

- (3) Rule 7(2)—

**Repeal**

“shall not exceed an area of 1 200 mm by 2 400 mm and there shall not be provision for”

**Substitute**

“must not exceed an area of 900 mm by 2 400 mm and there must be at least 300 mm”.

- (4) Rule 7(2), English text, proviso—

**Repeal**

“shall”

**Substitute**

“may”.

- (5) Rule 7(3), English text—

**Repeal**

“shall”

**Substitute**

“must”.

- (6) Rule 7(3)—

**Repeal**

“the grave”

**Substitute**

“the space”.

- (7) Rule 7(4), English text—

**Repeal**

“shall”

**Substitute**

“must”.

- (8) Rule 7(4)—

**Repeal**

“the grave”

**Substitute**

“a grave space”.

**14. Rule 7A added**

After rule 7—

**Add**

**“7A. Use of grave spaces**

- (1) The first interment in a grave space must only be that of the encoffined human remains of an eligible deceased.
- (2) Not more than one set of encoffined human remains can be interred in a grave space unless written consent has been given by the Board.
- (3) After exhumation, the Board may permit the skeletal remains, or ashes, derived from the exhumed human remains to be reburied in a container in the grave space.
- (4) After the first interment referred to in subrule (1), the Board may permit subsequent interments of encoffined human remains, or subsequent burials in containers of skeletal remains or ashes, of other deceased persons in the grave space if—
  - (a) the human remains, skeletal remains or ashes for a subsequent interment or burial are those of a relative of the eligible deceased;
  - (b) for an exhumable lot, the unexpired term of the lot is not less than 6 years;
  - (c) the human remains, skeletal remains or ashes of the eligible deceased are interred or buried in the space; and
  - (d) the prescribed fee has been paid.”.

**15. Rule 14 substituted**

Rule 14—

**Repeal the rule****Substitute****“14. Disinterment and removal of human remains and ashes from exhumable lot on expiry of the term**

- (1) On the expiry of the term of an exhumable lot, the permittee of the lot must disinter the human remains and ashes buried in the lot and remove them from the lot.
- (2) The Board may disinter the human remains and ashes and remove them from the lot if all of the following conditions are met—
  - (a) subrule (1) is not complied with;
  - (b) the Board has published a notice in the Gazette and in at least 2 local Chinese newspapers stating that the Board intends to disinter the human remains and ashes and remove them from the lot;
  - (c) 6 months after the publication of the notice, the permittee still has not disinterred the human remains and ashes and removed them from the lot.”.

**16. Rule 14A added**

After rule 14—

**Add****“14A. Cremation of human remains removed from exhumable lot**

The Board may cremate the human remains removed from an exhumable lot under rule 14(2) if all of the following conditions are met—

- (a) the permittee of the lot has not arranged with the Board for their disposal within 6 years from the expiry of the term of the lot;

- (b) the Board has published a notice in the Gazette and in at least 2 local Chinese newspapers stating that the Board intends to cremate the human remains;
- (c) 6 months after the publication of the notice, the permittee still has not arranged with the Board for the disposal of the human remains.”.

**17. Rule 15 amended (reversion of exhumable lot)**

Rule 15—

**Repeal**

everything after “remains”

**Substitute**

“and ashes under rule 14, an exhumable lot immediately reverts to the Board, and the Board may make any further allocation of the lot.”.

**18. Rule 16 repealed (several interments in one grave space)**

Rule 16—

**Repeal the rule.****19. Rule 17 repealed (burial in urn of skeletal or cremated remains)**

Rule 17—

**Repeal the rule.****20. Rule 18 amended (reversion of vacant ordinary or subscriber lot after exhumation)**

Rule 18—

**Repeal**

everything after “subscriber lot”

**Substitute**

“that remains vacant for a period of 3 months after exhumation immediately reverts to the Board, and the Board may make any further allocation of the lot.”.

