

**For discussion on
21 April 2020**

**Legislative Council Panel on Food Safety and Environmental Hygiene
Implementation of the Private Columbaria Ordinance (Cap. 630)**

Purpose

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

Background

The 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. In general, the Government takes a pragmatic and sympathetic approach towards the handling of pre-cut-off columbaria¹.

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 Private Columbaria Affairs Office (PCAO) under the Food and Environmental Hygiene Department (FEHD) undertakes various areas of work relating to the implementation of the Ordinance.

4. Under the Ordinance, unless a grace period² is applicable to that private columbarium, a person is required to obtain a specified instrument (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. Each type

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.

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a TSOL on or before 29 March 2018, the grace period would be extended until the application is finally disposed of or withdrawn.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.

of application for specified instrument is subject to various requirements stipulated in the Ordinance and the requirements specified by the PCLB. 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 the requirements in various areas including those relating to land, planning, buildings, management plan, right to use the premises, fire safety, electrical and mechanical safety, environmental protection, etc. For a TSOL application, the applicant must provide proof that the columbarium concerned has been certified by a qualified professional as not posing any obvious or imminent danger in terms of building safety and fire safety, proof that the columbarium qualifies as a pre-cut-off columbarium and the extent of the application is limited only to that as at the cut-off time, and the required documents³ to the PCLB for consideration. The PCLB will give regard to the public interest and any other relevant considerations when determining each application.

5. To ensure that the columbarium can continue its operation during the validity periods of the interment rights of niches sold and provide the committed services and fulfil other obligations stipulated in the sale agreements with the consumers, the PCLB promulgated the “Financial Mechanism for Protection of Consumer Interests” in November 2018. Licence applicants who intend to adopt a lump sum payment/pre-payment as the payment method are required to submit the specified financial information and financial projection⁴, which will be forwarded to the PCLB’s financial advisor for assessment. The financial advisor will submit a financial assessment report to the PCLB for the latter to consider each application according to the criteria as set out in the “Financial Mechanism for Protection of Consumer Interests” and impose appropriate financial related licensing conditions to protect the interests of consumers when approving a licence application.

6. An appeal mechanism has also been provided for in the Ordinance. The Private Columbaria Appeal Board (Appeal Board) is established under section 83 of the Ordinance. Its functions are to hear and determine an appeal lodged by an applicant or a holder of a specified instrument aggrieved by a decision made

³ The applicant is required to submit the proposed plans (including site plan, layout plan, floor plan and niche information), proof of compliance with the requirements relating to fire safety and electrical and mechanical safety and (for cases involving unlawful occupation of unleased land) documents showing that the applicant has applied to the Director of Lands for lawful authority to occupy the unleased land and has provided a written declaration to the Director of Lands to the effect that the applicant has no claim to the unleased land. If the premises of the columbarium are privately owned, the applicant must provide supporting documents showing the authorization or consent given by the owner(s) of the columbarium premises for the premises to be used as a columbarium. If the applicant has also applied for a licence/an exemption together with a TSOL application but have not been complied with any eligibility criteria for a licence/an exemption, the applicant must submit an action plan with timetable showing the necessary steps to be taken to achieve compliance with the eligibility criteria in a timely manner.

⁴ If the applicant will only let out the niches on a monthly or yearly rental basis during the licensing period (if the licence application is approved), he/she is not required to submit the said information.

by the Licensing Board or the Director of Food and Environmental Hygiene (DFEH) referred to in section 84(1) of the Ordinance. The Appeal Board is an independent, quasi-judicial body set up on 29 September 2017. The decision of an Appeal Board on any appeal is final.

Latest development on PCLB's processing of applications for specified instruments

New measures on speeding up the processing of applications for specified instruments

7. To speed up the processing of applications for specified instruments, the PCLB promulgated the implementation of the following three measures and arrangements on 30 August 2019 –

(a) Granting exemption without requiring applicant to restore the ash interment quantity first:

As the Ordinance does not prohibit the new interment of ashes in private columbaria during the grace period, it is possible that ashes were newly interred in the premises of some columbaria applying for an exemption after the commencement of the Ordinance. Considering that it will disturb the deceased and cause distress to their family members if the applicants are rigidly required to disinter the ashes newly interred during the grace period in niches which were sold before the cut-off time before the concerned exemption application is approved, the PCLB may, under specified circumstances, grant an exemption to a columbarium that complies with all application requirements⁵ for an exemption without requiring the ashes which were newly interred after the commencement of the Ordinance to be disinterred from the columbarium first.

