

**For discussion on  
11 May 2021**

**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 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 columbaria<sup>1</sup>.

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.

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<sup>1</sup> 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.

4. Under the Ordinance, unless a grace period<sup>2</sup> 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 of application for specified instrument is subject to the requirements stipulated in the Ordinance and the requirements specified by the PCLB. The requirements that must be met for various types of applications for specified instruments are summarised at **Enclosure I**. Applicants must submit documents to prove that their applications for specified documents meet the relevant requirements. The PCLB will consult relevant departments on whether each application meets the requirements, and take into account the public interest and other relevant factors when determining individual applications.

5. To ensure that the columbarium, after being granted a licence, 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 projection<sup>3</sup>, 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 (PCAB) 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 by the PCLB or the Director of Food and Environmental Hygiene (DFEH) referred to in section 84(1) of the Ordinance. The PCAB is an independent, quasi-judicial body set up on 29 September 2017. The decision of the PCAB on any appeal is final.

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<sup>2</sup> 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 temporary suspension of liability 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.

<sup>3</sup> 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.

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

### *Measures on speeding up the processing of applications for specified instruments implemented since 2019*

7. To speed up the processing of applications for specified instruments, the PCLB promulgated the implementation of three measures and arrangements on 30 August 2019, namely granting exemption without requiring applicant to restore the ash interment quantity first, setting a deadline for applicants' submission of documents/information in respect of TSOL applications, and administrative arrangements for "Approval-in-principle for TSOL Application", the details of which are set out in **Enclosure II**. After the expiry of the concerned 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](http://www.rpc.gov.hk)). Of the 15 private columbaria mentioned above, 4 of them have withdrawn their applications; and the PCLB has held open meetings to examine the applications for specified instruments submitted by the remaining 11 private columbaria and rejected those applications.

### *Further setting the deadline for applicants to submit documents/information for TSOL applications under vetting*

8. The PCLB has been closely monitoring the comments of various bureaux/departments on the applications for specified documents and the applicants' follow-up actions and submission of documents/information. However, some applicants have not yet submitted all the required documents/information in respect of their TSOL applications. In order to urge the applicants to submit documents as soon as possible so that the processing of applications for specified instruments can be speeded up, the PCLB announced on 4 September 2020 that the deadline for applicants to submit documents/information for their TSOL applications which are still under vetting is 31 December 2020. Subsequently, in view of the special circumstances of the COVID-19 epidemic, the PCLB decided on 18 December 2020 to extend the aforesaid deadline to 31 January 2021. The PCAO issued letters on 23 December 2020 to the applicants of the TSOL applications which are still under vetting to inform them of the decision to extend the deadline. If the

relevant applicants fail to submit the required documents in respect of their TSOL applications on or before 31 January 2021, unless there are special circumstances and sufficient reasons, under normal circumstances, the PCLB will cease the vetting of the whole set of applications which include the TSOL application and the application(s) for license/exemption submitted together with the TSOL application, and stop requesting relevant bureaux/departments to provide comments on the whole set of applications. For such cases, the PCLB will hold open meetings to examine those applications with a view to determining the applications.

9. Many applicants have submitted a large number of documents, information and certificates in various domains of application requirements by the end of the deadline on 31 January 2021. After a preliminary examination of such documents/information and certificates, the PCAO has made a report to the PCLB. The PCLB has carefully examined the status of the submission of the documents/information/certificates by the end of the aforesaid deadline (i.e. 31 January 2021) by the applicants of each TSOL application which is still under vetting, and took appropriate follow-up actions based on the actual circumstances of the cases, including ceasing the vetting of the whole set of applications for specified instruments submitted by 2 private columbaria. Since 31 January 2021, the PCLB has given approval-in-principle for the TSOL applications in respect of 3 private columbaria, and held open meetings for another 2 private columbaria whose TSOL applications are subject to cessation of vetting with a view to determining the applications. The PCAO has referred the documents/information/certificates submitted by other applicants to the relevant departments for vetting and provision of comments on whether the applications meet the requirements under their purview. The PCAO also continues to vet the applications with regard to the requirements of other domains.

10. When the PCLB determines the whole set of applications for specified instruments submitted by a private columbarium, if the applications for the specified instruments do not meet all the requirements specified in the Ordinance and the requirements specified by the PCLB, 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.

