

## **Bills Committee on Private Columbaria Bill**

### **Draft Committee Stage Amendments Proposed by the Government**

#### **Purpose**

In response to comments and suggestions from Members and Legal Adviser of the Bills Committee and different stakeholder groups, the Government would like to propose a number of Committee Stage Amendments (“CSAs”) to the Bill with a view to further refining the Bill. This paper sets out the draft CSAs to be proposed by the Government and their corresponding rationale.

#### **Proposed Amendments**

2. The three major CSAs proposed and their corresponding rationale are set out at **Annex 1**. We are also proposing some textual and technical amendments as set out at **Annex 2**.
3. To facilitate Members’ consideration, we have marked the proposed CSAs on the relevant provisions of the Bill at **Annex 3**.

#### **Advice Sought**

4. Members are invited to note the contents of the paper.

**Food and Health Bureau**  
**March 2017**

**Major CSAs Proposed by the Government**

	<b>Provision(s) to be amended</b>	<b>Proposed amendments</b>	<b>Rationale</b>
1	Definition of prescribed claimant under section 6, and section 9(5), of Schedule 5	To add “related person” as an additional category of “prescribed claimant” under section 6 of Schedule 5.	<p><b>It seeks to facilitate relevant related persons to claim for the return of ashes interred in private columbaria when the prescribed ash disposal procedures have been triggered.</b></p> <ul style="list-style-type: none"><li>• When the prescribed ash disposal procedures are triggered in respect of a columbarium, certain claimants may come forward to claim for the return of the ashes interred in the columbarium. According to the current draft of the Bill, “prescribed claimant” means “an authorized representative”, “a personal representative”, “relative” or “the purchaser of the interment right”.</li><li>• To facilitate relevant related persons to claim for the return of ashes, we propose to add “related person” as an additional category of “prescribed claimant”. We have made reference to other existing legislation, including the Fatal Accidents Ordinance (Cap. 22) and the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), in formulating the definition of “related person”, which is recapitulated below for reference –  “<i>related person</i> (相關人士), in relation to a deceased person, means a person who—<ul style="list-style-type: none"><li>(a) was living with the deceased person in the same household immediately before the date of the death of the deceased person; and</li><li>(b) had been living with the deceased person in the same household for at least 2 years before that date”</li></ul></li><li>• On the priority of claims, the claim of the “related person” would be lower than that of an authorized representative and a personal representative or relative, but higher than that of the purchaser of interment right. Section 9(5) of Schedule 5 would accordingly be revised to reflect this proposition.</li></ul>

	Provision(s) to be amended	Proposed amendments	Rationale
2	Schedule 1	To provide expressly that the Private Columbaria Licensing Board (“the Licensing Board”) may delegate its functions or powers to a public officer.	<p><b>It seeks to facilitate the execution and implementation of the provisions under the Bill by the Licensing Board and its secretariat (i.e. the Food and Environmental Hygiene Department).</b></p> <ul style="list-style-type: none"> <li>• The Bill currently contains an express provision on the Director of Food and Environmental Hygiene (“DFEH”)’s power to delegate its functions and powers to a public officer (see clause 91(1) and (3)). However, there is no specific or similar provision for the delegation of the Licensing Board’s functions and powers.</li> <li>• In the course of preparing various guidelines and practice notes, etc. for the implementation of the Ordinance, it has come to our attention that the exercise of many powers and functions of the Licensing Board involves a lot of work which is not practically feasible for the Licensing Board to carry out by itself and should be delegated to various staff of FEHD, including handling of complaints, conducting investigations into irregularities of the operation of columbaria, seeking information from applicants to facilitate the consideration of applications by the Licensing Board, keeping a register of private columbaria with specified instruments issued, etc.</li> <li>• In fact, such express delegation provisions could be found in legislation relating to various statutory bodies, including the Communications Authority, Competition Commission, Electoral Affairs Commission, Equal Opportunities Commission, Hong Kong Examinations and Assessment Authority, Independent Police Complaints Council, Liquor Licensing Board and Town Planning Board.</li> <li>• We will make clear that certain powers of the Licensing Board, specifically those relating to the Licensing Board’s decision-making on approval / refusal of applications are not delegable. Such non-delegable powers would include, for instance, the power to delegate, to approve or reject any application for a specified instrument, to revoke or suspend a specified instrument, to impose or vary conditions, to determine the validity period of a specified instrument, etc.</li> </ul>

	Provision(s) to be amended	Proposed amendments	Rationale
3	Clause 39 / new provision	To empower the Licensing Board to vary approved plans, endorsed registers and management plans and adding additional circumstances under which the Licensing Board may exercise the power under clause 39 (which include, among other things, the power to vary the conditions to which a specified instrument is subject to and impose new conditions)	<p><b>It seeks to allow the Licensing Board to vary the relevant documents and conditions to ensure that they are adequate to reflect the latest situation of a columbarium. The aim is to have better regulation, supervision and control of private columbaria.</b></p> <ul style="list-style-type: none"> <li>• There could be circumstances where an approved plan would need to be amended to reflect the prevailing situation of the columbarium. For instance, a building in a columbarium premises might have become structurally unsafe (or have collapsed) over time, and it would be necessary to remove the relevant building from, and make other necessary amendments to, the approved plan, such as – <ul style="list-style-type: none"> <li>– reducing the ash interment quantity if the columbarium has been issued with an exemption; or</li> <li>– including in the plan another building built by the operator within its premises for accommodating the niches originally housed at the structurally unsafe / collapsed building.</li> </ul> </li> <li>• The Licensing Board’s power to vary conditions in clause 39(1) is subject to subsection (2) but the circumstances set out in subsection (2) may not cover all the circumstances that may necessitate variation of conditions imposed by the Licensing Board. For instance – <ul style="list-style-type: none"> <li>– there might be changes in legal or Government requirements that may affect the requirements that should be imposed on the operation of private columbaria; or</li> <li>– the Licensing Board finds it necessary to impose further conditions on the specified instruments to enhance consumer protection (e.g. the crowd management measures proposed in the management plan were not as effective as it originally envisaged), etc.</li> </ul> </li> </ul> <p>It is hence necessary to empower the Licensing Board to vary conditions imposed on specified instruments after their issuance to cater for the circumstances outside the scope of clause 39(2).</p>

**Technical and Textual Amendments Proposed by the Government**

	<b>Provision(s) to be amended</b>	<b>Proposed amendments</b>	<b>Rationale</b>
1	Section 2(1) of Schedule 3	To allow a person who <i>intends</i> to operate a columbarium to make the applications to which Schedule 3 applies	<p><b>It seeks to cover various situations where an application would have to be made before a person operates a columbarium, thereby ensuring the smooth operation of the licensing regime under the Bill.</b></p> <ul style="list-style-type: none"> <li>• Section 2(1) of Schedule 3 provides that “an application to which this Schedule applies may only be made by a person who operates, keeps, manages or in any other way has control of a columbarium (abbreviated as ‘operates a columbarium’ below)”. The presumption seems to be that the applicant must be the one who operates a columbarium.</li> <li>• However, an application for a licence should not be required to be made by a person operating a columbarium, since the very objective of the Bill is to ensure that all columbaria which commence operation after the enactment date should obtain a licence before its operation, or else they would be regarded to have contravened clause 10(1) which prohibits the operation of a columbarium without a licence.</li> <li>• Similarly, a transfer of a specified instrument (see section 1(b) of Schedule 3) could be made by someone not operating a columbarium as the transferee could be a successor of the original instrument holder who died.</li> </ul>
2	New provision	<p>To provide clearly that a specified instrument would remain in force under certain circumstances, specifically –</p> <p>(a) a specified instrument in respect of which an application for transfer has been made (apart from an application for the renewal or extension of the instrument as currently</p>	<p><b>It seeks to set out clearly whether a specified instrument would remain “in force” in the said circumstances.</b></p> <ul style="list-style-type: none"> <li>• The current clause 15(6) cannot cater for the scenario where an application for a transfer of a specified instrument has been received before the expiry of the validity period of the specified instrument, but before determination of the application by the Licensing Board, the validity period of the specified instrument expires. Between expiry of</li> </ul>