(b) Setting a deadline for applicants' submission of documents/information in respect of TSOL applications:

The submission period of applications for specified instruments in respect of pre-cut-off columbaria ended on 29 March 2018. The PCLB has set 31 December 2019 as the deadline for submission of documents/information in respect of TSOL applications. The PCAO informed the relevant applicants for specified instruments in writing on 30 August 2019 that any documents/information in respect of their TSOL

⁵ Except that its ash interment quantity is not limited to that as at the cut-off time.

applications should be submitted to the PCLB on or before 31 December 2019 and that the PCLB in general would not consider any documents or information that are submitted after the said deadline and before the PCLB determines the relevant TSOL application except under very special circumstances and with sufficient justifications.

After the expiry of the said deadline, the PCLB has carefully examined the status of applicants' submission of the documents required for their TSOL applications. For 15 columbaria that have not submitted documents in one or more domains of the application requirements for their TSOL applications by the specified deadline, the PCLB has decided to cease the vetting of their TSOL applications. The list of private columbaria in respect of which the TSOL applications are subject to cessation of vetting has been uploaded onto the dedicated website "Regulation of Private Columbaria" (www.rpc.gov.hk). The PCAO has also informed the private columbaria involved in the list of the above as well as notified the relevant policy bureaux/departments of the said list and asked them to cease to vet those TSOL applications from the private columbaria on the list. The PCLB will arrange open meetings to determine those TSOL applications by batches. When determining those TSOL applications, the PCLB will reject those that do not comply with all application requirements stipulated in the Ordinance and the requirements specified by the PCLB. If the application for a licence/an exemption submitted together with the TSOL application does not comply with all application requirements for a licence/an exemption pursuant to the provisions of the Ordinance, the PCLB will reject the whole set of applications. Under such circumstances, the columbarium concerned will have to cease operation, and the ashes interred in the columbarium are required to be disposed of lawfully in accordance with the provisions of the Ordinance. The PCAO has also informed the applicants of the above arrangements. As at 8 April 2020, two private columbaria in the list mentioned above have withdrawn their applications for specified instruments; and

(c) Administrative arrangements for "Approval-in-principle for TSOL Application":

Having regard to the fact that some private columbaria may have newly interred ashes of the deceased in niches during the grace period, the PCLB may, under specified circumstances, give "Approval-in-principle for TSOL Application" to a columbarium that complies with all application requirements for TSOL (except the requirement on ash interment quantity set out in the Ordinance) without requiring the ashes which were newly interred after the commencement of the Ordinance to be disinterred from

the columbarium first. This can avoid disturbing the deceased and causing distress to their family members. With reference to the provisions for the validity period of TSOL stipulated in the Ordinance, the validity period of the first “Approval-in-principle for TSOL Application” is three years. In considering whether this validity period should be extended at the time when it is about to expire, the PCLB will take into account whether the applicant has taken, with reasonable expedition, all the necessary steps according to the action plan including the timetable, which was submitted by the applicant to comply with the TSOL application requirements and accepted by the PCLB, during the validity period of “Approval-in-principle for TSOL Application” to achieve compliance with all the requirements for the licence/exemption application submitted together with the TSOL application. If the applicant cannot prove to the satisfaction of the PCLB that it has taken, with reasonable expedition, all the above necessary steps, the PCLB will not extend the validity period of the “Approval-in-principle for TSOL Application”. Instead, the PCLB will determine the whole set of applications. If the applicant fails to comply with all the requirements for his/her licence/exemption application submitted together with his/her TSOL application, the PCLB will refuse the whole set of applications. Granting of “Approval-in-principle for TSOL Application” gives no indication on whether the application for a licence/an exemption in respect of the columbarium concerned will be approved eventually. If the applicant fails to comply with all the requirements for his/her licence/exemption application submitted together with his/her TSOL application by the expiry of the validity period of the “Approval-in-principle for TSOL Application”, the PCLB may refuse the whole set of applications. Under such circumstances, the columbarium concerned will have to cease operation, and the ashes interred in the columbarium are required to be disposed of lawfully in accordance with the provisions of the Ordinance.

Progress of processing of the applications for specified instruments

8. 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 columbaria⁶. From the said deadline to 8 April 2020, the PCLB has received applications for licence from two non-pre-cut-off columbaria.

