

## **LEGISLATIVE COUNCIL BRIEF**

### **Private Columbaria Bill**

#### **INTRODUCTION**

At the meeting of the Executive Council on 18 October 2016, the Council ADVISED and the Chief Executive ORDERED that the Private Columbaria Bill (“the Bill”), at **Annex A**, which is based on the earlier Bill and incorporates the proposed Committee Stage Amendments (“CSAs”) supported by the Bills committee of the Fifth Legislative Council (“LegCo”), should be re-introduced into the Sixth LegCo<sup>1</sup>.

#### **JUSTIFICATION**

2. A licensing scheme for regulating private columbaria was introduced for the first time, with the Bill tabled in LegCo in June 2014 (“the earlier Bill”). After 35 meetings ending in June 2016, the Government and the Bills Committee of the Fifth LegCo reached agreement on a total of 547 CSAs. Please see LC Paper No. CB(2) 1900/15-16(01) for the final marked-up version of the Bill with these CSAs submitted in accordance with Rule 57(2) of the LegCo Rules of Procedure on 25 June 2016.

3. These CSAs, which refined the regulatory regime, would make the Bill better suited for the purpose. Whilst it was acknowledged that the Bill might not provide the panacea that would at one stroke put right the historical legacy inherited from the past, there existed a cross-party consensus that the longer it took to enact the Bill, the higher the prospects that the transitional issues might become so unwieldy as to defeat our endeavours to freeze the historical legacy as at the announcement of the earlier Bill.

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<sup>1</sup> This LegCo Brief should be read in conjunction with a supplementary note to be presented to the Bills Committee of the Sixth LegCo to be formed.

4. In the event, the resumption of second reading debate of the Bill by the Fifth LegCo was derailed by filibustering on another bill preceding it. Notwithstanding this, the Government is committed to re-introducing the Bill into the Sixth LegCo as soon as possible, and endeavours to secure its early enactment. The Bill being re-introduced into LegCo adopts the framework supported by the Bills Committee of the Fifth LegCo, and includes all the CSAs over which consensus has already been reached. Nothing substantive has been changed, save for a few minor technical details and stylistic polishing.

## **KEY FEATURES OF THE RE-INTRODUCED BILL**

### **(1) Compliance with Requirements and Grandfathering Pre-cut-off Columbaria** *(clauses 17 to 21 and 108 to 111 of, and Schedule 2 to, the Bill)*

5. Under the Bill, a private columbarium has to obtain a specified instrument (in the form of a licence, an exemption or a temporary suspension of liability (“TSOL”)) in order to be able to operate. Of the three types of specified instruments, only a licence authorizes the operator to sell interment rights<sup>2</sup>. A columbarium will be licensed only if it complies with specified requirements, including planning-related, land-related and building-related requirements. A columbarium’s eligibility for a licence will also depend on meeting the following requirements —

- (a) the columbarium premises being held directly from the Government under a lease;
- (b) a management plan in respect of the columbarium having been approved by the Private Columbaria Licensing Board (“the Licensing Board”); and
- (c) if a deed of mutual covenant is in force in respect of the columbarium premises — a written legal advice of a legal practitioner confirming that there is no express restrictive covenant as prescribed in the Bill.

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<sup>2</sup> This includes offering interment rights for sale.

In determining an application for a specified instrument, the Licensing Board must have regard to public interest and may have regard to any other relevant considerations.

6. As set out in the Bill, the cut-off time for grandfathering pre-cut-off columbaria<sup>3</sup> is **8 a.m. on 18 June 2014** (the announcement time of the earlier Bill). We have, through a Notification Scheme (see **Annex B**) and aerial photos<sup>4</sup>, captured around the cut-off time a snapshot of the columbaria in existence together with information collected on their niches and ancillary facilities as well as land and structures on which such niches and ancillary facilities are located.

7. The Bills Committee of the Fifth LegCo and the community have generally accepted the need for grandfathering arrangements for pre-cut-off columbaria that do not meet all the statutory and Government requirements, having regard to the following –

- (a) failing sensitive handling, interred ashes in as many as 385 000 niches could be displaced and need to be handled, at a huge cost to society; and
- (b) such grandfathering arrangements have been premised on tightly ring-fenced grounds.

8. A sensitive and pragmatic approach is endorsed for dealing with pre-cut-off columbaria –

- (a) adopting a pragmatic threshold that allows pre-cut-off columbaria with prospect for regularisation to qualify for a TSOL. The validity period of a TSOL will be set at no more than three years for the first time, and may be extended for no more than three years if warranted. A TSOL may not be extended more than once, unless exceptional circumstances exist;

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<sup>3</sup> A pre-cut-off columbarium means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the cut-off time.

<sup>4</sup> Aerial photos were not applicable for columbaria that are located in units inside high-rise multi-storey buildings (mostly in the urban areas and new towns).

- (b) adopting commencement of operation before 1 January 1990 as the basis for pre-cut-off columbaria's eligibility to apply for an exemption. This is subject to such columbaria ceasing the sale of interment rights after the cut-off time and fulfilment of certain conditions. A columbarium is taken as commencing its operation at the earliest time when a set of ashes was interred in any of its niches or the earliest time when any interment right in respect of its niches was sold, whichever is the earlier;
- (c) for building works without approval or consent under section 14 of the Buildings Ordinance (Cap. 123), adopting a risk-based approach to building-related requirements (as reflected by concepts of certifiable buildings and structures certifiable for a pre-cut-off columbarium). Subject to such buildings and structures being certified by Authorized Persons/Registered Structural Engineers ("qualified professionals") to be structurally safe and meeting other requirements imposed by the Licensing Board –
- (i) buildings that are certifiable buildings may meet the building-related requirements for the purpose of an application for a licence in respect of a columbarium or an exemption in respect of a pre-cut-off columbarium;
- (ii) non-compliant structures that are structures certifiable for a pre-cut-off columbarium may be tolerated for the purpose of an application in respect of a pre-cut-off columbarium for a licence or an exemption;
- (d) providing for certain enforcement provisions under other Ordinances not applicable in respect of a pre-cut-off columbarium that fulfils certain prescribed conditions –
- (i) if the columbarium is conferred with, or has a pending application for, the following status –
- licence or exemption status: certain provisions under Cap. 123 do not apply to structures certifiable for a pre-cut-off columbarium; or

- TSOL status: certain provisions under Cap. 123 do not apply to non-compliant structures,

in respect of the columbarium;

- (ii) if the columbarium is conferred with, or has a pending application for, exemption or TSOL status: certain provisions under the Town Planning Ordinance (Cap. 131) do not apply to unauthorized development in respect of the columbarium; and
- (iii) if the columbarium is conferred with, or has a pending application for, TSOL status: certain provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) do not apply to unlawfully-occupied unleased land in respect of the columbarium.

The above approach does **not** legalise / legitimise what remains illegal / unauthorised. Also, it does **not** in any way prejudice the Government's other powers and civil rights and remedies, including taking of enforcement actions after the expiry or revocation of the TSOL, licence or exemption status against any breaches in question thereafter, or the Government's rights at any time to enforce against the areas outside the licensed or exempted areas (or the proposed ones) as shown in the relevant plans. To avoid doubt, enforcement actions already taken before receipt of an application for a specified instrument will **not** be affected<sup>5</sup>.

- (e) administratively, breach of relevant lease conditions (relating to leased land) in respect of a pre-cut-off columbarium under certain circumstances will be handled as set out in the ensuing paragraphs.

Lease enforcement actions do not apply to breaches of the relevant lease conditions by a pre-cut-off columbarium conferred with, or has a pending application for, TSOL status.

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<sup>5</sup> It means that any of the following enforcement actions already taken under the respective regimes will not be affected –

- (a) if a notice served or prosecution instituted under Cap. 131 is in force;
- (b) if a removal order served or a notice issued under section 24 or 24C of Cap. 123 is in force.

For a pre-cut-off columbarium eligible for an exemption in all other respects, the Director of Lands might administratively, upon application, regularise the breach of lease condition(s) of leased land and/or unlawful occupation of unleased land insofar as the proposed exemption area shown in the relevant plan is concerned, by way of a waiver or a short term tenancy (“STT”) or both, as the case may be. Such waiver fees or STT rentals or both, as well as administrative fees, in respect of the interment rights sold before the cut-off time, might be waived in respect of the exemption period and a period before it, depending on the circumstances and merits of each application (“the arrangements for waiving payment for regularisation”).

If such interred ashes are removed subsequently (such as claimed back by descendants), such vacated niches will not be allowed to be “refilled” as a matter of policy. CSAs have been incorporated to empower the Licensing Board to impose conditions on a specified instrument in respect of a pre-cut-off columbarium, disallowing the imposition of additional fees, charges or other sums beyond the amounts, or not in accordance with any mechanism for their future revision, as set out in the agreement for sale of an interment right entered into before the cut-off time. An exemption case benefitting from the arrangements for waiving payment for regularisation is required to be subject to such conditions imposed. With such safeguards, the arrangements for waiving payment for regularisation seek to benefit the consumers rather than the operators.

Regularisation in respect of the licensed or exempted area (be these proposed during the validity period of a TSOL issued or extended, or approved during the validity period of a licence or an exemption issued or renewed) of a pre-cut-off columbarium **cannot** be deemed to grant any exemption from or permit any contravention of any other enactments; and

- (f) CSAs have been incorporated to govern the interment of ashes of religious practitioners, without any fees, charges or other sums imposed in respect of such interment, in a religious ash pagoda of a pre-cut-off columbarium of a Chinese temple that has, among other requirements, obtained an exemption, and complied with the various

requirements and conditions prescribed in the Bill and imposed by the Secretary for Home Affairs.

9. Please see **Annex C** for details on the eligibility requirements relating to the different types of specified instruments.

(2) Consumer Protection

*(clauses 38, 46 to 49 of, and Schedule 4 to, the Bill)*

10. Under the Bill, a columbarium operator will have to obtain a licence, before he or she can sell interment rights. To tackle undesirable practices observed in some past cases, the earlier Bill provides that an agreement for sale of interment rights (“agreement”) to be entered into on or after the enactment date is unenforceable against the purchaser under the following circumstances –

- (a) if the seller purports to sell under the agreement a right that the seller is not entitled to sell (an example being selling the interment right for a term extending beyond the term of the lease under which the columbarium premises are held directly from the Government); or
- (b) unless –
  - (i) the seller held a licence in respect of the columbarium at the time when the agreement was entered into and the licence is still in force at the time of enforcing the agreement;
  - (ii) the agreement is in writing and was signed by the seller and the purchaser; and
  - (iii) the agreement sets out the information, recommendations and essential terms as prescribed in Schedule 4 to the Bill; and
- (c) unless, inter alia –
  - (i) before the purchaser entered into the agreement, the seller has explained to the purchaser the information, recommendations and essential terms as set out in the agreement;
  - (ii) the seller obtained the purchaser’s acknowledgement, in writing, that the explanation referred to in paragraph 10(c)(i) above was

given to the purchaser;

- (iii) the seller delivered to the purchaser a copy of the agreement as soon as possible after it was signed by all the parties, which delivery must be effected by the prescribed means in the Bill; and
- (iv) any other requirements specified by the Licensing Board are met.

If an agreement is not enforceable against the purchaser, the purchaser may cancel the agreement by giving the seller a written notice of cancellation and seek from the seller a refund of all money paid under the agreement.

11. CSAs have also been incorporated to the following effect –

- (a) for an agreement that is unenforceable against the purchaser –
  - (i) referred to in paragraph 10(a) and (b), the purchaser may cancel the agreement at any time (same duration as provided for in the earlier Bill) after the agreement is entered into; and
  - (ii) referred to in paragraph 10(c), the purchaser may cancel the agreement within 6 months (reduced duration as compared with the earlier Bill) after the date of the agreement;
- (b) the Bill makes a transferee of a specified instrument liable for all debts and obligations in relation to each agreement entered into before the transfer by the transferor. In other words, each such agreement may, after the transfer of a specified instrument, be enforced by the purchaser of the instrument right against the transferee;
- (c) an operator or his or her agent is excluded from being the authorized representative under an agreement as a person who is authorized to claim for the return of ashes interred under the agreement (definition of authorized representative in the Bill); and
- (d) the arrangements for authorizing a person to enforce an agreement are specified as an essential term of the agreement. This could cater for the scenario where the purchaser himself or herself is the dedicated



person, in which case the person so authorized could enforce the agreement when the purchaser passes away.

(3) Proper Disposal of Ashes

*(clauses 66 to 73 and 74 of, and Schedule 5 to, the Bill)*

12. Under the earlier Bill, improper disposal of ashes interred in a columbarium is made an offence. This is further elaborated in the relevant clauses of the Bill incorporating the CSAs, as follows –

- (a) if a person operating a columbarium under a specified instrument disposes of ashes, the person must act in accordance with the requirements prescribed in the Bill or carry out the prescribed ash disposal procedures;
- (b) a person is required to carry out the prescribed ash disposal procedures under the following circumstances –
  - (i) the person operates a columbarium without a specified instrument after the grace period;
  - (ii) the person ceases to operate a columbarium; and
  - (iii) the person has taken possession of the columbarium premises (“person in possession”) as –
    - (A) an owner or a mortgagee who acquired an interest in the premises subject to an obligation to carry out the prescribed ash disposal procedures; or
    - (B) a third party other than those in (A) above<sup>6</sup>.

13. Details of the prescribed ash disposal procedures (including provisions governing the return of the ashes and/or related items to whom these should be returned) are prescribed in the Bill. Flexibility is allowed for an ash handler to submit an alternative ash disposal plan, and provided that it is as effective as the

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<sup>6</sup> Such persons have the option of inviting DFEH to carry out steps considered necessary for ash disposal in respect of the columbarium on-site and allow a specified officer to enter the columbarium premises for the purposes of carrying out those steps, for at least 12 months.

prescribed ash disposal procedures, for the Director of Food and Environmental Hygiene (“DFEH”) to consider approving it. The Bill provides that a specified officer may apply to a magistrate for an occupation order to occupy the columbarium premises for a period of time to facilitate, as far as possible, the ashes and related items to be claimed back by the persons to whom these should be returned. After the expiry of the applicable stipulated period, any ashes and related items not returned to any claimants would be delivered to DFEH. If the prescribed ash disposal procedures have duly been completed by the ash handler (or the steps considered necessary for disposal of ashes by a specified officer have been carried out) and the ashes or items are left unclaimed after a reasonable period, DFEH may, at his or her discretion, arrange for the final disposal of such ashes and/or items in any manner as he or she sees fit.

(4) Exclusions and Exemptions  
*(clauses 4 to 7 of the Bill)*

14. The Bill does not apply to –

- (a) a columbarium that is built, operated, administered or maintained by the Government, including one in a Government crematorium specified in Part 5 of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
- (b) an authorized private crematorium specified in Part 6 of the Fifth Schedule to Cap. 132 to the extent that the keeping of ashes in it is transient and incidental to its operation as a crematorium;
- (c) a columbarium in a private cemetery specified in Part 2 of the Fifth Schedule to Cap. 132, but it will continue to be regulated under the Private Cemeteries Regulation (Cap. 132 sub. leg. BF);
- (d) a columbarium (if any in future) under the management and control of the Board of Management of the Chinese Permanent Cemeteries (“BMCPC”) other than those in the private cemeteries specified in Part 2 of the Fifth Schedule to Cap. 132, but it will be subject to regulation under Cap. 132BF;
- (e) premises specified in a licence referred to in the Undertakers of Burials Regulations (Cap. 132 sub. leg. CB) as the licence holder’s place of

business, provided that the licence does not prohibit the keeping of ashes in that place of business, but they will continue to be regulated under Cap. 132CB and will be subject to the provisions in this Bill on proper handling of interred ashes before ceasing their operation;

- (f) premises used for carrying out the transformation of ashes into synthetic diamonds, jewellery and ornaments, etc. provided that, among other things, the keeping of ashes in it is transient and incidental to the carrying out of the transformation work, no interment right has been sold, no worshipping activities are allowed, and proper registers and records are kept;
- (g) premises during the time when an exhibition of ashes (such as the Buddha's relics) is held, provided that, among other things, the exhibition period is not more than 14 days, there being no more than 10 containers of ashes (with each container containing the ashes of one person only) at the premises, and no interment right has been sold; and
- (h) the keeping of no more than 10 containers of ashes (with each container containing the ashes of one person only) in domestic premises.

(5) Proposed Licensing Board

*(clauses 8 to 9 of, and Schedule 1 to, the Bill)*

15. The functions of the Licensing Board are to regulate the operation and management of columbaria. The Licensing Board consists of not less than 7 members and not more than 9 members appointed by the Chief Executive.

(6) Appeals

*(clauses 80 to 90 of the Bill)*

16. Any aggrieved applicant or holder of a specified instrument could appeal to the Private Columbaria Appeal Board ("the Appeal Board"). A panel of persons may be appointed by the Chief Executive to serve on the Appeal Board.

(7) Major Offences  
(*clauses 11 and 72 of the Bill*)

17. The Bill proposes to make it an offence for a person to operate a columbarium, including sale of interment rights, without a licence. However, an exemption or a TSOL (available to a pre-cut-off columbarium only) suffices for the operation of columbarium if the operation does not involve selling interment right in respect of the columbarium. Sanction will take the form of heavy penalties punishable by a fine and imprisonment. For the offence of operating a columbarium without a regulatory instrument, there will be statutory defences for the person charged to establish that at the time of the alleged offence –

- (a) the person did not know and could not have reasonably known that the premises were a columbarium; or
- (b) the person believed on reasonable grounds that the person operating, keeping, managing or otherwise having control of the columbarium held, in respect of the columbarium, a licence, an exemption or a TSOL.

18. Improper disposal of interred ashes will also be made an offence. For an operator, sanction will take the form of heavy penalties punishable by a fine and imprisonment. For a person in possession other than the operator, sanction will take the form of penalties punishable by a fine.

(8) Commencement  
(*clause 1 of the Bill*)

19. Most of the provisions in the Bill will commence operation on the enactment date. These include, for protecting consumer interest –

- (a) restriction on sale of interment rights, as there should not be any sale of interment right until and unless the operators have obtained a licence; and
- (b) proper disposal of interred ashes by operators / persons in possession, and empowering a specified officer to apply for an occupation order to handle the aftermath of “fly-by-night” cases etc.

20. Preparatory work will be undertaken within the first 6 months after the enactment date. Applications from pre-cut-off columbaria for a licence, an exemption and a TSOL will have to be submitted within the ensuing 3 months after the expiry of the six-month preparatory period.

21. Under the Bill, a grace period will be allowed for a columbarium in operation before the enactment date to continue to operate without a specified instrument, but the columbarium must not sell interment rights.

## **OTHER OPTIONS**

22. Short of introducing the Bill, there is no other alternative for implementing a credible licensing scheme for private columbaria.

## **THE BILL**

23. The Bill contains 11 Parts and 7 Schedules –

- (a) Part 2 and Schedule 1 provides for the establishment of a Private Columbaria Licensing Board and its constitution, administration and powers, including powers to determine applications for a specified instrument in respect of a columbarium and to investigate irregularities and discipline operators.
- (b) Under Part 3, a person must have a licence to operate a columbarium (including selling interment rights). However, operation without selling interment rights is permitted under an exemption or a TSOL. Contravention of the requirement is an offence.
- (c) Part 4 and Schedules 2, 3 and 6 provide for the issue, and the renewal or extension, of specified instruments for operating columbaria, including—
  - (i) the eligibility criteria such as requirements relating to land, planning and building;
  - (ii) the form of, and the plans and other information required for, an

application for a specified instrument;

- (iii) proof of the ash interment layout and ash interment quantity of the columbarium as at the cut-off time under the Notification Scheme;
  - (iv) the form of a specified instrument and the conditions that may be imposed on it;
  - (v) the transfer of a specified instrument with the approval of the Licensing Board; and
  - (vi) the fees payable for the issue, and the renewal or extension, of specified instruments.
- (d) Part 5 and Schedule 4 provide for the specific requirements and duties relating to the operation of a columbarium including the requirements that must be met in order for an agreement for the sale of an interment right to be enforceable against the purchaser and requirements about ash interment layout and ash interment quantity.
- (e) Part 6 provides for enforcement including the issue of an enforcement notice.
- (f) Part 7 and Schedule 5 provide for matters relating to the proper disposal of ashes. Obligations for proper disposal rest with a columbarium operator and, in specified circumstances, the other persons in possession of the columbarium premises. DFEH and other specified officers are empowered to carry out necessary steps for disposal of ashes in respect of a columbarium and may, for this purpose, apply for a court order for occupying the premises concerned.
- (g) Part 8 provides for appeals against decisions of the Licensing Board and of DFEH and Part 9 provides for miscellaneous provisions.
- (h) Part 10 provides for certain modifications to the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) in the case of a pre-cut-off columbarium.

- (i) Part 11 deals with minor related amendments to other legislation, e.g. the Prevention of Bribery Ordinance (Cap. 201) and the Private Cemeteries Regulations of the Public Health and Municipal Services Ordinance (Cap. 132 sub. leg. BF), etc.

## LEGISLATIVE TIMETABLE

24. The legislative timetable will be –

Publication in the Gazette	11 November 2016
First reading and commencement of second reading debate in LegCo	23 November 2016
Resumption of second reading debate, committee stage and third reading in LegCo	To be notified

## IMPLICATIONS OF THE PROPOSAL

25. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill does not apply to Government columbaria. It has no competition, productivity or gender implications. The financial, civil service, economic, environmental, sustainability and family implications are set out at **Annex D**.

## PUBLIC CONSULTATION

26. The Food and Health Bureau launched two public consultations in July 2010 and December 2011 respectively. A Business Impact Assessment study was carried out in 2013 to collect the views of existing and potential operators and assess the impact of the licensing scheme on the trade. The Bills Committee under the Fifth LegCo discussed the earlier Bill extensively and comprehensively, and had a meeting with deputations on 25 October 2014. The Government also

held meetings with stakeholder organisations after the lapse of the Bill in July 2016.

## **PUBLICITY**

27. A press release will be issued. A spokesperson will be available to handle enquiries.

## **BACKGROUND**

28. There has been a proliferation of private columbaria in recent decades. Private columbaria, if properly regulated, could complement public columbaria and serve a useful role in meeting social needs for ancestral worship, in terms of added supply and, more importantly, choice of niches and related services. The majority of existing private columbaria are however in breach of statutory and Government requirements, including planning, land and building safety requirements. Members of the public, especially residents living near such columbaria are dissatisfied with their presence and the traffic impact and environmental nuisances caused by them. Consumers also demand better protection. There have been instances of descendants complaining about the difficulties in enforcing an agreement after the purchaser had passed away or in getting back the money and the ancestors' ashes after cessation of columbarium operation.

29. As transpired from the feedback received from the two rounds of public consultations and discussion with LegCo, while there was support for introducing a licensing scheme for regulating private columbaria, views were divergent over the scope and intensity of regulation under the licensing scheme and the arrangements for pre-cut-off columbaria. The licensing scheme, which was formulated in the light of public views received, sought to strike a balance amongst competing interests of various stakeholders, having regard to –

- (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) ensuring a sustainable mode of operation in the long run.
30. The licensing scheme serves the following policy objectives –
- (a) ensuring compliance with statutory and Government requirements, with suitable grandfathering arrangements for pre-cut-off columbaria in tightly-ringfenced circumstances;
  - (b) ensuring a sustainable mode of operation; and
  - (c) enhancing protection of consumer interests.

## **ENQUIRIES**

31. Any enquiries on this brief may be addressed to Miss Diane WONG, Principal Assistant Secretary for Food and Health (Food) 2, on 3509 8926.

**Food and Health Bureau**  
**November 2016**

## Private Columbaria Bill

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## A BILL

## To

Provide for the licensing of non-Government columbaria for keeping cremated human remains, the establishment of the Private Columbaria Licensing Board and for related matters.

Enacted by the Legislative Council.

## Part 1

## Preliminary

## 1. Short title and commencement

- (1) This Ordinance may be cited as the Private Columbaria Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on the expiry of 6 months beginning on the day on which this Ordinance is published in the Gazette—
  - (a) Part 4;
  - (b) Division 2 of Part 5;
  - (c) Part 10;
  - (d) Divisions 1, 2 and 3 of Part 11;
  - (e) Schedules 2 and 3.