	Provision(s) to be amended	Proposed amendments	Rationale
		<p>provided for in clause 15(6)) and which expires prior to the determination by the Licensing Board of the application, should remain in force until the determination of the application or the occurrence of the events currently specified in clause 15(6)(a) to (d));</p> <p>(b) a specified instrument that is suspended will remain “in force” in the relevant context so long as the validity period has not expired; and</p> <p>(c) a specified instrument the holder of which has died or been dissolved will remain “in force” in the relevant context so long as the validity period has not expired.</p>	<p>the validity period of the specified instrument and determination of the application by the Licensing Board, the columbarium will be in operation without a specified instrument. As it is not the policy intention to trigger the prescribed ash disposal procedures under the above scenario, the specified instrument will be treated as still in force.</p> <ul style="list-style-type: none"> <li>• In the case where the holder of the specified instrument died (in case of a natural person) or dissolved (in case of a body corporate) during the validity of the specified instrument, our policy intention is that the prescribed ash disposal procedures should not be triggered automatically, as another person could apply for the transfer of the specified instrument for continuing the operation of the columbarium. The specified instrument should hence be treated to be still in force unless the Licensing Board decides otherwise.</li> <li>• We will also include an express restriction to prohibit the person operating the columbarium from selling any interment right in respect of the columbarium after the validity period of the specified instrument has expired or after the death or dissolution of the holder of the specified instrument (despite the instrument still being in force by virtue of the amendment).</li> <li>• A general provision will be included to reflect that a suspended instrument would remain in force, provided that all the requirements, terms and conditions imposed by the Licensing Board upon suspending the specified instrument or authorization (to sell) are complied with.</li> </ul>
3	Section 9 of Schedule 5	To provide expressly that the Director of Food and Environmental Hygiene (“DFEH”) may invoke the interpleader proceedings in respect of ashes and/or items that came to DFEH’s possession to facilitate DFEH’s	<p><b>It seeks to put the matter beyond doubt for the sake of facilitating DFEH’s return of ashes to claimants.</b></p> <ul style="list-style-type: none"> <li>• Ashes could come into DFEH’s possession under the following circumstances –</li> </ul>

	Provision(s) to be amended	Proposed amendments	Rationale
		return of ashes to claimants.	<p>(a) the prescribed ash disposal procedures have not or any step of which has not been carried out and DFEH carries out the steps necessary for the disposal of ashes; and</p> <p>(b) the ashes are delivered to DFEH under the prescribed ash disposal procedures (say unclaimed ashes).</p> <ul style="list-style-type: none"> <li>For (a), DFEH may invoke interpleader proceedings by virtue of sections 9(11) and 12(4) of Schedule 5. For (b), section 13 of Schedule 5, which does not contain an express provision for interpleader proceedings, applies. While DFEH could invoke interpleader proceedings (even without express provision), this may only be possible as far as the claims for related items (which are property) are concerned. Hence, it would be desirable to have an express provision in the Bill to make clear that DFEH may invoke interpleader proceedings in both the circumstances in (a) and (b).</li> <li>Opportunity is also taken to restructure section 9 of Schedule 5 to set out the provisions regarding a court order for the return of ashes separately.</li> </ul>
4	Clause 52	To make consequential amendments to clause 52 to cater for the situations where applicants for exemption or temporary suspension of liability (“TSOL”) have arranged for the interment of ashes between the cut-off time and the enactment date in niches sold before the cut-off time or in religious ash pagodas (which was introduced by a CSA agreed by the former Bills Committee and is now incorporated in clause 19(2) and 20(4) of the	<p><b>It is an amendment consequential to the CSA introduced in the former Bills Committee which allowed the interment of ashes after the cut-off time and before the enactment date in niches sold before the cut-off time or in religious ash pagodas.</b></p> <ul style="list-style-type: none"> <li>The current clause 52(2) requires a TSOL holder (where the related application is for an exemption) to keep the number of sets of ashes to that as at the cut-off time. However, as envisaged in clause 20(4), it is intended that a TSOL applicant may still have ashes interred after cut-off time (but before the enactment date) if the interment falls within the exception for pre-cut-off-time-sold niches or religious ash pagodas (see clause 20(4)(a) and (b)) and that would not prejudice the TSOL</li> </ul>

	Provision(s) to be amended	Proposed amendments	Rationale
		Bill);	<p>application. The problem arises when a TSOL is issued (while the exemption application is still pending), as the TSOL holder will be made subject to the requirement under clause 52(2), but the exceptions under clauses 53 and 55 for pre-cut-off-time-sold niches and religious ash pagodas are not available to the TSOL holder because an exemption has yet to be issued.</p> <ul style="list-style-type: none"> <li>• Opportunity is also taken to refine the drafting of clauses 19(2), 20(4), 53 and 55(1) for better overall alignment.</li> </ul>
5	Clause 66(3) and (4)	To tally the wording in clause 66 and Schedule 7 such that the grace period in both provisions would only apply to a columbarium that was in operation immediately before the enactment date;	<p><b>It seeks to ensure consistency among different provisions in the Bill which made reference to the term “grace period”.</b></p> <ul style="list-style-type: none"> <li>• The original wording of clause 66(3) and (4) could mean that a grace period would apply to any columbarium, whether they come into operation before or after the enactment date (which is inconsistent with the provisions of Schedule 7).</li> <li>• Therefore, amendment is proposed to clarify that the grace period should be as follows – <ul style="list-style-type: none"> <li>(a) For a columbarium that was in operation immediately before the enactment date, the grace period means the period beginning on the enactment date and ending – <ul style="list-style-type: none"> <li>(i) on the expiry of 9 months beginning on the enactment date; or</li> <li>(ii) if an application is made for a TSOL by the expiry of those 9 months – at the time when the application is finally disposed of or withdrawn.</li> </ul> </li> <li>(b) For a columbarium that commences operation after the beginning of</li> </ul> </li> </ul>



	<b>Provision(s) to be amended</b>	<b>Proposed amendments</b>	<b>Rationale</b>
			the enactment date, no grace period applies.
6	Relevant clauses	<p>To introduce other necessary minor technical or textual amendments, including the following –</p> <p>(a) adding “, or appoint any other person to be a member of a committee” in section 3(2) of Schedule 1;</p> <p>(b) adding “the beginning of” before “the enactment date” in clause 20(2)(a)(ii) which meant to restrict the ash interment quantity of a columbarium to that as at the beginning of the enactment date;</p> <p>(c) tallying the presentation of clause 19(2) with that of clause 20(4) by adding “the applicant proves to the satisfaction of the Licensing board” after “if” as the prelude to both paragraphs (a) and (b) of clause 19(2); and</p> <p>(d) amending a typo at clause 38(6) (“the Licencing Board” should read “the Lic<u>en</u>sing Board”).</p>	<b>It seeks to streamline presentation and enhance clarity.</b>

**Proposed CSAs to relevant provisions of the Bill<sup>1</sup>**  
(shown as marked-up version)

***CSAs for Item 1 of Annex 1***

**Schedule 5**

[ss. 2, 4, 10, 44, 54, 63, 71, 73,  
74, 75, 76, 79, 82 & 101]

**Occupation Order and Ash Disposal Procedures**

...

