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Report of Bills Committee on Private Columbaria (Amendment) Bill 2024

Purpose

This paper reports on the deliberations of the Bills Committee on Private Columbaria (Amendment) Bill 2024 (“the Bills Committee”).

Background

2. According to the Legislative Council Brief, the Private Columbaria Ordinance (Cap. 630), which has been implemented since 30 June 2017, establishes a licensing regime to ensure private columbaria’s compliance with the statutory and government requirements, enhance protection of consumer interests, and foster the trade’s sustainable development. It also embraces a pragmatic and sympathetic approach in regulating private columbaria that were in operation, and in which ashes were interred in niches, immediately before 8:00 am on 18 June 2014 (“cut-off time”)¹ as specified by Cap. 630 (“pre-cut-off columbaria”).

3. Under the existing section 10 of Cap. 630, a person must not operate, keep, manage, or in any other way have control of a columbarium, unless the person holds a specified instrument (“SI”) (namely a licence, an exemption or a temporary suspension of liability (“TSOL”))² in respect of the columbarium, and only a holder of a licence may sell interment rights in respect of a columbarium if authorized to do so. The permitted business activities for holders of different types of SIs are summarized below:

¹ The Government formally announced its proposal to establish a licensing regime regulating the operation of private columbaria at the cut-off time (i.e. 8:00 am on 18 June 2014).

² Under section 21(1) of Cap. 630, an applicant who makes an application for the issue of TSOL in respect of a pre-cut-off columbarium also needs to make in respect of the columbarium either or both (a) an application for the issue of a licence; and/or (b) an application for the issue of an exemption.

SI	Permitted business activities
Licence	<ul style="list-style-type: none"> General operation (including selling or letting out of niches, and interment of ashes)
Exemption	<ul style="list-style-type: none"> General operation, but selling or newly letting out of niches is prohibited Ashes interred in a niche before the cut-off time may continue to be kept in that niche, or, if the interment right in respect of any niche purchased before the cut-off time has not been exercised or has only been partially exercised, ashes may be interred in that niche during the validity period of the exemption
TSOL	<ul style="list-style-type: none"> General operation, but selling or newly letting out of niches and new interment of ashes are prohibited

4. As at 31 March 2025, the progress of the Private Columbaria Licensing Board (“the Licensing Board”) in handling applications for various types of SIs is set out below:

	Licences approved	Exemptions approved	Applications under processing
Private columbaria	13	6	77 ³
Niches involved	Around 194 300	Around 9 800	Around 534 300

5. In the light of operation experience, the Administration has identified needs to put forward legislative proposals so as to achieve more effective execution of the regulatory regime on private columbaria, including providing pre-cut-off columbaria meeting certain conditions an option to apply for exemption to avert the need for large-scale disposal of ashes already interred in these columbaria so that they could continue to operate at their current confined scale, as they may have difficulties in fulfilling all requirements for a licence; enhancing enforcement provisions for greater deterrent effects; and enhancing

³ These include 76 pre-cut-off columbaria and one non-pre-cut-off columbarium. Of the 76 pre-cut-off columbaria, two were granted “approval-in-principle for licence application”, nine granted “approval-in-principle for exemption application”, and the remaining 65 granted “approval-in-principle for TSOL application”. During the validity period of their respective “approval-in-principle”, these applicants are required to act in accordance with their action plan and timetable so as to comply with all the requirements for their licence and/or exemption. The licence application made by the remaining one non-pre-cut-off columbarium has yet to meet the requirements for application in various aspects.

Cap. 630. The Administration conducted a public consultation from 2 May to 2 June 2024 on the legislative proposals, and each of the proposals was supported by at least 85% of written responses received.

Private Columbaria (Amendment) Bill 2024

6. The Private Columbaria (Amendment) Bill 2024 (“the Bill”) was published in the Gazette on 6 December 2024 and received its First Reading at the Council meeting of 18 December 2024. The Bill seeks to amend Cap. 630 to:

- (a) enable private columbaria meeting certain conditions to apply for an exemption;
- (b) increase the penalty for existing offences relating to interment of ashes and the failure to comply with an enforcement notice;
- (c) introduce new offences relating to the sale of interment rights and interment of ashes;
- (d) stipulate that the Private Columbaria Appeal Board (“the Appeal Board”) may receive and consider new materials upon special grounds being shown;
- (e) disapply Cap. 630 from eligible masons’ workshops that temporarily keep ashes for masonry work;
- (f) update certain references relating to company secretaries; and
- (g) provide for related matters.

