

Bills Committee on Private Columbaria Bill

**Supplementary Information Requested by Members
at Previous Meetings**

At the following meetings of the Bills Committee on Private Columbaria Bill (“the Bill”), Members asked the Government to provide supplementary information on a number of issues –

- (a) at the meeting on 13 January 2017, a Member asked the Government to consider providing information on unlawful occupation of unleased land in pre-cut-off columbaria and the quantity of ashes interred on unlawfully-occupied land of such columbaria; and
- (b) at the meeting on 3 February 2017, a Member asked for information on the number of columbarium premises which were occupied under a short term tenancy (STT) granted by the Government and the total area of the columbarium premises concerned.

The requested information is set out in the ensuing paragraphs.

Background

2. Backed by support obtained from two previous rounds of public consultation and the deliberation of the Bills Committee of the fifth-term LegCo, the licensing scheme for regulating private columbaria seeks to satisfy the test of necessity, reasonableness and proportionality, striking a fine balance amongst the following competing interests –

- (a) the wider community interest, including meeting society’s needs for provision of columbaria;
- (b) the sentiment of the descendants, in particular their wish not to upset the resting place of the deceased as far as practicable;

- (c) minimising the nuisance caused by such columbaria to their neighbouring community; and
- (d) the sustainable development of the trade in the long-run.

In this regard, **a sensitive and pragmatic approach** is called for in handling pre-existing private columbaria before the announcement of the Bill (8:00 a.m. on 18 June 2014). Against the above background, the policy objectives underlying the Bill for giving effect to the licensing scheme are to ensure compliance with statutory and Government requirements (with **grandfathering arrangements for pre-cut-off columbaria**, i.e. columbaria that were in operation, and in which ashes were interred in niches, immediately before the cut-off time (8:00 a.m. on 18 June 2014)); enhance protection of consumer interests; and ensure a sustainable and orderly provision of niches by private columbaria.

3. Clause 17(1) provides that the Licensing Board may refuse an application for the issue of a licence in respect of a columbarium, if –

- (a) the applicant fails to prove to its satisfaction that the columbarium complies with all of the following –
 - (i) **the land-related requirements;**
 - (ii) the planning-related requirements;
 - (iii) the building-related requirements; or
- (b) the applicant fails to prove to the satisfaction of the Licensing Board that the applicant **holds the columbarium premises directly from the Government under a lease** (the on-leased-premises requirements).

4. For a columbarium that **is a pre-cut-off columbarium**, if the applicant fails to satisfy clause 17(1)(a)(i) and (b), it may –

- (a) apply for the issue of a licence under clause 17 as modified by clause 18; or

- (b) apply for the issue of an exemption under clause 19.

5. However, we should bear in mind the following stringent requirements, among other requirements, applicable to those cases referred to in paragraph 4 –

- (a) those seeking a licence must prove to the satisfaction of the Licensing Board that –

- (i) the pre-cut-off columbarium **complies with the land-related requirements** (as clause 17(1)(a)(i) is applicable). In other words, it has to seek regularisation of unlawful occupation of unleased land and/or lease breach, if any, as ring-fenced in paragraph 5(a)(ii) below (which is subject to payment of premium, waiver fee or short term tenancy (STT) rental at full market value/rental (FMV) as well as administrative fee for regularisation), in order to be eligible for the issue of a licence;
- (ii) **the extent** of “occupation of land as is necessary for, or ancillary to, the operation of the columbarium” (note 1) is limited to that as was necessary for, or ancillary to, its operation **as at the cut-off time** (see clause 18(1)(c)); and

- (b) those seeking an exemption must prove to the satisfaction of the Licensing Board that –

- (i) the pre-cut-off columbarium **commenced operation before 1 January 1990** (clause 19(1)(d));
- (ii) **no interment right** in respect of the pre-cut-off columbarium **has been sold since the cut-off time** (clause 19(1)(e));
- (iii) the pre-cut-off columbarium **complies with the land-related requirements** (clause 19(1)(f)). In other words, it has to seek regularisation of unlawful occupation of unleased land and/or lease breach, if any, as ring-fenced in paragraph 5(b)(iv) below (where waiving payment for

regularisation may be considered on a case-by-case basis) (note 2) in order to be eligible for the issue of an exemption; and

- (iv) **the extent** of “occupation of land as is necessary for, or ancillary to, the operation of the columbarium” (note 1) is limited to that as was necessary for, or ancillary to, its operation **as at the cut-off time** (see clause 19(1)(c)).

6. Irrespective of whether it is –

- (a) a columbarium (which may, or may not, be a pre-cut-off columbarium) seeking a licence; or
- (b) a pre-cut-off columbarium seeking an exemption,

it has to **comply with the land-related requirements**, in order to meet the relevant eligibility requirements.

7. Under section 1 of Schedule 2, a columbarium **complies with the land-related requirements** only if –

- (a) the operation of the columbarium does **not** involve unlawful occupation of unleased land; and
- (b) the requirements in respect of the columbarium under the lease, short term tenancy or other instrument, under which the columbarium premises are held directly from the Government, are complied with.

