

立法會 *Legislative Council*

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Bills Committee on Private Columbaria Bill

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the re-introduced Private Columbaria Bill ("the Bill") which seeks to provide for a licensing regime for regulating private columbaria^{Note}. It also summarizes the relevant discussion of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the Bill.

Background

2. In June 2014, the Administration introduced into the Fifth Legislative Council ("LegCo") the Private Columbaria Bill ("the former Bill") and a Bills Committee was then formed to scrutinize the Bill. In June 2016, the Bills Committee on Private Columbaria Bill of the Fifth LegCo ("the former Bills Committee") completed scrutiny and supported the resumption of the Second Reading debate on the former Bill at the Council meeting of 6 July 2016. However, owing to other pressing business LegCo had to transact, the former Bill did not resume Second Reading debate and lapsed upon the prorogation of the Fifth LegCo on 16 July 2016.

3. According to the Administration, the Bill, re-introduced into the Sixth LegCo on 23 November 2016, is based on the former Bill and has adopted the framework of the licensing regime discussed and generally supported by the former Bills Committee. It has also incorporated a total of 547 Committee stage amendments ("CSAs") proposed to the former Bill over which consensus

^{Note} "Columbarium" means any premises that is used, or claimed, represented or held out, to be used, for keeping cremated human remains. After the enactment of the Bill, a person must obtain a licence for operating, keeping, managing or controlling a private columbarium, including the selling and letting out of interment right in respect of new or unoccupied niches in the columbarium.

have already been reached. Members may refer to the report of the former Bills Committee (LC Paper No. CB(2)1843/15-16) for details of its deliberations. The final version of the full set of CSAs to the former Bill proposed by the Administration (as at 28 June 2016) was set out in LC Paper No. CB(2)1900/15-16(01).

The Bill

4. According to the LegCo Brief (File Ref: FH CR 2/3751/07) issued by the Food and Health Bureau on 11 November 2016, nothing substantive has been changed in the Bill, save for a few minor technical details and stylistic polishing.

5. The Bill seeks to:

- (a) provide for the licensing of private columbaria for keeping ashes resulting from the cremation of human remains, including the establishment of the Private Columbaria Licensing Board ("the Licensing Board");
- (b) impose obligations for the disposal of ashes; and
- (c) make other provisions to deal with related matters such as the enforcement provisions and the appeal mechanism under the Bill, and provide for consequential or related amendments to other Ordinances.

6. The key features of the Bill are as follows:

The licensing scheme for private columbaria

Licensing requirements for operating a private columbarium

7. Under the licensing scheme proposed in the Bill, a person must not operate, keep, manage or in any other way have control of a private columbarium unless the person has a licence, an exemption or a temporary suspension of liability ("TSOL"). These three instruments are called "specified instruments" under the Bill. Only a licence holder would be authorized to sell interment rights in respect of the columbarium. Contravention of the prohibition would be an offence punishable, on summary conviction, with a fine of \$2,000,000 and an imprisonment for three years, and on conviction on indictment, with a fine of \$5,000,000 and an imprisonment for seven years.

Eligibility criteria

8. To be eligible for a licence, the columbarium must comply with prescribed requirements such as land-related, planning-related and building-related requirements as defined in Schedule 2 to the Bill and that the applicant must hold the columbarium premises directly from the Government. In case the columbarium is a pre-cut-off columbarium (i.e. a columbarium that was in operation and in which ashes were interred in niches immediately before the announcement time of the former Bill, i.e. 8:00 am on 18 June 2014 ("the cut-off time")), certain requirements would be modified.

9. Only a pre-cut-off columbarium would be eligible for an exemption or TSOL. To qualify for an exemption, the pre-cut-off columbarium must, among other things, be one which commenced operation before 1 January 1990. In the case of TSOL, the layout for ash interment in the pre-cut-off columbarium must be limited in extent to that as at the cut-off time and that the columbarium must also comply with other applicable requirements. An application for the issue of TSOL must be made together with an application for the issue of a licence and/or an exemption.