The Bill, if passed, would come into operation on the day the enacted Ordinance is published in the Gazette.

The Bills Committee

7. At the House Committee meeting held on 3 January 2025, Members agreed to form a Bills Committee to scrutinize the Bill. Hon YUNG Hoi-yan served as the Chairman of the Bills Committee. The membership list of the Bills Committee is in the **Appendix**.

8. The Bills Committee has held three meetings with the Administration and invited the public to provide written submissions on the Bill. The Bills Committee has received eight submissions in total. The Administration's consolidated responses to these submissions are set out in LC Paper Nos. [CB\(3\)243/2025\(02\)](#) and [CB\(3\)455/2025\(03\)](#).

Deliberations of the Bills Committee

9. In the course of scrutinizing the Bill, members have conducted in-depth discussions and expressed concerns on a number of issues. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Proposed amendments relating to applications for exemption

Applications for exemption in respect of pre-cut-off columbaria under the proposed new section 14A

10. According to the Administration, as at 30 November 2024, there were 59 pre-cut-off columbaria pursuing applications for licence. Among them, 11 had also applied for exemption. For the remaining 48 columbaria which had to continue with their applications under Cap. 630, they have yet to meet the requirements for a licence. In case these columbaria eventually fail to fulfil all requirements for a licence, they will have to cease operation, triggering ash disposal as stipulated in Cap. 630 and causing disturbance to the community.

11. The Bill seeks to provide that a pre-cut-off columbarium meeting specified conditions would be eligible to newly apply for exemption, and that the approval of which would allow an applicant to continue to operate the columbarium at its current confined scale, i.e. keeping the existing niches sold before 30 June 2017 (i.e. the enactment date of Cap. 630).

12. Clause 5 of the Bill seeks to add a new section 14A to Cap. 630 to provide that an application for the issue of an exemption in respect of a pre-cut-off columbarium could also be made after the date on which the Bill (if passed) comes into operation as an enacted Ordinance ("specified date") and within a period to be specified by the Licensing Board ("specified period"). Members and the Legal Adviser to the Bills Committee ("Legal Adviser") have sought explanation from the Administration on the intended length of the "specified period", and how the "specified period" would be made known to the public and/or the concerned pre-cut-off columbaria.

13. The Administration has replied that the existing section 14(2) of Cap. 630 requires pre-cut-off columbaria to apply for the issuance of an SI within a three-month period ending 29 March 2018. From operation experience, the said arrangement was smooth. The proposed new section 14A provides the authority for the Licensing Board to specify a period for pre-cut-off columbaria to make new applications for the issuance of an exemption as supplemented by the proposed new sections 14A and 20A. The Licensing Board would take into the relevant factors, including its past operation experience, in determining the length of the “specified period”. Once the Licensing Board has determined on the “specified period”, the Private Columbaria Affairs Office (“PCAO”) will inform all pre-cut-off columbaria of the “specified period”. The Food and Environmental Hygiene Department (“FEHD”) will also issue a press release on the “specified period” and announce it through its thematic website on “Regulation of Private Columbaria” (“thematic website”).

14. After the Administration’s explanation, some members have suggested that the Administration should refine the drafting of the proposed new section 14A, such as adding a period of time that is specified by the Licensing Board, and for which a notice is issued by FEHD, so as to clearly provide for the “specified period” for exemption application. The Administration has responded that the proposed new section 14A already clearly provides that the “specified period” is determined by the Licensing Board. FEHD will, after the determination of the “specified period” by the Licensing Board, widely inform the public and operators of the relevant decisions through various channels.

15. The proposed new section 14A(2) of Cap. 630 provides that the Licensing Board may consider an application for exemption made after the expiry of a period specified by the proposed new section 14A(1) if the applicant has a reasonable excuse for failing to make the application within time, and, in all the circumstances of the case, the Licensing Board considers that it is just and equitable to consider the application. Some members consider the drafting of “has a reasonable excuse” unclear and have suggested that the Administration should refine the provision.