8. Having explained the background to the Bill, we wish to highlight the following three points –

- (a) in parallel, departments with enforcement powers have been staying vigilant in their enforcement actions to contain the problem of unauthorised private columbaria. They have been nipping in the bud unauthorised private columbaria which have yet to start the columbarium operations, so as to help contain the proliferation of newly-emerging cases.

Please see below examples of suspected private columbaria / private columbaria involving lease breaches and lease enforcement actions had been taken on the part of LandsD –

- (i) a suspected columbarium at Tei Tong Tsai, Lantau Island;
 - (ii) Yuen Fuk Yuen, Tai Po;
 - (iii) Nam On Yuen, Tuen Mun;
 - (iv) Kam Sheung Cemetery, Yuen Long; and
 - (v) a suspected columbarium at Tsam Chuk Wan, Sai Kung.
- (b) for private columbaria that are **not pre-cut-off columbaria**, they are not eligible for applying for the issue of a temporary suspension of liability, and they should be in compliance with the land-related, planning-related and building-related requirements and the on-leased-premises requirements (clause 17(1)(a) and (b) referred to in paragraph 3 above) and obtain a licence, before they can start their columbarium operations, sell niches and inter ashes; and
- (c) for private columbaria that **are pre-cut-off columbaria** (covered by the grandfathering arrangements in paragraph 2), while their applications for regularisation will be processed on a case-by-case basis having regard to its individual merits (note 2). We wish to highlight the following points –
- (i) for those seeking a licence, they are subject to **payment of FMV/R premium, waiver fee or STT rental as well as administrative fee for regularisation**;
 - (ii) for those meeting the dated criteria (i.e. **commenced operation before 1 January 1990** referred to in paragraph 5(b)(i) above) and applying for the issue of an exemption, they are required to cease selling of niches from the cut-off time onwards, and hence **there has been no more income**

from sale of niches since then; and

- (iii) be they seeking a licence or an exemption, **the extent** of “occupation of land as is necessary for, or ancillary to, the operation of the columbarium” is limited to that as was necessary for, or ancillary to, its operation **as at the cut-off time** (see paragraph 5(a)(ii) and 5(b)(iv) above).

The earlier the Bill is passed, the quicker the concern of the community (including the way forward and the historical legacy) can be addressed.

Information on unlawful occupation of unleased land in pre-cut-off columbaria and the quantity of ashes interred on unlawfully-occupied land of such columbaria

9. On land control actions, according to a stock-taking exercise of the notices issued under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) between 2011 and 30 December 2016, LandsD has issued a total of 71 section 6(1) notices involving 31 private columbaria. Amongst the notices issued, the Government has taken prosecution actions for 9 cases.

10. The unlawfully-occupied unleased land, which once appeared in the DEVB's List, in the following columbaria has ceased by now¹ –

- (a) Gig Lok Monastery, Tuen Mun;
- (b) To Fuk Shan Tsz, Shatin;
- (c) Ever Rest Temple, Tai Po;

¹ Two other cases are not included in the above list –

- (a) In 2015, an operator informed us of the relocation of the ashes in his columbarium to a private cemetery and ceased its operation; and
- (b) For another columbarium, the demolition works are in progress and the unlawful occupation of unleased land will cease in due course.

- (d) Ku Ngam Ching Yuen, Shatin;
- (e) Po Kwong Yuen, Tsuen Wan;
- (f) Tung Lum Nien Fah Tong, Tsuen Wan;
- (g) Tung Po Tor Monastery, Tsuen Wan;
- (h) Pugauangming Temple, Shatin; and
- (i) Yan Hau Ancestral Hall, Shatin.

11. Among the 137 private columbaria (note 3) in the Information on Private Columbaria published by the Development Bureau as at 30 December 2016, leaving aside the one in (b) of footnote 1, there are 16 private columbaria with unlawfully-occupied unleased land. A very crude estimate of the total number of sets of ashes interred on unlawfully-occupied unleased land of such columbaria is in the region of 7500.

Information on the number of columbarium premises which were occupied under STTs granted by the Government and the total area of the columbarium premises concerned

12. Among the 137 private columbaria (note 3) included in the Information on Private Columbaria published by the Development Bureau as at 30 December 2016, 6 private columbaria involve land let by STTs. The total site area of the concerned STTs is about 29,800 square metres.

Notes

- (1) As provided for in clause 2(5) of the Bill, 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
 - (b) 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.

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

- (2) For pre-cut-off columbaria confirmed to be eligible for exemption status in all other respects, D of Lands might, upon application, consider administratively regularising the breach of lease conditions and / or unlawful occupation of unleased land for the proposed exempted area before and during the exemption period, by way of a waiver and / or a STT, with the relevant waiver fees, STT rentals and administrative fees waived, depending on the circumstances and merits of each application.
- (3) These exclude columbaria in private cemeteries regulated under the Public Health and Municipal Services Ordinance (Cap. 132).

Food and Health Bureau
Lands Department
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