## 2. Interpretation

(1) In this Ordinance—

**Appeal Board** (上訴委員會) means the body established under section 81(1);

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

**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 (if applicable);

**authorized officer** (獲授權人員) means any officer appointed under section 91(3);

**authorized representative** (獲授權代表), in relation to an agreement for the sale of an interment right, means a person who is authorized under the agreement to claim for the return of ashes interred under the agreement (other than the person who operates, keeps, manages or in any other way has control of the columbarium in which the ashes are, or are to be, interred or an agent of such a person);

**building** (建築物) (except in paragraph (b) of the definition of **structures certifiable for a pre-cut-off columbarium** in section 4(1) of, and in section 4(2) of, Schedule 2) has the



meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

**building works** (建築工程) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

**columbarium** (骨灰安置所)—

- (a) means any premises that are used, or claimed, represented or held out to be used, for keeping ashes;
- (b) includes furnaces for burning offerings and any other essential ancillary facilities supporting the premises to be so used; and
- (c) in relation to an application for a licence, includes—
  - (i) any premises that are indicated in the application as being intended to be used for keeping ashes; and
  - (ii) furnaces for burning offerings and any other essential ancillary facilities that are indicated in the application as being intended to support the premises to be so used; but
- (d) excludes premises used or to be used for scattering ashes with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

**columbarium premises** (骨灰安置所處所) means the premises comprising a columbarium;

**commencement of ash disposal notice** (展開骨灰處置通告)—see section 8 of Schedule 5;

**cut-off time** (截算時間) means 8 a.m. on 18 June 2014;

**dedicated person** (受供奉者) means—

- (a) in relation to a niche or any other area in a columbarium in which ashes of a person are interred—the person; or

- (b) in relation to an interment right (whether in respect of a niche or any other area in a columbarium)—a person whose ashes are to be interred by exercising the interment right, whether or not the person is living and whether or not a specific niche or area is allocated;

**deed of mutual covenant** (公契) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

**Director** (署長) means the Director of Food and Environmental Hygiene;

**enactment date** (刊憲日期) means the day on which this Ordinance is published in the Gazette;

**exemption** (豁免書) means an exemption issued or renewed under section 13;

**inter** (安放), in relation to ashes of a person—

- (a) means keep the ashes in, on or at any premises in any manner—
  - (i) whether or not the ashes are kept in a container; and
  - (ii) whether or not the ashes or container of ashes are or is kept in a niche; but
- (b) excludes scatter ashes in, on or at any premises with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

**interment right** (安放權), in relation to a columbarium, means the right to inter ashes in the columbarium—

- (a) whether or not in a specific niche or area; and
- (b) whether or not for a definite period;

**lease** (租契)—

- (a) means a Government lease; and

(b) includes any undivided share in a Government lease;

**licence** (牌照) (except in section 4(2) and in section 4(2)(a) of Schedule 2) means a licence issued or renewed under section 13;

**Licensing Board** (發牌委員會) means the board established under section 8;

**niche** (龕位) means a compartment, cubicle or vault that is used, or claimed, represented or held out to be used, for keeping ashes of one or more persons usually with the ashes of each person in a container;

**non-compliant structures** (違規構築物)—see section 4(1) of Schedule 2;

**owner** (擁有人), in relation to any premises—

(a) means—

(i) a person holding the premises directly from the Government, whether under a lease, short term tenancy or otherwise;

(ii) a mortgagee in possession; or

(iii) a person who receives the rent of the premises, solely or with another, on the person's own behalf or that of another person, or who would receive the rent if the premises were let to a tenant; and

(b) if a person referred to in paragraph (a) cannot be found or ascertained or is absent from Hong Kong or is under a disability—also means the agent of the person; but

(c) excludes the Government;

**pre-cut-off columbarium** (截算前骨灰安置所) means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the cut-off time;

**premises** (處所) includes a place and, in particular, includes—

(a) any land or building;

(b) a vehicle, vessel, aircraft, hovercraft or other conveyance, if stationary;

(c) a structure (whether or not movable or offshore); and

(d) a part of any of the premises described in paragraph (a), (b) or (c);

**purchaser** (買方), in relation to an interment right in respect of a columbarium, (except in Division 1 of Part 5 and in Schedule 4) means the person to whom the right is sold, whether or not to the person as dedicated person;

**qualified professional** (合資格專業人士), in relation to any provision of this Ordinance, means the person or persons specified under section 96 in relation to that provision;

**Secretary** (局長) means the Secretary for Food and Health;

**sell** (出售)—see section 3;

**seller** (賣方), in relation to an interment right in respect of a columbarium, (except in Division 1 of Part 5 and in Schedule 4) means the person by whom the right is sold;

**specified form** (指明格式) means the form specified by the Licensing Board;

**specified instrument** (指明文書) means—

(a) a licence;

(b) an exemption; or

(c) a temporary suspension of liability;

**specified officer** (指明人員) means the Director, an authorized officer or a public officer;

**structures certifiable for a pre-cut-off columbarium** (可就截算前骨灰安置所核證的構築物)—see section 4 of Schedule 2;

**temporary suspension of liability** (暫免法律責任書) means a temporary suspension of liability issued or extended under section 13;

**tenancy** (租賃) (except in section 2(b)(ii)(B) of Schedule 4) means—

- (a) a short term tenancy granted by the Government; or
- (b) an agreement entered into between private parties for the letting or leasing of any premises;

**unauthorized development** (違例發展) has the meaning given by section 1A of the Town Planning Ordinance (Cap. 131);

**unleased land** (未批租土地) has the meaning given by section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28);

**validity period** (有效期)—see section 15.

- (2) In this Ordinance, a reference to an application for a specified instrument is a reference to—
  - (a) an application for the issue or renewal of a licence;
  - (b) an application for the issue or renewal of an exemption; or
  - (c) an application for the issue or extension of a temporary suspension of liability.
- (3) In this Ordinance, a reference to any of the following is to be construed in accordance with the provisions of Part 1 of Schedule 2—
  - (a) compliance with the land-related requirements;
  - (b) compliance with the planning-related requirements;
  - (c) compliance with the building-related requirements.
- (4) In this Ordinance, a reference to unlawful occupation of unleased land is a reference to the occupation of unleased land

in contravention of section 4 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

- (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
- (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.

- (6) In this Ordinance, a reference to unauthorized development undertaken or continued as is necessary for, or ancillary to, the operation of a columbarium is a reference to the unauthorized development in the form of—
  - (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.
- (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 that contain niches used or intended to be 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.

- (8) In this Ordinance, a reference to non-compliant structures necessary for, or ancillary to, the operation of a columbarium is a reference to non-compliant structures that are structures necessary for, or ancillary to, the operation of the columbarium within the meaning of subsection (7).
- (9) If a specified instrument is transferred under section 38, a reference in this Ordinance to the person holding the instrument is to be construed as a reference to the person to whom it has been transferred.

### 3. **Meaning of sale of interment right**

- (1) For the purposes of this Ordinance—  
*sell* (出售), in relation to an interment right, includes—
  - (a) offer the interment right for sale; and
  - (b) make an agreement for the sale of the interment right to another person.
- (2) For the purposes of this Ordinance, a sale of an interment right in respect of a columbarium includes a disposition of the interment right to a person if the person, directly or indirectly, in connection with the disposition makes payments (whether or not any of the payments are described as donations) in one or more of the following manners—
  - (a) pays a sum periodically during the period for which the interment right lasts;
  - (b) pays a fixed sum, by instalment or otherwise;
  - (c) makes payments in any other manner.
- (3) For the purposes of this Ordinance—

- (a) a sale of an interment right in respect of a columbarium includes—
  - (i) such a sale, even before the columbarium is constructed;
  - (ii) such a sale, even if no dedicated person is named; and
  - (iii) such a sale to a person for resale; and
- (b) a sale of an interment right in respect of a niche in a columbarium includes a sale of an interment right in respect of—
  - (i) a particular niche, or a niche to be allocated, in the columbarium; or
  - (ii) a niche in existence, or a niche to be constructed, in the columbarium.

### 4. **Ordinance not applicable to Government columbaria, private cemeteries, private crematoria, undertakers of burials, etc.**

- (1) This Ordinance does not apply to any of the following—
  - (a) a columbarium that is built, operated, administered or maintained by the Government, including one that is in a Government crematorium specified in Part 5 of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
  - (b) a columbarium that is in a private cemetery specified in Part 2 of that Schedule;
  - (c) a columbarium under the management and control of a person specified in Part 2A of that Schedule;
  - (d) an authorized private crematorium specified in Part 6 of that Schedule to the extent that the keeping of ashes in it is transient and incidental to its operation as a crematorium.

- (2) This Ordinance (except Part 7 and Schedule 5) does not apply to a columbarium if—
- (a) it is in premises specified, in a licence referred to in the Undertakers of Burials Regulation (Cap. 132 sub. leg. CB), as the licence holder's place of business; and
  - (b) the licence does not prohibit the keeping of ashes in that place of business.

**5. Ordinance not applicable to premises where ash transforming work is carried out**

- (1) This Ordinance does not apply to any premises that are used for carrying out the transformation work in respect of any ashes (*workplace*) if—
- (a) the workplace is not situated within any columbarium premises;
  - (b) the keeping of ashes in the workplace is transient and incidental to the carrying out of the transformation work;
  - (c) no interment right in respect of the workplace is sold;
  - (d) no person may be allowed to pay worship, and no ritual offerings may be given, in the workplace to any deceased person; and
  - (e) the person operating, keeping, managing or in any other way having control of the workplace—
    - (i) has kept a register of the delivery of ashes and synthetic materials to and from the workplace;
    - (ii) has entered the following particulars into the register—
      - (A) the name of each deceased person whose ashes are delivered to the workplace, and the date of the delivery of those ashes to the workplace; and

- (B) the description of the synthetic material that the ashes of each deceased person are transformed into, and the date of the delivery of the synthetic material and the remaining ashes (if any) from the workplace; and

- (iii) makes the register available for inspection, on request, by the Director or an authorized officer.

(2) In this section—

*synthetic material* (人造物料), in relation to any ashes, means the synthetic diamond, jewellery, ornament or other material transformed from the ashes or part of the ashes;

*transformation work* (轉化工序), in relation to any ashes—

- (a) means the manufacturing process by which the ashes, or part of the ashes, are transformed into synthetic material; and
  - (b) includes any activity that is ancillary to any such manufacturing process (such as the delivery and collection of the ashes or the synthetic material).
- (3) In this section, a reference to giving ritual offerings includes a reference to—
- (a) the laying of flowers or wreaths; or
  - (b) the burning of candle-sticks, joss paper, incense or sacrificial articles.

**6. Ordinance not applicable to premises where transient exhibition of ashes is held**

This Ordinance does not apply to any premises during the time when an exhibition of ashes is held in, on or at them if—

- (a) the exhibition is held for a period of not more than 14 days;

- (b) ashes are kept in, on or at the premises only for the purpose of the exhibition;
- (c) no more than 10 containers of ashes are kept in, on or at the premises;
- (d) each container contains, or is claimed, represented or held out to be containing, the ashes of only 1 person; and
- (e) no interment right in respect of the premises is sold.

#### 7. Ordinance not applicable to domestic keeping of ashes

- (1) This Ordinance does not apply to the keeping of ashes in any domestic premises if—
  - (a) no more than 10 containers of ashes are kept in the premises; and
  - (b) each container contains, or is claimed, represented or held out to be containing, the ashes of only 1 person.
- (2) In this section—

*domestic premises* (住宅) means premises used solely or principally for residential purposes and constituting a separate household unit.

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## Part 2

### Private Columbaria Licensing Board

#### 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 and proceedings of the Licensing Board) has effect.

#### 9. Functions and powers of Licensing Board

- (1) The functions of the Licensing Board are—
  - (a) to regulate the operation and management of columbaria and, in particular—
    - (i) to consider and determine applications made to it under this Ordinance;
    - (ii) to issue guidelines and codes of practice about the operation and management of columbaria; and
    - (iii) to handle complaints against, and investigate into irregularities of, operators of columbaria and to exercise the power to revoke or suspend a specified instrument or other disciplinary powers under this Ordinance; and
  - (b) to do any other things that the Licensing Board is required or authorized to do by this Ordinance.

- (2) The Licensing Board has all ancillary powers that may be necessary to enable it to perform its functions.
- 

## Part 3

### Control on Operation of Columbaria

#### 10. Restriction on operating columbarium

- (1) A person must not operate, keep, manage or in any other way have control of a columbarium, otherwise than under a licence.
- (2) Subsection (1) does not prohibit a person from operating, keeping, managing or in any other way having control of a columbarium, otherwise than under a licence, if—
  - (a) the person does not sell any interment right in respect of the columbarium; and
  - (b) the person holds, in respect of the columbarium—
    - (i) an exemption; or
    - (ii) a temporary suspension of liability.
- (3) If—
  - (a) a specified instrument in respect of a columbarium; or
  - (b) an authorization under a licence to sell interment rights in respect of a columbarium,

is suspended, a person who operates, keeps, manages or in any other way has control of the columbarium under the specified instrument or licence does not contravene subsection (1) in respect of the columbarium if all the requirements, terms and conditions imposed by the Licensing Board upon suspending the specified instrument or authorization are complied with.
- (4) A person does not contravene subsection (1) in respect of a columbarium merely by giving an undertaking to carry out the prescribed ash disposal procedures (within the meaning of

section 7 of Schedule 5) in respect of the columbarium and actually carrying out the procedures.

#### 11. Offences relating to section 10

- (1) If a person contravenes section 10(1) in respect of a columbarium—
  - (a) the person commits an offence; and
  - (b) each person who is the owner, tenant, lessee or person in charge of the columbarium premises commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; and
  - (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.
- (3) A person charged with an offence under subsection (1) in respect of any premises has a defence if the person establishes that, at the time of the alleged offence—
  - (a) the person did not know and could not have reasonably known that the premises concerned were a columbarium; or
  - (b) the person believed on reasonable grounds that the person who operated, kept, managed or otherwise had control of the columbarium—
    - (i) did so under a licence; or
    - (ii) did not sell any interment right in respect of the columbarium and held, in respect of the columbarium, an exemption or temporary suspension of liability.

- (4) A person charged with an offence under subsection (1) is to be taken to have established a fact that needs to be established for the purpose of a defence under subsection (3)(a) or (b) if—
  - (a) there is sufficient evidence to raise an issue as to that alleged fact; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (5) Subsection (1) has effect subject to section 73(1).



## Part 4

### Instruments Required for Operating Columbaria

#### Division 1—General Provisions

##### 12. Interpretation of Part 4

In this Part—

*ash interment capacity* (骨灰安放容量), in relation to a columbarium in respect of which a licence is applied for or is issued, means the following particulars—

- (a) the maximum number of containers of ashes that may be interred in each niche in the columbarium, and the total maximum number of sets of ashes that may be interred in the niches;
- (b) the total maximum number of sets of ashes that may be interred otherwise than in niches in any area in the columbarium; and
- (c) the total maximum number of sets of ashes that may be interred in the columbarium;

*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.

##### 13. Licence, exemption and temporary suspension of liability

The Licensing Board may, on application and subject to any conditions that the Licensing Board thinks fit to impose in addition to the conditions mentioned in section 29, 32 or 35 (as the case requires)—

- (a) issue or renew a licence in respect of a columbarium;
- (b) issue or renew an exemption in respect of a pre-cut-off columbarium; or
- (c) issue or extend a temporary suspension of liability in respect of a pre-cut-off columbarium.

##### 14. Time limit for application for specified instrument

- (1) Subject to subsection (2), an application for the issue of a licence in respect of a columbarium may be made to the Licensing Board at any time after the expiry of 6 months beginning on the enactment date.

- (2) An application for the issue of a specified instrument in respect of a pre-cut-off columbarium must be made to the Licensing Board at any time—
  - (a) after the expiry of 6 months beginning on the enactment date; but
  - (b) before the expiry of 9 months beginning on that date.
- (3) An application for the renewal of a licence or exemption must be made to the Licensing Board not later than 18 months before the expiry of the validity period of the licence or exemption (as the case requires).
- (4) Subject to subsection (5), an application for the extension of a temporary suspension of liability must be made to the Licensing Board not later than 12 months before the expiry of the validity period of the temporary suspension of liability.
- (5) If the validity period of a temporary suspension of liability does not exceed 12 months, an application for the extension of the temporary suspension of liability must be made to the Licensing Board not later than the date specified by it.
- (6) Despite subsections (2), (3), (4) and (5), the Licensing Board may consider an application for a specified instrument out of time if—
  - (a) the applicant has a reasonable excuse for failing to make the application within time; and
  - (b) in all the circumstances of the case, the Licensing Board considers that it is just and equitable to consider the application.

#### 15. Validity period of specified instrument

- (1) The Licensing Board may, in its discretion, determine the term for which the specified instrument is issued, renewed or extended (*validity period*).

- (2) The validity period of a licence must not exceed the shorter of the following—
  - (a) where—
    - (i) the columbarium premises are held directly from the Government under a lease—the remainder of the term of the lease; or
    - (ii) the columbarium premises are occupied under a tenancy—the remainder of the term of the tenancy;
  - (b) 10 years.
- (3) The validity period of an exemption must not exceed—
  - (a) where the columbarium premises are held directly from the Government under a lease—the remainder of the term of the lease; or
  - (b) where the columbarium premises are occupied under a tenancy—the remainder of the term of the tenancy.
- (4) The validity period of a temporary suspension of liability must not exceed 3 years.
- (5) Subject to subsections (2)(b) and (4), where the columbarium premises are occupied under a short term tenancy granted by the Government, the validity period of a specified instrument issued, renewed or extended in respect of the premises may be concurrent with the period for which the short term tenancy lasts.
- (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.
- (7) A licence may be subject to review within its validity period on the dates specified in the licence.
- (8) A temporary suspension of liability may not be extended more than once, unless exceptional circumstances exist.

**16. No specified instrument issued if columbarium subject to specified law enforcement action**

- (1) Subsections (2) and (3) have effect despite section 13.
- (2) The Licensing Board may not grant an application for the issue of a specified instrument in respect of a columbarium if—
  - (a) the operation of the columbarium, or any part of it, constitutes an unauthorized development in contravention of section 20(7) or 21(1) of the Town Planning Ordinance (Cap. 131); and
  - (b) in respect of the unauthorized development—
    - (i) proceedings for prosecution of an offence under section 20(8) or 21(2) of that Ordinance have been instituted, whether against the applicant or any other person, before the making of the application; or
    - (ii) a notice—
      - (A) has been served, whether on the applicant or any other person, under section 23(1) or (2) of that Ordinance before the making of the application; and
      - (B) has not been complied with or withdrawn.

- (3) The Licensing Board may not grant an application for the issue of a specified instrument in respect of a columbarium if—
  - (a) any building or building works in, on or at the columbarium, or any part of it, have been completed or carried out in contravention of section 14(1) of the Buildings Ordinance (Cap. 123); and
  - (b) in respect of the building or building works, an order under section 24(1) of that Ordinance—
    - (i) has been served, whether on the applicant or any other person, before the making of the application; and
    - (ii) has not been complied with or withdrawn.

**Division 2—Eligibility Criteria**

**Subdivision 1—Licence for Operating Columbaria (Including Selling Interment Rights)**

**17. Licence—eligibility based on legal compliance, premises held from Government, etc.**

- (1) 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 the satisfaction of the Licensing Board 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.

- (2) Despite section 13, the Licensing Board may grant an application for the issue of a licence in respect of a columbarium only if a management plan, submitted by the applicant in respect of the columbarium and covering matters required under section 95, has been approved by the Licensing Board.
- (3) In relation to an application for the issue of a licence in respect of a columbarium, where a deed of mutual covenant is in force in respect of the columbarium premises, the Licensing Board may refuse the application if the applicant fails to produce the legal advice required under section 22(3).

#### **18. Modifications of section 17 for pre-cut-off columbarium**

- (1) In relation to an application for the issue of a licence in respect of a pre-cut-off columbarium, section 17 is modified in the manner specified in subsections (2) and (3) if the applicant proves to the satisfaction of the Licensing Board—
  - (a) that the ash interment layout is limited in extent to that as at the cut-off time;
  - (b) that the ash interment capacity is limited to that as at the cut-off time; and
  - (c) that 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.
- (2) The Licensing Board may decide not to refuse the application only because the applicant fails to prove the matter mentioned in section 17(1)(a)(iii) if the applicant proves to the satisfaction of the Licensing Board that—

- (a) the non-compliant structures necessary for, or ancillary to, the operation of the columbarium are structures certifiable for a pre-cut-off columbarium; and
  - (b) the requirements applicable to the structures (specified in section 4(3) of Schedule 2) are complied with.
- (3) The Licensing Board may decide not to refuse the application only because the applicant fails to prove the matter mentioned in section 17(1)(b) if—
    - (a) the Licensing Board is of the opinion that it would have granted the application but for that section; and
    - (b) the applicant proves to the satisfaction of the Licensing Board that the applicant has the right to continue to use the columbarium premises for at least 5 years beginning on the date on which the licence, if issued, is to take effect.

#### **Subdivision 2—Instruments for Pre-cut-off Columbaria to Continue Operation, without Selling Interment Rights**

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

- (1) The Licensing Board may refuse an application for the issue of an exemption in respect of a pre-cut-off columbarium if the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following matters—
  - (a) that the ash interment layout is limited in extent to that as at the cut-off time;
  - (b) that the ash interment quantity is limited to that as at the cut-off time;

- (c) that 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;
  - (d) that the columbarium commenced operation before 1 January 1990;
  - (e) that no interment right in respect of the columbarium has been sold since the cut-off time;
  - (f) the columbarium complies with the land-related requirements;
  - (g) either—
    - (i) the columbarium complies with the building-related requirements; or
    - (ii) the non-compliant structures necessary for, or ancillary to, the operation of the columbarium are structures certifiable for a pre-cut-off columbarium, and the requirements applicable to the structures (specified in section 4(3) of Schedule 2) are complied with;
  - (h) either—
    - (i) the applicant holds the columbarium premises directly from the Government under a lease; or
    - (ii) if the Licensing Board is of the opinion that it would have granted the application but for subparagraph (i)—the applicant has the right to continue to use the columbarium premises for at least 5 years beginning on the date on which the exemption, if issued, is to take effect.
- (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)—

- (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.
- (3) For the purposes of subsection (1)(d), the operation of a columbarium commenced on the earlier of the following times—
- (a) the earliest time when a set of ashes was interred in any niche in the columbarium;
  - (b) the earliest time when an interment right in respect of any niche in the columbarium was sold.

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

- (1) The Licensing Board may refuse an application for the issue of a temporary suspension of liability in respect of a pre-cut-off columbarium unless the applicant has also made in respect of the columbarium either or both of the following—
- (a) an application for the issue of a licence;
  - (b) an application for the issue of an exemption.

- (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—
    - (i) that the ash interment layout is limited in extent to that as at the cut-off time;
    - (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 enactment date;
    - (iii) if the applicant also applies for the issue of an exemption in respect of the columbarium—that the ash interment quantity is limited to that as at the cut-off time;
    - (iv) that 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; or
  - (b) the occupation of land as is necessary for, or ancillary to, the operation of the columbarium (to the extent as shown in the plans required under section 24) includes unlawful occupation of unleased land but the applicant—
    - (i) does not apply to the Director of Lands for lawful authority to occupy the unleased land; or
    - (ii) does not provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land, whether based on possession of

- the unleased land before, on or after the date of application or on any other ground.
- (3) The Licensing Board may refuse an application under subsection (1) if the applicant fails to prove to the satisfaction of the Licensing Board that the columbarium has been certified, by a qualified professional, as not posing any obvious or imminent danger in terms of building safety and fire safety.
  - (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)—
    - (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.

### Subdivision 3—Miscellaneous

#### 21. Considerations relevant to determination of applications

- (1) Subsection (2) applies to the determination by the Licensing Board of an application for a specified instrument in respect of a columbarium.
- (2) The Licensing Board—
  - (a) must have regard to the public interest; and
  - (b) may have regard to any other relevant considerations.
- (3) In relation to an application for the issue of a licence or exemption or an application for the extension of a temporary suspension of liability, the other relevant considerations referred to in subsection (2)(b) include (but are not limited to)—
  - (a) whether the applicant has or has not complied with, in respect of the columbarium, the applicable requirements in Schedule 2; and
  - (b) the record of the steps that the applicant has taken in respect of the columbarium towards meeting those requirements.
- (4) For the purposes of subsection (3), a reference to the applicant in that subsection is to be construed as including a reference to—
  - (a) if the applicant is a partner in a partnership—any other partner in the partnership; or
  - (b) if the applicant is a body corporate—a director or other officer concerned in the management of the body corporate.

### Division 3—Application for Specified Instrument

#### Subdivision 1—General Provisions

#### 22. Form of, and information required for, application

- (1) An application for a specified instrument in respect of a columbarium—
  - (a) must be made, in writing, to the Licensing Board in the specified form and in the manner determined by it; and
  - (b) must be accompanied by—
    - (i) for an application for the issue of a licence—a management plan for the Licensing Board's approval for the purposes of section 17(2);
    - (ii) for an application for the issue of an exemption in respect of a pre-cut-off columbarium (if any interment right in respect of any niche in the columbarium was sold before the cut-off time, but has not been exercised or has only been exercised partially)—the registers required under section 23;
    - (iii) the plans of the columbarium; and
    - (iv) the information, certificates and other documents—
      - (A) specified in the application form; or
      - (B) otherwise reasonably required by the Licensing Board.
- (2) Without limiting subsection (1)(b)(iv), the Licensing Board may, in relation to an application for a specified instrument in respect of a columbarium, require the applicant to produce evidence to prove to the satisfaction of the Licensing Board that the owner of the columbarium premises has, or all the joint owners or co-owners of the columbarium premises have,

given authorization or consent for the premises to be used as a columbarium.

- (3) In addition to the information required under subsection (1)(b), an application for the issue of a licence in respect of a columbarium, where a deed of mutual covenant is in force in respect of the columbarium premises, must be accompanied by a written legal advice of a legal practitioner (who is qualified to practise as counsel or to act as a solicitor in Hong Kong) confirming that there is no express restrictive covenant in the deed to the effect that—
  - (a) any use of the premises as a columbarium is prohibited;
  - (b) any commercial use of the premises is prohibited; or
  - (c) only private residential use of the premises is permitted.