**6. Interpretation of Part 2 of Schedule 5**

...

(2) In this Part—

...

***prescribed claimant*** (訂明申索人), in relation to the ashes of a deceased person,  
means—

(a) ~~—an authorized representative;~~

(b) a personal representative or relative;

(c) a related person; or

(d) ~~—the purchaser of the interment right;~~

***related person*** (相關人士), in relation to a deceased person, means a person who—

(a) was living with the deceased person in the same household immediately  
before the date of the death of the deceased person; and

(b) had been living with the deceased person in the same household for at least  
2 years before that date;

...

**9. Handling claims for ashes**

...

(5) The following rules apply in determining the priority of competing claims  
among prescribed claimants for the return of the ashes of a deceased person—

(a) among competing claims from 2 or more authorized representatives—

(i) the order of priority follows that stated in the agreement for the sale  
of the interment right concerned; or

(ii) if no order of priority is stated, the claims have equal priority;

(b) an authorized representative's claim has priority over that of a personal  
representative, ~~or~~ relative or related person or of the purchaser;

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<sup>1</sup> Subject to further fine-tuning.

### **Annex 3**

- (c) a claim of a personal representative or relative has priority over that of a related person or of the purchaser; ~~and~~
- (d) a personal representative's claim and a relative's claim have equal priority; ~~and~~
- (e) a related person's claim has priority over that of the purchaser.

***CSAs for Item 2 of Annex 1***

**8. Establishment of Licensing Board**

- (1) A board is established with the name “Private Columbaria Licensing Board” in English and “私營骨灰安置所發牌委員會” in Chinese.
- (2) Schedule 1 (which makes provisions about the constitution, administration and proceedings of the Licensing Board) has effect.

...

**Schedule 1**

[ss. 8 & 101]

**Private Columbaria Licensing Board**

...

**6. Delegation**

- (1) The Licensing Board may, in writing, delegate any of its functions or powers to a public officer.
- (2) However, the Licensing Board may not delegate its power to do any of the following things—
  - (a) delegate under subsection (1);
  - (b) approve or refuse an application for a specified instrument;
  - (c) approve or refuse an application for the transfer of a specified instrument;
  - (d) revoke or suspend a specified instrument or an authorization under a licence to sell interment rights;
  - (e) impose or vary any condition to which a specified instrument is subject;
  - (f) approve a management plan of a columbarium for the purpose of an application for a licence;
  - (g) endorse a register required for the purpose of an application for an exemption;
  - (h) approve plans of a columbarium for the purpose of an application for a specified instrument;
  - (i) vary any matter covered in an approved management plan or vary any particular contained in an endorsed register or shown in approved plans;
  - (j) determine the validity period of a specified instrument;
  - (k) determine any date for review of a licence;
  - (l) suspend the operation of a decision of the Licensing Board;
  - (m) approve or refuse an application for permission for alteration or addition to columbarium premises;
  - (n) amend any Schedule (or part of it) to this Ordinance;
  - (o) appoint a committee or the Chairperson or a member of a committee.

**131. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)**

Schedule 1—

**Add**

“73.	Private Columbaria Ordinance ( of 2016)	Sections 20(2)(b)(ii), 22(1)(a) and (3), 38(3)(a), (6) and (7), 39(3), 40(2)(a) and (3), 41(2)(a) and (4), 42(1), (3)(b)(i) and (5), 47(3)(b) and (g), 48(1) and (2), 51(1) and (4), 54(2)(b), 55(10), 61(2)(b), 69(b) and (c), 73(1), (4)(a) and (8), 78(4), 82(2), 84(3)(b) and (13), 85(1)(b), 91(1), (3) and (4)(b), 96(1), 105(1)(b)(i), (ii)(A), (iii) and (iv) and 108(4)(b), <a href="#">section 6(1) of Schedule 1,</a> sections 2(2)(b) and (c) and 5 of Schedule 3 and sections 4(3)(a), 11, 13(2) and 16(3) and (4) of Schedule 5”.
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## CSAs for Item 3 of Annex 1

**2. Interpretation**

(1) In this Ordinance—

...

**approved management plan** (經批准管理方案), in relation to a columbarium, means—

(a) the management plan required under section 17(2) that is approved for the purposes of an application for a licence in respect of the columbarium; or

(b) if such a plan is varied under section 40A, the plan as varied;

...

**approved plans** (經批准圖則), in relation to a columbarium, means—

(a) —plans approved under section 25 (as read with section 26(3), if applicable) in respect of the columbarium that are, on the issue of a specified instrument in respect of the columbarium, annexed to the instrument; or

(b) if such plans are varied under section 40A, the plans as varied;

...

**endorsed register** (經批註登記冊), in relation to a pre-cut-off columbarium, means—

(a) a register required under section 23 that is endorsed and attached to the approved plans of the columbarium, as referred to in section 25(3)(b); or

(b) if such a register is varied under section 40A or updated under section 54(2), the register as varied or updated;

...

**29. Licence—conditions about ash interment, non-compliant structures and management plan**

A licence in respect of a columbarium is subject to the following conditions—

...

(c) that the licence holder must operate and manage the columbarium in accordance with the approved management plan ~~approved for the purposes of section 17(2) in respect~~ of the columbarium.

...

**39. Revocation, suspension, refusal to renew or extend and variation of conditions**

(1) Subject to subsections (2) and (2A), the Licensing Board may—

...

(d) vary any conditions to which any of the following is subject or impose new conditions on it—

(i) a licence;

(ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;

(iii) an exemption;

- (iv) a temporary suspension of liability.

...

(2A) The Licensing Board may also exercise the powers under subsection (1)(d) if the Licensing Board considers it necessary or expedient to do so for the better regulation, supervision or control of the columbarium concerned.

...

**40A. Variation of approved plans, endorsed registers, etc.**

(1) The Licensing Board may, in the circumstances specified in subsection (3), vary any of the particulars or matters specified in subsection (2) in respect of a columbarium.

(2) The particulars or matters are—

(a) the following particulars shown in the approved plans of a columbarium—

(i) particulars specified in section 25(2) that are authorized or permitted by the specified instrument in respect of the columbarium;

(ii) particulars specified in section 26(1);

(iii) particulars specified in section 26(3);

(b) particulars contained in an endorsed register of a pre-cut-off columbarium;  
or

(c) matters covered in the approved management plan of a columbarium.

(3) The Licensing Board may vary a particular or matter under subsection (1)—

(a) if, at the time when the Licensing Board considers exercising the power in respect of the columbarium, circumstances exist that would have entitled the Licensing Board to approve or endorse the plans, register or management plan with the particulars or matters as varied had it been necessary to determine at that time whether to approve or endorse the plans, register or management plan; or

(b) if the Licensing Board considers that the variation is necessary or expedient for the better regulation, supervision or control of the columbarium.

(4) If the Licensing Board varies any particular or matter in respect of a columbarium under subsection (1), the Licensing Board must notify the person holding the specified instrument in respect of the columbarium in writing of—

(a) the Licensing Board's decision;

(b) the reasons for the decision; and

(c) the date on which the decision is to take effect.

**41. Licensing Board's decision may be suspended from operation**

(1) If a person in respect of whom the Licensing Board made a decision under section 39(1) or 40A(1) appeals against the decision under section 82, the Licensing Board—

(a) may, on application by the person, suspend the operation of the decision, pending the determination of the appeal; or

(b) may, on its volition, suspend the operation of the decision, pending the determination of the appeal.

...