16. The Administration has advised that the proposed new section 14A(2) is in line with the existing section 14(6) of Cap. 630. Under the existing mechanism, the Licensing Board is empowered to determine whether the information provided by a late applicant has a reasonable excuse. Given such a well-established mechanism, “has a reasonable excuse” is used as one of the considerations in the proposed new section 14A(2)(a).

17. Clause 6 of the Bill seeks to add a new section 20A to Cap. 630 to provide for the eligibility criteria for application for exemption under the proposed new

section 14A of Cap. 630, including: under the proposed new sections 20A(1)(a) and 20A(3), the date of commencement of operation of the columbarium be adjusted from before “1 January 1990” to before the “cut-off time” (i.e. 8:00 am on 18 June 2014); and the date as at which the ash interment quantity is limited to and the date on which interment right has ceased to be sold be adjusted from the “cut-off time” to the “beginning of the enactment date” of Cap. 630 (i.e. 30 June 2017).

18. Some members are concerned that some columbaria whose applications for SIs have been refused by the Licensing Board or voluntarily withdrawn, or those which have decided to cease operation, may hold the view that the relaxation of the aforesaid basic eligibility criteria for application might result in unfairness to them.

19. The Administration has clarified that columbaria whose applications for SIs have been refused by the Licensing Board or voluntarily withdrawn, or those which have decided to cease operation, often involved multiple violations before Cap. 630 came into effect. To allow time for pre-cut-off columbaria to rectify irregularities so that they will be eligible for a licence or exemption, operators of such columbaria may apply for a TSOL under Cap. 630, so as to gain time for completing the follow-up procedures relating to the application for a licence and/or exemption. However, columbaria whose applications for SIs have been refused by the Licensing Board or voluntarily withdrawn, or those which have decided to cease operation, failed to meet even the basic requirements, such as proving at the time of applying for a TSOL that the building in question did not pose an obvious or imminent danger. In addition, such cases were not eligible for the issue of an SI for a number of reasons (e.g. failure to submit the required documents or information). Hence, even if the aforesaid two criteria for application for exemption are open for the columbaria concerned to apply, they will still be ineligible for application, and thus there is no question of unfairness being caused.

20. Some members and the columbaria which have provided written submissions have pointed out that the relaxation of the aforementioned two basic eligibility criteria has created unfairness in the trade (particularly in the case of those columbaria which have already been granted a licence). As some columbaria do not meet the conditions for applying for exemption under the existing Cap. 630, they can only apply for a licence directly. However, during the initial period of the implementation of Cap. 630, the requirements for licence applications were stringent, and the operators needed to put in a lot of resources to comply with the law in such areas as land planning and fire safety. Moreover, licensed columbaria were required to pay the relevant fees for the short-term exemptions/short-term leases for niches sold at or after 8:00 am on 18 June 2014

(i.e. the cut-off time) but before 30 June 2017 (i.e. the enactment date of Cap. 630). This was therefore considered unfair. Members have enquired whether the Administration could consider extending the option of making new application for exemption to pre-cut-off columbaria with licences issued as well as those with “approval-in-principle for licence application”. There were also submissions from columbaria requesting the Administration to likewise consider extending the application of the proposed revised date of cessation of sale of interment right to columbaria with licences issued, so as to alleviate their financial burden.

21. The Administration has explained that the pre-cut-off columbaria newly applying for exemption under the Bill’s proposal are required to pay the relevant fees for short-term exemptions/short-term leases in accordance with the established policy of the Lands Department if they apply for land regularization for niches sold at or after 8:00 am on 18 June 2014 but before 30 June 2017. This arrangement is the same as the current arrangement for licence holders applying for land regularization. In short, the proposal for new application for exemption under the Bill will neither give rise to conflicts nor cause unfairness. Some licensed columbaria have mistaken that columbaria newly applying for exemption are not required to pay the relevant fees for short-term exemptions/short-term leases for niches sold at or after 8:00 am on 18 June 2014 but before 30 June 2017. They therefore hope to make new applications for exemption. PCAO has contacted these columbaria to explain the relevant arrangements. The Administration has further clarified that the arrangements of land-related fees on lease modification or land regularization in respect of pre-cut-off columbaria are neither a stipulation nor a mechanism under Cap. 630; and they are not related to the provisions of the Bill.