**21. Rule 18A added**

After rule 18—

**Add****“18A. Dimension, allocation and use of urn lots**

- (1) An urn lot must not exceed an area of 900 mm by 900 mm.
- (2) An urn lot may be allocated by the Board on payment of the prescribed fee.
- (3) The first burial in an urn lot must only be that of the skeletal remains of an eligible deceased.
- (4) After exhumation, the Board may permit the ashes derived from the exhumed skeletal remains to be reburied in a container in the urn lot.
- (5) After the first burial referred to in subrule (3), the Board may permit subsequent burials in containers of skeletal remains or ashes of other deceased persons in the urn lot if—
  - (a) the skeletal remains or ashes for a subsequent burial are those of a relative of the eligible deceased;
  - (b) the skeletal remains or ashes of the eligible deceased are buried in the lot; and
  - (c) the prescribed fee has been paid.”.

**22. Rule 19 substituted**

Rule 19—

**Repeal the rule****Substitute****“19. Reversion of vacant urn lot after removal**

- (1) An urn lot previously allocated that remains vacant for a period of 3 months after the removal of skeletal remains or ashes from the lot immediately reverts to the Board.
- (2) The Board may make any further allocation of an urn lot reverted to the Board under subrule (1).”.

**23. Rule 20 substituted**

Rule 20—

**Repeal the rule****Substitute****“20. Allocation and use of ossuary niches**

- (1) The Board may designate a niche to be an ossuary niche—
  - (a) for allocation under subrule (2), (3) or (4); or
  - (b) for the deposit of human remains disinterred and removed under rule 14(2).
- (2) On the application of a permittee of an exhumable lot, the Board must allocate an ossuary niche, if available, free of charge, for each set of skeletal remains removed from the lot on reversion of the lot to the Board.
- (3) On the application of a permittee of an ordinary lot or a subscriber lot, the Board must allocate an ossuary niche, if available, free of charge, for each set of skeletal

remains removed on exhumation for surrender of the lot to the Board.

- (4) An ossuary niche may be allocated by the Board on payment of the prescribed fee, for the immediate deposit of a set of skeletal remains.
- (5) The first deposit in an ossuary niche allocated by the Board under subrule (4) must only be that of the skeletal remains of an eligible deceased.
- (6) The Board may permit the ashes derived from the skeletal remains of the eligible deceased to be redeposited in a container in the ossuary niche.
- (7) After the first deposit referred to in subrule (5), the Board may permit subsequent deposits of skeletal remains or ashes of other deceased persons in the ossuary niche if—
  - (a) the skeletal remains or ashes for a subsequent deposit are those of a relative of the eligible deceased;
  - (b) the skeletal remains or ashes of the eligible deceased are deposited in the niche; and
  - (c) the prescribed fee has been paid.
- (8) The Board may determine the maximum numbers of sets of skeletal remains and ashes to be deposited in an ossuary niche.”.

**24. Rule 20A added**

After rule 20—

**Add****“20A. Allocation and use of ordinary niches**



- (1) The Board may designate a niche to be an ordinary niche.
- (2) An ordinary niche may be allocated by the Board on payment of the prescribed fee, for the immediate deposit of a set of ashes.
- (3) The first deposit in an ordinary niche must only be that of the ashes of an eligible deceased.
- (4) After the first deposit referred to in subrule (3), the Board may permit subsequent deposits of ashes of other deceased persons in the ordinary niche if—
  - (a) the ashes of the eligible deceased are deposited in the niche; and
  - (b) the prescribed fee has been paid.
- (5) The Board may determine the maximum number of sets of ashes to be deposited in an ordinary niche.”.

**25. Rule 21 substituted**

Rule 21—

**Repeal the rule****Substitute****“21. Reversion of vacant ossuary niche and ordinary niche**

- (1) An ossuary niche or ordinary niche that remains vacant for a period of 3 months after the allocation or removal of skeletal remains or ashes from the niche immediately reverts to the Board.
- (2) The Board may make any further allocation of the niche reverted to the Board under subrule (1).”.