**53. Interment of ashes by exercising interment right sold before cut-off time**

The ashes of a dedicated person may be interred after the cut-off time in a niche in a pre-cut-off columbarium in respect of which an exemption has been issued if—

- (a) the interment right in respect of the niche was sold before the cut-off time, but has not been exercised or (if more than one set of ashes may be interred in that niche) has only been exercised partially; and
- (b) the name of the dedicated person has been entered into—

- ~~— (i) an endorsed register referred to in section 25(3)(b); or~~
- ~~— (ii) the register updated under section 54(2).~~

**54. Records on unused or partially used niches, etc.**

- (1) The holder of an exemption in respect of a pre-cut-off columbarium must not replace the name of a dedicated person contained in an endorsed register ~~referred to in section 25(3)(b) or the register updated under subsection (2)~~, or cause such a name to be replaced, by the name of another person unless—

- (a) the purchaser so requests;
- (b) that other person is a relative (as defined by section 6(2) of Schedule 5) of the dedicated person, whether or not living, and the purchaser has made a statutory declaration to confirm that fact; and
- (c) the arrangements for effecting changes of the dedicated person set out in the agreement for the sale of the interment right (if applicable) have been followed.

...

- (3) If—

- (a) the name of a dedicated person contained in an endorsed register ~~referred to in section 25(3)(b), or the register updated under subsection (2)~~, is replaced by the name of another person otherwise than in accordance with subsection (1); or
- (b) the name of the dedicated person shown on the niche in the pre-cut-off columbarium is different from that entered into such a register,

the holder of an exemption in respect of the columbarium commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

...

**57. Power to inspect columbaria, etc.**

- (1) The Director or an authorized officer has power to do all or any of the things set out in subsection (2) for the purposes of ascertaining whether all or any of the following is being, or has been, complied with—

- (a) this Ordinance;
- (b) the conditions of a specified instrument;
- (c) the approved management plan ~~approved for the purposes of section 17(2) in respect~~ of a columbarium.

**82. Appeals**

- (1) An applicant or a holder of a specified instrument who is aggrieved by any of the following decisions under this Ordinance may appeal to the Appeal Board—



...

- (h) a refusal of an application made under section 40 to vary the conditions to which a specified instrument is subject;

(ha) a decision under section 40A(1) to vary a particular or matter;

- (i) a refusal of an application made under section 41(1)(a) for the suspension of the operation of a decision under section 39(1) pending the determination of an appeal;

...

...

**131. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)**

Schedule 1—

**Add**

“73.	Private Columbaria Ordinance ( of 2016)	Sections 20(2)(b)(ii), 22(1)(a) and (3), 38(3)(a), (6) and (7), 39(3), 40(2)(a) and (3), <a href="#">40A(4)</a> , 41(2)(a) and (4), 42(1), (3)(b)(i) and (5), 47(3)(b) and (g), 48(1) and (2), 51(1) and (4), 54(2)(b), 55(10), 61(2)(b), 69(b) and (c), 73(1), (4)(a) and (8), 78(4), 82(2), 84(3)(b) and (13), 85(1)(b), 91(1), (3) and (4)(b), 96(1), 105(1)(b)(i), (ii)(A), (iii) and (iv) and 108(4)(b), sections 2(2)(b) and (c) and 5 of Schedule 3 and sections 4(3)(a), 11, 13(2) and 16(3) and (4) of Schedule 5”.
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<i>CSAs for Item 1 of Annex 2</i>
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### **Schedule 3**

[ss. 43 & 101]

#### **Further Provisions on Applications Relating to Specified Instruments**

**1. Applications to which Schedule 3 applies**

This Schedule applies to—

- (a) an application for a specified instrument under section 13 of this Ordinance;
- (b) an application for the transfer of a specified instrument under section 38 of this Ordinance; and
- (c) an application for varying a condition of a specified instrument under section 40 of this Ordinance.

**2. Who may make application**

(1) An application to which this Schedule applies may only be made by—

(a) a person who operates, keeps, manages or in any other way has control of a columbarium; or

(b) a person who intends to operate, keep, manage or in any other way have control of a columbarium.

(2) The application must be signed—

- (a) if the applicant is a natural person—by the applicant;
- (b) if the applicant is a partner in a partnership—by the partner authorized in writing to act for and on behalf of the partnership;
- (c) if the applicant is a body corporate—by a director or other officer concerned in the management of the body corporate authorized in writing to act for and on behalf of the body corporate.

...

## CSAs for Item 2 of Annex 2

**2. Interpretation**

(1) In this Ordinance—

...

*in force* (有效), in relation to a specified instrument—see section 15A;

...

**15. Validity period of specified instrument**

...

~~(6) A specified instrument in respect of which an application for renewal or extension is made in accordance with section 14, and which expires prior to the determination by the Licensing Board of the application, remains in effect until the determination of the application unless—~~

~~(a) the application is withdrawn;~~

~~(b) the specified instrument is revoked under section 39;~~

~~(c) for a licence (despite subsection (2)(b)) the term referred to in subsection (2)(a)(i) or (ii) expires; or~~

~~(d) for an exemption the term referred to in subsection (3)(a) or (b) expires.~~

...

**15A. Specified instrument in force despite certain events**

(1) A specified instrument remains in force despite a suspension under section 39 if all the requirements, terms and conditions imposed by the Licensing Board upon suspending the instrument (*suspension requirements*) are complied with.

(2) For the purposes of sections 45, 57 and 68, a specified instrument is also regarded as in force despite a suspension under section 39 even if the suspension requirements are not complied with.

(3) A specified instrument remains in force despite the expiry of its validity period if—

(a) the following application was made before the expiry—

(i) an application under section 14 for the renewal or extension of the instrument; or

(ii) an application under section 38 for the transfer of the instrument; and

(b) the instrument expires before the Licensing Board determines the application.

(4) However, the specified instrument remains in force only until the earlier of the following—

(a) the determination of the application;

(b) the occurrence of any of the following events—

(i) the withdrawal of the application;

(ii) the revocation of the instrument under section 39;

(iii) if the instrument is a licence—the expiry of the term referred to in section 15(2)(a)(i) or (ii);

(iv) if the instrument is an exemption—the expiry of the term referred to in section 15(3)(a) or (b).

(5) A specified instrument remains in force despite the death or dissolution of its holder.

(6) In this section—

*specified instrument* (指明文書), in relation to a specified instrument that is a licence, does not include any authorization under the licence to sell interment rights.

<p><b><i>CSAs for Item 3 of Annex 2</i></b></p>
---

**2. Interpretation**

(1) In this Ordinance—

...

**ashes** (骨灰)—

(a) means ashes resulting from the cremation of human remains, and (except in section 5) includes synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes; and

(b) ~~(except in section 66(2)(a)(iii)(B), (C) and (D) and in the definition of *eligible claimant* in section 6(2) of, and in sections 9(7) and 10(4) of, Schedule 5)~~ includes any ~~related~~ items interred together with such ashes in the same ~~niche~~ container (if applicable), except for the following provisions—

(i) section 66(2A)(d)(ii), (iii), (iv) and (v);

(ii) the definitions of *eligible claimant* and *related item* in section 6(2) of Schedule 5; and

(iii) sections 9A, 9B(4)(b)(i) and 10(4) of Schedule 5;

...

**75. Power of court to order return of ashes**

(1) The court may, on application, make an order for the return of ashes as provided in section ~~9~~9B of Schedule 5.

(2) In this section—

**court** (法院) means the District Court.

...

**Schedule 5**

[ss. 2, 4, 10, 44, 54, 63, 71, 73,  
74, 75, 76, 79, 82 & 101]

**Occupation Order and Ash Disposal Procedures**

...

