

立法會
Legislative Council

LC Paper No. LS10/16-17

**Paper for the House Committee Meeting
on 25 November 2016**

**Legal Service Division Report on
Private Columbaria Bill**

I. SUMMARY

1. The Bill

The Bill, which is based on the Private Columbaria Bill as introduced into the Fifth Legislative Council in 2014, seeks to:

- (a) provide for the licensing of private columbaria for keeping ashes ("ashes") resulting from the cremation of human remains, including the establishment of the Private Columbaria Licensing Board;
- (b) impose obligations for the disposal of ashes; and
- (c) make other provisions to deal with related matters and provide for consequential or related amendments to other Ordinances.

2. Public Consultation

The Administration launched two public consultations in July 2010 and December 2011 respectively. A Business Impact Assessment study was also carried out in 2013. In July 2016, the Administration held meetings with various stakeholder organizations.

**3. Consultation with
LegCo Panel**

The Panel on Food Safety and Environmental Hygiene was briefed on the salient features of the Bill on 8 November 2016. While members in general expressed support for early introduction of the Bill, they expressed various concerns.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill provides for a new legislative scheme for regulating private columbaria in Hong Kong, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 23 November 2016. Members may refer to the LegCo Brief (File Ref.: FH CR 2/3751/07) issued by the Food and Health Bureau in November 2016 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) provide for the licensing of private columbaria for keeping ashes ("ashes") resulting from the cremation of human remains, including the establishment of the Private Columbaria Licensing Board ("the Licensing Board");
 - (b) impose obligations for the disposal of ashes; and
 - (c) make other provisions to deal with related matters such as the enforcement provisions and the appeal mechanism under the Bill, and provide for consequential or related amendments to other Ordinances.

Background

3. In June 2014, the Administration introduced the Private Columbaria Bill ("the Former Bill") into the Fifth Legislative Council ("the Fifth LegCo") for regulating private columbaria. A Bills Committee ("the Former BC") was then formed to study the Former Bill. Members of the Former BC raised various concerns on the Former Bill. In response to their concerns, deputations' views and enquiries made by the legal adviser to the Former BC and for implementing the Administration's revised or further proposals, the Administration proposed a total of 547 Committee stage amendments ("CSAs") to the Former Bill.

4. Members may refer to the Report of the Former BC ("the Former BC Report") (LC Paper No. CB(2)1843/15-16) for the views given by the Former BC on the Former Bill (including the Administration's CSAs)¹, LC Paper No.

¹ For example, the Former BC noted that amendments might have to be made in the future to certain legislative provisions after review, such as the provision on the keeping of ashes in the form of synthetic materials in domestic premises (see paragraphs 8 to 11 of the Former BC Report). With respect to certain requirements which were not to be prescribed in subsidiary legislation but with criminal sanction imposed in the event of default, the Former BC also expressed concerns but agreed on such arrangement for certain reasons (see, for example, paragraph 41 of the Former BC Report). At the request of the Former BC, the Administration undertook to keep in view the implementation of the Former Bill, if passed, and propose amendments to it as and when necessary and a review of it would in any event be conducted around three years after enactment (see, for example, paragraph 143(a) of the Former BC Report).

CB(3)772/15-16 for the full set of the Administration's CSAs, and the Administration's paper (LC Paper No. CB(2)1860/15-16(01)) for the Administration's explanations on those CSAs. Soft copies of these papers are available at the website of the Legislative Council.²

5. The resumption of the Second Reading debate, Committee stage and Third Reading on the Former Bill were put on the Agendas of the Council meetings of 6 July 2016 and 13 July 2016 but were not reached before Fifth LegCo stood prorogued. The Administration therefore introduces the Bill, which is, according to paragraph 1 of the LegCo Brief, based on the Former Bill and incorporates all the CSAs proposed by the Administration to the Former Bill. As stated in paragraph 4 of the LegCo Brief, nothing substantive has been changed in the Bill, save for a few minor technical details and stylistic polishing.

Provisions of the Bill

6. The main provisions of the Bill are explained in the ensuing paragraphs.

The licensing scheme for private columbaria

Licensing requirements for operating a private columbarium (Part 3 of the Bill)

7. Under the licensing scheme proposed in the Bill, a person must not operate, keep, manage or in any other way have control of a private columbarium unless the person has a licence, an exemption or a temporary suspension of liability ("TSOL"). These three instruments are called "specified instruments" under the Bill. Only a licence holder would be authorized to sell interment rights in respect of the columbarium. Contravention of the prohibition would be an offence punishable, on summary conviction, with a fine of \$2,000,000 and an imprisonment for three years, and on conviction on indictment, with a fine of \$5,000,000 and an imprisonment for seven years.

Eligibility criteria (Part 4 of and Schedule 2 to the Bill)

8. To be eligible for a licence, the columbarium must comply with prescribed requirements such as land-related, planning-related and building-related requirements as defined in Schedule 2 to the Bill and that the applicant must hold the columbarium premises directly from the Government. In case the columbarium is a pre-cut-off columbarium (i.e. a columbarium that was in

² As noted from paragraph 141 of the Former BC Report, a few number of CSAs were proposed by the Administration after the last meeting of the Former BC held on 13 June 2016. Please refer to the Administration's paper for details.

operation, and in which ashes were interred in niches, immediately before the cut-off time (i.e. 8 a.m. on 18 June 2014)), certain requirements would be modified.