22. The Administration has also pointed out that under the existing regulatory regime, licensed columbaria have greater flexibility in their operations. In addition to general operation, they can newly sell or let out niches. Holders of exemption, however, can only operate on a confined scale while new sale or letting out of niches is not allowed. Regarding pre-cut-off columbaria with “approval-in-principle for licence application”, as they have not yet been issued with a licence, they may choose to newly apply for an exemption under the proposed new section 14A if they meet the relevant conditions in the Bill.

23. Under the proposed new sections 20A(1)(b)(iii) and 20A(2)(b) of Cap. 630, an applicant applying for an exemption under the proposed new section 14A would need to prove that as at the specified date, no planning application in respect of the columbarium has been refused by the Town Planning Board (“TPB”). Some members and the columbaria which have provided submissions are concerned as to whether this condition will give rise to unfairness. Members

have urged the relevant bureaux and/or departments (“B/Ds”) to explore feasible ways to assist the columbaria concerned, having regard to the latest development in land policy.

24. The Administration has explained that pre-cut-off columbaria need to meet the specified conditions to be eligible for the option to make new application for exemption, which includes the pre-cut-off columbarium being not located in “high-density residential development” zones, and its relevant planning application made under the Town Planning Ordinance (Cap. 131) having not been refused by TPB as at the commencement of the Bill. The latter would include pre-cut-off columbaria that have obtained planning permission as at the commencement of the Bill (regardless of whether they have a history of rejection by TPB) and those that have never had any record of rejection by TPB. In fact, many columbaria used to have their planning applications rejected by TPB, but such applications were subsequently approved by TPB after they were revised. The proposed specified conditions mentioned above aim to minimize the impact of pre-cut-off columbaria eligible for the new exemption option on their neighbourhood and to demonstrate deference to TPB’s procedures and decisions, safeguarding overall public interests.

25. In response to the various concerns raised by columbaria operators, the Administration has assured members that the case managers of PCAO will contact the columbarium operators and they have done so after the meeting to explain to the operators details of the new arrangements, provide necessary assistance and address their concerns, so as to facilitate them in making appropriate decisions regarding their operational direction and understanding the responsibilities and obligations of private columbaria under Cap. 630.

Proposed amendments relating to the proposed new sections 14A and 20A

26. In relation to the proposed new option to make an application for the issue of an exemption in respect of a pre-cut-off columbarium under the proposed new sections 14A and 20A of Cap. 630, the Legal Adviser has sought clarification from the Administration on whether consequential amendments need to be made to the existing sections 27(4) and 40(2)(a) of Cap. 630 (e.g. to include the reference to the proposed new section 20A in those sections).

27. The Administration has responded that it appreciates that the general public who are not familiar with the licensing regime may find it helpful to include the reference to the proposed new section 20A in sections 27(4) and 40(2)(a) of Cap. 630 for clarity and certainty in statutory interpretations. As such, in response to the Legal Adviser’s advice, the Administration will propose

amendments, which are technical in nature, to include the reference to the proposed new section 20A in sections 27(4) and 40(2)(a) of Cap. 630.

28. The Legal Adviser has also sought clarification from the Administration on whether a refusal of an application made under the proposed new section 14A would be subject to appeal. If so, the Legal Adviser has asked the Administration to consider making necessary amendment to the existing section 84 of Cap. 630.

29. The Administration has explained that as applications relating to the proposed new sections 14A and 20A are essentially for an exemption under section 20 of Cap. 630, any refusal of such an application for exemption would be such under section 20 of Cap. 630 as supplemented by the proposed new sections 14A and 20A. Therefore, the Administration opines that the existing reference to section 20 of Cap. 630 in section 84(1)(a) of Cap. 630 can cover refusal of application for exemption as supplemented by the proposed new sections 14A and 20A. Nevertheless, the Administration appreciates that the general public who are not familiar with the licensing regime may find it helpful to include the reference to the proposed new section 20A in section 84 of Cap. 630 for clarity and certainty in statutory interpretations. As such, in response to the Legal Adviser's advice, the Administration will propose amendments, which are technical in nature, to include a reference to the proposed new section 20A in section 84(1)(a) to clearly reflect that the right to appeal under section 84 covers a refusal of an application for exemption made in reliance of the new section 20A.

