

**For Discussion  
on 24 January 2017**

**Bills Committee on Private Columbaria Bill**

**Summary of Views Received and the Government's Response**

The Bills Committee invited interested parties to give written views on the Private Columbaria Bill by 6 January 2017. Prior to the invitation, six submissions were received. In response to the Bills Committee's invitation, another nine submissions were received (with six of them received by the deadline and three after the deadline). This note sets out the views received and the response from the Government.

	<b>Key Comment</b>	<b>Relevant Submission</b>	<b>Response from the Government</b>
<b>(A) General</b>			
1	The licensing regime proposed in the Bill is welcomed. It is hoped that the Bill could be enacted as soon as possible.	<ul style="list-style-type: none"> <li>• DAB Kowloon City Branch</li> <li>• Hong Kong Columbarium Merchants Association Limited</li> <li>• 香港孝思園</li> <li>• The Society for Truth and Light</li> <li>• Civic Party</li> <li>• Liberal Party</li> </ul>	Noted. We will continue to work closely with the Bills Committee with a view to facilitating the early enactment of the Private Columbaria Ordinance ("the Ordinance").

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2	Our traditional Chinese culture attaches importance to filial piety. The Bill should not affect ashes already interred.	<ul style="list-style-type: none"> <li>• 香港孝思園</li> </ul>	<p>In formulating the regulatory regime under the Bill, we have sought to strike a reasonable balance amongst competing interests of various stakeholders, having regard to –</p> <ul style="list-style-type: none"> <li>(a) the wider community interest, including meeting society’s needs for provision of columbaria;</li> <li>(b) the sentiment of the descendants, in particular their wish not to upset the resting place of the deceased as far as practicable;</li> <li>(c) the desire of communities neighbouring private columbaria to have the nuisance caused by such columbaria minimised; and</li> <li>(d) the merits of ensuring a sustainable mode of operation of the private columbarium sector in the long run.</li> </ul> <p>We must reiterate that the regulatory regime proposed in the Bill represents a big step forward as compared with the status quo. Once the Bill is passed, a regulatory regime could be put in place, the industry could be put on a sustainable path, and consumers’ interests can be better protected. We have already adopted a pragmatic approach in handling dated private columbaria which do not comply with certain requirements of the prevailing statutory and Government requirements, with a view to avoiding massive displacement of interred ashes which would upset the resting place of the deceased and lead to social discord. We consider that the Bill strikes a fine balance amongst the interests of different stakeholders and helps address their various concerns.</p>

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3	<p>The transitional period allowed for private columbaria to continue to operate (i.e. the validity period of a temporary suspension of liability (“TSOL”)) should be shorter, say at 18 months.</p>	<ul style="list-style-type: none"> <li>• DAB Kowloon City Branch</li> <li>• Liberal Party</li> </ul>	<p>TSOL, which is temporary in nature, seeks to allow time for pre-cut-off columbaria to seek compliance with the requirements for a licence or an exemption, as the case may be.</p> <p>If the validity period is too short, this may not only reduce the supply of niches by the columbarium (with the potential of obtaining a licence), but also give rise to displacement of interred ashes, leading to social tension and disruption.</p> <p>Having considered the time required for the private columbaria to complete the rectification/regularisation process with a view to meeting the requirements concerning land, planning and buildings under the existing mechanism, we consider the proposed duration of the TSOL validity period under the proposed licensing regime reasonable and appropriate.</p> <p>It is not in the interest of the following to stall on their actions –</p> <p>(a) licence applicants: as they are not allowed to sell niches until they have obtained the licence; and</p> <p>(b) exemption applicants: as they are not allowed to inter ashes in unfilled or partially filled niches sold before the cut-off time until they have obtained the exemption (and there would be pressure from the purchasers on them to obtain the exemption as soon as possible).</p> <p>After all, the Bill would limit the number of sets of ashes kept in the columbarium issued with TSOL.</p>