**Part 2**

**Ash Disposal Procedures**

**6. Interpretation of Part 2 of Schedule 5**

(1) In this Part, a reference to arranging for the return of the ashes interred in a columbarium on-site is a reference to making available the ashes for return at the columbarium at reasonable hours during a period (which period is referred to as an *on-site claim period* and is to be construed as including the 2 months referred to in section 9(2) or 9A(3)(a)(i) of this Schedule).

(2) In this Part—

...

**court** (法院), except in section 13(b) of this Schedule, means the District Court;

***eligible claimant*** (合資格申索人), in relation to the ashes of a deceased person or any related items ~~interred together with the ashes~~, means—

- (a) unless paragraph (b) applies, a prescribed claimant; or
- (b) the owner of the item or the person to whom the ashes are to be returned (as the case requires) as determined in accordance with any law applicable to the item or ashes (as the case requires);

...

**related item** (相關物品), in relation to ashes, means an item interred together with the ashes in the same container;

***relative*** (親屬), in relation to the ashes of a deceased person, means—

...

- (p) the spouse of any person mentioned in paragraph (j), (k), (l), (m), (n) or (o);

**return order** (交還令) means an order for the return of ashes made under section 75 of this Ordinance.

...

## **7. Prescribed ash disposal procedures**

(1) Subject to section 16 of this Schedule, an ash handler carries out the prescribed ash disposal procedures in respect of a columbarium (***columbarium A***) if the ash handler—

- (a) gives a commencement of ash disposal notice stating the person's intention—
  - (i) to handle the ashes interred in the columbarium in the specified manner within the meaning of subsection (2) or (3); and
  - (ii) to handle claims for the return of ashes in accordance with sections 9 and 9A of this Schedule;

...

(4) Subsection (2)(b) has effect subject to sections 9(6) and ~~(8)~~ 9A(5)(b) of this Schedule.

...

## **9. Handling claims for ashes—general**

~~(1) In this section—~~

~~***court*** (法院) means the District Court.~~

(1) This section applies subject to section 9A of this Schedule.

(2) The ashes of a deceased person may only be returned on the expiry of the first 2 months (***the first 2 months***) of the on-site claim period.

(3) After the expiry of the first 2 months, the ash handler must return the ashes of a deceased person—

- (a) if the ash handler receives only 1 claim for the return of the ashes from a prescribed claimant—to the prescribed claimant; or

- (b) if the ash handler receives competing claims for the return of the ashes from 2 or more prescribed claimants—
  - (i) to the prescribed claimant whose claim has the highest priority under subsection (5); or
  - (ii) if the competing claims are of equal priority—in accordance with subsection (6).
- (4) If, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the ashes of a deceased person from a person who is a prescribed claimant—
  - (a) the ash handler must return the ashes to a prescribed claimant who first makes a claim in the remainder of the on-site claim period; or
  - (b) if competing claims are received from 2 or more prescribed claimants before the ashes are returned under paragraph (a)—
    - (i) the ash handler must return the ashes to the prescribed claimant whose claim has the highest priority under subsection (5); or
    - (ii) if the competing claims are of equal priority—the ash handler must return the ashes in accordance with subsection (6).
- (5) The following rules apply in determining the priority of competing claims among prescribed claimants for the return of the ashes of a deceased person—
  - (a) among competing claims from 2 or more authorized representatives—
    - (i) the order of priority follows that stated in the agreement for the sale of the interment right concerned; or
    - (ii) if no order of priority is stated, the claims have equal priority;
  - (b) an authorized representative's claim has priority over that of a personal representative or relative or of the purchaser;
  - (c) a claim of a personal representative or relative has priority over that of the purchaser; and
  - (d) a personal representative's claim and a relative's claim have equal priority.
- (6) If the ash handler receives competing claims as referred to in subsection (3)(b)(ii) or (4)(b)(ii), the ash handler—
  - (a) must keep the ashes until ~~a person obtains a court return order~~ is made for their return to ~~the one or more~~ prescribed claimants and must return the ashes as ordered; or
  - (b) if no court proceedings have been instituted by the expiry of 12 months after the on-site claim period—must deliver the ashes to the Director.

**9A. Handling claims for ashes—if there is claim for related item**

- ~~(71) Subsection (8)~~ This section, instead of section 9 of this Schedule, applies if—
- ~~—(a) the ash handler is in possession of a related item interred together with the ashes of a deceased person in the same niche (if applicable); and~~
  - ~~—(b) before the ashes of a deceased person (together with the any related items) are returned to any person under that this section, a person claims to be the owner of the a related item. (the item (together with the ashes) is called specified item).~~

(2) In this section—

- (a) *specified item* (指明物品) means the ashes of the deceased person, together with all related items (if applicable); and
- (b) *claim for return* (交還申索) means any claim for the return of the ashes of the deceased person or a related item, or both.
- ~~(83) In the circumstances specified in subsection (7)—~~
- ~~(a) The ash handler must return the specified item—~~
- ~~(ia) where the person who claims to be the owner of the related item as referred to in subsection (7)(b) is a prescribed claimant—~~
- ~~(Ai) if the ash handler receives only the claim for return the return of the item or the specified item from that person within the first 2 months of the on-site claim period (the first 2 months)—to that person after the expiry of the first 2 months; or~~
- ~~(Bii) if, by the expiry of the first 2 months, the ash handler does not receive any claim for return the return of the item or the specified item—and that person is the first one who makes such a claim in the remainder of the on-site claim period—to that person; or~~
- ~~(ib) where the person who claims to be the owner of the related item as referred to in subsection (7)(b) is not a prescribed claimant and if, throughout the on-site claim period, the ash handler does not receive any other claim for return claim for the return of the item or the specified item—to that person after the expiry of the on-site claim period.;~~
- ~~(b4) Subsection (5) applies if, before the specified item is returned in accordance with paragraph subsection (3)(a), the ash handler receives another claim for return the return of the item or the specified item.;~~
- (5) In the circumstances specified in subsection (4)—
- (a) the court may determine the ~~competing claims~~ claims for return in accordance with any applicable law ~~applicable to it~~; and
- (eb) the ash handler—
- (i) must keep the specified item until ~~a person obtains a court return order is made for its return of it to the one or more persons~~ and must return it as ordered; or
- (ii) if no court proceedings have been instituted by the expiry of 12 months after the on-site claim period—must deliver the specified item to the Director.
- ~~(96) For the purposes of ~~subsections (7) and (8)~~ this section, the ash handler is not under any obligation to open any container containing ashes in order to—~~
- ~~(a) ascertain if there is any related item ~~interred together with the ashes inside the container~~; or~~
- ~~(b) return any related item ~~interred together with the ashes inside the container~~, without returning the ashes together with it.~~

## **9B. Court order for return of ashes**

- (1) An application for a return order may be made, by originating summons, by—
- (a) a prescribed claimant;
- (b) a person who claims to be the owner of a related item;
- (c) an ash handler to which section 9(6) or 9A(5)(b) of this Schedule applies;
- or



- (d) if the Director is in possession of the ashes by virtue of any provision of this Ordinance—the Director.
- ~~(10) An application for a court order referred to in subsection (6)(a) or (8)(c)(i) may be made by originating summons.~~
- ~~(11) If an application for a return order is made by an ash handler or the Director—~~
- (a) Order 17 of the Rules of the District Court (Cap. 336 sub. leg. H) applies, with necessary modifications, in relation to the application ~~an application for a court order referred to in subsection (6)(a) or (8)(c)(i) made by an ash handler~~ as if it were an application for relief by way of interpleader; and
- (b) the court has the powers under that Order accordingly despite section 32(3) of the District Court Ordinance (Cap. 336).
- ~~(12) Despite subsections (1) and (2)–(10) and (11), the District Court Rules Committee established under section 17 of the District Court Ordinance (Cap. 336) may make rules to provide for the procedures for making an application for a return order ~~court order referred to in subsection (6)(a) or (8)(c)(i).~~~~
- ~~(13) On making a return order ~~court order referred to in subsection (6)(a) or (8)(c)(i), the court—~~~~
- (a) ~~may impose any the~~ conditions that it considers appropriate; and
- (b) may order that the ashes be returned in any manner it thinks fit, including—
- (i) separating any related item from the ashes; and
- (ii) returning different related items to different persons.