### **23. Requirements about registers accompanying application**

- (1) For the purposes of section 22(1)(b)(ii), the following registers of a pre-cut-off columbarium are to accompany an application for the issue of an exemption in respect of the columbarium—
  - (a) a register on the niches in the columbarium in respect of which the interment rights were sold before the cut-off time but have not been exercised;
  - (b) a register on the niches in the columbarium in respect of which the interment rights were sold before the cut-off time but have only been exercised partially.
- (2) The registers—
  - (a) must be in the specified form;
  - (b) must contain the particulars specified by the Licensing Board; and
  - (c) must be kept in the manner determined by the Licensing Board.

### **24. Requirements about plans accompanying application**

- (1) For the purposes of section 22(1)(b)(iii), the plans of a columbarium that are to accompany an application for a specified instrument in respect of a columbarium must comply with the requirements in this section.
- (2) The plans must include a site plan, layout plan and floor plans, each of which must be in the number of copies, and drawn to the scale, that the Licensing Board requires.
- (3) The plans must show the following particulars to be authorized or permitted by the specified instrument under application—
  - (a) the ash interment layout;
  - (b) for an application for the issue or renewal of a licence—the ash interment capacity;
  - (c) for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability, in respect of a pre-cut-off columbarium—the ash interment quantity;
  - (d) the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium;
  - (e) the structures necessary for, or ancillary to, the operation of the columbarium.
- (4) A qualified professional must—
  - (a) certify that the current site situation of the columbarium premises conforms to the plans in all respects; or
  - (b) if the current site situation of the columbarium premises does not conform to the plans in all respects—identify the difference, with annotations, on the plans.



**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 the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); 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.
- (2) The particulars are—
  - (a) the ash interment layout;
  - (b) for an application for the issue or renewal of a licence—the ash interment capacity;
  - (c) for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability, in respect of a pre-cut-off columbarium—the ash interment quantity;
  - (d) the extent of occupation of land as is necessary for, or ancillary to, the operation of the columbarium; and
  - (e) the structures necessary for, or ancillary to, the operation of the columbarium.
- (3) On approving the plans, the Licensing Board—
  - (a) must endorse the approval on each plan in each set of the plans to that effect;
  - (b) if the Licensing Board endorses the registers required under section 23 that accompany an application for the

issue of an exemption—must attach the endorsed registers to the plans;

- (c) must return 1 set of the plans to the applicant; and
- (d) may retain the remaining sets of plans.

**Subdivision 2—Applications in respect of Pre-cut-off Columbaria****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*)—
  - (a) the ash interment layout as at the cut-off time;
  - (b) for an application for the issue or renewal of a licence—the ash interment capacity as at the cut-off time;
  - (c) for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability—the ash interment quantity as at the cut-off time;
  - (d) the extent of occupation of land as was necessary for, or ancillary to, the operation of the columbarium as at the cut-off time;
  - (e) the fact that any structures necessary for, or ancillary to, the operation of the columbarium existed as at the cut-off time; and
  - (f) for an application for the issue of an exemption—the earliest date on which a set of ashes was interred in any niche in the columbarium or the earliest date on which an interment right in respect of any niche in the columbarium was sold.

- (2) In addition to the plans required under section 24, 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).
- (3) On approving the plans in accordance with section 25 for the purposes of an application for a specified instrument in respect of a pre-cut-off columbarium, the Licensing Board must decide on, and identify, the following in the plans—
- (a) for a temporary suspension of liability—the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium and covered by the temporary suspension of liability;
  - (b) for an exemption 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)); and
  - (c) structures certifiable for a pre-cut-off columbarium in, on or at the columbarium as are covered by the specified instrument.
- (4) In subsection (1)—
- eligibility-related provision** (資格相關條文) means section 18, 19 or 20 or section 4 of Schedule 2.

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

- (1) In this section—

- (a) **operator** (營辦人), in relation to a columbarium, means a person who operated, kept, managed or in any other way had control of the columbarium;
- (b) **eligibility-related provision** (資格相關條文) has the meaning given by section 26(4);
- (c) **notifiable particulars** (須通報詳情) means batch 1 particulars or batch 2 particulars;
- (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) or (f) or the particulars of furnaces for burning offerings existing in the columbarium concerned as at the cut-off time;
- (e) **batch 2 particulars** (第 2 組詳情) means the particulars of any other facilities (whether or not they are building or building works) existing in the columbarium concerned as at the cut-off time that the operator intended to claim to be relevant to the eligibility-related particulars referred to in section 26(1)(d) or (e);
- (f) the notification scheme is the administrative scheme that was announced by the Secretary at the cut-off time—
  - (i) for the Director or a public officer authorized to act for the purposes of the scheme (either is called a **scheme officer**) to ascertain the notifiable particulars in the manner described in subsections (2), (3) and (4); and
  - (ii) for facilitating, in the manner described in subsections (5), (6) and (7), the determination of whether any notifiable particulars are proved for the purposes of an application for a specified instrument in respect of a pre-cut-off columbarium.

- (2) Under the notification scheme, an operator of a pre-cut-off columbarium was—
  - (a) to provide to a scheme officer, in the number of copies and prepared in the manner as the scheme officer determined—
    - (i) a statement of the notifiable particulars; and
    - (ii) any other records relating to the notifiable particulars as the scheme officer determined; and
  - (b) to give consent to the scheme officer to enter into the columbarium during the following periods to verify the statement and records provided by the operator to ascertain the notifiable particulars—
    - (i) for batch 1 particulars—the period beginning at the cut-off time and ending on 30 June 2014; and
    - (ii) for batch 2 particulars—the period beginning at the cut-off time and ending on 31 August 2014.
- (3) On entering into the columbarium and verifying the statement of the notifiable particulars and records provided by the operator and being satisfied with their accuracy, the scheme officer might take photographs and make any other records.
- (4) After compiling the records, the scheme officer might, if he or she so desired, prepare—
  - (a) a statement of the notifiable particulars; and
  - (b) a set of photographs taken and other records made as the scheme officer thought fit, relating to the notifiable particulars (including plans to indicate the location of any facilities).
- (5) Subsections (6), (7) and (8) apply to an application for a specified instrument in respect of a pre-cut-off columbarium.

- (6) For the purposes of the eligibility-related provisions, a statement of the notifiable particulars prepared, the photographs taken and other records (including plans) made, under the notification scheme by the scheme officer under subsection (4) is evidence of the notifiable particulars in the absence of evidence to the contrary.
- (7) To avoid doubt, for the purposes of section 26(1)(d) and (e)—
  - (a) subsection (6) relates only to proof of the existence of the furnaces for burning offerings or any other facilities in the columbarium as at the cut-off time and the occupation of land by the furnaces or facilities as at that time; and
  - (b) subsection (6) does not affect the Licensing Board's determination of whether the furnaces or facilities fall within the essential ancillary facilities referred to in—
    - (i) section 2(1) (definition of *columbarium*) or section 2(5)(b), (6)(b) or (7)(b); or
    - (ii) paragraph (a)(ii) of the definition of *structures certifiable for a pre-cut-off columbarium* in section 4(1) of Schedule 2.
- (8) For the purposes of an application for a specified instrument in respect of a columbarium that is alleged to be a pre-cut-off columbarium, the Licensing Board may consider evidence of the notifiable particulars other than evidence referred to in subsection (6).

**Division 4—Form and Conditions of Specified Instruments****Subdivision 1—Licence for Operating Columbarium (Including Selling Interment Rights)****28. Licence—form**

- (1) A licence in respect of a columbarium—
  - (a) must be in the specified form; and
  - (b) must have annexed to it a set of the approved plans.
- (2) The licence must state—
  - (a) that the person to whom it is issued is authorized to operate, keep, manage or in any other way have control of the columbarium; and
  - (b) that, subject to section 39, the authorization includes an authorization to sell interment rights in respect of the columbarium.
- (3) The licence must specify—
  - (a) the conditions to which it is subject; and
  - (b) its validity period.

**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—

- (a) that the number of sets of ashes kept in the columbarium must be limited to the ash interment capacity shown in the approved plans;
- (b) for a pre-cut-off columbarium—that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures

certifiable for a pre-cut-off columbarium shown in the approved plans; and

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

**30. Licence—further conditions**

Without limiting section 13, the Licensing Board may as it thinks fit impose conditions on a licence in respect of a columbarium—

- (a) restricting any subletting or assignment of the columbarium premises, or any part of them, in a manner that is inconsistent with the operation of the columbarium;
- (b) requiring that the requirements for enforceability of an agreement for the sale of an interment right under section 47 be met in respect of each agreement for the sale of an interment right in respect of the columbarium;
- (c) on measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and
- (d) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

**Subdivision 2—Exemption****31. Exemption—form**

- (1) An exemption in respect of a pre-cut-off columbarium—
  - (a) must be in the specified form; and

- (b) must have annexed to it a set of the approved plans.
- (2) The exemption must state—
  - (a) that the person to whom it is issued remains prohibited under section 10 from selling any interment right in respect of the columbarium; and
  - (b) that, subject to the prohibition referred to in paragraph (a), the person is exempted from the requirement under that section for obtaining a licence for operating, keeping, managing or in any other way having control of the columbarium.
- (3) The exemption must specify—
  - (a) the conditions to which it is subject; and
  - (b) its validity period.

**32. Exemption—conditions about ash interment and non-compliant structures**

An exemption in respect of a pre-cut-off columbarium is subject to all of the following conditions—

- (a) subject to sections 53 and 55, that the ashes interred in the columbarium must be limited to the ash interment quantity as shown in the approved plans;
- (b) that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-cut-off columbarium shown in the approved plans.

**33. Exemption—further conditions**

Without limiting section 13, the Licensing Board may as it thinks fit impose conditions on an exemption in respect of a pre-cut-off columbarium—

- (a) on measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and
- (b) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

**Subdivision 3—Temporary Suspension of Liability**

**34. Temporary suspension of liability—form**

- (1) A temporary suspension of liability in respect of a pre-cut-off columbarium—
  - (a) must be in the specified form; and
  - (b) must have annexed to it a set of the approved plans.
- (2) The temporary suspension of liability must state—
  - (a) that the person to whom it is issued remains prohibited under section 10 from selling any interment right in respect of the columbarium; and
  - (b) that, subject to the prohibition referred to in paragraph (a), the person's liability under that section for operating, keeping, managing or in any other way having control of the columbarium without a licence is suspended temporarily.
- (3) The temporary suspension of liability must specify—
  - (a) the conditions to which it is subject; and
  - (b) its validity period.

**35. Temporary suspension of liability—conditions about steps to be taken, unleased land and non-compliant structures**

- (1) A temporary suspension of liability in respect of a pre-cut-off columbarium for which an application for the issue of a licence is pending is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards—
  - (a) meeting the requirements referred to in section 17 (whether or not as modified under section 18); and
  - (b) procuring the issue of the licence before the expiry of the temporary suspension of liability.
- (2) A temporary suspension of liability in respect of a pre-cut-off columbarium for which an application for the issue of an exemption is pending is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards—
  - (a) meeting the requirements referred to in section 19; and
  - (b) procuring the issue of the exemption before the expiry of the temporary suspension of liability.
- (3) The temporary suspension of liability is subject to all of the following conditions—
  - (a) that the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium must be limited to that as shown in the approved plans;
  - (b) that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to those as shown in the approved plans.

**36. Temporary suspension of liability—further conditions**

Without limiting section 13, the Licensing Board may as it thinks fit impose conditions on a temporary suspension of liability in respect of a pre-cut-off columbarium—

- (a) on measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals; and
- (b) on measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of the columbarium.

**Subdivision 4—Miscellaneous****37. Conditions about additional fees, etc.**

Without limiting Subdivisions 1, 2 and 3 and section 13, the Licensing Board may as it thinks fit impose conditions on a specified instrument in respect of a pre-cut-off columbarium restricting the imposition of any additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of the interment right entered into before the cut-off time.

**Division 5—Supplementary Provisions about Specified Instruments and Related Applications****38. Transfer of specified instrument**

- (1) Except as provided in this section, none of the following instruments is transferable—
  - (a) a licence;

- (b) an exemption;
- (c) a temporary suspension of liability together with one or both of the following—
  - (i) the related application for the issue of a licence;
  - (ii) the related application for the issue of an exemption.
- (2) Subject to subsections (3), (4), (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.
- (3) The application—
  - (a) must be made, in writing, to the Licensing Board in the specified form; and
  - (b) must be accompanied by the information, certificates and other documents—
    - (i) specified in the application form; or
    - (ii) otherwise reasonably required by the Licensing Board.
- (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).

- (5) On approving the transfer of an instrument referred to in subsection (1), the Licensing Board may vary the conditions to which the instrument is subject or impose new conditions.
- (6) On determining an application made under this section, the 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.
- (7) If the Licensing Board exercises its power under subsection (5) to vary the conditions to which an instrument referred to in subsection (1) is subject or impose new conditions, the Licensing Board must notify the transferee 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.
- (8) Subsection (2) does not apply to 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.
- (9) Despite the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49) and any rules of common law, a transferee is liable for all debts and obligations (including all outstanding, subsisting and future liabilities) in relation to each agreement for sale of an interment right entered into before the transfer by the person from whom an instrument referred to in subsection (1) is transferred and, accordingly, any such agreement may, after the transfer, be enforced by the purchaser against the transferee.

- (10) A transferee may be indemnified by the person from whom an instrument referred to in subsection (1) is transferred for all amounts for which the transferee is made liable under subsection (9) and for which the transferee would not otherwise be liable, and the amount of the indemnity may be recovered by civil proceedings as a debt or liquidated demand.
- (11) In this section, a reference to transfer includes—
  - (a) if the person from whom an instrument referred to in subsection (1) is transferred is a natural person and that person dies—a reference to succession; and
  - (b) if the person from whom an instrument referred to in subsection (1) is transferred is a partner in a partnership and there is a change of any partner in the partnership (whether that person or another partner)—a reference to a transfer from that person to a partner in the new partnership (whether to that person, if that person remains as a partner in the new partnership, or to another partner), and the reference to another person in subsection (2) is to be construed accordingly.
- (12) The holder of a specified instrument who purports to transfer the instrument without the Licensing Board's approval under this section commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

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

- (1) Subject to subsection (2), the Licensing Board may—
  - (a) revoke, or suspend for a period the Licensing Board thinks fit—
    - (i) a licence; or

- (ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;
  - (b) revoke, or suspend for a period the Licensing Board thinks fit, an exemption or temporary suspension of liability;
  - (c) refuse to renew a licence or exemption or refuse to extend a temporary suspension of liability;
  - (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.
- (2) The Licensing Board may exercise the powers under subsection (1)—
  - (a) if, at the time when the Licensing Board considers exercising the powers in respect of the columbarium, circumstances exist that would have entitled the Licensing Board to refuse an application for the issue of the specified instrument under section 17 (whether or not as modified under section 18) or section 19 or 20 had it been necessary to determine such an application at that time;
  - (b) if the person holding the specified instrument (*instrument holder*) has failed to comply with—
    - (i) a condition to which the instrument is subject; or
    - (ii) an enforcement notice served under section 62;
  - (c) if the application on the basis of which the specified instrument has been issued, renewed or extended, or a



- plan submitted in connection with such an application, contains information that is false or misleading in a material particular;
- (d) if the instrument holder has been convicted of an offence under this Ordinance;
  - (e) if it appears to the Licensing Board that—
    - (i) the columbarium has ceased to be operated as such or to exist; or
    - (ii) the instrument holder has ceased to operate the columbarium;
  - (f) if the instrument holder is a body corporate other than a company or (where the instrument holder is a partner in a partnership) if any partner in the partnership is a body corporate other than a company, and the body corporate is dissolved;
  - (g) if the instrument holder is a company or (where the instrument holder is a partner in a partnership) if any partner in the partnership is a company, and—
    - (i) a resolution for voluntary winding up (as defined by section 228(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)) is passed by the company;
    - (ii) a winding-up statement in respect of the company is delivered to the Registrar of Companies under section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
    - (iii) a winding-up order under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is made against the company;
    - (iv) the company is dissolved under the Companies Ordinance (Cap. 622); or

- (v) where the company is a registered non-Hong Kong company (as defined by section 2(1) of the Companies Ordinance (Cap. 622))—the company's name has been struck off the Companies Register under section 798 of that Ordinance; or
- (h) if a natural person who is the instrument holder, or is a partner in a partnership who is the instrument holder or is any other partner in that partnership—
  - (i) dies;
  - (ii) is, in accordance with the Mental Health Ordinance (Cap. 136), found by the court to be of unsound mind and incapable of managing himself or herself and his or her affairs;
  - (iii) is adjudicated bankrupt within the meaning of the Bankruptcy Ordinance (Cap. 6) or has entered into a composition or arrangement with his or her creditors without paying the creditors in full; or
  - (iv) is serving a sentence of imprisonment, whether in Hong Kong or elsewhere, at any time during the validity period of the specified instrument.
- (3) If the Licensing Board exercises any power under this section in respect of a specified instrument held by a person, the Licensing Board must notify the person 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.

#### 40. Variation of condition on application by holder of specified instrument

- (1) The Licensing Board may, on application by the holder of a specified instrument showing sufficient cause to its

satisfaction, vary any conditions to which the instrument is subject, by an endorsement on the instrument.

(2) The application—

- (a) must be made, in writing, to the Licensing Board in the specified form; and
- (b) must be accompanied by—
  - (i) if applicable—plans that comply with the requirements in section 24 and, where appropriate, section 26(2); and
  - (ii) the information, certificates and other documents—
    - (A) specified in the application form; or
    - (B) otherwise reasonably required by the Licensing Board.

(3) On determining an application made under this section, the 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.

**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) 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.
- (2) An application under subsection (1)(a)—

- (a) must be made, in writing, to the Licensing Board within 7 days after the date of the lodging of the notice of appeal by that person; and
- (b) must set out the grounds of the application.
- (3) The decision in respect of which an application under subsection (1)(a) is made is suspended in its operation until the Licensing Board determines the application.
- (4) On determining an application made under subsection (1)(a), the Licensing Board must notify the person in writing of—
  - (a) the Licensing Board's decision; and
  - (b) if the application is refused—the reasons for the refusal.

**42. Notification of changes**

- (1) If—
  - (a) a person has made an application for a specified instrument; and
  - (b) a change occurs that materially affects the accuracy of the information that the person has provided in connection with the application,

the person must notify the Licensing Board of the change, in writing, within 14 days after the date on which the change occurs.
- (2) A change referred to in subsection (1)(b) includes (but is not limited to) a change of any director, manager, secretary or other similar officer of the applicant.
- (3) If—
  - (a) a specified instrument has been issued, renewed or extended; and
  - (b) a change occurs that materially affects the accuracy of the information that the holder of the specified

instrument has provided in connection with the application on the basis of which the specified instrument has been issued, renewed or extended, the holder must—

- (i) notify the Licensing Board of the change, in writing, within 14 days after the date on which the change occurs; and
  - (ii) provide the information required by the Licensing Board within the time specified by it.
- (4) A change referred to in subsection (3)(b) includes (but is not limited to) a change of any director, manager, secretary or other similar officer of the holder of the specified instrument.
- (5) If the holder of a specified instrument in respect of a columbarium decides to cease operating the columbarium, the holder must notify the Licensing Board of the decision, in writing, within 14 days after the date of the decision.
- (6) A person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

#### 43. Further provisions on applications relating to specified instruments

Schedule 3 (which contains further provisions on applications relating to specified instruments under this Part) has effect.

### Division 6—Certificate and Register

#### 44. Certificate of columbarium use

- (1) As soon as the Licensing Board has issued a specified instrument to a person (*instrument holder*) in respect of any premises for which a land register has been kept under the

Land Registration Ordinance (Cap. 128), the Licensing Board must issue a certificate of columbarium use.

- (2) The certificate—
  - (a) must state—
    - (i) that the premises are a columbarium to which this Ordinance applies;
    - (ii) that a specified instrument is issued in respect of the columbarium; and
    - (iii) the name of the instrument holder; and
  - (b) must state that the provisions of Part 7 and Schedule 5 on obligations to carry out the prescribed ash disposal procedures and the power of a specified officer to apply for an occupation order under section 74 apply to the columbarium.
- (3) As soon as reasonably practicable after the certificate is issued, the Licensing Board must register the certificate against the premises in the Land Registry.

#### 45. Register of private columbaria

- (1) The Licensing Board must keep a register of private columbaria, listing each columbarium in respect of which a specified instrument is in force.
- (2) The register is to be kept in the form, and containing the particulars, that the Licensing Board considers appropriate.
- (3) The Licensing Board may keep separate parts under the register in respect of different types of columbaria.
- (4) The register—
  - (a) must be kept at a place determined by the Licensing Board; and

- (b) must be available for inspection by the general public during normal office hours free of charge.
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## Part 5

### Operation of Columbaria

#### Division 1—Requirements about Agreement for Sale of Interment Rights

##### 46. Interpretation of Part 5

- (1) In this Division—

*purchaser* (買方)—see section 47(1);

*seller* (賣方)—see section 47(1).

- (2) This Division applies to an agreement for the sale of an interment right entered into on or after the enactment date.

##### 47. Certain agreement for sale of interment right unenforceable against purchaser

- (1) This section applies if a person (*seller*) enters into an agreement with another person (*purchaser*) for the sale, to the purchaser, of an interment right in respect of a columbarium, whether or not to the purchaser as dedicated person.

- (2) The agreement is not enforceable against the purchaser if the seller purports to sell under the agreement an interment right that the seller is not entitled to sell—

- (a) where the columbarium premises are held directly from the Government under a lease—by selling an interment right in respect of the premises for a term that extends beyond the term of the lease;
- (b) where the columbarium premises are occupied under a short term tenancy granted by the Government—by selling an interment right in respect of the premises

- otherwise than for payment payable on the same periodic basis as that for the payment of rent for the short term tenancy; or
- (c) where the columbarium premises are occupied under a tenancy by an agreement entered into between private parties for the letting or leasing of the premises—by selling an interment right in respect of the premises for a term that extends beyond the term of the tenancy.
- (3) The agreement is not enforceable against the purchaser unless—
- (a) the seller held a licence in respect of the columbarium at the time when the agreement was entered into and the licence is still in force at the time of enforcing the agreement;
- (b) the agreement is in writing and was signed by both the seller and the purchaser;
- (c) the agreement sets out, in clear language—
- (i) the information and recommendations prescribed in Part 1 of Schedule 4; and
- (ii) the essential terms prescribed in Part 2 of that Schedule;
- (d) the agreement sets out the purchaser's cancellation rights under section 48;
- (e) the agreement includes a term on whether and, if so, on what conditions the purchaser's cancellation rights under section 48 may be exercised after the interment right has been exercised;
- (f) before the purchaser entered into the agreement, the seller has explained to the purchaser the information, recommendations and essential terms as set out in the agreement;

- (g) the seller obtained the purchaser's acknowledgement, in writing, that the explanation referred to in paragraph (f) was given to the purchaser;
- (h) the seller delivered to the purchaser a copy of the agreement as soon as possible after it was signed by all parties, which delivery must be effected—
- (i) by personal delivery to the purchaser;
- (ii) by registered post to the purchaser; or
- (iii) in any other manner if receipt of the copy by the purchaser can be proved; and
- (i) any other requirements specified by the Licensing Board are met.
- (4) A purchaser under an agreement that is not enforceable under subsection (2) or (3) may bring an action in a court to recover any amounts paid under the agreement together with costs if—
- (a) the purchaser has given a notice of cancellation under section 48(1) or (2); and
- (b) the amount has not been refunded to the purchaser under section 48(3).
- (5) Subsection (4) does not affect, limit or diminish any rights of a purchaser to claim under an agreement for the sale of an interment right under the common law rules or equitable principles or any other Ordinance.

#### **48. Cancellation of unenforceable agreement**

- (1) A purchaser under an agreement that is not enforceable under section 47(2) or (3)(a), (b) or (c) may cancel the agreement at any time after it is entered into by giving the seller a written notice of cancellation.

- (2) A purchaser under an agreement that is not enforceable under section 47(3)(d), (e), (f), (g), (h) or (i) may cancel the agreement within 6 months after the date of the agreement by giving the seller a written notice of cancellation.
- (3) A seller who receives a notice of cancellation under subsection (1) or (2) must, within 30 days after the date of receiving the notice, refund to the purchaser all money received under the agreement.
- (4) If the interment right has been exercised, subsections (1), (2) and (3) apply subject to the term of the agreement referred to in section 47(3)(e).
- (5) This section applies in the case of a transfer approved under section 38 as if a reference to seller in subsections (1), (2) and (3) were a reference to the transferee within the meaning of section 38(2).

