

For discussion on
12 March 2019

**Legislative Council Panel on Food Safety and Environmental Hygiene
Implementation of the Private Columbaria Ordinance**

Purpose

This paper informs Members of the implementation of the Private Columbaria Ordinance (the Ordinance) (Cap. 630).

Setting up a licensing regime for private columbaria

2. The Ordinance, which came into effect on 30 June 2017, aims to ensure the private columbaria's compliance with the statutory and Government requirements, enhance protection of consumer interests and foster the adoption of a sustainable mode of operation by private columbaria. It provides the legal framework for a licensing regime for private columbaria with a view to dealing with the historical legacy of private columbaria involving complex and sensitive problems. In general, the Government takes a pragmatic and sympathetic approach towards handling of pre-cut-off columbaria¹.

Preparatory work for the licensing regime

3. The Private Columbaria Licensing Board (PCLB), established on 8 September 2017, is responsible for regulating the operation and management of private columbaria and doing any other things the PCLB is required or authorised to do by the Ordinance. The Food and Environmental Hygiene Department (FEHD) has also set up a dedicated office, the Private Columbaria Affairs Office (PCAO), to undertake various areas of work relating to the implementation of the Ordinance.

4. Under the Ordinance, a person is required to obtain a specified instrument

¹ Pre-cut-off columbaria refer to columbaria that were in operation, and in which ashes were interred in niches, immediately before 8 a.m. on 18 June 2014.

(i.e. a licence, an exemption or a temporary suspension of liability (TSOL)) in order to operate, manage or in any other way have control of a private columbarium unless a grace period² is applicable to that private columbarium. Each type of application for specified instrument is subject to various requirements. For a licence application, the PCLB will give consideration to the granting of a licence only if the applicant can prove that the columbarium has complied with all the requirements stipulated in the Ordinance and the requirements specified by the PCLB, including those relating to land, planning, buildings, the management plan, the right to use the premises, fire safety, electrical and mechanical safety, etc. The PCLB will give regard to the public interest and other relevant considerations when determining individual applications.

5. In October 2017, the PCLB promulgated the “Application Guide for Private Columbarium Licence or Other Specified Instruments” (the Application Guide), setting out in detail the requirements stipulated in the Ordinance and the requirements specified by the PCLB in respect of applications for different specified instruments, and providing a number of templates (including the proposed plans, the management plan and the agreement for the sale of an interment right) to facilitate the operators in making applications. The PCAO also conducted briefings for the operators in July, August and November 2017 to explain to them the requirements which have to be complied with when applying for specified instruments, the statutory requirements for disposal of ashes and the legal consequences to be borne by those who operate private columbaria without specified instruments. As at the end of February 2019, the PCLB has held 36 meetings, established various guidelines and procedures and drawn up various templates, laying the foundation for this brand new regulatory regime.

6. On the protection of consumer interests, according to the Application Guide promulgated by the PCLB in October 2017, a licence applicant is required to submit a financial proposal, financial information on the operation of the columbarium in recent years and financial projection³. The applicant will have to demonstrate that effective measures will be implemented or a sound mechanism will be put in place to ensure that the columbarium can continue its operation during the validity periods of the interment

² If a columbarium was in operation immediately before the Ordinance came into effect, there will be a grace period of 9 months beginning on the enactment date of the Ordinance (i.e. from 30 June 2017 to 29 March 2018). If such a columbarium applied for a TSOL before the expiry of the above-mentioned period, the grace period would be extended until the application is finally disposed of or withdrawn. During the grace period, the columbarium may continue to operate without a specified instrument, but the operator must not sell or newly let out niches.

³ If the applicant will only let out the niches on a monthly or yearly rental basis during the license period (if the licence application is approved), he/she is not required to submit the said information.

rights of niches sold and provide the committed services and fulfil other obligations stipulated in the sale agreements with the consumers so as to protect the interests of consumers. Having carefully considered the financial proposals, financial information and financial projections received and consulted the views of experts, the PCLB promulgated the *Financial Mechanism for Protection of Consumer Interests* in November 2018. All the licence applicants were informed of the mechanism in writing. After receiving the financial information and financial projection from a licence applicant, the PCAO will forward such information to the PCLB's financial advisor for assessment. The financial advisor will submit a financial assessment report to the PCLB, which will consider the licence application according to the *Financial Mechanism for Protection of Consumer Interests*.