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4	For columbaria which are not eligible for an exemption, if they failed to meet the requirements for applying for a licence, they should cease operation and vacate the premises immediately, and should properly handle the niches affected.	<ul style="list-style-type: none"> <li>• DAB Kowloon City Branch</li> </ul>	It is for the future Private Columbaria Licensing Board to determine whether to approve or refuse an application for a specified instrument having regard to the facts and circumstances of each case. An operator who failed to obtain a specified instrument would need to carry out the prescribed ash disposal procedures as required under the Bill. The Food and Environmental Hygiene Department (“FEHD”) would also take enforcement actions against private columbaria operating without specified instruments as appropriate.
5	Similar to the arrangements for pre-cut-off columbaria applying for an exemption, pre-cut-off columbaria applying for a licence should be relieved from the need to comply with planning-related requirements.	<ul style="list-style-type: none"> <li>• Hong Kong Columbarium Merchants Association Limited</li> </ul>	When addressing the issue of private columbaria which is a historical legacy, we must strike a reasonable balance between avoiding social tension and disruption (including avoiding upsetting the resting place of the deceased whose ashes were interred in private columbaria) and safeguarding the interests of residents in their neighbourhood. We consider that the current framework of the Bill could achieve the above objective.
6	In relation to breach of the General Condition No. 15 (G.C. 15) (i.e. the “no human remains” clause), consideration should be given to regularising the breach by granting consent under G.C. 15 for pre-war new grant lots subject to G.C. 15, and lease modification for post-war new grant lots, in accordance with the established procedures.	<ul style="list-style-type: none"> <li>• Hong Kong Columbarium Merchants Association Limited</li> </ul>	Under the current policy, any application for regularisation of lease breach including the “no human remain” clause, will be processed in accordance with the established procedures, irrespective of when the lot was granted. Approval of any such application is subject to payment of full market value premia, waiver fees or STT rentals as well as administrative fees as appropriate by the applicant unless a policy directive is provided to charge nominal or concessionary premia / rentals / fees.

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<b>(B) Ash disposal</b>			
7	<p>The definition of “relative” (or for that matter, “spouse”) in section 6 of Schedule 5 to the Bill should not be amended to include same-sex partners married at a place outside Hong Kong, in light of the following considerations –</p> <p>(a) the Director of Food and Environmental Hygiene was already given the discretion in the Bill on how to handle the ashes in her possession; and</p> <p>(b) different religions had different stance on this matter, and that we should respect the position of individual religion.</p>	<ul style="list-style-type: none"> <li>• The Society for Truth and Light</li> </ul>	<p>Part 7 of and Schedule 5 to the Bill provide for the arrangements for disposing of the ashes interred in a private columbarium. According to the Bill, a “prescribed claimant” may claim for the return of ashes interred in the columbarium. “Prescribed claimant”, in relation to the ashes of a deceased person, is defined in the Bill to mean an authorized representative, personal representative or relative or the purchaser of the interment right.</p> <p>To facilitate the ash handler to return the ashes and related items to claimants, section 6(2) of Schedule 5 to the Bill stipulates the definition of “relative”. The definition was formulated based on the Government’s study of various Ordinances in the existing Hong Kong legislation that list out different relationships (including “spouse”) for different purposes.</p> <p>The Government is of the view that what the term “spouse” should mean for the purposes of the Bill should be formulated in accordance with the applicable law in force in Hong Kong. As of now, there is no legislation in Hong Kong that recognises the legal status of a same-sex marriage celebrated or contracted, or civil partnership or civil union registered, in accordance with the law of other jurisdictions. Same-sex marriage contracted in other jurisdictions is not recognised in a Hong Kong court for the purpose of matrimonial proceedings under the Matrimonial Causes Ordinance (Cap. 179).</p> <p>A cohabitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong may claim for the return of the ashes of the deceased in the capacity as (a) authorized representative; (b) personal representative; or (c) purchaser. Such</p>
8	<p>Same-sex couples in “long-term stable relationships” should have the right to claim for the return of ashes of their deceased partner, as with other relatives.</p>	<ul style="list-style-type: none"> <li>• 性小眾團體</li> <li>• The Covenant of Rainbow</li> <li>• Sexualities Research Programme, the Chinese University of Hong Kong</li> </ul>	
9	<p>The society could consider including in the</p>	<ul style="list-style-type: none"> <li>• The Society for Truth and</li> </ul>	

