

**Bills Committee on Private Columbaria Bill**

**Key issues of Concern discussed at the Bills Committee formed under the Fifth LegCo with Committee Stage Amendments (“CSAs”) incorporated into the re-introduced Bill (this Bill)**

	Issue of Concern (raised by public feedback or Members of the 5 <sup>th</sup> LegCo)	CSAs	Provision(s) in this Bill (Page No)
<b>(A) Applicability of the Bill</b>			
1	Some public feedback suggested that the following be addressed: Some operators are selling private niches for interring <b>synthetic materials</b> transformed from human ashes in a manner no different from selling private niches for interring human ashes. This is tantamount to running columbaria in disguise to circumvent the regulatory requirements.	We have incorporated the following CSAs to –  (a) amend the definition of <i>ashes</i> to cover synthetic materials transformed from human ashes; and  (b) exclude from the application of the Bill workplaces for such transformation work and its ancillary activities in such premises, including the delivery and collection of ashes and synthetic materials, provided that certain pre-requisites are met.	Paragraph (a) of the definition of <i>ashes</i> in clause 2 (page C835)  Clause 5 (C853, C855 & C857)
2	Some public feedback suggested that the original Bill should cater for <b>temporary display of ashes in exhibition venues</b> , noting past events on display of Buddha’s relics held.	We have incorporated CSAs to exclude premises used as exhibition venues for temporary display of ashes from the application of the Bill, provided that certain pre-requisites are met.	Clause 6 (C857)
3	The original Bill allowed domestic keeping of ashes, and some Members suggested that we should cater for the need of <b>large families</b> .	We have incorporated CSAs to raise the cap of domestic keeping of ashes from five containers of ashes to ten containers of ashes with each container containing, or being claimed, represented or held out to be containing, the ashes of only one person.	Clause 7(1)(a) (C859)

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<b>(B) Regulatory framework</b>			
4	Some Members asked that the following be addressed: For a columbarium operated in multi-storey buildings where the relevant <b>deed of mutual covenant</b> prohibits columbarium use, the Licensing Board should have regard to such a restrictive covenant when considering its application for the issue of a licence.	<p>We have incorporated CSAs to require an applicant for the issue of a licence in respect of a columbarium to produce to the Licensing Board a written legal advice of a legal practitioner (who is qualified to practise as counsel or to act as a solicitor in Hong Kong) to confirm that there is no express restrictive covenant in the deed of mutual covenant (that is in force) in respect of the columbarium premises to the effect that –</p> <p>(a) any use of the premises as a columbarium is prohibited;</p> <p>(b) any commercial use of the premises is prohibited; or</p> <p>(c) only private residential use of the premises is permitted.</p>	<p>Clause 17(3) (C881)</p> <p>Clause 22(3) (C897 &amp; C899)</p>
5	Some Members suggested that the original Bill should <b>allow, for exempted columbaria, niches sold before the cut-off time (pre-cut-off-time-sold niches) which were unoccupied as at the cut-off time to be filled afterwards,</b> and the Administration could consider imposing stringent criteria for allowing such arrangements.	<p>We have incorporated CSAs to relax the restriction in the original Bill that disqualifies a dated columbarium from being eligible for an exemption should ashes be newly interred after the cut-off time. Under the relaxed requirements, subject to the fulfilment of conditions to forestall abuse (e.g. any such columbarium must properly keep the relevant agreements and records of interment for future examination by the Licensing Board and the enforcement authority) –</p> <p>(a) a dated columbarium interring ashes in which ashes are newly interred into unfilled or partially filled <u>pre-cut-off-time-sold niches</u> after the cut-off time but before the enactment date may still be eligible for an exemption; and</p> <p>(b) a dated columbarium having obtained an exemption may still newly inter</p>	<p>Clause 19(2)(a) (C887)</p> <p>Clause 20(4)(a) (C893)</p> <p>Clauses 53 &amp; 54 (C965, C967 &amp; C969)</p>