Scrutiny of the applications and the challenges

7. By the deadline for submission of applications for specified instruments in respect of pre-cut-off columbaria (i.e. 29 March 2018), the PCLB received applications for specified instruments from 144 private columbaria⁴. At that time, a very large proportion of the applications lacked a substantial amount of information and supporting documents. In the PCAO, a case manager is assigned to follow up each application, answer queries from the applicant and assist the applicant to liaise and communicate with the relevant departments. Also, the case managers have contacted the applicants to remind them about the information and supporting documents that they are required to submit or clarify. As the regulatory regime is a brand new regime which was built from scratch, we understand that the applicants need more time and information to understand the requirements of the Ordinance and the requirements specified by the PCLB which have to be complied with. Thus, if the situation warrants, the PCAO will arrange meetings with the applicants to explain in detail the relevant requirements and the supporting documents that they have to submit. For long outstanding information and supporting documents, the PCAO will repeatedly remind the applicants of the submission. The PCAO will vet each application⁵ and conduct site visits to check the accuracy of the information submitted by the applicants. The information submitted by the applicants will also be sent to the relevant bureaux

⁴ Subsequently, the PCLB returned the application for specified instrument in respect of one columbarium to the applicant as the applicant failed to provide concrete information for the application. Besides, four private columbaria withdrew their applications.

⁵ Includes the eligibility of the applicants, the right to use the premises, the management plan, the proposed plans (including the site plan, the layout plan, the floor plan and the niche information), the sample of the agreement for the sale of interment right in respect of a niche and the application summary.

and departments⁶, which will assess the supporting documents and information under their purview, and give advice on whether an application meets the relevant requirements. Where necessary, inter-departmental meetings will be convened by the PCAO to discuss how to address the problems encountered during the handling of the applications for specified instruments. Whenever comments on an application for specified instrument from a department are received, the applicant will be notified as soon as possible for taking follow-up actions and submitting the required documents. When comments from all relevant departments on a particular application are received, the PCAO will issue a Letter of Requirements to the applicant and update the progress of the application on the Regulation of Private Columbaria website (www.rpc.gov.hk).

8. Information on the applications for specified instruments submitted by private columbaria is released by the PCLB to the public through various channels. On receipt of an application for specified instrument, the PCLB will post information about the application on the dedicated website. Information on all the applications for specified instruments submitted in respect of pre-cut-off columbaria received by the deadline on 29 March 2018 was uploaded to the dedicated website for public information within the month of March 2018. Moreover, when the PCAO has completed a preliminary check of the application summary submitted by an applicant and confirmed that the applicant has made the application in the specified format filling in the required information, it will post a notice of application on the dedicated website and put up a copy at a conspicuous place at the entrance to the columbarium. As stated in the notice of application, one may provide opinion on the application in writing to the PCAO within one month from the date of the notice. For a columbarium which is situated in a multi-storey building where there are other users, with the consent of the management staff of the building or relevant persons, the notice of application may also be put up at a conspicuous place of the building for knowledge of other users. The application summaries⁷ are also posted on the dedicated website for viewing by the public. Opinions from members of the public on an application for specified instrument submitted by a private columbarium may be submitted in writing to the PCLB. All opinions received will be recorded.

9. Regarding the processing of applications for specified instruments, the PCLB examined the licence applications submitted by two private columbaria on 17

⁶ Include the Lands Department, the Planning Department, the Buildings Department, the Fire Services Department, the Hong Kong Police Force, the Environmental Protection Department, the Transport Department, the Electrical and Mechanical Services Department and the Home Affairs Bureau.