30. In addition, under the proposed new sections 20A(1)(a) and 20A(3)(b) of Cap. 630, an applicant applying for an exemption under the proposed new section 14A would be required to prove to the satisfaction of the Licensing Board that no interment right in respect of the columbarium has been sold since the beginning of the enactment date. In view of the proposed adjustment of the time of cessation of sale of interment right from the cut-off time (i.e. 8:00 am on 18 June 2014) to the beginning of the enactment date of Cap. 630 (i.e. 30 June 2017), the Legal Adviser has sought clarification from the Administration on whether amendments need to be made to the existing sections 38 and 104(2)(d) of Cap. 630 (relating to restriction of imposing additional fees not specified in any agreement for the sale of interment right entered into before the cut-off time).

31. The Administration has replied that regarding the question on section 38 of Cap. 630, the Administration appreciates that amendments to section 38 of Cap. 630 would enhance clarity on the fact that the Licensing Board would have the authority to impose conditions restricting the imposition of additional fees not specified in any agreement for the sale of interment right entered into before the enactment date. As such, in response to the Legal Adviser's advice, the

Administration will propose an amendment, which is technical in nature, to include the reference to section 38 in the proposed new section 20A(5). Regarding the question on section 104(2)(d) of Cap. 630, the Administration appreciates that a clear stipulation in section 104(2)(d) that the Secretary for Environment and Ecology's authority would cover scenario involving sale of interment right entered into before the enactment date by holders of exemption who obtained such through application in relation to the proposed new section 20A would be conducive to enhancing the clarity of Cap. 630. As such, in response to the Legal Adviser's advice, an amendment, which is technical in nature, would be proposed to include the reference to section 104(2)(d) of Cap. 630 in the proposed new section 20A(5).

32. The Administration will also propose technical amendments to section 26(1)(b) of Cap. 630 to include a reference to section 20A to clearly reflect that the Licensing Board may grant the application for exemption made in reliance of the proposed new section 20A and authorize or permit the particulars specified in section 26(2) as shown in the plans.

Progress of processing applications for specified instruments

33. Members have pointed out that while Cap. 630 has been in force for more than seven years, the Administration has so far granted 13 licences and five exemptions, and 77 columbaria's applications for SIs are still being processed. They consider such processing progress undesirable.

34. According to the Administration, the progress in handling applications from pre-cut-off columbaria depends, to a large extent, on whether the applicants have already complied with all the requirements stipulated in Cap. 630 and the requirements specified by the Licensing Board; and whether the applications are accompanied by all the required documents and information. As violations involving pre-cut-off columbaria were serious when Cap. 630 came into operation, it took time for the operators to rectify the violations. In this connection, PCAO has taken a number of measures to assist the applicants and expedite the processing of applications from pre-cut-off columbaria, including promulgation of application guide for SIs; provision of specified templates to facilitate applicants' submission of required documents; designation of a case manager to follow up with each applicant; and implementation of an "Alternative Approach" in collaboration with the Buildings Department to assist applicants in fulfilling the building-related requirements under Cap. 630.

35. Some members have relayed the views of the trade that the procedures for applying for licences and exemptions are cumbersome, as approval from different departments is required and requirements are also imposed on the

applicants by different departments. Members consider that a columbarium holding a licence or exemption is a safeguard for the public. To shorten the processing time and expedite the handling of backlog cases, the Administration should enhance the existing one-stop services for columbaria by coordinating the requirements of various departments, assisting the applicants in following up and processing the applications for land regularization as early as practicable.

36. PCAO has undertaken to enhance its one-stop services to applicants by adopting various measures to further expedite the vetting and approval process of SI applications, including: (a) in the second quarter of 2025, all case managers will critically review with applicants the progress of their applications with reference to their committed action plans, and meet with applicants on their submission of outstanding documents and information, so as to identify areas that require further assistance or clarification on the requirements from the B/Ds concerned; (b) case managers will line up meetings as needed for the B/Ds to explain clearly to the applicants their requirements and the follow-up actions required to be taken. If there are any issues cutting across various B/Ds, PCAO will continue to coordinate their views; and (c) put in place a new mechanism to require all B/Ds relevant to an application to provide, within three weeks from the date of circulation, their comments on the documents and information submitted by the applicant, or initial comments with explanation on why full comments could not be provided. Case managers will also assist in urging B/Ds concerned to provide specific comments and avoid giving comments by batches, with a view to facilitating timely follow-up actions by the applicants.