9. The PCAO will assign a case manager to follow up each application, answer enquiries from the applicant and assist the applicant to liaise and

⁶ Subsequently, the PCLB returned the application for specified instrument in respect of one columbarium to the applicant due to the applicant’s failure to provide concrete information on the application.

communicate with the relevant departments. The PCAO will follow up with the applicants on the information and supporting documents which have not yet been provided and the actions to be taken. The information submitted by the applicants will be sent to the relevant bureaux and departments⁷, which will vet the supporting documents and information within their purview, and give comments on whether an application meets the relevant requirements. 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. Where necessary, inter-departmental meetings will also be convened by the PCAO to discuss how to address the problems encountered during the handling of the applications for specified instruments. The time the PCLB takes to process an application for specified instrument depends to a large extent on when the documents and information required for the application are submitted by the applicant, when responses are made to the comments of the relevant departments, when follow-up actions are taken and supporting documents are submitted, and whether the application has complied with all the requirements stipulated in the Ordinance and specified by the PCLB.

10. The PCLB is making its best effort to process the applications for specified instruments. As at 8 April 2020, the PCLB has held a total of 55 meetings. It has established guidelines and procedures in various aspects, continuously enhanced and updated these guidelines/procedures in the light of the circumstances encountered in the course of vetting the applications, and deliberated the applications for specified instruments.

11. At present, the PCLB has granted five licences, and approved in principle two licence applications and one TSOL application, involving about 133 000 sold niches which are roughly making up of around one-fourth of the total sold niches of private columbaria in the territory. As at 8 April 2020, the PCLB refused 15 sets of applications which failed to meet the requirements. Among these refused applications, many are private columbaria situated in multi-storey buildings or within zones of high-density residential developments. Refusing these applications could help minimise the impact of such columbaria on nearby residents. In addition, 12 private columbaria have withdrawn their applications. According to the information we have in hand, about 61 private columbaria have ceased operation or are carrying out the ash disposal procedures as required by the law since the Ordinance came into effect on 30 June 2017. With regard to the submission of applications for specified instruments in respect of pre-cut-off columbaria, the PCLB is now processing 278 applications for specified

⁷ 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.

instruments submitted by 110 private columbaria.

Enforcement actions and ash disposal

12. There are detailed requirements in the Ordinance regarding the arrangements for disposal of ashes in private columbaria. Under the circumstances as specified in the Ordinance⁸, the operator of a columbaria must carry out the “prescribed ash disposal procedures”⁹ 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 three years; or on conviction on indictment to a fine of \$5 million and to imprisonment for seven years.

13. From the commencement of the Ordinance to 8 April 2020, the FEHD received over 320 complaints¹⁰ about private columbaria, conducted about 1 500 inspections and carried out in-depth investigation into cases of suspected breaches of the Ordinance. The FEHD had made arrests in seven cases and taken prosecution against the operators of five columbaria. As at 8 April 2020, the operators in three cases were convicted with fines imposed and criminal records registered; and there are ongoing legal proceedings for another two cases. The FEHD will continue to take stringent enforcement actions to combat illegal operation of private columbaria.

14. 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 timely conducted to check if 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 non-compliance be detected.

15. For a columbarium with cessation of operation, the PCAO will explain to

⁸ 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.

⁹ 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.

¹⁰ The complaints are mainly concerned with suspected illegal operation of private columbaria; interment of ashes in the bought niches; the licensing regime; and the progress of the applications for specified instruments.

the operator the requirements of the Ordinance regarding the disposal of ashes and monitor the ash disposal work done by the operator to see if it complies with the requirements of the Ordinance and to ensure the proper return of the ashes to persons eligible for collection of the ashes.

Handling of appeal cases

16. The number of cases handled by the Appeal Board mainly depends on the number of applications for specified instruments rejected and whether appeals are lodged by the unsuccessful applicants. As at 8 April 2020, a total of five appeals were received by the Appeal Board. Among them, one appeal case was pending hearing and one was withdrawn by the appellant. For the other three appeal cases that had been heard, one was struck out and two were dismissed. The relevant information on the Appeal Board, including the hearing arrangements and the written decisions for the appeal cases, has been uploaded to its website for public information.