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		<p>ashes in <u>pre-cut-off-time-sold niches</u> during the validity period of exemption.</p> <p>Allowing bona fide consumers and operators to inter ashes into niches that were sold before the cut-off time but yet to be filled is considered a reasonable and empathetic arrangement. After all, these are valid contractual obligations and to qualify for exemption, a columbarium must cease the selling or letting out of any niches after the cut-off time. Hence, its scale of operation will still be frozen at the level prevailing at the cut-off time and subject to control through the regulatory regime.</p>	
6	<p><b>Religious ash pagodas</b>, which are used for interring the ashes of deceased religious practitioners, are common essential structures found in Chinese temples. Some Members suggested that the original Bill should allow special arrangements / exemptions for religious columbaria, especially for religious ash pagodas run by traditional Buddhist / Taoist temples that are not open for sale to the public.</p>	<p>We have incorporated CSAs to provide for the following, subject to fulfilment of conditions to forestall abuse –</p> <p>(a) a dated columbarium in which ashes are newly interred in a religious ash pagoda (hereinafter called “the subject niches”) (not involving any fees, charges or other sums) before the enactment date may still be eligible for an exemption; and</p> <p>(b) a dated columbarium having obtained an exemption and fulfilling the requirements under the Bill may, following publication of the relevant notice by the Secretary for Home Affairs (“SHA”), have ashes newly interred in the subject niches (not involving any fees, charges or other sums) during the validity period of exemption.</p> <p>SHA will be empowered to allow the subject niches (subject to a designated quota) in exempted pre-cut-off columbaria of specified Chinese temples to be used for interring ashes of religious practitioners</p>	<p>Clause 19(2)(b) (C887 &amp; C889)</p> <p>Clause 20(4)(b) (C893)</p> <p>Clause 55 (C969, C971, C973 &amp; C975)</p>

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		(e.g. Buddhist monks or nuns, or Taoist priests or priestesses residing in and serving the temples immediately before their deaths), and to formulate requirements and conditions for this purpose.	
7	A Member suggested that the Licensing Board should be empowered to have regard to <b>past records of non-compliance with requirements for planning, land and building</b> by private columbaria in determining an application for a specified instrument.	We have incorporated CSAs to expressly provide that in relation to an application for the issue of a licence or exemption or an application for the extension of a temporary suspension of liability, the other relevant considerations referred to in clause 21(2)(b) include, among others, whether, in respect of the columbarium, the applicant has or has not complied with applicable requirements in Schedule 2, and the steps that the applicant has taken towards meeting those requirements.	Clause 21(3) & (4) (C895)
8	In relation to the administrative <b>Notification Scheme</b> , some Members were concerned that some applicants might be precluded from participating in the Notification Scheme by circumstances beyond his/her control. The Licensing Board should be empowered to consider evidence other than those collected under the Notification Scheme for proving certain eligibility criteria.	We have incorporated CSAs to empower the Licensing Board to consider any evidence of the notifiable particulars other than evidence collected under the Notification Scheme.	Clause 27(8) (C915)

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9	Some Members suggested that columbarium operators should be prevented from collecting <b>fees or charges beyond what is agreed in an agreement for the sale of an interment right</b> entered into before the cut-off time.	We have incorporated CSAs to empower the Licensing Board to impose conditions on a specified instrument in respect of a pre-cut-off columbarium restricting the imposition of additional fees or charges beyond what is agreed in an agreement for the sale of an interment right entered into before the cut-off time.	Clause 37 (C925 & C927)
10	The original Bill required an applicant for a specified instrument to notify the Licensing Board of a change occurred that materially affects the accuracy of information in connection with the application, including <b>changes in proprietorship, partnership or directorship.</b> Some Members have suggested that a holder of a specified instrument should likewise be required to do so.	We have incorporated CSAs to require the holder of a specified instrument to notify the Licensing Board of any change occurring that materially affects the accuracy of the information that the holder of the specified instrument has provided in connection with the application on the basis of which the specified instrument has been issued, renewed or extended. Such a change includes a change of any director, manager, secretary or other similar officer of the holder of the specified instrument.	Clause 42(3) & (4) (C945)
11	Unlike the case of a natural person (sole proprietor), where the applicant for a specified instrument was a partner in a partnership or a body corporate, there is no explicit requirement in the original Bill requiring the person signing the application to do so with <b>authorization</b> from the partnership or body corporate.	We have incorporated CSAs to set out clear authorization requirement in respect of the following applicant seeking a specified instrument –  (a) if the applicant is a partner in a partnership – the application has to be signed by the partner who is authorized in writing to act for and on behalf of the partnership; and  (b) if the applicant is a body corporate – the application has to be signed by a director or other officer concerned in the management of the body corporate who is authorized in writing to act for and on behalf of the body corporate.	Section 2(b) & (c) of Schedule 3 (C1129)