#### 49. Record keeping

- (1) A person holding a licence in respect of a columbarium must keep copies of all agreements for the sale of interment rights in respect of the columbarium (including agreements avoided or cancelled) until the expiry of 6 years beginning on the date the agreement is fully performed or is avoided or cancelled.
- (2) A person holding a licence in respect of a columbarium—
  - (a) must keep a register of agreements for the sale of interment rights in respect of the columbarium; and
  - (b) must enter the specified particulars of each of the agreements into the register within the specified period.
- (3) A person holding a licence in respect of a columbarium must make the copies of agreements kept under subsection (1), and the register kept under subsection (2), in respect of the

- columbarium available for inspection, on request, by the Director or an authorized officer.
- (4) A person holding a specified instrument in respect of a columbarium must keep a record—
  - (a) on interment and disinterment of ashes in and from the columbarium; and
  - (b) of the contact details of—
    - (i) authorized representatives; and
    - (ii) purchasers of the interment rights,
 in respect of ashes interred in the columbarium.
- (5) A person holding a specified instrument in respect of a columbarium must make the record kept under subsection (4) in respect of the columbarium available for inspection, on request, by the Director or an authorized officer.
- (6) A person who contravenes subsection (1), (2), (3), (4) or (5) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (7) In subsection (2)(b)—
 

*specified* (指明) means specified by the Licensing Board.

### Division 2—Duties to Exhibit Specified Instruments and Notices, not to Deviate from Approved Plans, etc.

#### 50. Specified instruments and notices to be exhibited

- (1) A person who holds a specified instrument in respect of a columbarium must exhibit it at a conspicuous place in the columbarium.
- (2) A person who holds an exemption or temporary suspension of liability in respect of a pre-cut-off columbarium must exhibit at a conspicuous place in the columbarium a notice to the

effect that any sale of an interment right in respect of the columbarium is an offence under section 11.

- (3) A person must not—
  - (a) alter, deface or make any erasure on a specified instrument; or
  - (b) use, or have in the person's possession with a view to using, a specified instrument on which an erasure has been made or which has been wilfully altered or defaced in any way.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

**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.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) An application for permission for the purposes of subsection (1) must be accompanied by plans that comply with the requirements in section 24 and, where appropriate, section 26(2).
- (4) On determining an application for permission for the purposes of subsection (1), the 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.

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

- (1) The holder of a licence in respect of a columbarium must ensure that the number of sets of ashes kept in niches, and the number of those kept otherwise than in niches, are limited to the respective maximum numbers shown in the approved plans.
- (2) Subject to 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, as shown in the approved plans.
- (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) 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 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.
- (2) The holder of an exemption in respect of a pre-cut-off columbarium must—

- (a) update the endorsed register as soon as practicable after effecting the changes of a dedicated person;
  - (b) notify the Director of the change, in writing, within 10 working days after the date on which the change is effected; and
  - (c) make the updated register available for inspection, on request, by the Director or an authorized officer.
- (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.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

**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 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.



- (2) The Secretary for Home Affairs must, by notice published in the Gazette, specify for the purposes of subsection (1)—
  - (a) the columbaria of Chinese temples to which that subsection applies;
  - (b) the religious ash pagodas in each of those columbaria in which ashes may be interred under that subsection;
  - (c) the number of sets of ashes that may be interred under that subsection;
  - (d) the location of those religious ash pagodas (as shown in the approved plans) in which ashes may be interred under that subsection; and
  - (e) the location and serial numbering of the niches (according to the ash interment layout as shown in the approved plans) in which ashes may be interred under that subsection.
- (3) The number of sets of ashes specified under subsection (2) in respect of a pre-cut-off columbarium must not exceed 1 000.
- (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 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).
- (5) No fees, charges or other sums may be payable for interment of ashes under subsection (1).
- (6) Without limiting sections 31, 32 and 33, a pre-cut-off columbarium must comply with any requirement or condition that the Secretary for Home Affairs may impose for the purpose of determining whether the columbarium is, or continues to be, eligible or not to be specified under subsection (2).

- (7) If a pre-cut-off columbarium has failed to comply with any requirement or condition imposed under subsection (6) or the Secretary for Home Affairs is satisfied that a pre-cut-off columbarium is no longer eligible to be specified under subsection (2), he or she—
  - (a) may decide that the columbarium is to cease to be specified under subsection (2); and
  - (b) must notify his or her decision in the Gazette.
- (8) A notice published in the Gazette under subsection (2) or (7) is not subsidiary legislation.
- (9) The holder of an exemption in respect of a pre-cut-off columbarium that is a columbarium of a Chinese temple specified under subsection (2) must—
  - (a) keep a register of all the religious practitioners of that temple, whose ashes are interred in the religious ash pagoda, in compliance with any requirement or condition imposed under subsection (6); and
  - (b) make the register available for inspection, on request, by the Secretary for Home Affairs.
- (10) For the purposes of this section, the Secretary for Home Affairs or a public officer authorized by him or her in writing has power to do all or any of the following things—
  - (a) to enter and inspect at all reasonable times a columbarium of a Chinese temple specified under subsection (2);
  - (b) to require the holder of the exemption—
    - (i) to produce a book, document or any other article; or
    - (ii) to furnish any information,

- in that holder's possession that relates to any matter referred to in subsection (4), (6) or (9);
- (c) to conduct any examination and inquiry that may be necessary for ascertaining whether subsection (4), (6) or (9) is being, or has been, complied with.
- (11) A person commits an offence if the person—
- (a) wilfully obstructs the exercise of a power under subsection (10); 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).
- (12) A person who commits an offence under subsection (11) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (13) A person who contravenes subsection (4) or (9) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (14) In this section—

**Chinese temple** (華人廟宇) has the meaning given by section 2 of the Chinese Temples Ordinance (Cap. 153);

**religious ash pagoda** (宗教骨灰塔), in relation to a pre-cut-off columbarium that is a columbarium of a Chinese temple, means any part of that columbarium (whether a structure or otherwise) that is used for the interment of the ashes of the religious practitioners of that temple;

**religious practitioners** (修行者), in relation to a Chinese temple, includes the Buddhist monks and nuns and Taoist priests and priestesses (as the case requires) residing and serving in that temple immediately before death (but excludes their family

members and any other persons related to that temple, whether as followers, donors or otherwise of that temple).

#### 56. Duty to maintain columbarium

- (1) A person holding a specified instrument in respect of a columbarium must keep the columbarium clean and in good repair.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

**Part 6****Enforcement****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 management plan approved for the purposes of section 17(2) in respect of a columbarium.
- (2) The things referred to in subsection (1) are—
  - (a) to enter and inspect at all reasonable times a columbarium in respect of which a specified instrument is in force;
  - (b) to require a person taking part in the operation or management of the columbarium—
    - (i) to produce a book, document or any other article in the person's possession that relates to the operation or management of the columbarium or to any other activity in respect of the columbarium; or
    - (ii) to furnish any information in the person's possession that relates to the operation, management or activity;
  - (c) to inspect, examine and copy any such book, document or article;
  - (d) to conduct any examination and inquiry that the Director or authorized officer considers necessary;

- (e) to exercise any other powers that may be necessary for giving effect to the provisions of this Ordinance.
- (3) A person holding a specified instrument and the employees, servants or agents of the person must provide the assistance and information required by the Director or an authorized officer for exercising the powers under this section.

**58. Power to enter and search, etc.**

- (1) If satisfied by information on oath that there are reasonable grounds for suspecting that there is in any premises any thing which is or contains, or which is likely to be or to contain, evidence of an offence under this Ordinance, a magistrate may issue a search warrant in respect of the premises.
- (2) The search warrant may authorize the Director or an authorized officer to—
  - (a) break into and forcibly enter the premises and search the premises;
  - (b) seize, remove or impound any thing which appears to the Director or authorized officer to be or to contain, or to be likely to be or to contain, evidence of an offence under this Ordinance;
  - (c) remove by force a person or thing obstructing the Director or authorized officer in the exercise of a power conferred on the Director or authorized officer by this section; and
  - (d) detain a person found on the premises until the premises have been searched.
- (3) The Director or an authorized officer may exercise any of the powers referred to in subsection (2) in respect of any premises without a search warrant issued under subsection (1) if—

- (a) there are reasonable grounds for suspecting that there is in the premises any thing which is or contains, or which is likely to be or to contain, evidence of an offence under this Ordinance; and
  - (b) the delay necessary to obtain a search warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a search warrant.
- (4) If the Director or an authorized officer seizes, removes or impounds any thing under subsection (2)(b) (or by the exercise under subsection (3) of the powers referred to in subsection (2)(b)), the Director or authorized officer must post at a conspicuous place outside the premises a notice declaring the seizure, removal or impoundment.

**59. Power of arrest**

- (1) If the Director or an authorized officer reasonably suspects that a person has committed or is committing an offence under this Ordinance, the Director or authorized officer may arrest the person without a warrant.
- (2) The Director or an authorized officer may use all reasonable means necessary to make the arrest if the person—
  - (a) forcibly resists the attempt of the Director or authorized officer to arrest the person; or
  - (b) attempts to evade the arrest.
- (3) If the Director or an authorized officer arrests a person under this section, the Director or authorized officer must immediately take the person to the nearest police station or hand the person over to the custody of a police officer, to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

**60. Offence of obstruction of entry, inspection, arrest, etc.**

- (1) A person commits an offence if the person—
  - (a) wilfully obstructs the exercise of a power under section 57(2)(a), (c) or (d), 58 or 59; or
  - (b) without reasonable excuse, fails to produce a book, document or article required to be produced under section 57(2)(b) or furnish information required to be furnished under that section.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

**61. Disposal of thing seized, removed or impounded**

- (1) If any thing seized, removed or impounded under section 58(2)(b) (or by the exercise under section 58(3) of the powers referred to in section 58(2)(b)) is required, or likely to be required, for production in evidence in any proceedings under this Ordinance, the Director may retain the thing until the proceedings are abandoned or determined.
- (2) The Director must, after the proceedings are abandoned or determined—
  - (a) return the thing as ordered by the court; or
  - (b) if no court order is made—give a notice in writing to the owner of the thing, stating that—
    - (i) the owner may collect the thing from the Director within 60 days after the date of the notice; and
    - (ii) unless the owner collects the thing within 60 days after the date of the notice, it—
      - (A) is to become the property of the Government, free from all liens, claims or encumbrances; and

- (B) may be sold or otherwise disposed of in a manner that the Director thinks fit.
- (3) If the owner of the thing has not collected the thing within the 60 days stated in the notice, the thing—
- (a) is to become the property of the Government, free from all liens, claims or encumbrances; and
  - (b) may be sold or otherwise disposed of in a manner that the Director thinks fit.

**62. Enforcement notice**

- (1) The Director may, by notice (*enforcement notice*) served on the holder of a specified instrument in respect of a columbarium (*recipient*), require the recipient to do one or more of the following—
- (a) to end a contravention of a condition to which the instrument is subject;
  - (b) to remedy the consequences of such a contravention;
  - (c) to prevent the recurrence of such a contravention.
- (2) The enforcement notice must state—
- (a) the particulars of the contravention concerned and (if applicable) the time within which the contravention must end;
  - (b) if applicable—the action that the recipient must take to remedy the consequences of the contravention and the time within which the action must be taken;
  - (c) if applicable—the action that the recipient must take to prevent the recurrence of the contravention and the time within which the action must be taken;
  - (d) that a failure, without reasonable excuse, to comply with the notice is an offence; and

- (e) if paragraph (b) or (c) applies—
- (i) that, if the recipient fails to take the action referred to in that paragraph within the stated time, the Director may arrange for any action that the Director considers necessary or desirable to be taken to remedy the consequences of the contravention or to prevent the recurrence of the contravention; and
  - (ii) that the recipient will be liable for the expenses of taking the action.
- (3) The recipient of an enforcement notice who, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 3.
- (4) If the recipient of an enforcement notice fails to take the action stated in the notice within the stated time for remedying the consequences of a contravention stated in the notice or for preventing the recurrence of such a contravention, the Director may arrange for any action that the Director considers necessary or desirable to be taken to remedy the consequences of the contravention or to prevent the recurrence of the contravention.
- (5) The expenses of any action taken under subsection (4) are recoverable as a civil debt from the recipient of the enforcement notice.
- (6) An appeal under section 82 against a decision to serve an enforcement notice does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise.

## Part 7

### Ash Disposal and Cessation of Columbaria

#### 63. Interpretation of Part 7

In this Part, a reference to carrying out the prescribed ash disposal procedures is to be construed in accordance with section 7 of Schedule 5.

#### 64. Application of Part 7

This Part applies to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date, whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that day.

#### 65. General principles

A person disposing of ashes interred in a columbarium must do so having regard to the respect for, and the dignity of, the deceased persons concerned.

#### 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 person holds a specified instrument in respect of the columbarium and—

- (i) the ashes are disposed of not because of cessation of operation of the columbarium;
- (ii) 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
- (iii) the following particulars of disposal are entered into the record on interment and disinterment of ashes kept under section 49(4)—
  - (A) the name of the dedicated person;
  - (B) if the ashes are interred in a niche—
    - (I) the location and serial numbering of the niche;
    - (II) photos showing the exterior and interior of the niche before disposal; and
    - (III) the number of containers of ashes, and any related items interred together with the ashes, in the same niche;
  - (C) the name, the Hong Kong identity card number (if applicable) and the contact details of the person who has collected the ashes and the related items (if any) interred together with the ashes in the same niche (if applicable);
  - (D) the date of return of the ashes and the related items (if any) to the person referred to in sub-subparagraph (C); and
  - (E) any—
    - (I) breach of the agreement for the sale of the interment right on the part of the

purchaser or authorized representative;  
or

(II) 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 person who operates, keeps, manages or in any other way has control of the columbarium 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.

(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.

(5) If an application referred to in paragraph (b) of the definition of *grace period* in subsection (4) is refused, it is finally disposed of at the later of the following—

- (a) at the time the period within which an appeal may be lodged under section 82 against the refusal expires without an appeal having been lodged;
- (b) if an appeal has been lodged within time—at the time the appeal is determined or withdrawn.

(6) The Secretary may, by notice published in the Gazette, amend subsection (4) by substituting another period for any period specified in that subsection.

#### 67. **Abandonment of columbarium operated without specified instrument issued**

- (1) A person who has operated, kept, managed or in any other way had control of a columbarium, in respect of which no specified instrument has been issued, must not abandon the columbarium.
- (2) If the Director or an authorized officer suspects that a columbarium in respect of which no specified instrument is issued is not in operation, the Director or authorized officer may give a notice about the suspected abandonment (*notice about suspected abandonment*).
- (3) For the purposes of subsection (2), the notice about suspected abandonment must be—
  - (a) published in the Gazette once in each of 2 consecutive months; and
  - (b) posted at a conspicuous place outside the columbarium.
- (4) The notice about suspected abandonment must warn any person who has operated, kept, managed or in any other way had control of the columbarium that, unless within 2 months after the date of the notice, a person gives a specified response—
  - (a) a person who has operated, kept, managed or in any other way had control of the columbarium is liable to be prosecuted for an offence under section 72; and
  - (b) a specified officer may apply for an occupation order under section 74 to enable the officer to carry out the

steps that the officer considers necessary for disposal of ashes in respect of the columbarium.

- (5) A person referred to in subsection (1) abandons the columbarium if—
  - (a) the notice about suspected abandonment has been given; but
  - (b) the person fails to give a specified response within 2 months after the date of the notice about suspected abandonment.
- (6) A person who, without lawful authority or reasonable excuse, removes or defaces the notice about suspected abandonment posted under subsection (3)(b) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (7) In this section—  
*specified response* (指明回應) has the meaning given by section 69.

#### 68. Abandonment of columbarium if specified instrument issued

- (1) A person (*instrument holder*) whose specified instrument in respect of a columbarium is in force, has expired without being renewed or extended, or is revoked, must not abandon the columbarium.
- (2) If the Director or an authorized officer suspects that a columbarium in respect of which a specified instrument is in force, has expired without being renewed or extended, or is revoked, is not in operation, the Director or authorized officer may give a notice about the suspected abandonment (*notice about suspected abandonment*).
- (3) For the purposes of subsection (2), the notice about suspected abandonment must be given to the instrument holder.

- (4) The notice about suspected abandonment must warn that, unless within 2 months after the date of the notice, the instrument holder gives a specified response—
  - (a) the instrument holder is liable to be prosecuted for an offence under section 72; and
  - (b) a specified officer may apply for an occupation order under section 74 to enable the officer to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium.
- (5) If the instrument holder fails to give a specified response within 1 month after the date of the notice about suspected abandonment, the Director or an authorized officer may give a reminder notice.
- (6) The reminder notice must warn again that, unless within 2 months after the date of the notice about suspected abandonment, the instrument holder gives a specified response—
  - (a) the instrument holder is liable to be prosecuted for an offence under section 72; and
  - (b) a specified officer may apply for an occupation order under section 74 to enable the officer to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium.
- (7) The reminder notice under subsection (5) must be—
  - (a) given to the instrument holder;
  - (b) published in the Gazette; and
  - (c) posted at a conspicuous place outside the columbarium.
- (8) An instrument holder abandons the columbarium if—
  - (a) the notice about suspected abandonment has been given; but



- (b) the instrument holder fails to give a specified response within 2 months after the date of the notice about suspected abandonment.
- (9) A person who, without lawful authority or reasonable excuse, removes or defaces the reminder notice posted under subsection (7)(c) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (10) In this section—  
*specified response* (指明回應) has the meaning given by section 69.

**69. Meaning of specified response**

A person gives a specified response for the purposes of section 67 or 68 if—

- (a) if the person has been issued with a specified instrument in respect of the columbarium but it has expired without having been renewed or extended—the person applies for the renewal or extension of the instrument;
- (b) if the person's specified instrument is in force in respect of the columbarium—the person informs the Director or authorized officer, in writing, that the person continues to operate the columbarium; or
- (c) the person gives to the Director or authorized officer a written undertaking to carry out the prescribed ash disposal procedures in respect of the columbarium, specifying the particulars that the Director or authorized officer requires.

**70. Columbarium to continue operation if specified response given**  
If—

- (a) a notice about suspected abandonment has been given under section 68 in respect of a columbarium; and
- (b) a person whose specified instrument in respect of the columbarium is in force has given a specified response within the meaning of section 69(b),  
the person must continue to operate the columbarium.

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

- (1) If—
  - (a) the Director's 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.
- (2) A person referred to in subsection (1)(b) fails to comply with the undertaking referred to in that subsection if the person—
  - (a) fails to give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after the date on which the undertaking is given; or
  - (b) fails to take a step specified in a commencement of ash disposal notice at the time specified in that notice for taking that step and in accordance with Part 2 of that Schedule.

**72. Offence for contravention of section 66, 67(1), 68(1), 70 or 71**

A person who contravenes section 66, 67(1), 68(1), 70 or 71 commits an offence and is liable—

- (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; and
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

**73. Obligations of owner, mortgagee, etc. taking possession of columbarium premises**

- (1) A person (*person in possession*) who, whether or not as owner or mortgagee or based on any other interest in any premises that are a columbarium (but excluding the Government), takes possession of those premises does not commit an offence under section 11 merely by taking possession if the person notifies the Director, in writing, of that fact within 7 days after the date of taking possession.
- (2) The person in possession must carry out the prescribed ash disposal procedures as soon as reasonably practicable after taking possession of the premises.
- (3) A person in possession is regarded as having contravened subsection (2) if—
  - (a) the person is an owner or mortgagee who acquired an interest in the premises subject to the obligation to carry out the prescribed ash disposal procedures; and
  - (b) the person fails to—
    - (i) give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after the date of the notification under subsection (1); or
    - (ii) take a step specified in the commencement of ash disposal notice—
      - (A) at the time specified in that notice for taking that step; and

- (B) in accordance with Part 2 of that Schedule.
- (4) Despite subsection (2), a person in possession who is not a person referred to in subsection (3)(a) may—
  - (a) invite, in writing, the Director to carry out the steps that the Director considers necessary for disposal of ashes in respect of the columbarium on-site; and
  - (b) allow a specified officer to enter the columbarium premises for the purposes of carrying out those steps, for at least 12 months.
- (5) A person in possession who is not a person referred to in subsection (3)(a) is regarded as having contravened subsection (2) if the person—
  - (a) fails to—
    - (i) give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after the date of the notification under subsection (1); or
    - (ii) take a step specified in the commencement of ash disposal notice—
      - (A) at the time specified in that notice for taking that step; and
      - (B) in accordance with Part 2 of that Schedule; and
  - (b) fails to act in accordance with subsection (4).
- (6) If a person in possession who is a person referred to in subsection (3)(a) contravenes subsection (2), that person commits an offence and is liable on conviction to a fine of \$500,000.
- (7) If a person in possession who is not a person referred to in subsection (3)(a) contravenes subsection (2), that person

commits an offence and is liable on conviction to a fine of \$250,000.

- (8) Despite subsection (2), if an application for transfer under section 38 is received by the Licensing Board, a person in possession is not required, with the written permission of the Director, to—
  - (a) act in accordance with that subsection; or
  - (b) so act until after the period specified by the Director.
- (9) For the purposes of subsection (3)(a), a person in possession acquired an interest in the premises subject to the obligation to carry out the prescribed ash disposal procedures if—
  - (a) at the time of acquisition—
    - (i) a certificate of columbarium use was registered under section 44 against the premises; and
    - (ii) no certificate was registered under section 78 against the premises; or
  - (b) the person in possession is a successor or assign of another person who acquired the interest in the premises in circumstances specified in paragraph (a).
- (10) For the purposes of subsection (9)(a), the time of acquisition of an interest in the premises is—
  - (a) if the person in possession is an owner—the time of acquiring the ownership of the premises by the person; or
  - (b) if the person in possession is a mortgagee—the time of executing the mortgage deed by the person.
- (11) A person in possession may request a person who has operated, kept, managed or in any other way had control of the columbarium to produce any information (including any book, document, article, thing, record and register) that the

person in possession reasonably considers necessary to facilitate the carrying out of the prescribed ash disposal procedures by the person in possession, and that person is required to produce the information to the person in possession.

- (12) This section does not affect a right that the person in possession may have, as owner or mortgagee or based on any other interest in the premises, to claim compensation against another person for—
  - (a) that other person's failure to deliver vacant possession in accordance with the terms of the instrument—
    - (i) entered into by the person in possession in the capacity as owner or mortgagee in respect of the premises with that other person; or
    - (ii) by virtue of which the interest of the person in possession in the premises arises; or
  - (b) that other person's other violation of the interest of the person in possession.

**74. Power to carry out steps necessary for disposal of ashes; occupation order**

- (1) A specified officer may carry out any steps that the officer considers necessary for disposal of ashes in respect of a columbarium if the prescribed ash disposal procedures have, or any step in them has, not been carried out in respect of the columbarium.
- (2) Without limiting subsection (1), a magistrate may, on an application by a specified officer and on being satisfied that section 66, 67(1), 68(1), 70, 71 or 73(2) has been contravened in respect of a columbarium, make an order (*occupation order*) empowering the specified officer—

- (a) to enter the columbarium premises;
  - (b) to occupy the columbarium premises, or any part of them, for a period specified in the order; and
  - (c) to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium.
- (3) An occupation order may be made, whether or not a person—
- (a) is identified as having contravened section 66, 67(1), 68(1), 70, 71 or 73(2); or
  - (b) is prosecuted for an offence under section 72 or 73(6) or (7).
- (4) This section does not affect any person's liability for failing to carry out the prescribed ash disposal procedures as required by section 66(2)(b), 71 or 73(2).
- (5) If a specified officer reasonably believes that a person has any information that the officer considers necessary to facilitate disposal of ashes by the officer under this Ordinance—
- (a) the officer may request that person to produce the information to him or her; and
  - (b) that person is required to produce the information to the officer.
- (6) A specified officer may, for the purpose of disposal of ashes under this Ordinance, consider and use any information—
- (a) produced under subsection (5);
  - (b) obtained during an inspection or search under this Ordinance; or
  - (c) obtained by the exercise of the powers under an occupation order.
- (7) In subsections (5) and (6)—

*information* (資料) includes any book, document, article, thing, record and register.

- (8) Part 1 of Schedule 5 (which provides for the making of an occupation order and the effect of such an order) has effect.

#### 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 of Schedule 5.

- (2) In this section—

*court* (法院) means the District Court.

#### 76. Further provisions on ash disposal procedures

Part 2 of Schedule 5 (which contains further provisions on ash disposal procedures and the recovery of expenses incurred in connection with the procedures) has effect.

#### 77. Discharge of obligations in respect of disposal of ashes

- (1) Subject to section 79, a person to whom an ash disposal requirement applies in respect of a columbarium is discharged from all obligations in respect of the disposal of ashes interred in the columbarium if the person complies with the requirement.

- (2) In subsection (1)—

*ash disposal requirement* (骨灰處置規定) means the requirement under section 66(2)(b), 71 or 73(2) to carry out the prescribed ash disposal procedures.

#### 78. Certificate of cessation of columbarium use

- (1) The Licensing Board may, on application and if satisfied that—

- (a) the prescribed ash disposal procedures have been carried out in respect of a columbarium against the premises of which a certificate of columbarium use is registered under section 44; or
  - (b) the steps that a specified officer considers necessary for disposal of ashes in respect of such a columbarium under this Ordinance have been carried out by the officer,  
issue a certificate that the premises cease to be a columbarium.
- (2) An application for the purposes of subsection (1) must be made by—
- (a) the owner of the premises;
  - (b) the holder of a specified instrument in respect of the premises;
  - (c) the person in possession within the meaning of section 73; or
  - (d) a specified officer.
- (3) A person to whom a certificate is issued under subsection (1) in respect of any premises may register the certificate against the premises in the Land Registry.
- (4) On determining an application for the purposes of subsection (1), the 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.