## **10. Record**

...

- (3) If section 9(6) of this Schedule applies to the ashes of a deceased person, the period within which the ash handler must deliver the part of the record, relating to the ashes of the deceased person, to the Director is 30 days after the earlier of the following—
- (a) the return of the ashes ~~of the deceased~~ under that section;
- (b) the expiry of 12 months after the on-site claim period.
- (4) If section ~~9(8)~~ 9A(5)(b) of this Schedule applies to the ashes of a deceased person and any related items ~~interred together with the ashes~~, the period within which the ash handler must deliver the part of the record, relating to the ashes of the deceased person and the items, to the Director is 30 days after the earlier of the following—
- (a) ~~on the claims for the ashes and items being finally disposed of in accordance with the law referred to in~~ the return of the ashes and items under that section;
- (b) the expiry of 12 months after the on-site claim period.

...

## **12. Director carrying out steps necessary for disposal of ashes**

...

- (4) Sections 7, 8, ~~and 9~~ and 9A of this Schedule apply, with any necessary modifications, to the Director for the purposes of disposal of ashes to the extent

to which those sections provide for the steps that the Director considers necessary for the disposal.

...

## CSAs for Item 4 of Annex 2

**19. Exemption for pre-cut-off columbarium—eligibility based on datedness, legal compliance and premises held from Government or right to occupation**

...

- (2) The Licensing Board may decide not to refuse the application only because the applicant fails to prove the matter mentioned in subsection (1)(b) if the applicant proves to the satisfaction of the Licensing Board that—

(a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and

(b) each new set of ashes is either—

(i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or

(ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.

~~(a) if—~~

~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred before the enactment date; and~~

~~(ii) the interment right in respect of those ashes was sold before the cut-off time; or~~

~~(b) if—~~

~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred in a religious ash pagoda (as defined by section 55(14)) before the enactment date; and~~

~~(ii) no fees, charges or other sums were paid, or are payable, for the interment of the ashes.~~

...

**20. Temporary suspension of liability for pre-cut-off columbarium—eligibility based on accompanying application for licence or exemption, etc.**

...

- (4) The Licensing Board may decide not to refuse the application (made together with a related application for the issue of an exemption) only because the applicant fails to prove the matter mentioned in subsection (2)(a)(iii) if the applicant proves to the satisfaction of the Licensing Board that—

(a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and

(b) each new set of ashes is either—

(i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or

- (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- ~~(a) if the applicant proves to the satisfaction of the Licensing Board that—~~
  - ~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred before the enactment date; and~~
  - ~~(ii) the interment right in respect of those ashes was sold before the cut-off time; or~~
- ~~(b) if the applicant proves to the satisfaction of the Licensing Board that—~~
  - ~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred in a religious ash pagoda (as defined by section 55(14)) before the enactment date; and~~
  - ~~(ii) no fees, charges or other sums were paid, or are payable, for the interment of the ashes.~~

...

## **52. Number of sets of ashes interred restricted**

...

- (2) Subject to subsection (2A)~~sections 53 and 55~~, the holder of an exemption ~~or temporary suspension of liability~~ in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the ~~material time~~ cut-off time, as shown in the approved plans.
- (2A) The holder of an exemption does not contravene subsection (2) if—
  - (a) any increase in the total number of sets of ashes since the cut-off time is caused only by—
    - (i) sets of ashes interred in the columbarium between the cut-off time and the enactment date; or
    - (ii) sets of ashes interred in the columbarium under section 53 or 55; and
  - (b) for each set of ashes mentioned in paragraph (a)(i), it is either—
    - (i) ashes interred or to be interred in a niche, where—
      - (A) the interment right in respect of the niche was sold before the cut-off time; and
      - (B) the name of the dedicated person has been entered into an endorsed register; or
    - (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- (2B) Subject to subsection (2C), the holder of a temporary suspension of liability in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the following time, as shown in the approved plans—
  - (a) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the beginning of the enactment date; or

- (b) if an application for the issue of an exemption is pending in respect of the columbarium—the cut-off time.
- (2C) The holder of a temporary suspension of liability does not contravene subsection (2B)(b) if—
- (a) any increase in the total number of sets of ashes since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and
- (b) each new set of ashes is either—
- (i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or
- (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- ~~(3) In subsection (2)—~~
- ~~*material time* (關鍵時間) means—~~
- ~~(a) in relation to an exemption—the cut-off time; or~~
- ~~(b) in relation to a temporary suspension of liability—~~
- ~~(i) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the enactment date;~~
- ~~(ii) if an application for the issue of an exemption is pending in respect of the columbarium—the cut-off time.~~
- (4) A person who contravenes subsection (1)~~-or, (2)~~ or (2B) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

**53. Interment of ashes by exercising interment right sold before cut-off time**

The ashes of a dedicated person may be interred ~~after the cut-off time~~ in a niche in a pre-cut-off columbarium in respect of which an exemption ~~has been issued~~ is in force if—

- (a) the interment right in respect of the niche was sold before the cut-off time, but has not been exercised or (if more than one set of ashes may be interred in that niche) has only been exercised partially; and

...

**55. Interment of ashes in religious ash pagodas**

- (1) If a pre-cut-off columbarium in respect of which an exemption ~~has been issued~~ is in force is a columbarium of a Chinese temple specified under subsection (2), the ashes of the religious practitioners of that temple may be interred in a religious ash pagoda specified under that subsection after the publication of the notice under that subsection.

...

## CSAs for Item 5 of Annex 2

**66. Operator's obligations in disposal of ashes**

- (1) A person who has operated, kept, managed or in any other way had control of a columbarium must not improperly dispose of ashes interred in the columbarium.
- (2) For the purposes of subsection (1), a person who disposes of ashes interred in a columbarium does so improperly unless—

- (a) the disposal complies with the requirements specified in subsection (2A);  
or

- (b) the disposal forms part of the prescribed ash disposal procedures carried out in respect of the columbarium.

(2A) For the purposes of subsection (2)(a), the requirements are—

- (a) either—

- (i) the person holds a specified instrument in respect of the columbarium  
~~and—; or~~

- (ii) the columbarium was in operation immediately before the enactment date, and the ashes are disposed of within the grace period;

- (~~ib~~) the ashes are disposed of not because of cessation of operation of the columbarium;

- (~~ic~~) the ashes are disposed of in accordance with the terms of any agreement for the sale of an interment right in respect of the ashes; and

- (~~id~~) the following particulars of disposal are entered into the record on interment and disinterment of ashes kept under section 49(4) (if paragraph (a)(i) applies), or into a record of ash disposal (if paragraph (a)(ii) applies)—

- (~~ai~~) the name of the dedicated person;

- (~~bi~~) if the ashes are interred in a niche—

- (~~ia~~) the location and serial numbering of the niche;

- (~~ib~~) photos showing the exterior and interior of the niche before disposal; and

- (~~ic~~) the number of containers of ashes, ~~and any related items interred together with the ashes, in the same~~ disinterred from the niche;

- (iii) if the ashes are interred in an area other than a niche—

- (A) the location of the area;

- (B) photos showing the area before disposal; and

- (C) the number of containers of ashes disinterred from the area;

- (~~iv~~) the name, the Hong Kong identity card number (if applicable) and the contact details of the person who has collected the ashes and ~~the any related items (if any)~~ interred together with the ashes in the same niche-container (related items) (if applicable);

- (~~v~~) the date of return of the ashes and the related items (if any) to the person referred to in subparagraph (iv); and

- (~~vi~~) any—

(~~IA~~) breach of the agreement for the sale of the interment right on the part of the purchaser or authorized representative; or

(~~HB~~) other reason for the disposal;~~or~~

~~— (b) — the person carries out the prescribed ash disposal procedures.~~

- (3) Without affecting sections 10 and 11, ~~if a columbarium in respect of which no specified instrument is in force is still in operation after the grace period, the~~ a person who operates, keeps, manages or in any other way has control of ~~the~~ a columbarium in the circumstances specified in subsection (3A) is regarded, for the purposes of subsection (1), as having improperly disposed of ashes interred in the columbarium, unless the person carries out the prescribed ash disposal procedures in respect of the columbarium.