37. Members have enquired about the estimated time required by the Administration to complete the vetting and approval of the applications for SIs from 77 columbaria. The Administration has responded that the progress of applications made by individual pre-cut-off columbaria depends, to a large extent, on the progress of the applicants in complying with the requirements in relation to SIs. The validity period of an “approval-in-principle for licence/exemption application” is one year and that of “approval-in-principle for TSOL application” is three years. Application for extension is permissible if necessary, but they may not be extended more than once under normal circumstances. The pre-cut-off columbaria with an “approval-in-principle for licence/exemption/TSOL application” are currently taking actions to comply with the requirements under Cap. 630 and all those specified by PCLB as soon as possible, so that PCLB can determine their application. The Licensing Board will continue to closely monitor the vetting and approval of applications, and PCAO will continue to provide appropriate assistance to the applicants.

Handling public enquiries

38. Some members have relayed the views of members of the public that the telephone enquiry service provided by PCAO often fails to provide immediate answers to their enquiries. They have thus requested PCAO to enhance its public enquiry service (e.g. provision of assistance through adoption of new technology), so as to improve the overall user experience.

39. The Administration has advised that PCAO currently provides two telephone hotlines, one 24-hour hotline handled by 1823 on all private columbaria matters and the other handled by PCAO staff during office hours on ash disposal matters. To enhance the effectiveness of the enquiry service being provided to the public, PCAO has expanded the scope of the existing hotline handled by PCAO staff during office hours to cover all private columbaria matters; and enhanced manpower support for the hotline handled by PCAO such that incoming calls will be handled by a pool of dedicated personnel. In addition, PCAO will also further explore the feasibility of using AI (such as Chatbot) with a view to enhancing its enquiry service. For columbarium operators, they can continue to contact their case managers or staff of PCAO for enquiries and assistance.

40. Members have noted that the thematic website set up by PCAO provides useful information on private columbaria and the requirements of Cap. 630 to both the public and the trade. Members have suggested that the Administration should consider requiring licensed columbaria to provide regular updates on the number of niches available for sale, so as to enrich the information on the thematic website and make it more convenient for the public to obtain comprehensive information. The Administration has undertaken to take account of members' views when considering how to improve the thematic website. Members of the public may also approach PCAO directly for relevant information.

Proposed amendments relating to offences and penalty

Offences relating to sale of interment rights and interment of ashes as well as non-compliance with enforcement notice

41. Clause 9(4) of the Bill seeks to add new sections 54(1A) and (1B) to Cap. 630 to provide that the licence holder in respect of a columbarium must not sell any interment right in respect of the columbarium other than an interment right in respect of a niche that is shown in the approved plans; and must not inter ashes, or cause or permit ashes to be interred, in a niche other than a niche that is shown in the approved plans. Clause 9(5) and (6) of the Bill seeks to amend section 54(6) of Cap. 630 to provide that a person who contravenes the proposed new section 54(1A) or (1B) would commit an offence, and to increase the

maximum penalty for an offence under section 54 of Cap. 630 from a fine at level 3 (\$10,000) and imprisonment for six months to a fine of \$2,000,000 and imprisonment for six months on summary conviction, or a fine of \$5,000,000 and imprisonment for two years on conviction on indictment.

42. Clause 10 of the Bill seeks to amend section 64(3) of Cap. 630 to increase the maximum penalty for the non-compliance with enforcement notice from a fine at level 3 (\$10,000) to a fine of \$500,000 and imprisonment for six months on summary conviction, or a fine of \$5,000,000 and imprisonment for two years on conviction on indictment.

43. Members have noted that since the commencement of Cap. 630, PCAO has identified no contravention by any private columbarium of the restrictions on the number of sets of ashes kept under section 54 of Cap. 630, nor has it prosecuted any columbarium for non-compliance with enforcement notice under section 64 of Cap. 630. Some members are concerned why the Bill still substantially increases the penalties for the offences under such circumstances. Some members hope that the Administration will ensure sufficient deterrent effect when introduce the penalties and at the same time, consider whether the increased penalties will have any adverse impact on the trade.