Applications for specified instruments and the establishment of the Licensing Board

10. An application for the issue, renewal or extension of a specified instrument must be made to the Licensing Board to be established under clause 8 of the Bill. The Licensing Board would be conferred various functions and powers, including the power to revoke or suspend for a certain period a specified instrument upon prescribed circumstances.

Requirements on agreements for the sale of interment rights and obligations in relation to operation of a columbarium

11. The Bill imposes the requirements that an agreement for the sale of an interment right entered into on or after the enactment date (i.e. the day on which the Bill, if passed, is published in the Gazette) must meet in order for it to be enforceable against the purchaser. If an agreement is not enforceable, the purchaser may cancel the agreement and the seller must refund to the purchaser in accordance with the prescribed requirements.

12. The Bill also imposes various obligations on a holder of a specified instrument in relation to the operation of the columbarium such as the requirements to exhibit a specified instrument and keep the columbarium clean and in good repair.

Obligations in disposal of ashes

13. The Bill provides for obligations in disposing of ashes interred in a columbarium. A person who has operated, kept, managed or in any other way has control of a columbarium must not abandon the columbarium, whether or not a specified instrument is issued. Furthermore, such a person must not improperly dispose of ashes. Contravention of any of the obligations would be an offence which carries the same penalties as those stated in paragraph 7 above. Part 2 of Schedule 5 to the Bill prescribes the ash disposal procedures to be carried out.

14. A person who takes possession of the premises of a columbarium (such as an owner or a mortgagee) must also carry out the prescribed ash disposal procedures or where applicable, invite the Director of Food and Environmental Hygiene to carry out the necessary steps for disposal of ashes as required. Failure to comply would constitute an offence for which the maximum penalty is proposed to be a fine of \$250,000 or \$500,000, depending on whether the person is an owner or mortgagee who acquired an interest in the premises subject to the obligation to carry out the prescribed ash disposal procedures.

15. The Director of Food and Environmental Hygiene, an authorized officer or a public officer would be empowered to carry out necessary steps for disposal of ashes in respect of a columbarium if the prescribed ash disposal procedures have, or any step in them has, not been carried out. For this purpose, an application for a court order may be made for occupying the premises concerned.

Relevant discussion of the Panel

16. The Panel was briefed on the salient features of the Bill at the meeting on 8 November 2016. Members in general expressed support for early introduction of the Bill. Major views and concerns expressed by members at the meeting are summarized below.

Waiver arrangements for pre-cut-off columbaria

17. There was concern that the land premium waiver arrangements for pre-cut-off columbaria could be subject to abuse. A suggestion was made that a mechanism should be put in place to require private columbarium operators to provide samples of their agreements with consumers when applying for land premium exemption, so as to prevent abuse by operators from charging consumers extortionate fees or reselling niches to make profit.

18. The Administration advised that a private columbarium had to fulfill certain prescribed conditions in order to be eligible for waiver of land premium. A columbarium's eligibility for a licence would also depend on its meeting specified requirements, including the requirements that the columbarium premises being held directly from the Government under a lease and a management plan in respect of the columbarium having been approved by the Licensing Board. The Licensing Board could also impose licensing conditions (e.g. restriction on subletting or assignment in a manner inconsistent with the operation of the columbarium) in respect of a licence. The Administration also advised that the Director of Lands might consider exercising discretion to waive the land premium for pre-cut-off columbaria, depending on the circumstances and merits of each application.

Enforcement actions against non-compliant columbaria

19. There was a view that operators should be prevented from making use of the processing window prior to the enactment of the Bill to mislead or deceive consumers through quick sale of potentially unauthorized niches. The Administration was urged to collect from operators of private columbaria placed in Part B of the "Information on Private Columbaria" published by the Development Bureau such data, including the number of occupied niches, the number of niches already sold but not yet been occupied and the number of niches available for sale as at the cut-off time, to ensure a snapshot of their scale of operation was taken.