**79. Contractual obligations not affected**

Neither this Part nor Schedule 5 affects any claim for compensation arising out of an agreement for the sale of an interment right in respect of a columbarium for a breach of the seller's obligation in connection with the handling of ashes.

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**Part 8****Appeal****80. Interpretation of Part 8**

In this Part—

*appeal* (上訴) means an appeal under section 82;

*appellant* (上訴人) means a person lodging an appeal;

*Chairperson* (主席) means the Chairperson of the Appeal Board appointed under section 81(3);

*Deputy Chairperson* (副主席) means a Deputy Chairperson of the Appeal Board appointed under section 81(3);

*legally qualified* (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);

*panel member* (委員團成員) means a member of the panel of persons appointed under section 81(2);

*party* (方)—

(a) in relation to an appeal against a decision of the Licensing Board—means the appellant or the Licensing Board;

(b) in relation to an appeal against a decision of the Director—means the appellant or the Director;

*presiding officer* (審裁官), in relation to an appeal, means the presiding officer referred to in section 83(1)(a).

**81. Establishment of Appeal Board**

- (1) A body is established with the name “Private Columbaria Appeal Board” in English and “私營骨灰安置所上訴委員會” in Chinese.
- (2) The Chief Executive may appoint a panel of persons each of whom—
  - (a) is neither a member of the Licensing Board nor a public officer; and
  - (b) is considered by the Chief Executive to be suitable to serve on an Appeal Board to hear an appeal.
- (3) The Chief Executive may—
  - (a) appoint a panel member who is legally qualified to be the Chairperson of the Appeal Board; and
  - (b) appoint other panel members who are legally qualified to be Deputy Chairpersons of the Appeal Board.
- (4) A panel member—
  - (a) is to hold and vacate office in accordance with the panel member’s terms of appointment; and
  - (b) on ceasing to be a panel member, is eligible for reappointment.
- (5) An appointment under this section must be notified in the Gazette.
- (6) The Secretary may appoint a public officer to be the secretary to the Appeal Board.
- (7) The Secretary may appoint a legal adviser to advise the Appeal Board on legal matters relating to an appeal.

**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—
  - (a) a refusal under section 17 (whether or not as modified under section 18) or section 19 or 20 of an application for the issue of a specified instrument;
  - (b) a refusal under section 39(1)(c)—
    - (i) to renew a licence or exemption; or
    - (ii) to extend a temporary suspension of liability;
  - (c) a refusal under section 38(4) of an application for—
    - (i) the transfer of a licence or exemption; or
    - (ii) the transfer of a temporary suspension of liability together with one or both of the following—
      - (A) the related application for the issue of a licence;
      - (B) the related application for the issue of an exemption;
  - (d) a decision under section 39(1)(a)(i) or (b) to revoke or suspend a specified instrument;
  - (e) a decision under section 39(1)(a)(ii) to revoke or suspend an authorization under a licence;
  - (f) a refusal of an application for permission for the purposes of section 51(1);
  - (g) a decision under section 38(5) or 39(1)(d)—
    - (i) to vary the conditions to which a specified instrument is subject; or
    - (ii) to impose new conditions;

- (h) a refusal of an application made under section 40 to vary the conditions to which a specified instrument is subject;
  - (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;
  - (j) a decision under section 62 to serve an enforcement notice;
  - (k) a refusal of an application for the issue of a certificate under section 78;
  - (l) a refusal of an application made under section 16(2) of Schedule 5 for the approval of an ash disposal plan.
- (2) A person who wishes to appeal under subsection (1) must lodge a notice of appeal, 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.
- (3) The notice of appeal must—
  - (a) set out the grounds of the appeal and the facts on which the appeal relies;
  - (b) be accompanied by a copy of every document that the appellant intends to rely on; and
  - (c) include particulars of every witness whom the appellant intends to call at the hearing.
- (4) The secretary to the Appeal Board must, as soon as practicable, give a copy of the notice of appeal—
  - (a) if subsection (1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (k) applies—to the Licensing Board; or
  - (b) if subsection (1)(j) or (l) applies—to the Director.

**83. Composition of Appeal Board for purposes of appeal**

- (1) For the purposes of an appeal, the Appeal Board consists of—
  - (a) a presiding officer, who is to preside at the hearing of the appeal; and
  - (b) 4 panel members selected by the presiding officer.
- (2) Subject to subsections (3), (4) and (5), the Chairperson or a Deputy Chairperson may act as presiding officer.
- (3) The Chairperson must not act as presiding officer if the Chairperson has a direct or indirect interest in the appeal.
- (4) A Deputy Chairperson must not act as presiding officer if the Deputy Chairperson has a direct or indirect interest in the appeal.
- (5) If the Chairperson and each Deputy Chairperson have a direct or indirect interest in an appeal, the Secretary may select a panel member who is legally qualified, and who does not have a direct or indirect interest in the appeal, to act as presiding officer.
- (6) The presiding officer must not select a panel member to hear an appeal if the panel member has a direct or indirect interest in the appeal.
- (7) If the term of appointment of the Chairperson or a Deputy Chairperson, or a panel member selected under subsection (5), who is the presiding officer at an appeal or a panel member selected under subsection (1)(b) for the purposes of an appeal expires during the hearing of the appeal, the Chairperson, Deputy Chairperson or panel member may continue to hear the appeal until the appeal is determined.

**84. Hearing and determination of appeals**

- (1) The presiding officer and 4 other panel members constituting the Appeal Board for hearing an appeal are to be present to hear and determine the appeal.
- (2) However, if after the commencement of the hearing of an appeal, one or more panel members (other than the presiding officer) are unable to continue hearing the appeal, the remaining panel members (so long as their number, including the presiding officer, is not less than 3) may, with the consent of the parties, continue to hear and determine the appeal.
- (3) Each party to an appeal may—
  - (a) appear and be present at the hearing of the appeal; and
  - (b) make representations during the hearing or be represented by another person, authorized by the party, in writing, during the hearing.
- (4) If a party to an appeal fails to appear on a date set for the hearing of an appeal without showing reasonable cause for the failure, an Appeal Board may—
  - (a) proceed to hear any other party entitled to appear; and
  - (b) make its decision without hearing the absent party.
- (5) A legal adviser may be present at any hearing before the Appeal Board or deliberations of the Appeal Board to advise the Appeal Board on legal matters.
- (6) When the legal adviser advises the Appeal Board on legal matters relating to an appeal, the legal adviser must do so in the presence of every party to the appeal (or the party's representative).
- (7) However, if the advice is tendered after the Appeal Board has commenced to deliberate on its findings, every such party or



representative must be informed afterwards of the advice that the legal adviser has tendered.

- (8) In any case where the Appeal Board does not accept the advice of the legal adviser on a legal matter relating to an appeal, every party to the appeal (or the party's representative) must be informed of this fact.
- (9) Except for a question of law—
  - (a) every question before the Appeal Board is to be determined by a majority of the members hearing the appeal; and
  - (b) if there is an equality of votes in respect of a question to be determined in an appeal, the presiding officer of the Appeal Board hearing the appeal is to have a casting vote in addition to the presiding officer's original vote.
- (10) A question of law to be determined in an appeal is to be determined by the presiding officer of the Appeal Board hearing the appeal.
- (11) In determining an appeal, an Appeal Board may—
  - (a) confirm, reverse or vary the decision appealed against;
  - (b) substitute its own decision for the decision appealed against; or
  - (c) make any other order that it thinks fit.
- (12) The decision of an Appeal Board on any appeal is final.
- (13) The Appeal Board must notify the parties to an appeal in writing of—
  - (a) the Appeal Board's decision;
  - (b) the reasons for the decision; and
  - (c) the date on which the decision is to take effect.

- (14) The secretary to the Appeal Board is to serve a copy of the written notification under subsection (13) on the parties to the appeal.

## **85. Powers of Appeal Board**

- (1) Subject to sections 86 and 90, in the hearing of an appeal, the Appeal Board may—
  - (a) subject to subsection (2), receive and consider any material—
    - (i) whether by way of oral evidence, written statements, documents or otherwise; and
    - (ii) whether or not it would be admissible in a court;
  - (b) by notice in writing, summon a person—
    - (i) to produce to the Appeal Board any document (including material and information referred to in section 92) that is relevant to the appeal and is in or under the custody or control of the person; or
    - (ii) to appear before the Appeal Board and to give evidence relevant to the appeal;
  - (c) administer oaths and affirmations;
  - (d) require evidence to be given on oath or affirmation; or
  - (e) make an order prohibiting a person from publishing or otherwise disclosing any material the Appeal Board receives.
- (2) Subsection (1)(a) does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made.
- (3) Any notice or order of an Appeal Board hearing an appeal is to be issued by the presiding officer of the Appeal Board.

**86. Privileges against disclosure**

In relation to an appeal, the appellant, the Licensing Board, the Director and any other person summoned under section 85(1)(b) are each to have the same privileges in respect of the disclosure of any material as if the proceedings before the Appeal Board were proceedings before a court.

**87. Case may be stated for Court of Appeal**

- (1) The Appeal Board may, before determining an appeal, refer a question of law arising in the appeal to the Court of Appeal for determination by way of case stated.
- (2) On hearing the case, the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment in a manner that the Court of Appeal orders.
- (3) The Appeal Board is to comply with the order.

**88. Offences relating to appeals**

- (1) In relation to an appeal, a person commits an offence if the person—
  - (a) without reasonable excuse, refuses or fails—
    - (i) to attend and give evidence when required to do so by the Appeal Board;
    - (ii) to answer truthfully and completely questions put to the person by the Appeal Board;
    - (iii) to produce a document that the person is required by the Appeal Board to produce; or
    - (iv) to comply with any other lawful order, requirement or direction made or given by the Appeal Board or the presiding officer of the Appeal Board; or
  - (b) disturbs or otherwise interferes with the proceedings of the Appeal Board.

- (2) A person commits an offence if the person publishes or otherwise discloses any material in contravention of an order under section 85(1)(e).
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5.
- (4) It is a defence to a charge for an offence under subsection (2) for the person charged to prove that the person did not know, and had no reason for knowing, that the Appeal Board had made an order under section 85(1)(e) prohibiting the publication or other disclosure of the material concerned.
- (5) A person charged with an offence under subsection (2) is to be taken to have established a fact that needs to be established for the purpose of a defence under subsection (4) if—
  - (a) there is sufficient evidence to raise an issue as to that alleged fact; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

**89. Chairperson of Appeal Board may make rules and determine practice or procedure**

- (1) The Chairperson may make rules—
  - (a) to provide for the lodging of appeals; and
  - (b) generally for regulating the practice and procedure of the Appeal Board.
- (2) Rules made under this section are not subsidiary legislation.
- (3) The Chairperson may determine any matter of practice or procedure relating to the hearing of appeals if no provision governing the matter is made in this Ordinance or in rules made under subsection (1).

**90. Privileges and immunities of Appeal Board members and witnesses**

- (1) The Chairperson, a Deputy Chairperson or a panel member performing any functions under this Ordinance is to have the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
  - (2) A witness appearing before the Appeal Board is to have the same privileges and immunities of a witness in civil proceedings in the Court of First Instance.
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**Part 9**

**Miscellaneous**

**91. Delegation and authorization**

- (1) Subject to subsection (2), the Director may, in writing, delegate to a public officer any of his or her functions or powers under this Ordinance.
- (2) The power to delegate conferred by subsection (1) may not be delegated by the Director.
- (3) The Director may appoint in writing a public officer as an authorized officer for the purposes of this Ordinance.
- (4) When exercising a power or performing a function under this Ordinance, an officer delegated under subsection (1) or an authorized officer—
  - (a) may be assisted by such persons as the officer reasonably requires; and
  - (b) must produce the officer's written delegation or appointment for inspection by any person who reasonably requires to see it.

**92. Consultation with other authorities and persons**

- (1) In this section—  
*specified person* (指明人士) means—
  - (a) the Licensing Board; or
  - (b) the Director.
- (2) If a columbarium's compliance with another Ordinance is relevant for the purpose of a specified person's performance of a function under this Ordinance and a person (*other*

*authority*) is conferred with the function to enforce that other Ordinance—

- (a) the specified person may consult the other authority and may, for this purpose, present to the other authority any statement, photographs, records (including plans) and other material prepared, taken, made or obtained under the notification scheme referred to in section 27;
  - (b) the other authority may present information that it has in connection with the enforcement of that other Ordinance to the specified person; and
  - (c) the specified person may, when performing the function under this Ordinance, consider and use the information including producing the information before the Appeal Board hearing an appeal under Part 8.
- (3) A specified person may consult any other authority or any other person if the expertise of the authority or person is necessary for or relevant to the performance of a function under this Ordinance.

### 93. Guidelines

- (1) The Licensing Board may issue guidelines—
  - (a) indicating the manner in which it proposes to perform its functions under this Ordinance; and
  - (b) providing guidance on the operation of any provision of this Ordinance.
- (2) Without limiting subsection (1), the Licensing Board may issue guidelines—
  - (a) indicating the considerations it proposes to take into account in making a decision under this Ordinance; and
  - (b) providing guidance on compliance with a provision of this Ordinance.

- (3) The guidelines are not subsidiary legislation.

### 94. Codes of practice

- (1) For providing practical guidance in respect of this Ordinance or conditions imposed under it, the Licensing Board may issue a code of practice setting out principles, procedures, guidelines, standards or requirements in relation to columbaria.
- (2) A failure on the part of any person to observe a code of practice issued under subsection (1) does not of itself render that person liable to criminal proceedings of any kind. However, in any civil or criminal proceedings (including proceedings for an offence under this Ordinance), evidence about the failure may be relied on as tending to establish or to negative any liability that is in question in those proceedings.
- (3) A code of practice is not subsidiary legislation.

### 95. Management plan

- (1) The Licensing Board may require a management plan, submitted for approval for the purposes of section 17(2) in respect of a columbarium, to cover matters that the Licensing Board specifies.
- (2) Without limiting subsection (1), the Licensing Board may require the management plan to cover in respect of the columbarium concerned—
  - (a) the holding capacity for visitors and admission control;
  - (b) the traffic and public transport arrangement or management;
  - (c) crowd management;
  - (d) security management;

- (e) manpower deployment on peak grave sweeping days or periods and other days or periods;
- (f) a contingency plan in the event of fire or other emergency situations; and
- (g) measures to ensure compliance with guidelines and codes of practice issued under sections 93 and 94.

**96. Qualified professional**

- (1) The Licensing Board may by notice in writing specify, either generally or in a particular case or class of cases, either or both of the following to be a qualified professional for the purposes of giving certification, or doing any other thing, as required by a provision of this Ordinance—
  - (a) an authorized person;
  - (b) a registered structural engineer.
- (2) The notice is not subsidiary legislation.
- (3) In this section—

*authorized person* (認可人士) and *registered structural engineer* (註冊結構工程師) have the meanings given by section 2(1) of the Buildings Ordinance (Cap. 123).

**97. Offence of providing false or misleading information**

- (1) A person commits an offence if the person—
  - (a) provides information that is false or misleading in a material particular in, or in connection with, an application the person makes under this Ordinance in respect of a columbarium; or
  - (b) furnishes the Director, an authorized officer or a public officer with information under this Ordinance knowing that it is false or misleading in a material particular.

- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

**98. Liability of directors, partners, etc. for offences**

- (1) If—
  - (a) a body corporate commits an offence under this Ordinance; and
  - (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate,
 the director, manager, secretary or other similar officer commits the like offence.
- (2) If—
  - (a) a partner in a partnership commits an offence under this Ordinance; and
  - (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other partner in the partnership or any other person concerned in the management of the partnership,
 the other partner or the other person concerned in the management of the partnership commits the like offence.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (4) If—

- (a) a member of an unincorporated body commits an offence under this Ordinance; and
  - (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other member or any manager, secretary or other similar officer of the unincorporated body,
- the other member or the manager, secretary or other similar officer commits the like offence.

**99. Time limit for prosecution**

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence, other than an indictable offence, under this Ordinance within 12 months after the offence is discovered by, or comes to the notice of, the Licensing Board or the Director.

**100. Fees**

- (1) The fee for an item specified in column 2 of Schedule 6 is payable at the time specified in column 3 of that Schedule in the amount specified in column 4 of that Schedule opposite to that item.
- (2) A fee paid under this section is not refundable.

**101. Amendment of Schedules**

- (1) The Licensing Board may, with the approval of the Secretary, by notice published in the Gazette, amend Schedule 3 or 4 or Part 2 of Schedule 5.
- (2) The Secretary may, by notice published in the Gazette, amend Schedule 1, 6 or 7.

**102. Regulations**

- (1) The Secretary may make regulations—
  - (a) providing for any matter required or permitted to be prescribed under this Ordinance; or
  - (b) providing for matters that are necessary or expedient to give effect to the provisions of this Ordinance.
- (2) Without limiting subsection (1), the Secretary may make regulations—
  - (a) providing for principles, procedures, guidelines, standards or requirements about the operation and management of a columbarium, including additional duties required of an applicant for or holder of a specified instrument;
  - (b) restricting any subletting or assignment of the columbarium premises, or any part of them, in a manner that is inconsistent with the operation of a columbarium;
  - (c) requiring that the requirements for enforceability of an agreement for the sale of an interment right under section 47 be met in respect of each agreement for the sale of an interment right in respect of the columbarium;
  - (d) restricting the imposition of any additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of the interment right entered into before the cut-off time;
  - (e) providing for measures relating to building safety, fire safety, other safety matters, drainage and sewage, including requiring certificates or reports, by a qualified professional, to be submitted to the Licensing Board at regular intervals;

- (f) providing for measures for minimizing the environmental nuisance caused to the neighbourhood by the operation of a columbarium; or
- (g) providing for any principles, procedures, guidelines, standards or requirements relevant to any provisions of this Ordinance.
- (3) Regulations made under this Ordinance may—
  - (a) be of general application or make different provisions for different cases or classes of cases; or
  - (b) contain any incidental, consequential, evidential, transitional, saving or supplementary provisions that the Secretary thinks fit.
- (4) Regulations under this section may provide that a contravention of a regulation is an offence and may prescribe penalties for it of a fine not exceeding level 6 and imprisonment not exceeding 2 years.

**103. Licensing Board not servant or agent of Government**

The Licensing Board is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

**104. Immunity from civil liability**

- (1) A person to whom this subsection applies is not civilly liable for an act done or omitted to be done by the person in good faith—
  - (a) in performing or purportedly performing a function of the person under this Ordinance; or
  - (b) in exercising or purportedly exercising a power of the person under this Ordinance.
- (2) Subsection (1) applies to—

- (a) a member of the Licensing Board;
- (b) a member of a committee of the Licensing Board;
- (c) a member of the staff of the Licensing Board; and
- (d) the Director, an authorized officer or any other public officer.
- (3) In relation to a person referred to in subsection (2)(d), an act referred to in subsection (1) includes taking possession of, breaking open, seizing, removing, impounding or disposing of property.
- (4) Subsection (1) does not in any way affect any liability of the Government in respect of an act or omission of a public officer.

**105. Service of documents, etc.**

- (1) A notice, decision or other document required to be given, issued, notified or served on a person (other than the Appeal Board, the Licensing Board or a public officer) under this Ordinance may be given, issued, notified or served—
  - (a) in the case of a natural person—
    - (i) by delivering it by hand to the person;
    - (ii) by sending it by post in a letter—
      - (A) addressed to the person at the person's usual place of residence or business or (if that place is unknown) at the person's last known place of residence or business; or
      - (B) if the person dies—addressed to the person's last known place of residence or business;
  - (iii) by sending it by fax transmission to the fax number of the person or (if that number is unknown) to the last known fax number of the person; or

- (iv) by sending it by electronic mail transmission to the electronic mail address of the person or (if that address is unknown) to the last known electronic mail address of the person;
- (b) in the case of a partner in a partnership—
  - (i) by delivering it by hand to the partner authorized in writing to act for and on behalf of the partnership;
  - (ii) by sending it by post in a letter—
    - (A) addressed to the partner authorized in writing to act for and on behalf of the partnership at that partner's usual place of residence or business or (if that place is unknown) at that partner's last known place of residence or business; or
    - (B) if that partner dies—addressed to that partner's last known place of residence or business, and to the usual places of residence or business of the other partners in the partnership or (if those places are unknown) to the last known places of residence or business of those other partners;
  - (iii) by sending it by fax transmission to the fax number of the partner authorized in writing to act for and on behalf of the partnership or (if that number is unknown) to the last known fax number of that partner; or
  - (iv) by sending it by electronic mail transmission to the electronic mail address of the partner authorized in writing to act for and on behalf of the partnership or (if that address is unknown) to the last known electronic mail address of that partner; or

- (c) in the case of a body corporate—
  - (i) by delivering it by hand to any place in Hong Kong at which the body corporate carries on business and giving it to any person in the place who appears to be concerned in the management of, or employed by, the body corporate;
  - (ii) by sending it by post in a letter addressed to the body corporate at its registered office in Hong Kong or at any place in Hong Kong at which the body corporate carries on business or (if that office or place is unknown) at the body corporate's last known place of business;
  - (iii) by sending it by fax transmission to the fax number of the body corporate or (if that number is unknown) to the last known fax number of the body corporate; or
  - (iv) by sending it by electronic mail transmission to the electronic mail address of the body corporate or (if that address is unknown) to the last known electronic mail address of the body corporate.
- (2) A notice, decision or other document given, issued, notified or served in accordance with subsection (1) is to be taken, in the absence of evidence to the contrary, to have been given, issued, notified or served—
  - (a) if delivered by hand—on the day after the day on which it was so delivered;
  - (b) if sent by post—on the second working day after the day on which it was posted;
  - (c) if sent by fax transmission—on the day after the day on which it was transmitted; or



- (d) if sent by electronic mail transmission—on the day after the day on which it was transmitted.
- (3) A notice or other document required to be given to, lodged with or served on the Appeal Board, the Licensing Board or a public officer under this Ordinance may be given, lodged or served—
  - (a) by delivering it by hand to the office of the Appeal Board, the Licensing Board or the officer (as the case requires) during office hours;
  - (b) by sending it by post to the office of the Appeal Board, the Licensing Board or the officer (as the case requires);
  - (c) by sending it by fax transmission to the fax number of the Appeal Board, the Licensing Board or the officer (as the case requires); or
  - (d) by sending it by electronic mail transmission to the electronic mail address of the Appeal Board, the Licensing Board or the officer (as the case requires).
- (4) A notice or other document given, lodged or served in accordance with subsection (3) is to be taken, in the absence of evidence to the contrary, to have been given, lodged or served—
  - (a) if delivered by hand—on the day after the day on which it was so delivered;
  - (b) if sent by post—on the second working day after the day on which it was posted;
  - (c) if sent by fax transmission—on the day after the day on which it was transmitted; or
  - (d) if sent by electronic mail transmission—on the day after the day on which it was transmitted.

- (5) This section is subject to section 2 of, and item 73 of Schedule 1 to, the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B).

**106. Transitionals**

The transitional provisions as set out in Schedule 7 have effect.

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**Part 10****Implications on Land (Miscellaneous Provisions)  
Ordinance, Town Planning Ordinance, Buildings  
Ordinance and other Ordinances****107. Other Ordinances, law and liabilities not affected, unless expressly provided otherwise**

- (1) Subsections (2), (3) and (4) apply, except as expressly provided to the contrary in this Part.
- (2) The requirements under this Ordinance are in addition to and do not derogate from any requirement under any other Ordinance or law.
- (3) A specified instrument—
  - (a) has effect solely for the purposes of this Ordinance;
  - (b) does not, to any extent, negate liability of any description for any contravention of any other Ordinance or law; and
  - (c) does not, to any extent, negate liability of any description arising—
    - (i) under an instrument affecting land, whether or not the Government is a party to the instrument;
    - (ii) from an agreement, whether or not the Government is a party to the agreement;
    - (iii) in tort, whether or not the tort is committed against the Government; or
    - (iv) in any other manner.
- (4) That any function is conferred on or performed by a person under this Ordinance does not, to any extent, affect any

function conferred on or performed by a person under any other Ordinance or law.

**108. Effect of Land (Miscellaneous Provisions) Ordinance modified**

- (1) Section 6(1), (2) and (3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) does not apply in respect of the unlawful occupation of unleased land during a period if—
  - (a) the occupation is necessary for, or ancillary to, the operation of a pre-cut-off columbarium; and
  - (b) during the period—
    - (i) the instrument-related condition is met in the manner specified in subsection (2), (3) or (5); and
    - (ii) the extent of breach condition specified in subsection (6) is met.
- (2) The instrument-related condition is met if a temporary suspension of liability is in force in respect of the pre-cut-off columbarium.
- (3) The instrument-related condition is met if an application for the issue of a temporary suspension of liability in respect of the pre-cut-off columbarium—
  - (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or
  - (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.
- (4) Subsection (3) does not apply if, in respect of an application referred to in that subsection, the occupation of land as is necessary for, or ancillary to, the operation of the pre-cut-off columbarium (to the extent as shown in the plans required

under section 24) includes unlawful occupation of unleased land but the applicant—

- (a) does not apply to the Director of Lands for lawful authority to occupy the unleased land; or
  - (b) does not provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land, whether based on possession of the unleased land before, on or after the date of application or on any other ground.
- (5) The instrument-related condition is met if an application for the extension of a temporary suspension of liability in respect of the pre-cut-off columbarium—
- (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or
  - (c) has been refused, which refusal has been appealed against and is suspended from operation under section 41 pending the determination of the appeal.
- (6) The extent of breach condition is that any unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the pre-cut-off columbarium is limited to—
- (a) if a temporary suspension of liability is issued or extended in respect of the columbarium—the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium, as shown in the approved plans annexed to the temporary suspension of liability; or
  - (b) in any other case—the extent of unlawful occupation of unleased land as was necessary for, or ancillary to, the operation of the columbarium as at the cut-off time.