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	concept of “diversified powers of attorney” the authorisation from a same-sex partner for his/her partner to claim for the return of his/her ashes.	Light	persons, if they are the owner of the related items interred together with the ashes, may also be considered as an “eligible claimant”, and lodge claim for the return of the item together with the ashes.  For ashes which are unclaimed <u>or</u> subject to competing claims but without court proceedings having been instituted by the expiry of 12 months after the on-site claim period, they are to be delivered to the Director of Food and Environmental Hygiene (“the Director”). The Director has discretion on how to dispose of the ashes in her possession, including handing the ashes to a cohabitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong, etc. as she deems appropriate.
10	Object to amending the definition of “relative”.	<ul style="list-style-type: none"> <li>Hong Kong Sex Culture Society Limited</li> </ul>	
<b>(C) Consumer protection</b>			
11	Upon enactment of the Ordinance, private columbaria would not be allowed to arrange interment of ashes in their niches even if the niches were sold before the enactment date, until they obtained either a licence (for interment in any niches) or an exemption (for interment in niches sold before the cut-off time). This would affect the contractual relationship between the operator and the consumer. It was suggested that private columbaria should be allowed to inter ashes in niches sold before the enactment date as stipulated in the relevant agreement.	<ul style="list-style-type: none"> <li>馮小姐</li> <li>林生</li> </ul>	<p>After the Ordinance is enacted, only private columbaria that have been issued with a licence may sell or let niches (and inter ashes therein), while private columbaria that have been issued with an exemption would be allowed to inter ashes in niches sold before the cut-off time subject to fulfilment of certain provisions governing such arrangements (e.g. regarding keeping of registers, changing of dedicated persons) in the Ordinance.</p> <p>At this stage, whether an existing private columbarium would be able to obtain a licence or an exemption in the future is uncertain. Even if a private columbarium could obtain a licence or an exemption in future, the maximum ash interment capacity or ash interment quantity could not be foretold at present. The restriction which does not allow interment of ashes in niches sold before the cut-off time between the enactment date and the issue of a licence or an exemption, albeit causing slight inconvenience to consumers, is a prudent measure to guard against aggravation of the</p>

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			<p>scale of non-compliant columbaria in the post-enactment stage. It also minimises the scale of possible displacement of ashes interred in those columbaria which eventually fail to obtain a specified instrument in future for various reasons. After all, we have to strike a fine balance amongst the interests of various stakeholders, including the consumers and neighbours affected by the columbarium operations.</p> <p>In the interim, should members of the public need to handle cremated ashes, they may wish to consider options including temporary storage of ashes provided by the Government; niches of the columbaria in private cemeteries; co-location in niches already allocated by FEHD or the Board of Management of the Chinese Permanent Cemeteries; scattering the ashes in Garden of Remembrance or at sea; or keeping the ashes at home.</p>
12	<p>The Bill should not be over prescriptive, and in particular, it should not deprive purchasers of the flexibility to change the name of the dedicated person of the niche.</p>	<ul style="list-style-type: none"> <li>• 朱先生</li> </ul>	<p>According to the submission, the purchase took place about two years ago. It was unclear from the submission as to whether the transaction was entered into before or after the cut-off time.</p> <p>We do not see the basis of the claim made by the operator that the change of name of the dedicated person in the pre-enactment stage has anything to do with the Bill, as such a change is currently processed in accordance with the relevant agreement as executed. If necessary, the consumer should seek advice from his legal adviser on how his interest should be protected.</p> <p>In the post-enactment stage, a private columbarium in operation before the cut-off time generally had the option of applying for a licence and/or exemption, subject to fulfilment of the applicable requirements in all respects. If such a columbarium chooses to apply for a licence, the Bill does</p>