Public education and publicity

17. The PCLB, through various means, releases information on the applications for specified instruments submitted by private columbaria to the public –

- (a) the applications for specified instruments received by the PCLB are published on a dedicated page of the website “Regulation of Private Columbaria”;
- (b) 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, members of the public 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 to inform other users of the building. The application

summaries¹¹ are also posted on the dedicated website for viewing by the public. If members of the public have any opinion on an application for specified instrument, they can submit the opinion in writing to the PCLB;

- (c) in order to let members of the public have a better understanding about the progress of the applications for specified instruments, the PCLB has published, since late-July 2019, the status of submission of documents in respect of certain major domains of the application requirements as at the end of the previous quarter on the dedicated website. The information is updated on a regular basis; and
- (d) information on the specified instruments issued (including the validity period of licence, the name of licensee, the restriction(s) on sale of interment rights of niches and the conditions which the licence is subject to) can be found in the “Register of Private Columbaria” on the dedicated website.

18. The website “Regulation of Private Columbaria” offers a wide range of information, including the progress of the processing of the applications for specified instruments, the “Register of Private Columbaria”, the contents of the Ordinance, the “Application Guide for Private Columbarium Licence or Other Specified Instruments” (the Application Guide) and information on the private columbaria in respect of which the ash disposal procedures have been or are being carried out, etc., for easy reference by the public and the trade. 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 31 March 2020, the PCAO received over 3 800 enquiries which have been handled one by one. The FEHD has also, through public talks and announcements of public interest, etc., enhanced public understanding of the requirements for the operation of private columbaria under the Ordinance and reminded the public of the issues to note when purchasing interment rights of niches for the protection of their interests.

Overall review of the implementation of the Ordinance

19. The Ordinance is at an early stage of implementation so far. As at 8 April 2020, the PCLB has held 55 meetings and carried out work in various areas, including the promulgation of the Application Guide, the setting out in detail of the requirements stipulated in the Ordinance and the requirements specified by

¹¹ Include basic information, site information and site plans of the columbarium.

the PCLB in respect of the application for each type of specified instruments, the establishment of work procedures as the basis of the scrutiny of the applications, and the provision of various templates (including proposed plans, management plan and the agreement for the sale of an interment right) to facilitate the applicants in making applications. At the same time, the PCAO has made efforts to facilitate the processing of applications in various aspects, including taking initiative to contact applicants proactively to explain in detail the relevant requirements and remind them to submit the required documents; as well as convening inter-departmental meetings to assist the relevant departments in addressing the problems encountered during the handling of the applications for specified instruments.

20. In the past year, the PCLB implemented a number of new measures, including publishing on a quarterly basis since late July 2019 the status of submission of documents by the applicants in respect of the major aspects of the application requirements to increase the transparency of the processing of applications, and setting the end of 2019 as the deadline for submission of documents in respect of TSOL applications together with urging applicants by letters to submit documents as quickly as possible with a view to speeding up the processing of applications. Moreover, the PCLB has made administrative arrangements for “Approval-in-principle for TSOL Application” so as to make public the directions for processing different applications as soon as possible. With these efforts, the PCLB has achieved significant progress in the scrutiny of the applications for specified instruments.

21. The regulatory regime of private columbaria is an unprecedented system established from scratch. The current effort in determining the applications for specified instruments requires the settling of problems of historical legacy. In general, the implementation of the Ordinance has been operating smoothly, and has effectively brought the complex issues related to private columbaria to a stable and regularized situation. As a complete legal framework, the Ordinance has provided a solid legal foundation for the regulation of the private columbaria. At present, the focus of the implementation of the Ordinance is on the processing of specified instruments. As for other aspects, including the supervision of the operation of licensed private columbaria, the exercise of law enforcement power conferred by the Ordinance against non-compliance, the protection of consumer interests, and the handling of appeal cases, etc., the number of cases and practical experience accumulated so far is limited. Therefore, there lacks sufficient information and experience for a comprehensive review on the various aspects of the Ordinance at this moment. We will continue to keep in view the implementation of the Ordinance and take heed of the views of the stakeholders.

Way forward

22. 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. Through the dedicated website “Regulation of Private Columbaria”, public talks and announcements of public interest, the PCLB and the PCAO will continue to provide information to the public on the progress of the processing of applications for specified instruments and the private columbaria in respect of which the ash disposal procedures have been or are being carried out. The public will be reminded of the issues to note when purchasing interment rights of niches for the protection of their interests. The PCAB will also handle each appeal case in a fair, open and just as well as objective manner.

**Food and Health Bureau
Food and Environmental Hygiene Department
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