- (7) This section does not affect any civil liability in respect of the unlawful occupation of unleased land.
- (8) Subsection (7) does not affect the operation of section 107.
- (9) In subsection (1), a reference to section 6(3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) is to be construed as a reference to section 6(3) of that Ordinance to the extent that it relates to section 6(2)(b) (but not section 6(2A)(iii)) of that Ordinance.

#### **109. Effect of Town Planning Ordinance modified**

- (1) Sections 20(8), 21(2) and 23(1) and (2) of the Town Planning Ordinance (Cap. 131) do not apply in respect of an unauthorized development undertaken or continued on any land during a period if—
  - (a) the development is necessary for, or ancillary to, the operation of a pre-cut-off columbarium; and
  - (b) the condition specified in subsection (2), (3) or (5) is met during the period.
- (2) The condition is that either of the following instruments is in force in respect of the pre-cut-off columbarium—
  - (a) an exemption;
  - (b) a temporary suspension of liability.
- (3) The condition is that an application for the issue of an exemption, or the issue of a temporary suspension of liability, in respect of the pre-cut-off columbarium—
  - (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or

- (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.
- (4) Subsection (3) does not apply if, before the making of the application and in respect of an unauthorized development undertaken or continued on the land referred to in subsection (1), or any part of it—
  - (a) proceedings for the prosecution of an offence under section 20(8) or 21(2) of the Town Planning Ordinance (Cap. 131) have been instituted, whether against the applicant or any other person; or
  - (b) a notice—
    - (i) has been served under section 23(1) or (2) of that Ordinance, whether on the applicant or any other person; and
    - (ii) has not been complied with or withdrawn.
- (5) The condition is that an application for the renewal of an exemption, or the extension of a temporary suspension of liability, in respect of the pre-cut-off columbarium—
  - (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or
  - (c) has been refused, which refusal has been appealed against and is suspended from operation under section 41 pending the determination of the appeal.

#### 110. Effect of Buildings Ordinance modified

- (1) Sections 24(1) and 24C(1) of the Buildings Ordinance (Cap. 123) do not apply in respect of any non-compliant structures existing during a period merely because the structures have been completed, or building works relating to the structures

- have been carried out, in contravention of section 14(1) of that Ordinance if—
  - (a) the structures are necessary for, or ancillary to, the operation of a pre-cut-off columbarium; and
  - (b) during the period—
    - (i) the instrument-related condition is met in the manner specified in subsection (2), (3) or (5); and
    - (ii) the extent of breach condition specified in subsection (6) is met.
- (2) The instrument-related condition is met if a specified instrument is in force in respect of the pre-cut-off columbarium.
- (3) The instrument-related condition is met if an application for the issue of a specified instrument in respect of the pre-cut-off columbarium—
  - (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or
  - (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.
- (4) Subsection (3) does not apply if, before the making of the application, an order or notice—
  - (a) has been served under section 24(1) or issued under section 24C(1) (as the case requires) of the Buildings Ordinance (Cap. 123) in respect of the non-compliant structures referred to in subsection (1), or any part of them, whether on the applicant or any other person; and
  - (b) has not been complied with or withdrawn.

- (5) The instrument-related condition is met if an application for the renewal of a licence or exemption, or the extension of a temporary suspension of liability, in respect of the pre-cut-off columbarium—
- (a) has been made but has not been determined;
  - (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or
  - (c) has been refused, which refusal has been appealed against and is suspended from operation under section 41 pending the determination of the appeal.
- (6) The extent of breach condition is that the non-compliant structures necessary for, or ancillary to, the operation of the pre-cut-off columbarium are limited to—
- (a) if a temporary suspension of liability is issued or extended in respect of the columbarium—the non-compliant structures necessary for, or ancillary to, the operation of the columbarium, as shown in the approved plans annexed to the temporary suspension of liability;
  - (b) if a licence or exemption is issued or renewed in respect of the columbarium—the structures certifiable for a pre-cut-off columbarium in, on or at the columbarium, as shown in the approved plans annexed to the licence or exemption (as the case requires); or
  - (c) in any other case—the non-compliant structures necessary for, or ancillary to, the operation of the columbarium as at the cut-off time.

**111. Provisions inapplicable because of section 108, 109 or 110 to resume application**

- (1) Even if, because of the operation of section 108, 109 or 110, any provision of an Ordinance referred to in that section does not apply in respect of a pre-cut-off columbarium during a specified period, that fact does not in any way affect the application of the provision in respect of the columbarium after the period.
- (2) In subsection (1)—  
*specified period* (指明期間) means the period during which the conditions referred to in section 108(1), 109(1) or 110(1) (as the case requires) are met in respect of the pre-cut-off columbarium.
- (3) Subsection (1) does not affect the operation of section 107.

**Part 11****Related Amendments****Division 1—Amendment to Land (Miscellaneous Provisions) Ordinance****112. Land (Miscellaneous Provisions) Ordinance amended**

The Land (Miscellaneous Provisions) Ordinance (Cap. 28) is amended as set out in this Division.

**113. Section 6 amended (unlawful occupation of unleased land)**

After section 6(7)—

**Add**

“(8) Subsections (1), (2) and (3) have effect subject to section 108 of the Private Columbaria Ordinance ( of 2016).”.

**Division 2—Amendments to Buildings Ordinance****114. Buildings Ordinance amended**

The Buildings Ordinance (Cap. 123) is amended as set out in this Division.

**115. Section 24 amended (order for demolition, removal, or alteration of building, building works (other than minor works commenced under simplified requirements) or street works)**

At the end of section 24—

**Add**

“(6) Subsection (1) has effect subject to section 110 of the Private Columbaria Ordinance ( of 2016).”.

**116. Section 24C amended (notice for demolition or alteration of building or building works)**

After section 24C(6)—

**Add**

“(7) Subsection (1) has effect subject to section 110 of the Private Columbaria Ordinance ( of 2016).”.

**Division 3—Amendments to Town Planning Ordinance****117. Town Planning Ordinance amended**

The Town Planning Ordinance (Cap. 131) is amended as set out in this Division.

**118. Section 20 amended (development permission area plans)**

After section 20(8)—

**Add**

“(9) Subsection (8) has effect subject to section 109 of the Private Columbaria Ordinance ( of 2016).”.

**119. Section 21 amended (offence of unauthorized development)**

After section 21(2)—

**Add**

“(3) Subsection (2) has effect subject to section 109 of the Private Columbaria Ordinance ( of 2016).”.

**120. Section 23 amended (enforcement on land within a development permission area)**

After section 23(12)—

**Add**

“(13) Subsections (1) and (2) have effect subject to section 109 of the Private Columbaria Ordinance ( of 2016).”.

### **Division 4—Amendments to Public Health and Municipal Services Ordinance**

#### **121. Public Health and Municipal Services Ordinance amended**

The Public Health and Municipal Services Ordinance (Cap. 132) is amended as set out in this Division.

#### **122. Section 113 amended (public and private cemeteries)**

(1) After section 113(2)—

**Add**

“(2AA) A columbarium, as defined by section 113A(1), that is under the management and control of a person specified in Part 2A of the Fifth Schedule is a private cemetery.”.

(2) Section 113(3), after “Schedule”—

**Add**

“(except its Part 2A)”.

(3) After section 113(3)—

**Add**

“(4) The Chief Executive in Council may by order amend, or add a person to, or delete a person from, Part 2A of the Fifth Schedule.”.

#### **123. Section 113A added**

After section 113—

**Add**

#### **“113A. Columbarium managed and controlled by person specified in Part 2A of Fifth Schedule**

(1) In this section—

*ashes* (骨灰) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance ( of 2016);

*columbarium* (骨灰安置所), subject to subsection (6), has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance ( of 2016);

*inter* (安放) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance ( of 2016);

*interment right* (安放權) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance ( of 2016);

*specified person* (指明人士) means a person specified in Part 2A of the Fifth Schedule.

(2) No ashes may be interred in a columbarium that is under the management and control of a specified person, nor may an interment right in respect of the columbarium be sold, unless—

(a) the specified person has provided to the Authority information on the name and location of the columbarium; and

(b) at least 6 months have lapsed since the information was so provided.

(3) The Authority must, by notice in the Gazette, publish the information within 3 months after receiving it.

(4) The notice is not subsidiary legislation.

(5) A specified person must provide to the Authority, on request, a list setting out the name, location and other

particulars of each columbarium that is under the specified person's management and control.

- (6) This section does not apply to a columbarium in a private cemetery specified in Part 2 of the Fifth Schedule.”.

**124. Third Schedule amended (designated authorities)**

Third Schedule, after the entry relating to section 112A—

**Add**

“113A Secretary for Food and Health”.

**125. Fifth Schedule amended (cemeteries, crematoria and gardens of remembrance)**

- (1) Fifth Schedule—

**Repeal**

“[ss. 2, 113”

**Substitute**

“[ss. 2, 113, 113A”.

- (2) Fifth Schedule, after Part 2—

**Add**

**“Part 2A**

**Persons Specified for Purposes of Section 113A  
(so that Columbaria under the Persons’  
Management and Control are Private Cemeteries)**

1. The Board of Management of the Chinese Permanent Cemeteries, established under the Chinese Permanent Cemeteries Ordinance (Cap. 1112)”.

**Division 5—Amendment to Private Cemeteries Regulation**

**126. Private Cemeteries Regulation amended**

The Private Cemeteries Regulation (Cap. 132 sub. leg. BF) is amended as set out in this Division.

**127. Section 2 amended (interpretation)**

Section 2—

**Repeal the definition of *private cemetery***

**Substitute**

“*private cemetery* (私營墳場) means—

- (a) a cemetery specified in Part 2 of the Fifth Schedule to the Ordinance; or
- (b) a columbarium that is under the management and control of a person specified in Part 2A of that Schedule.”.

**Division 6—Amendment to Prevention of Bribery Ordinance**

**128. Prevention of Bribery Ordinance amended**

The Prevention of Bribery Ordinance (Cap. 201) is amended as set out in this Division.

**129. Schedule 1 amended (public bodies)**

Schedule 1—

**Add**



- “132. Private Columbaria Licensing Board established under section 8 of the Private Columbaria Ordinance ( of 2016).
133. Private Columbaria Appeal Board established under section 81 of the Private Columbaria Ordinance ( of 2016).”.

### **Division 7—Amendment to Electronic Transactions (Exclusion) Order**

#### **130. Electronic Transactions (Exclusion) Order amended**

The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in this Division.

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

Schedule 1—

##### **Add**

- |   |   |
|---|---|
| <p>“73. Private Columbaria Ordinance ( of 2016)</p> | <p>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)</p> |
|---|---|

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”.

## **Schedule 1**

[ss. 8 & 101]

### **Private Columbaria Licensing Board**

#### **1. Constitution**

- (1) The Licensing Board consists of not less than 7 members and not more than 9 members appointed by the Chief Executive. Any one or more of the members may be public officers.
- (2) The Chief Executive may appoint a member of the Licensing Board, either ex officio or personally, as the Chairperson of the Licensing Board.
- (3) The Chief Executive may appoint another member of the Licensing Board as the Deputy Chairperson of the Licensing Board.
- (4) Subject to this Schedule, a member of the Licensing Board—
  - (a) is to hold and vacate office in accordance with the member's terms of appointment; and
  - (b) on ceasing to be a member, is eligible for reappointment.
- (5) An appointment under this section must be notified in the Gazette.
- (6) The notification is not subsidiary legislation.

#### **2. Staff**

- (1) The Secretary may appoint a secretary to the Licensing Board.
- (2) The Secretary may appoint a legal adviser to the Licensing Board.

- (3) The legal adviser may be present at any meeting, hearing or deliberation of the Licensing Board to advise the Licensing Board on legal matters.
- (4) The Secretary may appoint other staff to the Licensing Board as the Secretary considers necessary.

#### **3. Committees**

- (1) The Licensing Board may appoint committees to perform any of the functions of the Licensing Board.
- (2) The Licensing Board may appoint a member of the Licensing Board to be the Chairperson or a member of a committee.

#### **4. Meetings of Licensing Board and committees**

- (1) The Licensing Board or a committee may determine its practice and procedures at its meetings.
- (2) A quorum at a meeting of the Licensing Board is formed by 4 members of the Licensing Board, one of whom must be the Chairperson of the Licensing Board.
- (3) If the Chairperson of the Licensing Board is absent or is otherwise unable to act—
  - (a) the Deputy Chairperson of the Licensing Board is to act as Chairperson of the Licensing Board; or
  - (b) if the Deputy Chairperson of the Licensing Board is absent or is otherwise unable to act—a member of the Licensing Board named by the Secretary is to act as Chairperson of the Licensing Board.
- (4) One-third of the members of a committee, one of whom must be the Chairperson of the committee, are to form a quorum at a meeting of the committee.

- (5) If the Chairperson of a committee is absent or is otherwise unable to act, a member of the committee named by the Director is to act as Chairperson of the committee.
- (6) The Chairperson of the Licensing Board or a committee (as the case requires) is to have a casting vote in case of an equality of votes for and against a motion at a meeting of the Licensing Board or committee.
- (7) Business of the Licensing Board or any committee may be transacted by way of meetings or circulation of papers.
- (8) A meeting of the Licensing Board or a committee is to be open to the public unless the Licensing Board or committee determines that there is a good reason for it to be held in private.
- (9) If a member of the Licensing Board or a committee is disqualified from taking part in a decision or deliberation in respect of a matter under section 5 of this Schedule, the member must be disregarded for the purposes of constituting the quorum for deciding or deliberating on that matter.
- (10) To avoid doubt—
  - (a) in subsections (2) and (6), a reference to the Chairperson of the Licensing Board includes a reference to a person who acts as Chairperson of the Licensing Board under subsection (3); and
  - (b) in subsections (4) and (6), a reference to the Chairperson of a committee includes a reference to a person who acts as Chairperson of the committee under subsection (5).

## 5. Disclosure of interests of member

If a member of the Licensing Board or a committee has a direct or indirect interest in any matter under consideration at a meeting of

the Licensing Board or committee (as the case requires), the member—

- (a) must disclose to the Licensing Board or committee (as the case requires) the nature of the interest—
  - (i) before the meeting begins; or
  - (ii) if it comes to the notice of the member after the meeting begins that he or she has such an interest—as soon as practicable after the meeting begins;
- (b) must withdraw from the meeting while the Licensing Board or committee (as the case requires) is considering the matter if so required by the meeting; and
- (c) must not participate in any deliberation or be involved in any decision regarding the matter.

## Schedule 2

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

### Requirements Relevant to Eligibility for Specified Instruments

#### Part 1

##### General Provisions

#### 1. Compliance with land-related requirements

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.

#### 2. Compliance with planning-related requirements

A columbarium complies with the planning-related requirements only if the columbarium complies with every requirement under the Town Planning Ordinance (Cap. 131).

#### 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
- (b) the following requirements are met in respect of every building or building works in, on or at the columbarium—
  - (i) the building or building works form the whole, or a part, of a certifiable building;
  - (ii) the certifiable building is certified to be structurally safe by a qualified professional, to the satisfaction of the Licensing Board; and
  - (iii) any works that the Licensing Board may require in respect of the certifiable building have been carried out in accordance with the requirements that the Licensing Board thinks fit to impose.
- (2) The specification of requirements under subsection (1)(a) is not subsidiary legislation.
- (3) In this section—  
*certifiable building* (可核證建築物) means—
  - (a) an NT small building that came into existence on or after 16 October 1987 and in respect of which a certificate of exemption has been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
  - (b) an NT small building that—
    - (i) came into existence on or after 1 January 1961 and before 16 October 1987; and

- (ii) complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection;
  - (c) a pre-1961 NT building; or
  - (d) a building situated on land—
    - (i) that was unleased land at the time the building was erected; and
    - (ii) in respect of which—
      - (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.

(4) For the purposes of this section—

**New Territories** (新界) does not include New Kowloon;

**NT small building** (新界小型建築物) means a building in the New Territories that is a small building within the meaning of section 5 of this Schedule;

**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 there has been no alteration, addition or reconstruction of the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date;

**repealed Buildings Ordinance (Application to the New Territories) Ordinance** (已廢除的《建築物條例(新界適用)條例》) means the Buildings Ordinance (Application to the New Territories) Ordinance that came into operation on 1 January 1961 and was repealed and replaced by the Buildings

Ordinance (Application to the New Territories) Ordinance (Cap. 121).

## Part 2

### Special Provisions for Pre-cut-off Columbaria

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

(1) In this section—

**non-compliant structures** (違規構築物) means any building or building works that do not meet any of the requirements referred to in section 3(1) of this Schedule;

**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
- (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).
- (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).
- (3) 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—

- (a) a qualified professional must certify, to the satisfaction of the Licensing Board, that—
- (i) if paragraph (b)(i) of the definition of *structures certifiable for a pre-cut-off columbarium* in subsection (1) applies—the on-grade outdoor structures with niches are structurally safe; or
- (ii) if paragraph (b)(ii), (iii) or (iv) of that definition applies—the building referred to in that paragraph is structurally safe; and
- (b) any works that the Licensing Board may require in respect of on-grade outdoor structures with niches or the building (as the case requires) have been carried out in accordance with the requirements that the Licensing Board thinks fit to impose.
- (4) For the purposes of this section—
- ground storey* (地面樓層) means—
- (a) the storey in which an entrance from a street to the building is situated; or
- (b) if—
- (i) a building fronts or abuts on more than one street; and
- (ii) due to a difference in street levels there are 2 or more entrances serving different streets and situated in different storeys,
- each of those storeys.

### Part 3

#### Interpretative Provisions

##### 5. Meaning of *small building*

(1) For the purposes of sections 3 and 4 of this Schedule—

***small building*** (小型建築物) means a building that meets the descriptions in subsection (2).

(2) The building is of not more than 3 storeys and is—

- (a) of a height of more than 7.62 m but not more than 8.23 m and with a roofed-over area not exceeding 65.03 m<sup>2</sup>, and in respect of which each load-bearing wall is of a thickness as follows—
  - (i) in the case of a load-bearing reinforced concrete wall—not less than 175 mm;
  - (ii) in the case of a load-bearing brick wall of the lowest storey—not less than 340 mm;
  - (iii) in the case of a load-bearing brick wall of any higher storey—not less than 225 mm; or
- (b) of a height of not more than 7.62 m with a roofed-over area not exceeding 65.03 m<sup>2</sup>.

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

- (1) This section applies for the purposes of the construction of section 5 of this Schedule.
- (2) ***Height*** (高度) means the perpendicular height of the building measured from the level of its lowest point at ground level to the level of the highest point of its roof.

- (3) In determining the highest point of a roof, no account is to be taken of—
  - (a) 1 stairhood if it has a roof area of not more than 7.44 m<sup>2</sup>, a height of not more than 2.14 m and is erected and used solely to provide protection from rain and sun for a stairway used to gain access to the roof of the building;
  - (b) any parapet on the roof if the height is not more than 1.22 m; or
  - (c) 1 water storage tank if it has a roof area of not more than 2 m<sup>2</sup>, a height of not more than 1.22 m and is installed at any point on the roof other than on a stairhood.
- (4) ***Roofed-over area*** (有蓋面積) means the area of a building enclosed within the exterior faces of the external walls (which includes any party wall) of that building together with the area of any balcony, stairway, verandah, porch, canopy or any other projection from the building. For the purpose of calculating the roofed-over area of any building, the area of not more than 2 balconies and 1 canopy is to be excluded if—
  - (a) they all project from the same side of the building for a distance of not more than 1.22 m; and
  - (b) they are not enclosed.
- (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.

#### 7. **Meaning of undefined word or phrase**

For the purposes of this Part, a word or phrase not defined in this Part or section 2(1) of this Ordinance has the meaning (if any) given by—

- (a) section 2 of the Buildings Ordinance (Cap. 123); or
- (b) section 2 of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

### **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 person who operates, keeps, manages or in any other way has 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.



**3. Certification as to building safety, fire safety, etc.**

For the purposes of an application to which this Schedule applies, the Licensing Board may require—

- (a) certification as to building safety and compliance with the prevailing building safety and fire safety standards as well as structural, drainage and sewage requirements by a qualified professional; and
- (b) certificates of fire service installations and equipment to prove that they are in efficient working order.

**4. Publication etc. of notices of licence applications**

- (1) If the Licensing Board considers it appropriate to do so in relation to an application for the issue of a licence in respect of a columbarium, the Licensing Board may do any one or more of the following—
  - (a) publishing a notice of the application through the internet or a similar electronic network or in any other manner that the Licensing Board considers appropriate;
  - (b) causing a notice of the application to be published at the expense of the applicant in an English language newspaper and a Chinese language newspaper in general circulation in Hong Kong determined by the Licensing Board;
  - (c) posting a notice of the application at a conspicuous place outside the columbarium.
- (2) A notice published or posted under subsection (1) must state the place or places where the particulars of the application may be inspected.

**5. Notification of decision about application for specified instrument**

On determining an application referred to in section 1(a) of this Schedule, the 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.
-

## Schedule 4

[ss. 2, 47 & 101]

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

#### Part 1

#### Information and Recommendations

1. An agreement for the sale of an interment right must set out all of the following information and recommendations—
  - (a) information about the seller's licence (name of licensee, address of the licensed premises, licence number and the validity period of the licence);
  - (b) information about ownership, tenancy, encumbrances and restrictions on use and disposition—
    - (i) whether the seller is the owner of the columbarium premises held directly from the Government under a lease and, if so—
      - (A) whether the seller is the sole owner, the joint owners or the co-owners;
      - (B) the name of the sole owner, or the names of the joint owners or the co-owners;
      - (C) in the case of co-ownership—each co-owner's respective share or interest in the premises; and

- (D) the following particulars of the lease—
  - (I) the lot number of the premises; and
  - (II) the date on which the term of the lease is to end;
- (ii) whether the seller occupies the columbarium premises under a tenancy and, if so—
  - (A) the name of the landlord;
  - (B) the periodic basis for the payment of rent for the tenancy;
  - (C) the terms in the tenancy agreement—
    - (I) on the arrangements for the termination of the tenancy; and
    - (II) on the arrangements for the renewal of the tenancy; and
  - (D) the following particulars of the tenancy—
    - (I) the lot number of the premises;
    - (II) if applicable—the memorial number (where available) of the tenancy agreement;
    - (III) for a short term tenancy—the short term tenancy number assigned by the Lands Department; and
    - (IV) the date on which the term of the tenancy is to end;
- (iii) whether mortgage or any other encumbrance subsists in the columbarium premises that may jeopardize the purchaser's interest and, if so—
  - (A) the name of the mortgagee or the person entitled to the benefit of, or to require

- payment or discharge of, the encumbrance (as the case requires); and
- (B) if applicable—the memorial number (where available) of the mortgage or encumbrance;
- (iv) whether the columbarium premises are prevented, by an instrument registered in the Land Registry, from being used or disposed of in a manner that may jeopardize the purchaser's interest and, if so, the memorial number of the instrument;
- (c) a recommendation that the purchaser should carefully consider whether the purchaser's interest is protected against the financial risks involved with lump sum prepayment for an interment right for a long period;
- (d) a recommendation that the purchaser should seek legal advice if the purchaser does not understand any part of the information, recommendations or terms in the agreement.

## Part 2

### Essential Terms

2. An agreement for the sale of an interment right must set out—
- (a) the names of the parties to the agreement;
- (b) a full description of the interment right sold, specifying—
- (i) if the interment right relates to a niche—
- (A) the location, serial numbering and dimensions of the niche; and

- (B) the maximum number (if applicable) of containers of ashes that are permitted to be interred in the niche;
- (ii) if the interment right relates to a niche—the nature of the right or interest that the interment right comprises, whether it is—
- (A) an interest in land;
- (B) a right under a tenancy or service agreement to use the niche; or
- (C) a right or interest of any other nature;
- (iii) the duration of the interment right; and
- (iv) particulars about any right of the purchaser to renew the interment right for another term, on the expiry of the term under the agreement;
- (c) any other services to be provided under the agreement;
- (d) a comprehensive list of all fees, charges and other sums payable by the purchaser (whether recurrent or non-recurrent), specifying—
- (i) the precise purposes for which the fees, charges and sums are payable under the agreement;
- (ii) the amounts of the fees, charges and sums and the mechanism for any future revision of the fees, charges and sums; and
- (iii) payment methods (whether periodic payments during the period for which the interment right lasts, or payment by instalments payable on the commencement of each validity period of the seller's licence, or any other payment method);
- (e) without limiting paragraph (d) and if the interment right includes a right to renew the interment right on the seller

- being granted a renewed term of the lease under which the columbarium premises are held directly from the Government—any contribution due from the purchaser to the seller towards the premium payable by the seller to the Government, expressed as a share of the premium;
- (f) other 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
- (g) the arrangements for handling interred ashes in the event of—
- (i) the temporary suspension of operation of the agreement; or
  - (ii) the termination of the agreement (whether on expiry of the term of the interment right or not).

