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Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the meeting on 10 March 2020

Implementation of the Private Columbaria Ordinance

Purpose

This paper provides background information on the Administration's implementation of the Private Columbaria Ordinance (Cap. 630) ("PCO"), and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on relevant issues.

Background

2. PCO, which came into effect on 30 June 2017, aims to ensure 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. PCO 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. According to the Administration, a pragmatic and sympathetic approach has been taken towards handling of pre-cut-off columbaria¹.

Processing of applications for specified instruments

3. The Private Columbaria Licensing Board ("PCLB"), which was established on 8 September 2017, is responsible for, among others, regulating the operation and management of private columbaria. PCLB is authorized under PCO to consider and determine applications for specified instruments (i.e.

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.

a licence², an exemption or a temporary suspension of liability ("TSOL")). To support the work of PCLB, the Private Columbaria Affairs Office ("PCAO"), a dedicated office, has been set up under the Food and Environmental Hygiene Department ("FEHD") to undertake various areas of work relating to the implementation of PCO.

4. Under PCO, a person is required to obtain a specified instrument in order to operate, manage or in any other way have control of a private columbarium unless a grace period³ is applicable to that private columbarium. Each type of application for specified instrument is subject to various requirements. For a licence application, 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 PCO and the requirements specified by PCLB, including those relating to land, planning, buildings, the management plan, the right to use the premises, fire safety, electrical and mechanical safety, etc. PCLB will give regard to the public interest and other relevant considerations when determining individual applications.

5. According to information provided by the Administration to the Finance Committee in April 2019, as at 18 March 2019, PCLB was processing 333 applications for specified instruments submitted by 136 private columbaria, 106 of which submitted applications for a licence.

Ash disposal and enforcement actions

6. PCO sets out detailed requirements regarding the arrangements for disposal of ashes in private columbaria. Under applicable circumstances as specified in PCO⁴, the operator of a columbarium must carry out the "prescribed

² Among the specified instruments, only a licence authorizes a columbarium to sell or newly let out niches.

³ If a columbarium was in operation immediately before PCO came into effect, there will be a grace period of nine months beginning on the enactment date of PCO (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.

⁴ For a private columbarium under any of the following circumstances, the "prescribed ash disposal procedures" as stipulated in PCO must be carried out by the operator: (a) the private columbarium commences operation on or after 30 June 2017 without any specified instrument in force; (b) 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 (c) the private columbarium is abandoned or ceases operation.

ash disposal procedures"⁵ in accordance with the requirements of PCO 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 three years; or on conviction on indictment to a fine of \$5 million and to imprisonment for seven years. In addition to conducting inspections and in-depth investigations, FEHD will take stringent enforcement actions to combat against illegal operation of private columbaria.

Members' concerns

7. Members' major views and concerns on issues relating to the Administration's implementation of PCO are summarized below.

Processing of applications for specified instruments

8. Members were concerned about the slow progress of PCAO in processing applications for specified instrument from private columbaria since the implementation of PCO. Enquiries were raised about the difficulties encountered by PCAO during the vetting process and whether adequate support had been provided to PCAO in handling the applications.

9. The Administration advised that the progress in handling applications from pre-cut-off columbaria depended, to a large extent, on whether the applicants had already complied with all the requirements stipulated in PCO and the requirements specified by PCLB at the time of application, and whether the applications were accompanied by all the required documents and information. As at the time of the Panel meeting on 12 March 2019, the majority of the private columbaria had not yet submitted all the required supporting documents and information. In many cases, clarifications had to be sought or provision of supplementary information was required. Furthermore, many complex issues often arose in the course of processing the applications. If the situation warranted, PCAO would arrange meetings with the applicants to explain in detail the relevant requirements and the supporting documents that they had to submit. For long outstanding information and supporting documents, PCAO would repeatedly remind the applicants of the submission. PCAO would continue to maintain close contact with the relevant departments and the applicants in order to complete the vetting work and submit the applications to PCLB for determination as soon as possible.

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

10. As regards the support provided to PCAO, the Administration advised that a number of posts had been created after the establishment of PCAO to undertake various areas of work relating to the implementation of PCO, including provision of executive support to PCLB in discharging the latter's statutory functions. PCAO would review from time to time the manpower resources required for discharging its duties.