**26. Rule 21A substituted**

Rule 21A—

**Repeal the rule****Substitute****“21A. Allocation and use of family niches**

- (1) The Board may designate a niche to be a family niche at the time of the allocation of the niche.
- (2) A family niche may be allocated by the Board on payment of the prescribed fee.
- (3) The Board may allocate more than one family niche to the same permittee.
- (4) The first family niche allocated to a permittee must be used immediately for the deposit of a set of ashes.
- (5) The first deposit in a family niche must only be that of the ashes of an eligible deceased.
- (6) After the first deposit referred to in subrule (5), the Board may permit subsequent deposits of ashes of other deceased persons in the family niche if—
  - (a) the ashes for a subsequent deposit are those of a relative of the eligible deceased;
  - (b) the ashes of the eligible deceased are deposited in the niche; and
  - (c) the prescribed fee has been paid.
- (7) The Board may determine the maximum number of sets of ashes to be deposited in a family niche.”.

**27. Rule 21B amended (reversion of family niches allocated)**

(1) Rule 21B(1)—

**Repeal**

everything after “one time”

**Substitute**

“remain vacant for a period of 3 months after the allocation or removal of ashes, the Board may, at its absolute discretion, revoke the allocation and designation by notice in writing addressed to the permittee at the permittee’s last known address and by posting the notice at a conspicuous place of the niche or niches.”.

- (2) Rule 21B(2)—

**Repeal**

everything before “to the Board”

**Substitute**

“(2) On the expiry of 14 days of the notice being sent and posted as prescribed in subrule (1), the niche or niches immediately revert”.

- (3) Rule 21B(3), English text—

**Repeal**

“Upon”

**Substitute**

“On”.

- (4) Rule 21B(3)—

**Repeal**

everything after “used for” and before “after deduction”

**Substitute**

“depositing ashes pursuant to this rule, all fees paid for the allocation of the niche or niches must,”.

- (5) Rule 21B(3), English text, proviso—

**Repeal**

“shall”

**Substitute**

“must”.

- (6) Rule 21B(4)—

**Repeal**

“Any family”

**Substitute**

“A family”.

- (7) Rule 21B(4), English text—

**Repeal**

“shall be”

**Substitute**

“is”.

**28. Rule 22 amended (digging, paving, monuments and headstones etc.)**

- (1) Rule 22(1), English text—

**Repeal**

“Save where”

**Substitute**

“Unless”.

- (2) Rule 22(1)—

**Repeal**

“urn space”

**Substitute**

“urn lot”.

- (3) Rule 22(1), English text—

**Repeal**

“shall be”

**Substitute**

“are to be”.

- (4) Rule 22(2), English text—

**Repeal**

“Save”

**Substitute**

“Except”.

- (5) Rule 22(2), English text—

**Repeal**

“the grant thereof, no person shall”

**Substitute**

“giving the consent, no person may”.

- (6) Rule 22(2)—

**Repeal**

“grave or urn space”

**Substitute**

“grave space or urn lot”.

- (7) Rule 22(3), English text—

**Repeal**

“article whatsoever”

**Substitute**

“article”.

- (8) Rule 22(3)—

**Repeal**

“any grave or urn space”

**Substitute**

“any grave space, urn lot”.

- (9) Rule 22(3), English text—

**Repeal**

“shall be placed”

**Substitute**

“is to be placed”.

- (10) Rule 22(3), English text—

**Repeal**

“Board shall not be”

**Substitute**

“Board is not”.

- (11) Rule 22(3)—

**Repeal**

“damage thereto arising from any cause whatsoever.”

**Substitute**

“damage to it.”.

**29. Rule 23 substituted**

Rule 23—

**Repeal the rule****Substitute**

**“23. No liability against damage**

The Board is not liable for any damage to any part of a cemetery in the event of subsidence, natural disaster, civil commotion, war or terrorist attack.”.

**30. Rule 23A substituted**

Rule 23A—

**Repeal the rule**

**Substitute**

**“23A. Power of Board to repair and recover expenses**

The Board has the power to—

- (a) carry out for the protection of public safety any repairs to a grave space, an urn lot or a niche on behalf of the permittee who failed to carry out the repairs as requested by the Board; and
- (b) recover from the permittee any expenses incurred for the repairs.”.