### Part 3

#### Interpretative Provisions

3. In this Schedule—

**memorial number** (註冊摘要編號) has the meaning given by regulation 2 of the Land Registration Regulations (Cap. 128 sub. leg. A);

**purchaser** (買方)—see section 47(1) of this Ordinance;

**seller** (賣方)—see section 47(1) of this Ordinance.

4. This Schedule applies to an agreement for the sale of an interment right entered into on or after the enactment date.

**Schedule 5**

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

**Occupation Order and Ash Disposal Procedures****Part 1****Occupation Order****1. Interpretation of Part 1 of Schedule 5**

In this Part—

*instrument holder* (文書持有人) means a person to whom a specified instrument has been issued, whether the instrument is still in force, has expired without being renewed or extended or is revoked or suspended.

**2. Procedures for application for occupation order**

- (1) The Chief Justice may, by practice directions, provide for the procedures for making an application for, or otherwise in relation to, an occupation order under section 74 of this Ordinance.
- (2) Practice directions referred to in subsection (1) are not subsidiary legislation.

**3. Making of occupation order**

- (1) A magistrate may not make an occupation order under section 74 of this Ordinance in respect of a columbarium unless, at least 30 days before the hearing of the application—

- (a) a specified officer—
    - (i) has given a notice of the hearing of the application—
      - (A) to the owner of the columbarium premises; and
      - (B) to the instrument holder (if any) in respect of the columbarium; and
    - (ii) has posted a notice of the hearing at a conspicuous place outside the columbarium; and
  - (b) each of the notices states the date, time and venue of the hearing.
- (2) If a magistrate makes an occupation order in respect of a columbarium, the specified officer must do both of the following within 7 days after the day the order is made—
    - (a) give notice of the order—
      - (i) to the owner of the columbarium premises; and
      - (ii) to the instrument holder (if any) in respect of the columbarium;
    - (b) post a copy of the order at a conspicuous place outside the columbarium.
  - (3) An occupation order takes effect on the date set out in the order.
  - (4) Proceedings before a magistrate for the purposes of this section are deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) applies, with necessary modifications, to appeals against an occupation order.

- (5) A person who, without lawful authority or reasonable excuse, removes or defaces a notice posted under subsection (1)(a)(ii) or a copy of an occupation order posted under subsection (2)(b) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

**4. Restriction on entry into columbarium subject to occupation order**

- (1) When an occupation order in respect of any columbarium comes into force, a specified officer may lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the columbarium premises, or any part of them.
- (2) Subject to subsection (3), a person must not enter or remain on the premises of any columbarium subject to an occupation order, or any part of them, unless the person is—
- (a) a specified officer acting in the course of his or her duty; or
  - (b) a specified officer's agent acting in connection with performance of the duty.
- (3) While a columbarium is subject to an occupation order, the specified officer may—
- (a) permit, in writing, any person to enter and remain on the columbarium premises, or any part of them, for a purpose specified in the permit;
  - (b) impose on the permit conditions that the specified officer thinks fit;
  - (c) revoke the permit if the specified officer thinks that the purpose for which the permit was granted no longer exists or any condition imposed under paragraph (b) has been breached; or

- (d) request any person found on the columbarium premises, or any part of them, to leave and, if the person refuses to leave, remove the person from the premises or part, with any assistance of police officers and using any force that is reasonably necessary.
- (4) A person who, without lawful authority or reasonable excuse, breaks or interferes with any lock or seal made under subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (5) A person who, without lawful authority or reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 12 months.

**5. Variation or cancellation of occupation order**

- (1) The owner of the premises that are a columbarium subject to an occupation order, or the instrument holder (if any) in respect of the columbarium, may apply to a magistrate for a variation, or the cancellation, of the order.
- (2) The applicant must serve a copy of the application on the Director, who is entitled to be heard on the application.

## 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) of this Schedule).

(2) In this Part—

**ash handler** (骨灰處理者) means a person who is required under section 66(2)(b), 71 or 73(2) of this Ordinance to carry out the prescribed ash disposal procedures in respect of a columbarium;

**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);

**personal representative** (遺產代理人), in relation to a deceased person, means—

- (a) a personal representative within the meaning of section 2 of the Probate and Administration Ordinance (Cap. 10); or
- (b) if the Official Administrator gets in and administers an estate in a summary manner under section 15 of that Ordinance—the Official Administrator;

**prescribed claimant** (訂明申索人), in relation to the ashes of a deceased person, means an authorized representative, personal representative or relative or the purchaser of the interment right;

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

- (a) the deceased's spouse;

- (b) the deceased's father, mother, grandfather or grandmother (whether natural or adoptive);
- (c) the deceased's step-father, step-mother, step-grandfather or step-grandmother;
- (d) the deceased's father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the deceased's spouse;
- (e) the deceased's grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the deceased's spouse;
- (f) the deceased's son, daughter, grandson or granddaughter (whether natural or adoptive);
- (g) the deceased's step-son, step-daughter, step-grandson or step-granddaughter;
- (h) the deceased's son-in-law or daughter-in-law who is the spouse of the deceased's natural child, adoptive child or step-child;
- (i) the deceased's grandson-in-law or granddaughter-in-law who is the spouse of the deceased's natural grandchild, adoptive grandchild or step-grandchild;
- (j) the deceased's brother or sister (whether of full or half blood or by virtue of adoption);
- (k) the brother or sister (whether of full or half blood or by virtue of adoption) of the deceased's spouse;
- (l) the deceased's step-brother or step-sister;
- (m) the step-brother or step-sister of the deceased's spouse;
- (n) the deceased's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);

- (o) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the deceased's spouse; or
- (p) the spouse of any person mentioned in paragraph (j), (k), (l), (m), (n) or (o).

#### 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 section 9 of this Schedule;
  - (b) handles the ashes and claims in accordance with the intention stated in the notice;
  - (c) takes the steps required by the Director under section 11 of this Schedule; and
  - (d) complies with the requirement under section 10 of this Schedule for the delivery of a record of the procedures to the Director.
- (2) The ash handler 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 12 months; and
  - (b) after the expiry of the on-site claim period, delivers to the Director, in a manner specified by the Director, the ashes that are not returned to an eligible claimant.

- (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 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.
- (4) Subsection (2)(b) has effect subject to section 9(6) and (8) of this Schedule.

#### 8. Commencement of ash disposal notice

- (1) For the purposes of section 7(1)(a) of this Schedule, an ash handler must give a commencement of ash disposal notice, stating the ash handler's intention regarding disposal of the ashes, before opening sealed niches in the columbarium or otherwise starting to handle the ashes in the columbarium.
- (2) A commencement of ash disposal notice must be—
  - (a) published in 3 newspapers (of which 1 must be in English and 1 must be in Chinese) in general circulation in Hong Kong at least once in each of 2 consecutive weeks;
  - (b) posted at a conspicuous place outside the columbarium;



- (c) served on the Licensing Board; and
- (d) served on each specified addressee (if any).

## (3) In subsection (2)—

*specified addressee* (指明收訊者), in relation to ashes interred under an agreement for the sale of an interment right, means—

- (a) an authorized representative (where available);
- (b) the purchaser; or
- (c) any other person available whose contact details are entered into any register or record kept under this Ordinance.

## (4) A commencement of ash disposal notice must contain—

- (a) the name and address of the columbarium in respect of which the prescribed ash disposal procedures are to be carried out;
- (b) a statement of the intention of the ash handler giving the notice with respect to the manner of ash disposal specifying—
  - (i) that the prescribed ash disposal procedures are to be carried out;
  - (ii) which of section 7(2) or (3) of this Schedule are the ashes to be handled in accordance with or (if applicable) that the ashes are to be handled in accordance with section 7(2) and (3) of this Schedule; and
  - (iii) the particulars relating to the intended handling of the ashes including—
    - (A) the date on which the on-site claim period begins (which must be no earlier than the expiry of 14 days, and no later than the expiry

of 30 days, immediately after the date of the commencement of ash disposal notice) and the date on which the on-site claim period ends;

- (B) if applicable—the date by which the ashes, if not returned to an eligible claimant, are to be reinterred and the address of the columbarium in which the ashes are to be reinterred and the terms of reinterment; and

- (C) if sub-subparagraph (B) does not apply—the date by which the ashes, if not returned to an eligible claimant, are to be delivered to the Director and that the ashes are to be finally disposed of in a manner that the Director thinks fit; and

- (c) a statement that the carrying out of the prescribed ash disposal procedures does not affect any person's right to compensation under an agreement for the sale of an interment right.

- (5) The particulars specified in the commencement of ash disposal notice must conform to the requirements of section 7(2) or (3), or section 7(2) and (3), of this Schedule (as the case requires) about the handling of ashes.

9. **Handling claims for ashes**

- (1) In this section—

*court* (法院) means the District Court.

- (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 order for their return to the prescribed claimant 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.
- (7) Subsection (8) 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 (together with the item) are returned to any person under this section, a person claims to be the owner of the item (the item (together with the ashes) is called *specified item*).

- (8) In the circumstances specified in subsection (7)—
- (a) the ash handler must return the specified item—
    - (i) where the person who claims to be the owner of the item as referred to in subsection (7)(b) is a prescribed claimant—
      - (A) if the ash handler receives only the claim for the return of the item or the specified item from that person within the first 2 months—to that person after the expiry of the first 2 months; or
      - (B) if, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the item or the specified item and that person is the first one who makes a claim in the remainder of the on-site claim period—to that person; or
    - (ii) where the person who claims to be the owner of the 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 the return of the item or the specified item—to that person after the expiry of the on-site claim period;
  - (b) if, before the specified item is returned in accordance with paragraph (a), the ash handler receives another claim for the return of the item or the specified item, the court may determine the competing claims in accordance with any law applicable to it; and
  - (c) the ash handler—

- (i) must keep the specified item until a person obtains a court order for return of it to the person 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.
- (9) For the purposes of subsections (7) and (8), 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.
- (10) An application for a court order referred to in subsection (6)(a) or (8)(c)(i) may be made by originating summons.
- (11) Order 17 of the Rules of the District Court (Cap. 336 sub. leg. H) applies, with necessary modifications, in relation to 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 the court has the powers under that Order accordingly despite section 32(3) of the District Court Ordinance (Cap. 336).
- (12) Despite subsections (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 court order referred to in subsection (6)(a) or (8)(c)(i).

- (13) On making a court order referred to in subsection (6)(a) or (8)(c)(i), the court may impose the conditions that it considers appropriate.

#### 10. Record

- (1) An ash handler must keep a record of the steps that the ash handler has taken to carry out the prescribed ash disposal procedures, which record—
  - (a) must be in the specified form; and
  - (b) must contain the information that the Licensing Board requires about ashes and claims handled in carrying out the procedures.
- (2) Subject to subsections (3) and (4), the ash handler must deliver the record to the Director within 30 days after the expiry of the on-site claim period.
- (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) of this Schedule applies to the ashes of a deceased person and any 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 that section;

- (b) the expiry of 12 months after the on-site claim period.

#### 11. Further steps to facilitate return of ashes

The Director or an authorized officer may, by notice in writing, require an ash handler to take any steps that the Director considers necessary to facilitate—

- (a) the return of ashes to their eligible claimants;
- (b) the delivery of ashes to the Director; or
- (c) the reinterment of ashes.

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

- (1) Subsections (2), (3) and (4) apply if the Director has in his or her possession ashes in respect of which the prescribed ash disposal procedures have, or any step in them has, not been carried out, whether or not after a contravention of section 66, 67, 68, 70, 71 or 73 of this Ordinance.
- (2) The Director may, under section 74(1) of this Ordinance, carry out the steps that the Director considers necessary for disposal of ashes (to the extent that there are steps in the prescribed ash disposal procedures that have not been carried out).
- (3) The Director must keep a record of the process of the steps carried out under section 74(1) of this Ordinance.
- (4) Sections 7, 8 and 9 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.

#### 13. Director's power to dispose of ashes

- (1) Any ashes in the Director's possession in respect of which the prescribed ash disposal procedures, or the steps that a

specified officer considers necessary for disposal of ashes, have been carried out may be disposed of by the Director in any manner that the Director thinks fit.

- (2) Subsection (1) does not apply to any ashes in respect of which proceedings are pending in the court and a person has, by written notice, informed the Director of the proceedings.

**14. Director recovering expenses of steps carried out for disposal of ashes**

- (1) A person is liable to pay to the Director all expenses that the Director incurs in carrying out the steps that the Director considers necessary for disposal of ashes in respect of a columbarium if the person—
- (a) is required under section 66(2)(b), 71 or 73(2) of this Ordinance to carry out the prescribed ash disposal procedures; but
  - (b) has not done so.
- (2) To avoid doubt, for the purposes of subsection (1)(a), a person is regarded as being required under section 66(2)(b) of this Ordinance to carry out the prescribed ash disposal procedures if the person—
- (a) has abandoned the columbarium as referred to in section 67 or 68 of this Ordinance; or
  - (b) does not continue to operate the columbarium as required by section 70 of this Ordinance.
- (3) The Director may issue a certificate to certify the expenses incurred in respect of a columbarium as mentioned in subsection (1).
- (4) Without limiting the general meaning of *expenses*, the expenses may include supervision and departmental charges and legal costs.

- (5) The certificate must state that upon registration of it in the Land Registry under subsection (12) in the case referred to in that subsection, the expenses (including any interest recoverable under subsection (7)) constitute a legal charge on the columbarium premises.
- (6) The Director must serve a copy of the certificate on each person whom the Director believes to be liable to pay the expenses.
- (7) Interest is recoverable as part of the expenses from a person who is liable for the expenses under subsection (1) at the annual rate of 10% commencing 1 month after the date of service of the certificate on the person.
- (8) Payment of the expenses by any person is without prejudice to the person's right to recover the payment from any other person who is liable to pay for the expenses.
- (9) The expenses due from a person to the Director under this section are recoverable as a civil debt due to the Government.
- (10) A certificate purporting to be signed by the Director under subsection (3) is on its production admissible in any proceedings without further proof.
- (11) The certificate is presumed, in the absence of evidence to the contrary, to be proof of the signature of the Director and of the amount of expenses due from a person referred to in subsection (1).
- (12) Where any person liable to pay the expenses is the owner of the columbarium premises, then at any time before the expenses (including the interest accrued) have been recovered in full, the certificate under subsection (3) may be registered in the Land Registry against the title of the premises.
- (13) Upon the recovery of the expenses (including the interest accrued) in full, the Director is to lodge, or cause to be lodged,

in the Land Registry a memorial of satisfaction against the certificate.

**15. Director to provide information on ash disposal by columbaria**

(1) The Director must keep—

(a) a list setting out—

- (i) each columbarium in respect of which the prescribed ash disposal procedures are being carried out;
- (ii) each columbarium in respect of which the prescribed ash disposal procedures have been carried out;
- (iii) each columbarium in respect of which the steps that a specified officer considers necessary for disposal of ashes are being carried out; and
- (iv) each columbarium in respect of which the steps that a specified officer considers necessary for disposal of ashes have been carried out; and

(b) in respect of each columbarium referred to in paragraph (a)(i) or (ii), a copy of the commencement of ash disposal notice given in accordance with section 8 of this Schedule.

(2) The Director must make available the information kept under subsection (1) for inspection by the general public during normal office hours free of charge.

**16. Alternative ash disposal procedures**

(1) A person is treated as having carried out the prescribed ash disposal procedures in respect of a columbarium if the person has carried out, in respect of the columbarium, the procedures

specified in an ash disposal plan approved by the Director in respect of the columbarium.

- (2) The Director may, on application, approve an ash disposal plan in respect of a columbarium if the Director is satisfied that the procedures specified in the plan are as effective as the prescribed ash disposal procedures in facilitating the return of the ashes interred in the columbarium, or the reinterment of those ashes, under this Schedule.
- (3) An application under subsection (2) must be made, in writing, within the 30 days referred to in section 71(2)(a) or 73(3)(b)(i) or (5)(a)(i) (as the case requires) of this Ordinance as if a reference to a commencement of ash disposal notice in that section were a reference to the application.
- (4) On determining an application under subsection (2), the Director must notify the applicant in writing of—
  - (a) the Director's decision; and
  - (b) if the application is refused—the reasons for the refusal.
- (5) If the application is refused, the applicant must—
  - (a) carry out the prescribed ash disposal procedures in accordance with section 7 of this Schedule; and
  - (b) for the purposes of paragraph (a), give a commencement of ash disposal notice in accordance with section 8 of this Schedule within 30 days after the date on which the Director notifies the applicant of the Director's decision.
- (6) Subject to any necessary modifications, the other provisions of this Ordinance apply to a person who is treated as having carried out the prescribed ash disposal procedures under subsection (1) in the same manner as they apply to a person who has carried out the prescribed ash disposal procedures.
- (7) An appeal under section 82 of this Ordinance against a decision to refuse an application made under subsection (2)

does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise.

**Schedule 6**

[ss. 100 &amp; 101]

**Fees**

Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
1.	Issue of temporary suspension of liability ( <i>TSOL</i> ) (regardless of the duration of the validity period)	Upon issue	For a columbarium in which the following total number of sets of ashes (according to the ash interment quantity as shown in the approved plans) may be interred— (a) not exceeding 1 000 \$24,000 (b) exceeding 1 000 but not exceeding 5 000 \$48,000 (c) exceeding 5 000 but not exceeding 10 000 \$72,000

Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
			(d) exceeding 10 000 but not exceeding 50 000 \$96,000
			(e) exceeding 50 000 \$120,000
2.	Issue of exemption (regardless of the duration of the validity period)	Upon issue	For a columbarium in which the following total number of sets of ashes (according to the ash interment quantity as shown in the approved plans) may be interred—
			(a) not exceeding 1 000 \$50,000
			(b) exceeding 1 000 but not exceeding 5 000 \$90,000
			(c) exceeding 5 000 but not exceeding 10 000 \$130,000

Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
			(d) exceeding 10 000 but not exceeding 50 000 \$170,000
			(e) exceeding 50 000 \$210,000
3.	Issue of licence (regardless of the duration of the validity period)	Upon issue	For a columbarium in which the following total maximum number of sets of ashes (according to the ash interment capacity as shown in the approved plans) may be interred—
			(a) not exceeding 1 000 \$90,000
			(b) exceeding 1 000 but not exceeding 5 000 \$165,000
			(c) exceeding 5 000 but not \$240,000



## Private Columbaria Bill

Schedule 6

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Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
			exceeding 10 000
		(d)	exceeding 10 000 but not exceeding 50 000
		(e)	exceeding 50 000
4.	Extension of TSOL	Upon extension	\$29,600
5.	Renewal of exemption	Upon renewal	\$26,450
6.	Renewal of licence	Upon renewal	\$28,100
7.	Transfer of TSOL	Upon approval for transfer	\$23,150
8.	Transfer of exemption	Upon approval for transfer	\$25,000

## Private Columbaria Bill

Schedule 6

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Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
9.	Transfer of licence	Upon approval for transfer	\$26,250
10.	Variation of condition(s) to which a TSOL is subject	Upon approval for variation of condition(s)	\$7,350
11.	Variation of condition(s) to which an exemption is subject	Upon approval for variation of condition(s)	\$9,860
12.	Variation of condition(s) to which a licence is subject	Upon approval for variation of condition(s)	\$9,860
13.	Permission for alteration or addition to the premises of a columbarium	Upon permission for alteration or addition	\$30,550

## Private Columbaria Bill

## Schedule 6

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Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
14.	in respect of which a TSOL is issued Permission for alteration or addition to the premises of a columbarium in respect of which an exemption is issued	Upon permission for alteration or addition	\$46,800
15.	Permission for alteration or addition to the premises of a columbarium in respect of which a licence is issued	Upon permission for alteration or addition	\$59,550

## Private Columbaria Bill

## Schedule 6

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Column 1	Column 2	Column 3	Column 4
Item	Particular	When Payable	Fee
16.	Duplicate of a TSOL	Upon issue of a duplicate	\$435
17.	Duplicate of an exemption	Upon issue of a duplicate	\$435
18.	Duplicate of a licence	Upon issue of a duplicate	\$435

**Schedule 7**

[ss. 101 &amp; 106]

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

- (1) This section applies to a columbarium that was in operation immediately before the enactment date.
- (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 as the person does not sell any interment right in respect of the columbarium in that period.
- (3) 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.
- (4) If an application referred to in paragraph (b) of the definition of ***grace period*** in subsection (3) is refused, it is finally disposed of at the later of the following—
  - (a) at the time the period within which an appeal may be lodged under section 82 of this Ordinance against the refusal expires without an appeal having been lodged;

- (b) if an appeal has been lodged within time—at the time the appeal is determined or withdrawn.

### Explanatory Memorandum

The main purpose of this Bill is to provide for the licensing of non-Government columbaria.

2. The Bill contains 11 Parts and 7 Schedules.

#### Part 1

3. Part 1 contains preliminary provisions. Clause 1 sets out the short title and provides for commencement. Clause 2 defines *ashes*, *columbarium*, *cut-off time*, *enactment date*, *inter*, *interment right*, *pre-cut-off columbarium* and other expressions for the interpretation of the Bill. Clause 3 explains the meaning of *sale of interment right* used in the Bill. Clauses 4, 5, 6 and 7 exclude from the application of the Bill—

- (a) columbaria that are built, operated, administered or maintained by the Government;
- (b) private crematoria, private cemeteries (which will include columbaria operated by the Board of Management of the Chinese Permanent Cemeteries) and the places of business of undertakers of burials—all of which are or will be regulated under the Public Health and Municipal Services Ordinance (Cap. 132);
- (c) workplaces used for transforming ashes into synthetic materials;
- (d) premises where no more than 10 containers of ashes are exhibited for a transient period of not more than 14 days; and
- (e) the keeping of no more than 10 containers of ashes in domestic premises.

#### Part 2

4. Clause 8 establishes a Private Columbaria Licensing Board (*Licensing Board*). Schedule 1 contains the constitutional and administrative provisions relating to the Licensing Board. Clause 9 empowers the Licensing Board to determine applications for a licence, exemption or temporary suspension of liability (*specified instrument*) in respect of a columbarium, to issue guidelines and codes of practice about the operation and management of columbaria, to conduct investigation into irregularities and discipline operators, and to exercise powers that are ancillary to its functions.

#### Part 3

5. Part 3 controls the operation of columbaria. Under clause 10, a person must have a licence to operate a columbarium (including selling interment rights). However, operation without selling interment rights is permitted under an exemption or temporary suspension of liability. Contravention of the prohibition is an offence (clause 11).

#### Part 4

6. Part 4 provides for the issue of specified instruments for operating columbaria. This Part is divided into 6 Divisions.
7. Division 1 contains general provisions. Clause 13 empowers the Licensing Board to issue, renew or extend a specified instrument. But a columbarium subject to certain enforcement actions under the Town Planning Ordinance (Cap. 131) or the Buildings Ordinance (Cap. 123) may not be issued with a specified instrument (clause 16). Clause 14 sets out the time limit for application for a specified instrument. Basically, an application for the issue of a licence in respect of a columbarium may be made at any time after the expiry of 6 months beginning on the day on which the Private Columbaria

Ordinance, if this Bill is passed, is published in the Gazette (*enactment date*). However, an application for the issue of a specified instrument in respect of a pre-cut-off columbarium must be made at any time after the expiry of 6 months beginning on the enactment date, but before the expiry of 9 months beginning on that date. Clause 15 provides for the validity period of a specified instrument.

8. Division 2 (as read with Schedule 2) prescribes the matters that affect the grant or refusal of an application for a specified instrument (*eligibility criteria*) and are presented in table form below—

Main Eligibility Criteria for Specified Instruments

Columbarium to which eligibility criteria apply	Instrument applied for	Aspects of eligibility criteria			
		Land	Planning	Building	Interest in premises
1. Any	Licence (Note (1)) (clause 17)	No unlawful occupation of unleased land and compliance with the requirements in respect of the columbarium under the lease, short term tenancy or other instrument under which the columbarium premises are held directly	Compliance with the requirements under the Town Planning Ordinance (Cap. 131).	Compliance with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) and other requirements specified by the Licensing Board.  Alternatively, if the columbarium comprises structures that form the whole, or a part, of a certifiable	Holding the columbarium premises directly from the Government under a lease.