⁷ Includes basic information of the columbarium, site information and site plans.

and 31 January 2019 respectively and has granted the first licence. The third licence application is scheduled for deliberation on 7 March 2019. At present, 340 applications for specified instruments submitted by 139 private columbaria⁸ are being processed. The PCLB spares no effort to process the applications for specified instrument as soon as possible. The progress in handling these applications depends, to a large extent, on whether the applicants have already complied with all the requirements stipulated in the Ordinance and the requirements specified by the PCLB at the time of application, and whether the applications are accompanied by all the required documents and information. So far, the majority of the private columbaria have not submitted all the required supporting documents and information. In many cases, clarifications are being sought or provision of supplementary information is required. Furthermore, many complex issues often arise in the course of processing the applications. The PCAO maintains close contact with the relevant departments and the applicants in order to complete the vetting work and submit the applications to the PCLB for determination as soon as possible.

Ash disposal and enforcement actions

10. There are detailed requirements in the Ordinance regarding the arrangements for disposal of ashes in private columbaria. Under applicable circumstances as specified in the Ordinance⁹, the operator of a columbarium must carry out the “prescribed ash disposal procedures”¹⁰ in accordance with the requirements of the Ordinance and return the ashes properly to those persons eligible for collection of the ashes. Failure to do so constitutes an offence of improper disposal of ashes. Any person who illegally operates a private columbarium or improperly disposes of ashes is liable on summary conviction to a fine of \$2 million and to imprisonment for 3 years; or on conviction on indictment to a fine of \$5 million and to imprisonment for 7 years.

⁸ Including the columbarium whose application was examined at the meeting held on 31 January 2019.

⁹ For a private columbarium under any of the following circumstances, the “prescribed ash disposal procedures” as stipulated by the Ordinance must be carried out by the operator:

- the private columbarium commences operation on or after 30 June 2017 without any specified instrument in force;
- the private columbarium was in operation before 30 June 2017 but continues to operate, without any specified instrument in force, after the grace period; or
- the private columbarium is abandoned or ceases operation.

¹⁰ Under section 18 of Schedule 5 to the Ordinance, the operator may submit an application to the Director of Food and Environmental Hygiene for an alternative ash disposal plan.

11. According to the information available to FEHD, over 30 private columbaria ceased operation or indicated their intention to cease operation between the commencement of the Ordinance and 31 January 2019, involving over 2,300 sets of ashes. Among them, 23 columbaria have returned the ashes to the eligible persons, completed the “prescribed ash disposal procedures” or implemented the approved alternative ash disposal plans, while the remaining columbaria are carrying out or have undertaken to comply with the ash disposal procedures stipulated in the Ordinance.

12. Since the commencement of the Ordinance up to 31 January 2019, the FEHD has received around 110 complaints against suspected illegal operation of columbaria, conducted over 1,000 inspections and discovered 6 cases of suspected contravention of the Ordinance. The FEHD has conducted in-depth investigation into these cases, made arrests in 3 cases and taken prosecution against the operator of one columbarium. It will continue to take stringent enforcement actions to combat against illegal operation of private columbaria.

13. For a columbarium that has obtained a specified instrument, the PCAO will explain to the operator the relevant conditions and requirements. Inspections will also be conducted as appropriate to ensure that the operator complies with the conditions of the specified instrument and the requirements of the Ordinance. The PCAO will take appropriate follow-up actions in accordance with the Ordinance should irregularities be detected.

Public education and publicity

14. The Regulation of Private Columbaria website (www.rpc.gov.hk) offers a wide range of information for easy reference by the public and the trade, including the contents of the Ordinance, the Application Guide, the progress of the processing of the applications for specified instruments, the Register of Private Columbaria, information on the private columbaria in respect of which the ash disposal procedures have been or are being carried out, etc. If members of the public have any enquiries, suggestions or complaints, they may contact the PCAO by telephone, email, fax or post. Information on various means of contact has been posted on the dedicated website. Between June 2017 and January 2019, the PCAO received over 2,380 enquiries, and replies were duly given to the enquirers. The FEHD will also, through public talks and announcements of public interest etc., enhance public understanding of the requirements on the

operation of private columbaria under the Ordinance and remind the public of the issues to note when purchasing interment rights of niches for the protection of their interests.

Way forward

15. The PCLB will continue to put in its greatest efforts to process the applications for specified instruments as quickly as possible and the PCAO will continue to strive to assist the PCLB in handling these applications and take stringent enforcement actions.

**Food and Health Bureau
Food and Environmental Hygiene Department
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