**31. Rule 28 added**

After rule 27—

**Add**

**“28. Saving**

- (1) Rule 7(2), as in force immediately before the appointed date, continues to apply to a grave space allocated by the Board before that date, as if the amending Ordinance had not been enacted.
- (2) Rule 14A does not apply to an exhumable lot—

(a) allocated by the Board before the appointed date; and

(b) whose term is not extended after the appointed date.

(3) Rule 18A(1) does not apply to an urn lot allocated by the Board before the appointed date.

(4) In this rule—

*amending Ordinance* (《修訂條例》) means the Chinese Permanent Cemeteries (Amendment) Ordinance 2015 ( of 2015);

*appointed date* (指定日期) means the date on which the amending Ordinance comes into operation.”.

**32. First Schedule amended (cemeteries)**

First Schedule—

**Repeal**

“[rule 2]”

**Substitute**

“[rules 2 & 3]”.

**33. Third Schedule amended (fees)**

(1) Third Schedule, item 5—

**Repeal**

“16 and 17”

**Substitute**

“7A and 18A”.

(2) Third Schedule, item 5(b)—

**Repeal**

- “in urn”  
**Substitute**  
 “in a container”.
- (3) Third Schedule, item 6—  
**Repeal**  
 “in columbarium (each space)”  
**Substitute**  
 “(each niche)”.
- (4) Third Schedule, item 6A—  
**Repeal**  
 “in columbarium (each space)”  
**Substitute**  
 “(each niche)”.
- (5) Third Schedule, item 7—  
**Repeal**  
 “niche in ossuary or a columbarium (rule 20(3)) (each space)”  
**Substitute**  
 “ossuary niche (rule 20(4)) (each niche)”.
- (6) Third Schedule, item 10—  
**Repeal**  
 “each area 2.4 metres × 1.2 metres or part thereof”.
- (7) Third Schedule, item 13—  
**Repeal**  
 “niche of columbarium (each set of cremated human remains)”  
**Substitute**

- “ordinary niche, family niche or ossuary niche (each set of skeletal remains or ashes)”.
- (8) Third Schedule, item 14—  
**Repeal**  
 “space (each space)”  
**Substitute**  
 “lot (each lot)”.
- (9) Third Schedule, item 16(b), after “remains”—  
**Add**  
 “or ashes”.
- (10) Third Schedule, English text, item 16(b)—  
**Repeal**  
 “thereof”  
**Substitute**  
 “of a month”.
-

**Part 4**

**Amendments Relating to Headings of Provisions**

**34. Amendments relating to headings of provisions**

- (1) The amendments relating to headings of provisions as specified in the Schedule have effect.
- (2) The Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A) are amended as set out in the Schedule.

**Schedule**

[s. 34]

**Amendments Relating to Headings of Provisions of  
Chinese Permanent Cemeteries Rules**

**1. Part 1 heading added**

Before rule 1—

**Add**

**“Part 1**

**General Provisions”.**

**2. Part 2 heading added**

Before rule 6—

**Add**

**“Part 2**

**Grave Spaces”.**

**3. Part 3 heading added**

After rule 18—

**Add**

**“Part 3****Urn Lots”.**

4. **Part 4 heading added**  
Before rule 20—  
**Add**

**“Part 4****Niches”.**

5. **Part 5 heading added**  
Before rule 22—  
**Add**

**“Part 5****Miscellaneous Provisions”.****Explanatory Memorandum**

The Board of Management of the Chinese Permanent Cemeteries (*Board*) was established by the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (*Ordinance*) to provide, maintain and administer the cemeteries specified (*specified cemeteries*) in the First Schedule to the Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A) (*Rules*). The Rules were made for, amongst other things, the management and use of the cemeteries. The purpose of this Bill is to amend the Ordinance and the Rules.