9. Only a pre-cut-off columbarium would be eligible for an exemption or TSOL. To qualify for an exemption, the pre-cut-off columbarium must, among other things, be one which commenced operation before 1 January 1990. In the case of TSOL, the layout for ash interment in the pre-cut-off columbarium must be limited in extent to that as at the cut-off time and that the columbarium must also comply with other applicable requirements. An application for the issue of TSOL must be made together with an application for the issue of a licence and/or an exemption.

Applications for specified instruments and the establishment of the Licensing Board (Parts 2 and 4 of, and Schedules 1 and 3 to, the Bill)

10. An application for the issue, renewal or extension of a specified instrument must be made to the Licensing Board to be established under clause 8 of the Bill. The Licensing Board would be conferred various functions and powers, including the power to revoke or suspend for a certain period a specified instrument upon prescribed circumstances.

Requirements on agreements for the sale of interment rights and obligations in relation to operation of a columbarium (Part 5 of and Schedule 4 to the Bill)

11. The Bill imposes the requirements that an agreement for the sale of an interment right entered into on or after the enactment date (i.e. the day on which the Bill, if passed, is published in the Gazette) must meet in order for it to be enforceable against the purchaser. If an agreement is not enforceable, the purchaser may cancel the agreement and the seller must refund to the purchaser in accordance with the prescribed requirements.

12. The Bill also imposes various obligations on a holder of a specified instrument in relation to the operation of the columbarium such as the requirements to exhibit a specified instrument and keep the columbarium clean and in good repair.

Obligations in disposal of ashes (Part 7 of and Schedule 5 to the Bill)

13. The Bill provides for obligations in disposing of ashes interred in a columbarium. A person who has operated, kept, managed or in any other way had control of a columbarium must not abandon the columbarium, whether or not a specified instrument is issued. Further, such a person must not improperly

dispose of ashes. Contravention of any of the obligations would be an offence which carries the same penalties as those stated in paragraph 7 above. Part 2 of Schedule 5 prescribes the ash disposal procedures to be carried out.

14. A person who takes possession of the premises of a columbarium (such as an owner or a mortgagee) must also carry out the prescribed ash disposal procedures or where applicable, invite the Director of Food and Environmental Hygiene ("the Director") to carry out the necessary steps for disposal of ashes as required. Failure to comply would constitute an offence for which the maximum penalty is proposed to be a fine of \$250,000 or \$500,000, depending on whether 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.

15. The Director, an authorized officer or a public officer would be empowered to carry out necessary steps 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. For this purpose, an application for a court order may be made for occupying the premises concerned.

Other provisions (clauses 4 to 7 and Parts 6, 8 to 11 of, and Schedules 6 and 7 to, the Bill)

16. Clauses 4 to 7 of the Bill exclude certain columbaria, crematoria and premises from the application of the Bill or part of the Bill, for example, Government columbaria and domestic premises where no more than 10 containers of ashes are kept.

17. Part 6 of the Bill contains enforcement provisions, including empowering the Director or an authorized officer to enter and inspect a columbarium.

18. Part 8 of the Bill provides for the appeal mechanism under the Bill. For this purpose, the Private Columbaria Appeal Board would be established under clause 81 of the Bill.

19. Part 9 of the Bill contains provisions which deal with miscellaneous matters relating to the Bill. Schedules 6 and 7 to the Bill set out the fees payable and the transitional arrangements under the Bill respectively.

20. Part 10 of the Bill deals with the implications of the Bill on other Ordinances and legal requirements. Part 11 of the Bill makes consequential and related amendments to certain Ordinances.

Commencement

21. A two-phased approach would be adopted for the commencement of the Bill, if passed. All provisions would come into operation on the enactment date, except Part 4, Division 2 of Part 5, Part 10, Divisions 1, 2 and 3 of Part 11, and Schedules 2 and 3, which would come into operation on the expiry of six months beginning on the enactment date.

Public Consultation

22. According to paragraph 26 of the LegCo Brief, the Administration launched two public consultations in July 2010 and December 2011 respectively. In 2013, a Business Impact Assessment study was carried out by the Administration to collect the views of existing and potential operators and assess the impact of the licensing scheme on the trade. In addition, the Administration held meetings with various stakeholder organizations in July 2016.

Consultation with LegCo Panel

23. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel was briefed on the salient features of the Bill on 8 November 2016. While expressing support for early introduction of the Bill, members expressed concerns on a number of issues including the proposed licensing requirements, waiver arrangements for pre-cut-off columbaria, the inclusion of the same-sex partner of a deceased person in the definition of "relative", enforcement actions against non-compliant columbaria, regulatory measures for protecting consumers' interests and arrangements for handling the interred ashes in existing columbaria if licence applications for such columbaria were unsuccessful.

Conclusion

24. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill provides for a new legislative scheme for regulating private columbaria in Hong Kong, it is recommended that a Bills Committee be formed to study the Bill in detail.

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