Columbarium to which eligibility criteria apply	Instrument applied for	Aspects of eligibility criteria			
		Land	Planning	Building	Interest in premises
		from the Government.		building <sup>(Note (2))</sup> —the certifiable building is certified <sup>(Note (3))</sup> as structurally safe and any works that the Licensing Board requires have been carried out.	
2. Pre-cut-off columbarium (Note (4))	Licence (Note (1)) (clause 18)	Same as item 1 above.	Same as item 1 above.	Same as item 1 above.  Alternatively, if the non-compliant structures in the pre-cut-off columbarium are structures certifiable for a pre-cut-off columbarium <sup>(Note (5))</sup> —the structures or building concerned is certified <sup>(Note (3))</sup> as structurally safe and any works that the Licensing Board requires have been carried out.	Same as item 1 above.  Alternatively, a right to use the columbarium premises for at least 5 years beginning on the date on which the licence (if issued) is to take effect.
3. Pre-cut-off columbarium (Note (4))	Exemption (Note (6)) (clause 19)	Same as item 1 above.	Not applicable.	Same as item 2 above.	Same as item 1 above.  Alternatively, a right to use the columbarium

Columbarium to which eligibility criteria apply	Instrument applied for	Aspects of eligibility criteria			
		Land	Planning	Building	Interest in premises
					premises for at least 5 years beginning on the date on which the exemption (if issued) is to take effect.
4. Pre-cut-off columbarium (Note (4))	Temporary suspension of liability (clause 20)	If the case involves unlawful occupation of unleased land, the applicant must make an application for lawful authority to occupy the land and declares that the applicant has no claim to the land based on adverse possession.	Not applicable.	Certified <sup>(Note (3))</sup> as not posing obvious or imminent danger in terms of building safety and fire safety.	Not applicable.

Notes: (1) A columbarium's eligibility for a licence will also depend on—

- (a) it having a management plan approved by the Licensing Board; and
- (b) where a deed of mutual covenant is in force in respect of the columbarium premises—a written legal advice being produced to confirm that the deed contains no express restrictive covenant as specified in clause 22(3).

(2) **Certifiable building** is defined by section 3(3) of Schedule 2 to mean—

- (a) an NT small building erected on or after 16 October 1987 with certificate of exemption issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);

- (b) an NT small building erected on or after 1 January 1961 and before 16 October 1987 that complied with the law at that time;
- (c) a pre-1961 NT building; or
- (d) a building situated on land that was unleased land at the time the building was erected but a lease or short term tenancy is subsequently granted by the Government before the enactment date,

where **NT small building** and **pre-1961 NT building** are defined by section 3(4) of Schedule 2, and a **pre-1961 NT building** is limited to a building in the New Territories built before 1 January 1961 if there has been no alteration, addition or reconstruction of the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date.

- (3) **Certified** means certified by an authorized person or registered structural engineer (or both of them) as specified by the Licensing Board.
- (4) A **pre-cut-off columbarium** may be treated as such if it is proved—
  - (a) that the ash interment layout is limited in extent to that as at the cut-off time;
  - (b) (for an application for the issue of a licence or an accompanying application for the issue of a temporary suspension of liability) that the ash interment capacity is limited to that as at the cut-off time, and also (for the accompanying application for the issue of a temporary suspension of liability) that the ash interment quantity is limited to that as at the enactment date;
  - (c) (for an application for the issue of an exemption or an accompanying application for the issue of a temporary suspension of liability) that the ash interment quantity is limited to that as at the cut-off time; and
  - (d) that 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.
- (5) **Structures certifiable for a pre-cut-off columbarium** essentially cover structures that—
  - (a) do not comply with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123), and do not form the whole, or a part, of a certifiable building; but
  - (b) 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
    - (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium; and
  - (c) 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—
      - (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).
  - (6) A pre-cut-off columbarium's eligibility for an exemption will also depend on meeting the following requirements—
    - (a) the columbarium commenced operation before 1 January 1990; and
    - (b) no interment right in respect of the columbarium has been sold since the cut-off time.
9. Division 3 provides for the form of, and the plans and other information required for, an application for a specified instrument. Under clause 27, the ash interment layout and ash interment quantity of the columbarium as at the cut-off time can be proved by a statement prepared by the Director of Food and Environmental Hygiene (*Director*) or an authorized public officer under the notification scheme announced by the Secretary for Food and Health at the cut-off time. The Licensing Board may also consider other evidence of these particulars.
10. Division 4 provides for the form of a specified instrument and the conditions that may be imposed on a specified instrument. Basically—
- (a) the main conditions include those about ash interment and continued compliance with certain eligibility criteria referred to in Division 2;
  - (b) a temporary suspension of liability, if issued, will be subject to conditions requiring its holder to take steps, with reasonable expedition, towards meeting the eligibility criteria for a licence or exemption and

- procuring the issue of a licence or exemption before the expiry of the temporary suspension of liability; and
    - (c) the Licensing Board may impose conditions restricting the imposition of additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of the interment right entered into before the cut-off time.
11. Division 5 contains supplementary provisions about specified instruments and related applications.
12. Clause 38 specifies the circumstances in which a specified instrument may be transferred. It also provides that a transferee is liable for all debts and obligations in relation to each agreement for the sale of an interment right entered into before the transfer by the transferor. Clause 39 specifies the circumstances under which the Licensing Board may revoke or suspend a specified instrument, or vary its conditions. Under clause 40, the holder of a specified instrument may also apply for the variation of its conditions. Clause 41 provides for suspension of operation of the decision if it is appealed against.
13. Clause 42 requires an applicant for a specified instrument or a holder of a specified instrument to notify the Licensing Board of certain matters (including a change in the information provided in connection with the application concerned, and cessation of the columbarium). Clause 43 (as read with Schedule 3) provides for the procedural aspects of applications for specified instruments.
14. In Division 6, clause 44 provides for the issue of a certificate of columbarium use in respect of the columbarium premises on the issue of a specified instrument. The Licensing Board must register the certificate against the premises in the Land Registry. Clause 45 requires the Licensing Board to keep a register of private

columbaria issued with specified instruments and to make it available for public inspection.

## Part 5

15. Part 5 provides for the requirements and duties relating to the operation of a columbarium. This Part is divided into 2 Divisions.
16. Division 1 (as read with Schedule 4) relates to an agreement for the sale of an interment right entered into on or after the enactment date. Clause 47 imposes requirements that such an agreement must meet in order for it to be enforceable against the purchaser. Among other things, it must not purport to sell an interment right for a term extending beyond the term of the lease under which the columbarium premises are held directly from the Government, or otherwise than for payment payable on the same periodic basis as that for the payment of rent for the short term tenancy granted by the Government under which the columbarium premises are occupied, or for a term extending beyond the term of the tenancy between private parties under which the columbarium premises are occupied. It must contain the information, recommendations and essential terms prescribed in Schedule 4. Under clause 48, if an agreement for the sale of an interment right is not enforceable, the purchaser may cancel the agreement by giving the seller written notice and obtain a refund of any money paid under the agreement. Clause 49 sets out the requirements for records to be kept by holders of specified instruments.
17. Division 2 provides for the ongoing obligations on a holder of a specified instrument, including—
  - (a) exhibition of the instrument at the columbarium (clause 50(1));
  - (b) (for a pre-cut-off columbarium operated under an exemption or temporary suspension of liability)

exhibition of a notice that a sale of interment right in respect of the columbarium is an offence (clause 50(2));

- (c) prohibition on alteration or addition to the columbarium premises in material deviation from the approved plans (clause 51);
- (d) compliance with the limit on the number of sets of ashes in the columbarium as shown in the approved plans (clause 52) except that—
  - (i) ashes may be interred in a pre-cut-off columbarium operated under an exemption if the interment right was sold before the cut-off time (clause 53); or
  - (ii) a specified number of sets of ashes of religious practitioners may be interred in a religious ash pagoda of a specified Chinese temple which is a pre-cut-off columbarium operated under an exemption (clause 55); and
- (e) keeping the columbarium in good repair (clause 56).

Failure to comply with any of the requirements constitutes an offence.

## Part 6

18. Part 6 contains enforcement provisions as follows—
  - (a) clauses 57, 58 and 59 set out respectively the powers of the Director or an authorized officer—
    - (i) to enter and inspect a columbarium in respect of which a specified instrument is in force;
    - (ii) to exercise the powers to enter and search (as well as the power of seizure etc.) against any premises on obtaining a search warrant or if there is (or is likely to be) evidence of an offence under the Bill



but it is not reasonably practicable to obtain a search warrant; and

(iii) to arrest a person who commits (or is suspected of having committed) an offence under the Bill;

(b) clause 60 contains related offences; and

(c) clause 61 provides for disposal of the things seized, removed or impounded.

19. Clause 62 empowers the Director to issue an enforcement notice to require the holder of a specified instrument to end, remedy or prevent the recurrence of any contravention of a condition of the instrument. Failure to comply with the notice is an offence. Further, the Director is empowered to take necessary or desirable remedial or preventive action and recover the expenses from the holder.

#### Part 7

20. Part 7 provides for obligations in disposing of ashes.
21. Clauses 67 and 68 state that a person who has operated a columbarium must not abandon the columbarium. This applies whether the columbarium is issued with a specified instrument or not. Such a person also must not improperly dispose of ashes (clause 66). Contravention of any of the obligations is an offence (clause 72).
22. Part 2 of Schedule 5 sets out the ash disposal procedures to be carried out.
23. A person who takes possession of the premises of a columbarium (whether as owner, mortgagee or based on any other interest in the premises) must notify the Director within 7 days after the date of taking possession (clause 73(1)).
24. An owner or mortgagee who acquires the columbarium premises against which a certificate of columbarium use is registered must

carry out the prescribed ash disposal procedures (clause 73(2)). Other third parties taking possession of the columbarium premises must also carry out these procedures or, alternatively, invite the Director to carry out necessary steps for disposal of ashes on-site (clause 73(4)).

25. Clause 74 empowers the Director, an authorized officer or a public officer (each is called a *specified officer*) to carry out necessary steps for disposal of ashes in respect of a columbarium. For this purpose, a specified officer may apply for a court order for occupying the premises concerned. Part 1 of Schedule 5 relates to such an occupation order. The expenses incurred in carrying out these steps may be recovered from the person who is required to carry out the prescribed ash disposal procedures but has not done so (section 14 of Schedule 5).

#### Part 8

26. Part 8 provides for appeals against decisions of the Licensing Board and of the Director under the Bill. Clauses 81, 82 and 83 provide for the right of appeal and for the establishment and composition of the Private Columbaria Appeal Board (*Appeal Board*).
27. Clauses 84 to 90 deal with the procedures for hearing an appeal, create related offences, and provide for the privileges and immunities of the members of an Appeal Board and any witness appearing before it.

#### Part 9

28. Part 9 contains miscellaneous provisions. Clause 91 provides for delegation of powers and appointment of an authorized officer by the Director. Clause 92 enables the Licensing Board or the Director to consult other law enforcement authorities and persons, and obtain information from them, when performing functions under the Bill.

29. Clauses 93 and 94 empower the Licensing Board to issue guidelines and codes of practice. Under clause 95, the Licensing Board may impose requirements on the matters to be covered in a management plan that must accompany a licence application. Clause 97 makes it an offence to provide false or misleading information under the Bill. Clause 98 provides for the liability of a director etc. of a body corporate, a partner etc. in a partnership, or a member etc. of an unincorporated body, for an offence by the body corporate, another partner, or another member of the unincorporated body, respectively.
30. Clause 100 introduces Schedule 6, which sets out the fees payable for matters under the Bill.
31. Clauses 101 and 102 provide for the powers to amend the Schedules and to make regulations. Clause 104 covers immunity for anything done or omitted to be done in good faith by the Licensing Board's member, a member of its committee, its staff member or the Director, an authorized officer or any other public officer in performing functions under the Bill. Clause 105 deals with service of notice, decision or other document under the Bill. Clause 106 introduces Schedule 7, which contains transitional provisions.

**Part 10**

32. Part 10 deals with the implications of the Bill on other legal requirements.
33. In general, the requirements of the Bill are in addition to and do not derogate from other legal requirements unless otherwise stated in the Bill. A specified instrument does not negate any liability under any other Ordinance (clause 107).
34. Clauses 108, 109 and 110 modify the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) and—

- (a) the modifications apply to certain breaches of these Ordinances by a pre-cut-off columbarium if—
- (i) a specified instrument specified in the relevant provision is in force or is being applied for, or refusal of the instrument is under appeal and (in the case of extension or renewal) is suspended from operation; and
  - (ii) the breach is limited to the extent that is necessary for, or ancillary to, the operation of the columbarium; and
- (b) the effects of the modifications are that certain provisions of these Ordinances do not apply during the period the conditions are met.

**Part 11**

35. Part 11 contains related amendments. In particular—

- (a) clauses 112 to 120 are amendments to the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) consequential to clauses 108, 109 and 110;
- (b) clauses 121 to 127 amend the Public Health and Municipal Services Ordinance (Cap. 132) and the Private Cemeteries Regulation (Cap. 132 sub. leg. BF) so that—
  - (i) columbaria operated by the Board of Management of the Chinese Permanent Cemeteries (other than the private cemeteries currently listed in that Ordinance) will be private cemeteries under that Ordinance; and

- (ii) these columbaria will be regulated under that Regulation;
- (c) clauses 128 and 129 amend the Prevention of Bribery Ordinance (Cap. 201) so that the Licensing Board and the Appeal Board are regulated as public bodies under that Ordinance; and
- (d) clauses 130 and 131 amend the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) to exclude the application of section 5 of the Electronic Transactions Ordinance (Cap. 553) to certain provisions requiring the production of information in writing so that such information may not be provided by electronic means.

**Private Columbaria Bill –  
Notification Scheme launched in June 2014**

In June 2014, the Food and Environmental Hygiene Department (“FEHD”) rolled out an administrative Notification Scheme. The Secretary for Food and Health announced the Notification Scheme through a press release at 8:00 a.m. and a press conference thereafter on 18 June 2014. Operators taking part in the Notification Scheme were required to respond to a notice served by FEHD and provide details of his or her columbarium operation and, within a relevant deadline, allow FEHD to enter and inspect the columbarium premises for the purpose of verifying the information provided.

2. Specifically, the information sought comprised the following data as at the cut-off time –

(a) in batch 1 on the following niche-related particulars, including:

- (i) the number of columbarium blocks and the number of outdoor niche walls;
- (ii) in respect of (i) where niches with interred ashes were in existence, the categories and number of niches, the number of sold and occupied niches, the number of sold but not yet occupied niches, and the number of niches available for sale; and
- (iii) the date of sale of first niche and the date of first interment in a niche,

as well as furnaces (if any) in the columbarium; and

(b) in batch 2 on any other facilities (if any) in the columbarium that were claimed by the operator to be “necessary for, or ancillary to, the operation of the columbarium”, to the extent that they were not covered in batch 1.

3. By implication, the land/structures on or in which such facilities were located formed part and parcel of the information collected. FEHD

compiled a record on the information received and verified by FEHD, including plans marking where such facilities are located.

4. We wish to make it clear that information collected above will not pre-empt the decisions of the Licensing Board, which might draw up relevant criteria for determining what are essential ancillary facilities supporting the purpose of interment of ashes which in turn determine what is “necessary for, or ancillary to, the operation of a columbarium”. Facilities that are not such essential ancillary facilities (and the land/structures on or in which they are located) will be excluded from the approved plan of a pre-cut-off columbarium. Once excluded, the grandfathering arrangements would not apply to them.

5. The information collected will facilitate the Licensing Board in considering the pre-cut-off columbarium status of the relevant columbaria and their eligibility for seeking temporary suspension of liability, a licence and/or exemption. When the Licensing Board considers their applications in due course, such information will be evidence of the notifiable particulars in the absence of evidence to the contrary. The Licensing Board may consider such evidence as may be provided by these operators in support of their applications, other than evidence referred to in the Notification Scheme.

**Eligibility Requirements Relating to Different Types of Specified Instruments**

A private columbarium will be licensed only if it complies with specified requirements, including planning-related, land-related and building-related requirements. Specifically, the following are required of an applicant seeking a licence –

- (a) compliance with planning-related requirements – the columbarium must comply with every requirements under the Town Planning Ordinance (Cap. 131);
- (b) compliance with land-related requirements – the columbarium on leased land must comply with the requirements in respect of the columbarium under the lease, short term tenancy or other land instrument. In addition, the operation of the columbarium must not involve unlawful occupation of unleased land;
- (c) compliance with building-related requirements –
  - (i) with approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) and meeting other requirements imposed by the Licensing Board; or
  - (ii) being a certifiable building<sup>1</sup> certified by an Authorized Person / Registered Structural Engineer (“AP/RSE”) to be

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<sup>1</sup> A certifiable building means –

- (a) an New Territories (“NT”) small building erected on or after 16 October 1987 with a certificate of exemption issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
- (b) an NT small building erected on or after 1 January 1961 and before 16 October 1987 and complied with the repealed Buildings Ordinance (Application to the New Territories) Ordinance at the time of its erection;
- (c) a pre-1961 NT building, if there has been no alteration, addition or reconstruction of the building in contravention of Cap. 123 on or after that date; or
- (d) a building situated on land that was unleased land at the time the building was erected on that land, but a lease under which the columbarium premises are held directly from the Government or a short term tenancy under which the columbarium premises are occupied is subsequently granted by the Government before the date on which the Private Columbaria Ordinance is published in the Gazette (“enactment date”).

structurally safe and meeting other requirements imposed by the Licensing Board,

*(except for a pre-cut-off columbarium, this requirement may be modified to the extent that structures certifiable for a pre-cut-off columbarium<sup>2</sup> might be tolerated, subject to certification by AP/RSE to be structurally safe and meeting other requirements imposed by the Licensing Board);*

- (d) having the right to use the premises – the columbarium premises must be held directly from the Government under a lease *(except for a pre-cut-off columbarium, this requirement may be modified to the extent that if the above is not the case, the operator must prove that he or she has the right to continue to use the premises for at least five years from the grant of a licence);*
- (e) compliance with deed of mutual covenant – if there is a deed of mutual covenant in force in respect of the columbarium premises, the application must be accompanied by a written legal advice confirming that there is no express restrictive covenant in the deed prohibiting the premises for columbarium or commercial use or restricting the premises for only private residential use; and
- (f) management plan – the operator is required to submit to the

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<sup>2</sup> Structures certifiable for a pre-cut-off columbarium is defined to mean non-compliant structures existing immediately before the cut-off time for the grandfathering arrangements –

- (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
  - (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium immediately before the cut-off time; and
- (b) fall within the following description –
  - (i) they are an 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; or
  - (iv) they form the whole, or a part, of a multi-storey building that is an NT small building that came into existence on or after 16 October 1987 and has not been issued with a certificate of exemption under Cap. 121.

Licensing Board, for its approval, a management plan covering, among other things, traffic and crowd control management, in respect of the columbarium.

2. For a pre-cut-off columbarium, subject to its meeting the specified requirements, it is open to the relevant operator to apply for the following specified instrument(s) –

(A) ***Licence***

- Please see paragraph 1 above for the eligibility requirements for seeking a licence. The modifications under the grandfathering arrangements in respect of a pre-cut-off columbarium set out in paragraph 1(c) and (d) above apply.

(B) ***Exemption***

- (a) The eligibility requirements for seeking an exemption include proving, amongst others –
  - (i) having commenced columbarium operation<sup>3</sup> before 1 January 1990 (to be referred to as “dated columbarium” hereinafter);
  - (ii) **having ceased sale of interment right as from the cut-off time;**
  - (iii) complying with the land-related requirements;
  - (iv) complying with the building-related requirements or the non-compliant structures necessary for, or ancillary to, the operation of the columbarium are structures certifiable for a pre-cut-off columbarium and the requirements applicable to the structures are complied with (i.e. certifying structures certifiable for a pre-cut-off columbarium by AP/RSE to be

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<sup>3</sup> A columbarium is taken as commencing its operation at the earliest time when a set of ashes was interred in any of its niches or the earliest time when any of its niches was sold, whichever is the earlier.



structurally safe and meeting other requirements imposed by the Licensing Board); and

- (v) if it does not hold the columbarium premises directly from the Government under a lease, the operator must prove that he or she has the right to continue to use the premises for at least five years from the grant of an exemption;
- (b) A dated columbarium may inter ashes in niches therein after the cut-off time but before the enactment date without affecting its eligibility to apply for an exemption, so long as the interment right in respect of those ashes was sold before the cut-off time. If the dated columbarium is granted an exemption in future, it may continue to inter ashes during the validity period of the exemption in niches sold before the cut-off time. To prevent abuse, should any dated columbarium intending to apply for an exemption inter ashes in its niches after the cut-off time, it must properly keep the relevant agreements, register on unused / partially used niches sold before the cut-off time, and records of interment / disinterment for future inspection by the Director of Food and Environmental Hygiene or an authorized officer; and
- (c) Specifically for a pre-cut-off columbarium of a Chinese temple that is a dated columbarium, the columbarium may inter ashes in niches in its religious ash pagoda after the cut-off time but before the enactment date without affecting its eligibility to apply for an exemption, so long as no fees, charges or other sums are involved in respect of the interment of ashes. Subject to the columbarium's obtaining an exemption and following the publication of relevant notice in the Gazette by the Secretary for Home Affairs ("SHA"), the columbarium may continue to inter ashes of the religious practitioners of that temple<sup>4</sup> into the specified religious ash pagoda during the validity period of the exemption. SHA is empowered under the Bill to

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<sup>4</sup> Religious practitioners are defined in the Bill as Buddhist or Taoist monks, nuns, priests or priestesses who have resided and served in the temple immediately before their death.

designate a quota for the number of set of ashes so interred (capped at 1 000 for a specified pre-cut-off columbarium), and formulate requirements and conditions for this purpose.

(C) *Temporary suspension of liability (TSOL)*

- (a) The Licensing Board may refuse to grant a TSOL –
- (i) where the columbarium involves unlawful occupation of unleased land, if the operator –
- does not apply to the Director of Lands for lawful authority to occupy the unleased land; or
  - does not provide to the Director of Lands a written declaration on no claim to the unleased land, whether based on possession of the unleased land before, on or after the date of the application or on any other ground; and
- (ii) if the operator fails to prove that the columbarium has been certified by AP/RSE as not posing any obvious or imminent danger in terms of building safety and fire safety.
- (b) An application for a TSOL cannot be submitted on a stand-alone basis, but must be submitted together with an application for a licence and / or an exemption. A TSOL is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards meeting the applicable requirements and procuring the issue of the licence or the exemption (as the case requires).
- (c) We will make it clear that the TSOL status conferred does **not** guarantee that the holder will get a licence or an exemption upon expiry of TSOL status or extension of such.

**Implications of the Proposal**

**Financial and civil service implications**

To implement the proposed licensing scheme, a recurrent allocation of \$24.8 million involving the creation of 42 posts in a full year, as well as a time-limited allocation of \$25.0 million involving the creation of 9 time-limited posts, was provided to concerned bureaux/departments. Any further resources requirements from bureaux/departments concerned will be sought in accordance with the established mechanism. In line with the usual funding arrangements between the Judiciary and the Government, the Government would provide the Judiciary with the necessary manpower and financial resources should such needs arise in future.

2. The proposed waiver of waiver fees, STT rentals and administrative fees for columbaria eligible for exemption seeking regularisation will result in revenue foregone. However, the amount of revenue foregone cannot be estimated at this stage as it depends on the number of private columbaria applying for an exemption and the actual circumstances (e.g. the location and the number of niches, etc.) of individual sites.

3. Fees and charges arising from the licensing scheme for private columbaria have been prescribed in Schedule 6 to the Bill after obtaining support from the LegCo Panel on Food Safety and Environmental Hygiene in June 2016. Assuming that (a) the proposed fees and charges can be implemented within the 2016-17 financial year, (b) all applications for temporary suspension of liability would be processed within two years upon the receipt of application, and (c) applications for licence / exemption would be processed within six years upon receipt of application, we estimate that the revenue generated from the above fee proposals will be \$10.8 million per annum for the first two years, and thereafter \$5.3 million per annum from the third to sixth year.

### Environmental implications

4. Private columbaria will still be subject to the control of relevant environmental legislation. Conditions to be set by the future Licensing Board for licences and exemptions to be granted will also encompass measures to improve the environment surrounding the relevant columbarium. The proposal will therefore have a positive impact on environment.

### Sustainability implications

5. Under the proposal, some existing unauthorised private columbaria, which should otherwise be subject to enforcement actions, will be allowed to continue to exist while they are applying for or holding a specified instrument subject to certain conditions being met. This will make more efficient use of existing private columbarium facilities, hence freeing up scarce land resources for other priority uses by society. Besides, as the Licensing Board would be able to impose conditions on private columbaria including, inter alia, plans to control nuisance, on crowd management and to prevent any potential environmental problems that may arise, the impact on the living environment of the neighbourhood by the continued operation of these private columbaria would be put under control under the licensing scheme. The proposal will thus have a positive impact on sustainability.

### Family implications

6. From the family perspective, effective regulation of columbarium operations would reduce tension and anxiety on the part of family members in handling post-death matters of the deceased. This would help promote greater harmony and cohesion in families and society.

### Economic implications

7. Taken as a whole, the licensing scheme would help regulate the development of private columbaria, enhance protection of consumer interest, and provide certainty to enable potential operators to make informed investment decisions. It would also help avoid the closing down of some

private columbaria upon their meeting certain conditions, thereby minimising service disruptions for consumers. Allowing the interment of ashes in niches sold before the cut-off time in exempted private columbaria would also help put the niches concerned to better use and relieve the pressure for finding land for the set-up of new columbarium.