**Part 1—Preliminary**

2. Clause 1 sets out the short title and provides for commencement.

**Part 2—Amendments to the Ordinance**

3. Clause 3 amends the long title of the Ordinance.
4. Clauses 4 and 5 update the preamble to the Ordinance and amend section 2 of the Ordinance by adding the definition of *relative*.
5. Clauses 6 and 7 amend sections 6 and 7 of the Ordinance to update the purposes and powers of the Board.
6. Clause 8 amends section 8 of the Ordinance to empower the Board to make rules to provide for the cremation of human remains and disinterment and removal of human ashes (*ashes*).

**Part 3—Amendments to the Rules**

7. The major amendments are explained below.

***Eligibility for interment, burials or deposits of human remains or ashes***

8. Clause 10(8) and (10) amends the definition of *relative* and repeals the definition of *close relative* in rule 3 of the Rules so that the

human remains or ashes of a married woman can be interred, buried or deposited with her original family.

9. Clause 11 substitutes new rule 4 for the existing rule 4 of the Rules so that a person of Chinese race permanently resident in Hong Kong (regardless of the sex of that person) and the spouse and children of that person are eligible for the first interment, burial or deposit in a specified cemetery.

#### *Subsequent burials of ashes*

10. Clauses 18 and 19 repeal rules 16 and 17 of the Rules and clause 14 adds a new rule 7A to the Rules so that subsequent burials of ashes are also allowed in an exhumable lot.

#### *Power to cremate unclaimed human remains*

11. Clause 16 adds a new rule 14A to the Rules to empower the Board to cremate the human remains removed from an exhumable lot.

#### *Miscellaneous amendments*

12. Apart from the amendments referred to in paragraph 8, clause 10 also amends the definitions of *Board*, *cemetery*, *exhumable lot*, *family niche*, *human remains*, *ordinary niche* and *permittee*. In addition, certain new definitions are added including *allocated place*, *ashes*, *eligible deceased*, *expiry of the term*, *first*, *grave space*, *ossuary niche*, *spouse* and *urn lot*.
13. Clauses 21 and 24 respectively add new rules 18A and 20A to the Rules, and clauses 23 and 26 substitute new rules 20 and 21A for the existing rules 20 and 21A of the Rules to set out the provisions concerning urn lots, ordinary niches, ossuary niches, and family niches. The provisions also remove the maximum number of sets of ashes to be deposited in an ordinary niche and a family niche.

14. Clauses 10(9), 12, 13, 17, 20, 27 and 28 respectively amend rules 3, 5, 7, 15, 18, 21B and 22 of the Rules to introduce technical amendments.
15. Clauses 15, 22, 25 and 30 substitute new rules 14, 19, 21 and 23A for the existing rules 14, 19, 21 and 23A of the Rules to introduce technical amendments.
16. Clause 29 substitutes new rule 23 for the existing rule 23 of the Rules to provide that the Board is not liable for any damage to any part of a specified cemetery.
17. Clause 33 amends the Third Schedule to the Rules to provide for fees for multiple deposit, and storage, of ashes. The clause also introduces certain consequential amendments.

#### **Part 4—Amendments relating to headings of provisions**

18. Clause 34 and the Schedule add Part headings to the Rules.



## **Implications of the Proposal**

The proposed removal of those outdated Rules disallowing a deceased married woman to be buried or deposited in a niche, grave space or urn lot with members of her paternal family is consistent with the spirit and object of the United Convention on the Elimination of All Forms of Discrimination against Women which is applicable to Hong Kong, in particular Article 5 (a) thereof which seeks to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

2. The proposal has positive family implications as we expect that generally the public would welcome a proposal that responds to the increasing recognition of gender equality (removing the outdated provision on use of facilities by married women) in family. With the expansion of the eligibility for burial, the public should be given more flexibility in the use of burial facilities and may help easing family's burden in securing niches which are under keen demand.

3. The proposal will also have positive impact on the environment as scarce land resources can be better utilised to meet the increasing community needs for cemetery facilities. Other than the above, the proposal has no significant sustainability implications.