11. Some members expressed concern that since the supply of private niches had been curtailed after the commencement of the licensing regime for private columbaria, the slow progress in processing applications for specified instrument submitted by private columbaria would affect the supply of niches in the market. These members suggested that the Administration should consider setting a deadline for private columbaria's submission of the required documents and information, so as to facilitate PCAO's and PCLB's timely vetting and determination of the applications as well as the early resumption of supply of private niches. There was also a view that enforcement actions should be taken against private columbaria which failed to submit the required information after the specified deadline.

12. According to the Administration, while PCAO spared no effort to process the applications for specified instrument, reasonably sufficient time should be given to applicants for submission of the required information and taking follow-up/remedial actions in response to the comments made by relevant departments during the vetting process. The Administration believed that private columbaria seeking a licence would have the necessary incentive to complete the application procedures for an early resumption of the supply of niches. In view of some members' concern, PCAO would explore the feasibility of setting a timeline for submission of the required information by applicants.

13. In response to an enquiry about PCAO's work plan in handling the applications for specified instrument received, the Administration advised that, for those cases which had not submitted all the required documents and information for TSOL application, PCLB would first look into cases involving private columbaria situated in multi-storey buildings. The handling of such cases was expected to be completed by end of 2019. After that, PCLB would look into other cases. In parallel, where the applicants of any cases had submitted all the required documents and were confirmed to comply with all applicable application requirements, the cases would be submitted to PCLB for determination as soon as possible.

Ash disposal and enforcement actions

14. Some members were concerned that people who had purchased niches from private columbaria but yet interred therein the ashes of their deceased relatives might suffer loss as a result of cessation of business of some private columbaria. Enquiries were raised as to how the Administration would safeguard the interests of those who had already purchased niches from private columbaria, and whether consideration would be given to granting compensation to consumers who suffered loss from the cessation of columbarium operations.

15. The Administration advised that PCAO did not have any statutory power to resolve contractual disputes between operators of private columbaria and their customers or to make compensation for affected consumers. As in the case of other trades and industries, consumers who felt aggrieved by the arrangements of the columbarium operators might seek remedies through civil legal proceedings. Private columbaria which ceased operation or indicated their intention to cease operation were required to comply with the ash disposal procedures stipulated in PCO.

16. Some members urged the Administration to conduct decoy operations to collect evidence and take timely enforcement actions against illegal operation (including illegal sale of niches) of private columbaria. An enquiry was raised about the follow-up actions taken by FEHD against complaints about suspected illegal operation of columbaria received since the commencement of PCO.

17. According to the Administration, since the commencement of PCO up to 31 January 2019, FEHD had received around 110 complaints against suspected illegal operation of private columbaria, conducted over 1 000 inspections and discovered seven cases of suspected contravention of PCO. FEHD had conducted in-depth investigation into these cases, made arrests in three cases and initiated prosecution against the operator of one columbarium. After investigations, PCAO found that no enforcement action was required in 103 complaints due to insufficient evidence. The Administration stressed that FEHD would continue to take stringent enforcement actions to combat illegal operation of private columbaria. Apart from following up on complaints, FEHD would monitor suspected cases reported by the media and take appropriate actions (e.g. decoy operations) to collect evidence.

Latest developments

18. The Administration will brief members on the latest position of the implementation of the licensing scheme for regulating private columbaria at the Panel meeting of 10 March 2020.

Relevant papers

19. A list of relevant papers on the website of the Legislative Council is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
6 March 2020

Appendix

Relevant papers on issues relating to the implementation of the Private Columbaria Ordinance

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	30.4.2018 (Item I)	<u>Agenda</u> <u>Minutes</u> Administration's paper entitled "Progress Report on the Implementation of the Private Columbaria Ordinance (LC Paper No. <u>CB(2)1269/17-18(01)</u>)
	12.3.2019 (Item IV)	<u>Agenda</u> <u>Minutes</u> Administration's follow-up paper on the implementation of the Private Columbaria Ordinance (LC Paper No. <u>CB(2)1347/18-19(01)</u>)
Finance Committee (special meeting)	11.4.2019	<u>Administration's replies to Members' initial written questions in examining the 2019-2020 Estimates of Expenditure (Reply Serial No. FHB(FE)224)</u>