### *Progress of processing of the applications for specified instruments*

11. 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 columbaria<sup>4</sup>. From the aforesaid deadline to 30 April 2021, the PCLB has received applications for licence from 2 non-pre-cut-off columbaria.

12. The PCAO will assign a case manager to follow up each application, answer enquiries from the applicant and assist the applicant in liaising and communicating 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 / departments<sup>5</sup>, 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.

13. The PCLB is making its best effort to process the applications for specified instruments. As at 30 April 2021, the PCLB has held a total of 69 meetings. It has established guidelines and procedures in various aspects, enhanced and updated these guidelines / procedures continuously in the light of the circumstances encountered in the course of vetting the applications, and deliberated the applications for specified instruments.

14. So far, the PCLB has granted approval/approved-in-principle to the applications for specified instruments in respect of 22 private columbaria, including giving approval of 6 licences and 1 exemption, and approval-in-principle for 2 licence applications, 1 exemption application and 13 TSOL applications, involving more than over 52% of the total sold niches of private columbaria in the territory. As at 15 April 2021, the PCLB has refused applications from 26 private columbaria which failed to meet the requirements. Among these refused applications, many are private columbaria situated in

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<sup>4</sup> 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.

<sup>5</sup> Including 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.

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, 14 private columbaria have withdrawn their applications. Based on our information, nearly 80 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, as at 15 April 2021, the PCLB is processing 233 applications for specified instruments submitted by 95 private columbaria (including 15 private columbaria which have been granted approval-in-principle for their applications for specified instruments).

## **Enforcement actions and ash disposal**

15. There are detailed requirements in the Ordinance regarding the arrangements for disposal of ashes in private columbaria. Under the circumstances as specified in the Ordinance<sup>6</sup>, the operator of a columbaria must carry out the “prescribed ash disposal procedures”<sup>7</sup> 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.

16. From the commencement of the Ordinance to 30 April 2021, the FEHD received over 150 complaints about suspected illegal operation of private columbaria, and conducted about 1 800 inspections and carried out in-depth investigation into cases of suspected breaches of the Ordinance. The FEHD had made arrests in 10 cases and taken prosecution against the operators of 6 columbaria. As at 30 April 2021, the operators in the 6 cases were convicted with fines imposed and criminal records registered. The FEHD will continue to take stringent enforcement actions to combat illegal operation of private columbaria.

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<sup>6</sup> 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.

<sup>7</sup> Under section 18 of Schedule 5 to the Ordinance, the operator may submit an application to the DFEH for an alternative ash disposal plan.

17. 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.

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

19. The number of cases handled by the PCAB mainly depends on the number of applications for specified instruments rejected and whether appeals are lodged by the unsuccessful applicants. As at 30 April 2021, a total of 13 appeals were received by the PCAB. Among them, 4 appeal cases were heard in 2019 and 2020 (with 1 struck out and 3 dismissed) and 1 withdrawn by the appellant before hearing. For the remaining 8 appeal cases, 6 were pending hearing that had all been scheduled in 2021, 1 was lodged out of time and 1 pending a written decision after hearing. The relevant information on the PCAB, 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**

20. 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 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 summaries<sup>8</sup> 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 their 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 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 specified instrument, the name of the holder of specified instrument, the restriction(s) on sale of interment rights of niches and the conditions which the specified instrument is subject to) can be found in the “Register of Private Columbaria” on the dedicated website.

21. 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 30 April 2021, the PCAO received over 4 500 enquiries which have been handled one by one. The FEHD has also, through public talks, announcements of public interest and promotional leaflets, etc., enhanced public understanding of the requirements for the operation of private columbaria under the Ordinance, reminded the public of the issues to note when purchasing interment rights of niches for the protection of their interests and alternative means of disposal of ashes.

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<sup>8</sup> Including basic information, site information and site plans of the columbarium.

## **Way forward**

22. The current target of the PCLB is to make certain decisions on all applications for specified instruments made in respect of pre-cut-off columbaria (giving approval/“approval-in-principle” to or rejecting the applications for licence / exemption / TSOL) within two years. However, the progress of the above work depends on the actual circumstances of the cases, especially when the applicants submit the required documents and information, respond to the comments of the relevant departments, take follow-up actions and submit supporting documents, and whether the applications have met all the requirements of the relevant types of applications under the Ordinance and all the requirements specified by the PCLB. After the examination of the required documents/information submitted by the applicants, the PCAO will seek the relevant departments’ comments, and then notify the applicants to follow up on these comments and submit reports. The relevant reports will be examined by the relevant departments. After confirming that an individual application has met the application requirements, the PCAO will immediately arrange for it to be submitted to the PCLB for determination.

