

# 立法會 *Legislative Council*

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## **Panel on Food Safety and Environmental Hygiene**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 11 May 2021**

### **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 private columbaria's adoption of a sustainable mode of operation. 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 is adopted towards the handling of pre-cut-off columbaria<sup>1</sup>.

#### 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

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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.

under PCO to consider and determine applications for specified instruments, namely, a licence<sup>2</sup>, 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 period<sup>3</sup> 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, management plan, right to use the premises, fire safety, electrical and mechanical safety, environmental protection, etc. PCLB will give regard to the public interest and other relevant considerations when determining individual applications.

5. According to the Administration's written reply to a question raised by Hon Alice MAK at the Council meeting of 16 December 2020, since the enactment of PCO, PCLB has received 162 applications for TSOL and the private columbaria concerned have also applied for other specified instruments simultaneously. As at 30 November 2020, PCLB has approved in principle nine TSOL applications (one of them is also given approval-in-principle for an exemption application). PCLB has also granted six licences, approved in principle two licence applications and refused 29 TSOL applications. The above approved/approval-in-principle cases involve 17 private columbaria (involving over 170 000 sold niches which approximately account for more than 30% of the total sold niches of private columbaria in Hong Kong). Besides, 15 TSOL applications have been withdrawn by the applicants. The above mentioned cases aside, PCLB is vetting 101 TSOL applications.

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

<sup>3</sup> If a columbarium was in operation immediately before PCO came into effect, there would 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 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.

### 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 PCO<sup>4</sup>, the operator of a columbarium must carry out the "prescribed ash disposal procedures" in accordance with the requirements of PCO<sup>5</sup> 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.

### **Members' concerns**

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

### Processing of applications for specified instruments

#### *Processing progress and measures for speeding up the progress*

8. Members were concerned about the slow progress of PCLB in processing applications for specified instruments from private columbaria. The Administration was urged to explore ways to expedite the processing time for various specified instruments.

9. According to the Administration, the progress in handling applications from private 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. If the applicant concerned had provided all the required documents and the

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<sup>4</sup> 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.

<sup>5</sup> 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.

application was confirmed to comply with all applicable requirements, PCAO would submit the case to PCLB for determination as soon as possible. The Administration advised that 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.

10. The Administration further advised that PCLB had implemented a number of new measures in order to speed up the processing of applications for specified instruments. To increase the transparency of the progress of processing applications, since late July 2019, the status of submission of documents by the applicants in respect of some major domains of the application requirements had been published on a dedicated website and the information was updated on a quarterly basis. In August 2019, PCLB also promulgated the implementation of three other measures and arrangements, i.e. (a) granting exemption without requiring applicants to restore the ash interment quantity first; (b) setting 31 December 2019 as the deadline for submission of documents/information in respect of TSOL applications; and (c) making administrative arrangements for "Approval-in-principle for TSOL Application". With these efforts, PCLB had achieved significant progress in the scrutiny of the applications for specified instruments.

*Support provided to PCAO and applicants*

11. Concerns were expressed as to whether adequate support and manpower resources had been provided to PCAO for handling the applications from private columbaria; and what assistance would be provided to applicants to strengthen their liaison and communication with the relevant bureaux and departments.

12. According to the Administration, 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. At present, more than 10 cases managers had been assigned to handle applications for specified instruments submitted by private columbaria. PCAO would review from time to time the manpower resources required for discharging its duties.

13. As regards the support provided to applicants, the Administration advised that PCAO had all along played a coordination role in the processing of applications for specified instruments. It had already streamlined work procedures and provided various templates to facilitate the applicants in making applications. PCAO also assigned a case manager to follow up each

application, answer enquiries from the applicant and assist the applicant to liaise with the relevant bureaux and departments. In 2017, PCAO had conducted briefings and invited representatives of relevant departments to explain directly to the operators of private columbaria the requirements which had to be complied with when applying for specified instruments. Where necessary, PCAO would convene inter-departmental meetings to discuss how to address the problems encountered during the vetting of the applications.

#### 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 8 April 2020, FEHD had received over 320 complaints<sup>6</sup> about private columbaria, conducted about 1 500 inspections and carried out in-depth investigation into cases of suspected breaches of PCO. FEHD had made arrests in seven cases and taken prosecution against the operators of five

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<sup>6</sup> According to the Administration, the complaints were 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.

columbaria. As at 8 April 2020, the operators in three cases were convicted with fines imposed and criminal records registered; and there were ongoing legal proceedings for another two cases. 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 development**

18. The Administration will brief members on the implementation progress of PCO at the Panel meeting of 11 May 2021.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
5 May 2021

**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> )
	21.4.2020 (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)1165/19-20(01)</u> )
Legislative Council	16.12.2020	<u>Official Record of Proceedings</u> <u>Pages 2497 to 2500 (Written question raised by Hon Alice MAK on "The licensing regime for private columbaria")</u>