(3A) The circumstances are—

(a) for a columbarium that was in operation immediately before the enactment date—that the columbarium is in operation, after the grace period, while no specified instrument is in force in respect of it; or

(b) for any other columbarium—that the columbarium is in operation while no specified instrument is in force in respect of it.

- (4) In this section—

***grace period*** (寬限期) means the period beginning on the enactment date and ending—

- (a) on the expiry of 9 months beginning on the enactment date; or
- (b) if an application is made for a temporary suspension of liability by the expiry of those 9 months—at the time when the application is finally disposed of or withdrawn.

...

## CSAs for Item 6 of Annex 2

**2. Interpretation**

...

- (5) In this Ordinance, a reference to occupation of land as is necessary for, or ancillary to, the operation of a columbarium is a reference to the occupation of land by—

- (a) any building or building works containing niches used or intended to be used for the interment of ashes; ~~or~~

(ab) any area other than a niche used for the interment of ashes; or

- (b) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a), or the area referred to in paragraph (ab), to be used as referred to in that paragraph.

Unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of a columbarium is to be construed accordingly.

...

- (7) In this Ordinance, a reference to structures necessary for, or ancillary to, the operation of a columbarium is a reference to—

- (a) building or building works—

(i) —that contain niches used or intended to be used for the interment of ashes; or

(ii) that are otherwise used for the interment of ashes; or

- (b) building or building works that are furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.

...

**12. Interpretation of Part 4**

In this Part—

...

**ash interment layout** (骨灰安放布局), in relation to a columbarium, means the following particulars—

- (a) the location and serial numbering of niches in the columbarium;
- (b) ~~if a licence is applied for or is issued in respect of the columbarium—~~any area in the columbarium in which ashes may be interred otherwise than in niches; and
- (c) if an exemption is applied for or is issued in respect of the columbarium that is a columbarium of a Chinese temple as referred to in section 55—the location of the religious ash pagoda (as defined by section 55(14));

**ash interment quantity** (骨灰安放數量), in relation to a columbarium, means the following particulars—

- (a) the number of containers of ashes interred in each niche in the columbarium and the total number of sets of ashes interred in the niches;



- (b) ~~if a licence is applied for or is issued in respect of the columbarium~~—the number of sets of ashes that are interred otherwise than in niches in any area in the columbarium; and
- (c) the total number of sets of ashes that are interred in the columbarium.

...

**20. Temporary suspension of liability for pre-cut-off columbarium—eligibility based on accompanying application for licence or exemption, etc.**

...

- (2) The Licensing Board may refuse an application for the issue of a temporary suspension of liability in respect of a pre-cut-off columbarium if—
  - (a) the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following matters—
    - ...
    - (ii) if the applicant also applies for the issue of a licence in respect of the columbarium—that the ash interment capacity is limited to that as at the cut-off time and the ash interment quantity is limited to that as at the beginning of the enactment date;
    - ...

**25. Approved plans to be endorsed**

- (1) The Licensing Board may approve plans of a columbarium for the purposes of an application for a specified instrument only if—
  - (a) it is satisfied that either—
    - (i) —the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); or
    - (ii) if not, the difference identified on the plans (as required under section 24(4)(b)) is not contradictory to the particulars to be authorized or permitted as mentioned in paragraph (b); and
  - (b) having regard to sections 16, 17, 18, 19, 20 and 21, the Licensing Board decides to grant the application and authorize or permit the particulars specified in subsection (2) as shown in the plans.

...

**26. Application concerning pre-cut-off columbarium—evidence of ash interment layout and quantity, etc. and plans**

- (1) An application for a specified instrument in respect of a pre-cut-off columbarium, to which an eligibility-related provision is relevant, must be accompanied by evidence of the following particulars (each is called an *eligibility-related particular*)—
  - ...
  - (c) for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability—
    - (i) the ash interment quantity as at the cut-off time; and
    - (ii) if the applicant wishes the Licensing Board to apply section 19(2) or 20(4)—the ash interment quantity as at the beginning of the enactment date;

...

- (2) In addition to showing the ~~plans-particulars~~ required under section 24(3), the plans accompanying an application for a specified instrument in respect of a pre-cut-off columbarium must also ~~be accompanied by a set of plans that~~ meet the following requirements—

- (a) they must show the eligibility-related particulars; and
- (b) they must identify the extent (if any) to which the particulars to be authorized or permitted as referred to in section 24(3) differ from those as referred to in paragraph (a).

...

## **27. Notification scheme: proof of particulars about pre-cut-off columbarium**

- (1) In this section—

...

- (d) *batch 1 particulars* (第 1 組詳情) means any of the eligibility-related particulars referred to in section 26(1)(a), (b), (c)(i) or (f) or the particulars of furnaces for burning offerings existing in the columbarium concerned as at the cut-off time;

...

## **38. Transfer of specified instrument**

...

- (2) Subject to subsections (3), (4), (4A) and ~~(5) and (8)~~, the Licensing Board may, on application, approve the transfer from a person in respect of whom an instrument referred to in subsection (1) is in force to another person (*transferee*). The fact of the transfer must be endorsed on the instrument.

...

- (4) The Licensing Board may refuse an application for the transfer of an instrument referred to in subsection (1) if the transferee fails to prove to the satisfaction of the Licensing Board that the transferee—

- (a) holds the columbarium premises directly from the Government under a lease; or
- (b) has the right to continue to use the columbarium premises as mentioned in section 18(3)(b) or 19(1)(h)(ii) (as the case requires).

- ~~(84A) Subsection (2) does not apply to~~ The Licensing Board may also refuse an application for the transfer of an instrument referred to in subsection (1) if—

- (a) a notice of revocation or suspension has been given by the Licensing Board under section 39 in respect of the instrument; or
- (b) an application for the renewal or extension of the instrument has been refused.

...

- (6) On determining an application made under this section, the ~~Licensing~~ Licensing Board must notify the applicant in writing of—

- (a) the Licensing Board's decision; and
- (b) if the application is refused—the reasons for the refusal.<sup>2</sup>

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<sup>2</sup> For clause 38(6), only the English text is amended.

...

**46. Interpretation of Division 1 of Part 5**

(1) In this Division—

*purchaser* (買方)—see section 47(1);

*seller* (賣方)—see section 47(1).

...

**51. No alteration or addition in material deviation from approved plans, etc.**

(1) Except with the written permission of the Licensing Board, a person holding a specified instrument in respect of a columbarium must not cause or permit any alteration or addition to the columbarium premises that would result in material deviation from the approved plans ~~in respect~~ of the columbarium.

...

**55. Interment of ashes in religious ash pagodas**

...

(4) The holder of an exemption in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes that ~~may be~~ are interred in the columbarium under subsection (1) is limited to the number of sets of ashes specified by the Secretary for Home Affairs under subsection (2)(c).<sup>3</sup>

...