20. The Administration advised that upon introduction of the former Bill, a Notification Scheme was launched administratively to collect information about the operation of private columbaria which were made known to the Government. The information collected under the Scheme, which had been carefully verified by the Food and Environmental Hygiene Department ("FEHD"), allowed the Administration to obtain a fuller picture of the overall landscape of private columbaria in operation and would facilitate the Licensing Board in considering the pre-cut-off columbarium status of the relevant columbaria and their eligibility for seeking TSOL, a licence and/or exemption. A dated columbarium might inter ashes in niches therein after the cut-off time but before the enactment date without affecting its eligibility to apply for an exemption, so long as the interment right in respect of those ashes was sold before the cut-off time. If the dated columbarium was granted an exemption in future, it might continue to inter ashes during the validity period of the exemption in niches sold before the cut-off time. Operators, however, must properly keep the relevant agreements, register on unused/partially used niches sold before the cut-off time and records of interment/disinterment for future examination by the Licensing Board and the enforcement authority. Failure to keep proper records might render an application for a specific instrument (in the form of a licence, an exemption or a TSOL) unsuccessful.

Measures for protecting consumers' interests

21. Some members expressed concern that some consumers were allured to purchase niches before the commencement of the new legislation. Enquiring about measures to protect consumers' interests, members urged the Administration to step up consumer education to enhance consumers' awareness of various issues.

22. According to the Administration, to tackle undesirable practices observed in some past cases, the Bill would have express provisions stipulating that an agreement for sale of an interment right to be entered into on or after the enactment date was not enforceable against the purchaser under certain circumstances and the purchaser might cancel the agreement by giving the seller a written notice of cancellation and might seek from the seller a refund of all money paid under the agreement. This apart, the Administration had all along been advising consumers not to make rash decisions on purchase of private niches prior to the enactment of the Bill through various publicity means. Consumers who chose to purchase niches in private columbaria before the commencement of the new legislation should pay attention to the detailed terms in the agreement (e.g. what arrangements would apply in case of cessation of columbarium operation for any reason, non-renewal of the licence, including whether and if so how a refund or compensation would be made to the consumers and how the interred ashes would be properly disposed of). The Administration would draw up a detailed publicity plan on the licensing regime.

Arrangements for handling displaced ashes

23. Noting that FEHD would be obliged to handle the unclaimed ashes that remained in case of cessation of columbarium operation, some members enquired how FEHD would handle the displaced ashes and the procedures involved. Concern was expressed that a large number of private columbaria might cease operation after the passage of the Bill, bringing about displacement of a considerable number of ashes and a serious shortage of supply of private niches in the near future.

24. The Administration advised that under the proposed licensing regime, private columbaria with prospect for regularization would be given time to seek regularization/rectification, with a view to ensuring a sustainable and orderly provision of niches by private columbaria. That said, FEHD would monitor closely whether the private columbaria had followed up the prescribed ash disposal procedures in conscientiously contacting the deceased's authorized representative to claim back the displaced ashes and would mount investigation and prosecution if any unscrupulous operators were found derelict in discharging their obligations on ash disposal.

Definition of "relative" of a deceased person

25. Some members suggested including the same-sex partner of a deceased person in the definition of "relative" of a deceased person so that the same-sex partner could claim for the return of the ashes of that deceased person in case licence applications in respect of the existing columbaria were unsuccessful. Clarification was sought as to whether a person who was married to a person of the same sex at a place outside Hong Kong had the right to claim for the ashes of his or her same-sex spouse under the Bill. According to the Administration, if a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong was the authorized representative or the purchaser, he/she was entitled to claim for the return of the ashes in that capacity.

Relevant papers

26. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
8 December 2016

Relevant papers on the Private Columbaria Bill

Committee	Date of meeting	Paper
Council meeting	6.7.2016	Report of the former Bills Committee on Private Columbaria Bill
Panel on Food Safety and Environmental Hygiene	8.11.2016 (Item VII)	Agenda

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