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<b>(C) Enforcement</b>			
12	Some Members suggested narrowing the scope of <b>inspection power</b> conferred upon the Director or an authorized officer under the original Bill (e.g. to delete the power to remove and impound insofar as inspection is concerned).	We have incorporated CSAs to clearly stipulate that the inspection power conferred upon the Director or an authorized officer is for ascertaining whether the requirements specified the Bill, and the specified instrument and management plan concerned are complied with.	Clause 57(1) & (2)(c) (C977)
<b>(D) Consumer protection</b>			
13	Some public feedback suggested that the following be addressed: A <b>transferee</b> of a specified instrument should be made to shoulder all responsibilities and obligations in relation to all agreements for the sale of interment right entered into by the transferor before the transfer.	<p>We have incorporated CSAs to enhance consumer protection by stating explicitly that a transferee is liable for all debts and obligations in relation to each agreement for sale of an interment right entered into before the transfer of the specified instrument and, accordingly, any such agreement may, after the transfer, be enforced by the purchaser against the transferee.</p> <p>A transferee may be indemnified by the transferor for all amounts for which the transferee is made liable as mentioned above and for which the transferee would not otherwise be liable. We will defer the issue of indemnity to be settled among the transferee and the transferor, as this is basically a commercial decision on their part.</p>	Clause 38(9), (10) & (11) (C931 & C933)

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14	Some Members asked that the following be addressed: A seller or his/her agent might coerce the purchaser to nominate the former as the latter's authorized representative in relation to an agreement for the sale of an interment right, and the possibility of a <b>conflict of interest</b> arising from the seller's or his/her agent's assuming such a capacity.	We have incorporated CSAs to amend the definition of <i>authorized representative</i> to stipulate that the columbarium operator or its agents cannot be an authorized representative in relation to an agreement for the sale of interment right concerned.	Definition of <i>authorized representative</i> in clause 2 (C835 & C837)
15	Some Members and the ALA expressed the concern that allowing a purchaser under an agreement that is not enforceable to <b>cancel the agreement at any time</b> after it is entered into might be too harsh to the seller.	We have incorporated CSAs to provide that the purchaser under an agreement that is not enforceable may cancel the agreement –  (a) if the case involves fundamental issues relating to the agreement – at any time after the agreement is entered into; or  (b) if the case involves less serious issues relating to the agreement – within six months after the date of the agreement.	Clause 48(1) and (2) (C957)
16	Some Members and the ALA suggested that the original Bill should set out, in more concrete terms, the <b>particulars required to be covered in an agreement for sale of an interment right</b> , in order to facilitate the industry's compliance with the relevant requirements.	We have incorporated CSAs to this effect.	Section 1(b) of Schedule 4 (C1135, C1137 & C1139)

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17	Some public feedback suggested that the following be addressed: after a <b>purchaser who is the dedicated person dies</b> , there are difficulties on the part of his/her relative / friend to enforce the agreement on his/her behalf, because that relative / friend is not a party to the contract.	We have incorporated CSAs to require an agreement for the sale of interment right to set out the arrangements for authorizing a person to enforce the agreement (as one of the “other essential terms”).	Section 2(f)(iii) of Schedule 4 (C1143)
<b>(E) Ash disposal</b>			
18	Some Members expressed concern that requiring <b>innocent third parties</b> taking possession of a columbarium premises to carry out the prescribed ash disposal procedures under the original Bill was too harsh.	We have incorporated CSAs to provide an alternative to a person in possession who is not “an owner or mortgagee who acquired an interest in the premises subject to an obligation to carry out the prescribed ash disposal procedures”, such that the person could, instead of carrying out the prescribed ash disposal procedures by himself, invite the Director to carry out ash disposal and allow a specified officer to enter the columbarium premises for ash disposal purpose for at least 12 months.	Clause 73(4) (C1009)
19	Some Members suggested that original Bill should include provisions to empower the person in possession who is carrying out the prescribed ash disposal procedures or a specified officer carrying out ash disposal to <b>require the operator to provide information</b> which is necessary to facilitate the disposal of ashes.	We have incorporated CSAs to this effect.	Clauses 73(11) & 74(5), (6) & (7) (C1013 & C1017)



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20	Some Members suggested that the original Bill should clearly stipulate the specific <b>level of court</b> expected to deal with the relevant situations, e.g. which court could make an occupation order, which court could handle claims for the return of ashes, etc.	We have incorporated CSAs to the effect that a magistrate may make an occupation order upon application by a specified officer whereas the District Court may handle the claims for the return of ashes.	Clauses 74(2) & 75, and sections 3(1) & 9(1) of Schedule 5 (C1015, C1017, C1147, C1149, C1151 & C1167)
21	Some Members suggested that the Bill should specify clearly that an <b>occupation order</b> could cover the <i>entire columbarium premises</i> or just <i>part of it</i> to allow flexibility to the court.	We have incorporated CSAs to this effect.	Clause 74(2)(b), and section 4(1) of Schedule 5 (C1015 & C1151)