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			<p>not limit the change of name of the dedicated person. If the columbarium chooses to apply for an exemption, the change of name of the dedicated person in respect of niches sold before the cut-off time but the ash interment in which was exercised between the cut-off time and enactment date or after obtaining the exemption should follow the procedures stipulated in clause 54 of the Bill. Again, if necessary, the consumer should seek advice from his legal adviser on how his interest should be protected.</p> <p>In the interim, we will step up publicity to warn consumers to stay vigilant in protecting their interests in the pre-enactment stage.</p>
13	The Government should have in place a mechanism to assist affected consumers to handle displaced ashes, for instance, by setting aside sufficient temporary storage facilities for storing ashes.	<ul style="list-style-type: none"> <li>• Liberal Party</li> </ul>	<p>FEHD provides service for temporary storage of ashes free of charge in the first two months following cremation in its crematoria. The duration may be extended upon application at a monthly fee of \$80. At present, FEHD has a total of about 23 000 temporary urn storage spaces at the Kwai Chung Crematorium and Wo Hop Shek Columbarium (Phase III &amp; Phase V). An additional 38 000 temporary urn storage spaces will be made available by stages in 2017 and 2018. In other words, the total number of temporary urn storage spaces of the Government would be increased to more than 60 000 in the coming two years. FEHD is exploring the feasibility of increasing temporary storage spaces in other venues.</p>
14	The Government should explore how to assist affected consumers in claiming back their loss in case of cessation of business. The Government could consider setting up a central compensation	<ul style="list-style-type: none"> <li>• Liberal Party</li> </ul>	<p>We have made reference to the mode of operation of the Travel Industry Compensation Fund and considered the merits or otherwise of the setting up a central compensation fund for post-enactment transactions on the sale of interment rights. However, after careful consideration, we are of the view that it is not feasible to set up such a fund. In case</p>



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	fund.		<p>of default of a travel agent, the consumers affected can make use of the compensation from the Fund to procure substitute tourism products of comparable value usually in a matter of weeks, whereas the interval between the prepayment date and the date of use/default in respect of sale of niches may be in terms of many years. During that period, the prices of niches could have inflated substantially and unscrupulous operators could also opt to fly by night. Consumers affected may be unable to buy another niche of comparable value, if the levy is fixed at a low level. If the amount of compensation payable at the event-triggering point is set at such a level that an aggrieved consumer is able to purchase a niche at a price comparable to the current market price of the niche he bought long ago, the amount of levy to be imposed will be huge. As the levy is payable by the trade and consumers, imposing high levy will result in inequity, as operators of sound columbaria would have to shoulder the burden of operators of poorly-run columbaria. In all, the setting up of a central compensation fund is obviously not feasible. We do not have a fair and objective mechanism to assess the level of levy required. In addition, the proposed fund may also give rise to moral hazard and make consumers less vigilant in protecting their interests.</p>
15	The regulatory role of the Government should be strengthened under the proposed licensing regime.	<ul style="list-style-type: none"> <li>• Liberal Party</li> </ul>	<p>An integrated, holistic and coordinated regulatory mechanism incorporating all relevant statutory requirements could only be put in place after enactment of the Ordinance. This is in fact the very reason why the early enactment of the Ordinance is important. Before enactment of the Ordinance, departments with enforcement powers would continue to stay vigilant in their enforcement actions to contain the problem of private columbaria operating in blatant breach of existing statutory land,</p>