(11) A person commits an offence if the person—

(a) wilfully obstructs the exercise of a power under subsection (10)(a) or (c);  
or

(b) without reasonable excuse, fails to produce a book, document or article required to be produced, or furnish information required to be furnished, under subsection (10)(b).

...

**71. Breach of undertaking to carry out prescribed ash disposal procedures**

(1) If—

(a) ~~the Director's~~ a notice about suspected abandonment has been given under section 67 or 68; and

(b) a person has given a specified response within the meaning of section 69(c) by giving an undertaking to carry out the prescribed ash disposal procedures,

the person must comply with the undertaking, whether or not the person has ever operated, kept, managed or in any other way had control of the columbarium.

...

**82. Appeals**

...

---

<sup>3</sup> For clause 51(1), only the English text is amended.

- (2) A person who wishes to appeal under subsection (1) must lodge a notice of appeal, in writing and in the specified form, with the Appeal Board within 21 days after the date on which the notice, ~~in writing,~~ of the decision under appeal is given to the person.

...

## **Schedule 1**

[ss. 8 & 101]

### **Private Columbaria Licensing Board**

...

#### **3. Committees**

- (1) The Licensing Board may appoint committees to perform any of the functions of the Licensing Board.

- (2) The Licensing Board may—

(a) —appoint a member of the Licensing Board to be the Chairperson of a committee; and

(b) ~~—~~ appoint any person to be a member of a committee.

...

## **Schedule 2**

[ss. 2, 18, 19, 21, 26 & 27]

### **Requirements Relevant to Eligibility for Specified Instruments**

...

#### **3. Compliance with building-related requirements**

- (1) A columbarium complies with the building-related requirements only if—

- (a) the columbarium complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) and every other requirement specified by the Licensing Board including requirements relating to design, construction, structure, fire precautions, health, sanitation or safety; or<sup>4</sup>

...

- (3) In this section—

***certifiable building*** (可核證建築物) means—

...

- (d) a building situated on land—

- (i) that was unleased land at the time the building was erected; and  
(ii) in respect of which—

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<sup>4</sup> For section 3(1)(a) of Schedule 2, only the Chinese text is amended.

- (A) a lease under which the columbarium premises are held directly from the Government; or
- (B) a short term tenancy under which the columbarium premises are occupied,

~~is subsequently granted by the Government before the enactment date.~~

is subsequently granted by the Government before the enactment date.<sup>5</sup>

- (4) For the purposes of this section—

...

***pre-1961 NT building*** (1961 年前新界建築物) means a building in the New Territories built before 1 January 1961 ~~if~~ where there has been no alteration, ~~or~~ addition to, or reconstruction of, the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date;<sup>6</sup>

...

#### **4. Requirements applicable to structures certifiable for a pre-cut-off columbarium**

- (1) In this section—

...

***structures certifiable for a pre-cut-off columbarium*** (可就截算前骨灰安置所核證的構築物) means non-compliant structures existing immediately before the cut-off time that—

- (a) fall within the following description—

- (i) they contain niches used or intended to be used for the interment of ashes where at least a niche in the structures was so used immediately before the cut-off time; ~~or~~

(ia) they are otherwise used for the interment of ashes and were so used immediately before the cut-off time; or

- (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium; and

- (b) fall within the following description—

- (i) they are on-grade outdoor structures with niches;
- (ii) they form the whole, or a part, of a single-storey building;
- (iii) they form the whole, or a part, of the ground storey of a multi-storey building but do not form the whole, or any part, of any other storey of the building; or
- (iv) they form the whole, or a part, of a multi-storey building that is an NT small building (as defined by section 3(4) of this Schedule)—
  - (A) that came into existence on or after 16 October 1987; and
  - (B) in respect of which a certificate of exemption has not been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

<sup>5</sup> For paragraph (d) of the definition of ***certifiable building*** in section 3(3) of Schedule 2, only the English text is amended.

<sup>6</sup> For the definition of ***pre-1961 NT building*** in section 3(4) of Schedule 2, only the English text is amended.

...

- (2) In paragraph (b) of the definition of *structures certifiable for a pre-cut-off columbarium* in subsection (1), a reference to a building—
- (a) is a reference to any building (having the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123)), including such a building situated on land that was unleased land at the time the building was erected—
    - (i) without a licence issued under section 5 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28); or
    - (ii) in breach of such a licence; but
  - (b) does not include a reference to a building situated in or on another building that complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123).<sup>7</sup>
- (3) The ~~R~~requirements applicable to structures certifiable for a pre-cut-off columbarium for the purposes of sections 18(2) and 19(1)(g)(ii) of this Ordinance are—<sup>8</sup>

...

**6. Meaning of *height, roofed-over area, building, etc.* in section 5 of this Schedule**

...

- (5) If a building is divided into separate units by means of one or more party walls, each such unit is to be considered to be a separate building for the purposes of section 5 of this Schedule, if any such party wall ~~meets the following descriptions~~—
- (a) if that building is of a height of not more than 7.62 m—is a load-bearing brick wall of not less than 225 mm thick;
  - (b) if that building is of a height of more than 7.62 m but not more than 8.23 m—
    - (i) for the lowest storey—is a load-bearing brick wall of not less than 340 mm thick; and
    - (ii) for any higher storey—is a load-bearing brick wall of not less than 225 mm thick; or
  - (c) is a load-bearing reinforced concrete wall of not less than 175 mm thick.

...

**Schedule 4**

[ss. 2, 47 & 101]

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<sup>7</sup> For section 4(2)(b) of Schedule 2, only the Chinese text is amended.

<sup>8</sup> For section 4(3) of Schedule 2, only the English text is amended.

## **Prescribed Information, Recommendations and Essential Terms in Agreement for Sale of Interment Right**

### **Part 2**

#### **Essential Terms**

2. An agreement for the sale of an interment right must set out—
- ...
- (f) ~~other~~ the following essential terms—
- (i) arrangements for naming a dedicated person and effecting changes of the dedicated person;
  - (ii) arrangements for appointing and replacing authorized representatives;
  - (iii) arrangements for authorizing a person to enforce the agreement; and
  - (iv) the circumstances and the manner in which the operation of the agreement may be temporarily suspended or the agreement may be terminated otherwise than on the expiry of the term of the interment right; and
- ...

### **Schedule 5**

[ss. 2, 4, 10, 44, 54, 63, 71, 73,  
74, 75, 76, 79, 82 & 101]

## **Occupation Order and Ash Disposal Procedures**

- ...
7. **Prescribed ash disposal procedures**
- ...
- (3) The ash handler also handles the ashes in the specified manner for the purposes of subsection (1)(a)(i) if the ash handler—
- (a) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 8 months; and
  - (b) after the expiry of the on-site claim period—
    - (i) arranges for the removal from columbarium A of the ashes that are not returned to an eligible claimant; and
    - (ii) arranges for the reinterment of the ashes—
      - (A) in a columbarium (*columbarium B*) in respect of which a licence is in force and not suspended or to which this Ordinance does not apply because of section 4 of this Ordinance; and
      - (B) on terms no less favourable than the terms governing interment of the ashes in columbarium A.
- ...

## **Schedule 7**

[ss. 101 & 106]

### **Transitionals**

**1. Grace period for columbarium to continue operation without selling interment right**

...

- (2) A person who operates, keeps, manages or in any other way has control of a columbarium to which this section applies in the grace period does not commit an offence under section 11 of this Ordinance ~~in so far~~ so long as the person does not sell any interment right in respect of the columbarium in that period.<sup>9</sup>

...

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<sup>9</sup> For section 1(2) of Schedule 7, only the English text is amended.