23. 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 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 upholding fair, open and just principles as well as in an objective manner.

24. Members are invited to note the measures and progress of various aspects concerning private columbaria, including the processing and approval of applications for specified instruments, the enforcement actions and ash disposal, the handling of appeal cases, as well as public education and publicity.

**Food and Health Bureau**  
**Food and Environmental Hygiene Department**  
**May 2021**

## Enclosure I

### Requirements for various types of applications for specified instruments

	<b>Application Requirements for TSOL</b>	<b>Application Requirements for Licence</b>	<b>Application Requirements for Exemption</b>
1	Certified by qualified professional(s) as not posing obvious or imminent danger for building safety and fire safety  <i>(S.21(3) of the Ordinance)</i>	Building-related requirements  <i>(Schedule 2 of the Ordinance)</i>	Building-related requirements  <i>(Schedule 2 of the Ordinance)</i>
2	Fire safety		
3	Electrical and mechanical safety		
4	Proposed plans – certified by qualified professional(s) <i>(S.12, 25, 26(1) and (2), 27(1), (2) and (3), 29(1)(b), 32(1)(b) and 35(1)(b) of the Ordinance)</i>		
5	(If illegal occupation of unleased land is involved) Submission of two land documents (Note (1)) <i>(S.21(2)(b) of the Ordinance)</i>	Land-related requirements  <i>(Schedule 2 of the Ordinance)</i>	Land-related requirements  <i>(Schedule 2 of the Ordinance)</i>
6	“Pre-cut-off columbaria” status <i>(S.21 of the Ordinance)</i>		
7	The following is limited to as at cut-off time <i>(S.27 of the Ordinance)</i> : <ul style="list-style-type: none"> <li>- ash interment layout</li> <li>- ash interment capacity (if a licence application is submitted)</li> <li>- ash interment quantity (different requirements for licence and/or exemption application(s))</li> <li>- extent of land occupation</li> </ul>		
8	Owners’ consent to use the premises for columbarium use <i>(S.23(2) of the Ordinance)</i>	Owners’ consent to use the premises for columbarium use <i>(S.23(2) of the Ordinance)</i>  Right to use the premises <i>(S.18(1)(b) and 19(3)(b) of the Ordinance)</i>	Owners’ consent to use the premises for columbarium use <i>(S.23(2) of the Ordinance)</i>  Right to use the premises <i>(S.20(1)(h) of the Ordinance)</i>
9	Action Plan for meeting the requirements of the associated licence and/or exemption application(s) <i>(S.23(1) and 36 of the Ordinance)</i>	Management Plan  <i>(S.18(2) and 23(1)(b)(i) of the Ordinance)</i>	

	<b>Application Requirements for TSOL</b>	<b>Application Requirements for Licence</b>	<b>Application Requirements for Exemption</b>
10		Environmental protection	Environmental protection
11	Application form is signed by an authorised person <i>(Schedule 3 of the Ordinance)</i>		
12		Planning-related requirements <i>(Schedule 2 of the Ordinance)</i>	
13	The private columbarium is not subject to specified enforcement actions <i>(S.17 of the Ordinance)</i>		

Note (1): The two land documents refer to the following:

- (i) to apply to the Director of Lands for lawful authority to occupy the unleased land; and
- (ii) to provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land.

**Measures and arrangements promulgated by the PCLB on 30 August 2019 to speed up the processing of applications for specified instruments**

- (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, under specified circumstances, the PCLB may grant an exemption to a columbarium that complies with all application requirements for an exemption without requiring the applicant to disinter the ashes which were newly interred after the commencement of the Ordinance 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. Since many applicants have not submitted the required documents in various requirement domains of their applications despite repeated reminders, the PCLB announced on 30 August 2019 that it had 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 applications should be submitted to the PCLB on or before 31 December 2019 and that the PCLB in general would not consider any documents/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.

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

As mentioned above, the Ordinance does not prohibit the new interment of ashes in private columbaria during the grace period. 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 in general 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.