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			building and planning requirements in order to help contain the proliferation of newly-emerged cases.
<b>(D) Other related matters</b>			
16	The Government should maintain communication with the trade in order to listen to the views and suggestions.	<ul style="list-style-type: none"> <li>Hong Kong Columbarium Merchants Association Limited</li> </ul>	We have maintained communication with the trade throughout the process and will continue to do so.
17	The Government should consult the Legislative Council (“LegCo”) as soon as possible should there be any subsidiary legislation relating to the Bill, and should report regularly to the LegCo Panel on Food Safety and Environmental Hygiene on latest progress of the implementation of the Private Columbaria Ordinance.	<ul style="list-style-type: none"> <li>Civic Party</li> </ul>	Noted.
18	The Government should step up public education on the risks associated with the purchasing of private niches pending the enactment of the Bill.	<ul style="list-style-type: none"> <li>Civic Party</li> </ul>	A new TV Announcement in Public Interest has indeed been broadcast since early January 2017 to promote to the public that the Bill has been re-introduced and alert them of the need to carefully assess the risks in purchasing niches from private columbaria pending the enactment of the Ordinance.
19	The Government should pick up the pace in developing public columbarium projects with a view to alleviating demand for private niches.	<ul style="list-style-type: none"> <li>DAB Kowloon City Branch</li> <li>Liberal Party</li> </ul>	The Government is committed to taking forward the district-based columbarium development scheme, under which the 18 districts would collectively share the responsibility of developing columbarium facilities. A total of 24 potential sites have accordingly been identified in the 18 districts for columbarium development.

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			As at end 2016, we have obtained support from the relevant District Councils (“DCs”) on 14 projects, which could provide about 589 000 new public niches in total, accounting for about two-thirds of the aggregate number of niches in the 24 projects. We will continue to consult the relevant DCs for the remaining projects with a view to securing the supply of public niches in the years to come.
20	The Government should consider developing large-scale public columbarium facilities on desolated islands.	<ul style="list-style-type: none"> <li>• Liberal Party</li> </ul>	Noted.
21	The Government should step up its promotion and education efforts on green burial.	<ul style="list-style-type: none"> <li>• DAB Kowloon City Branch</li> </ul>	<p>The Government has been taking active steps to promote green burial with a view to bringing about a gradual change in mindset and culture, such that this environment-friendly and sustainable means of handling human ashes would become more widely accepted.</p> <p>Our efforts on promoting green burial over the years are beginning to bear fruit. The number of green burial cases handled by the Government in 2016 accounts for about 10.5% of the total number of deaths in Hong Kong, as compared with 4.6% in 2010.</p> <p>We are conscious that it will take time for green burial to gain public acceptance as the preferred way to dispose of cremated ashes. To strengthen strategy formulation on this front, we have set up under the Advisory Council on Food and Environmental Hygiene a working group focusing on green burial and related matters. This will allow us to have a dedicated platform for tapping the views from a wide cross-section of the community. Meanwhile, the Government will continue to step up our efforts to improve and increase our green burial facilities and services and strengthen our</p>

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			<p>promotional efforts on green burial.</p> <p>With persistent efforts, we are optimistic that we could be able to progressively secure a paradigm shift, as vindicated by our experience in promoting cremation over land burial.</p>
22	<p>When renewing the tendering arrangement in respect of the Hung Hom Public Funeral Parlour, the Government should take the opportunity to require the new operator to allow the public to access and use the furnaces therein daily.</p>	<ul style="list-style-type: none"> <li>• DAB Kowloon City Branch</li> </ul>	<p>The Government has put in place arrangements to enable the public to use the furnaces at the Hung Hom Public Funeral Parlour (HHPFP) during the Ching Ming Festival and Chung Yeung Festival periods.</p> <p>Now that the agreement on the HHPFP will expire on 31 March 2017, consideration is being given to putting in appropriate arrangements at least as effective as the arrangements mentioned above.</p>

**Food and Health Bureau**  
**January 2017**