44. According to the Administration, having regard to the seriousness of the offence, the extent of damage to consumer interests, and the fact that the benefits available to offenders are not commensurate with the existing penalties, it is considered necessary to increase the penalties to enhance the deterrent effect and nip the problem in the bud, so as to protect consumer interests. In fact, the proposed penalties are modelled on the penalty for the offence of illegal columbarium operation under section 11 of Cap. 630, where the maximum penalty is imprisonment for seven years and a fine of \$5 million. The penalties are therefore consistent. Moreover, the penalties were clearly stipulated during the public consultation exercise and most of the views received are in favour of the proposal.

45. Clause 9(3) of the Bill seeks to amend section 54(1) of Cap. 630 to provide that the licence holder in respect of a columbarium must ensure that the number of sets of ashes kept in niches, the number of those kept otherwise than in niches, and the number of interment rights sold in respect of the columbarium, are limited to the ash interment capacity shown in the approved plans. Members have noted that different quantifiers are used in the provisions relating to ashes, including number of sets, number of interment rights and ash interment capacity. Members have expressed worries that members of the public may be confused in understanding such terms and hope that the Administration will consider using unified quantifiers, such as the number of deceased persons whose ashes can be

kept in one niche. The Administration has advised that as “ash interment capacity”, which is defined in Cap. 630, and “number of sets”, which also appears on many occasions in Cap. 630, relates to the requirements pertinent to licences and exemptions respectively, operators are already familiar with these terms. As such, it is not suitable to make substantial changes to the existing articulation in the Bill.

Whether proposed new offences are intended to be strict liability offences

46. Clause 9(5) of the Bill seeks to amend section 54(6) of Cap. 630 to provide that a person who contravenes the proposed revised section 54(1) or the proposed new section 54(1A) or (1B) would commit an offence. The Legal Adviser has sought clarification from the Administration on whether such offences are intended to be strict liability offences. The Administration has replied that the proposed amendment to section 54(6) under the Bill does not seek to alter the articulation of the presumption of the offences under the existing section. There is no indication of displacement of the prosecution’s burden of proof regarding the accused’s mens rea in the existing articulation. Therefore, the offences under the proposed revised section 54(6) are not intended to be strict liability offences.

47. In addition, regarding the offence under the proposed new section 99A (that is, the licence holder in respect of a columbarium who sells any interment right in respect of the columbarium without an authorization under the licence to sell the interment rights, or when the authorization has been revoked or suspended under the existing section 40(1)(a)(ii) of Cap. 630 would commit an offence), the Legal Adviser has also sought clarification from the Administration on whether the proposed new offence is intended to be a strict liability offence. The Administration has replied that there is no indication of displacement of the prosecution’s burden of proof regarding the accused’s mens rea in the existing articulation of the proposed new section 99A of Cap. 630. Therefore, the new offence under the proposed new section 99A of Cap. 630 is not intended to be a strict liability offence.

Offence relating to illegally operating a private columbarium without a licence

48. Members have noted that by 31 December 2024, the operators of 10 columbaria, all for contravening section 10 of Cap. 630 (i.e. operating a private columbarium without a licence), had been convicted with a fine ranging from \$2,000 to \$30,000, under section 11 of Cap. 630. Criminal record was also registered against the operators. Some members are concerned about the details of the cases and whether the penalties imposed are proportionate to the nature and seriousness of the offences.

49. The Administration has explained that the existing maximum penalty for contravention of section 10 of Cap. 630 is a fine of \$2 million and imprisonment for three years on summary conviction, or a fine of \$5 million and imprisonment for seven years on conviction on indictment. This penalty is already the maximum penalty under Cap. 630 and has a certain degree of deterrent effect. The Court exercises judicial power and imposes sentences independently and properly. The amount of fine for the 10 convicted cases ranged from \$2,000 to \$30,000, and criminal record was registered against the operators. FEHD will continue to closely monitor the prosecution of cases contravening section 10 of Cap.630 and, if necessary, will lodge an appeal against court verdict.

50. Some members have suggested that guidelines on prosecution should be formulated in respect of the offences under Cap. 630 so that prosecutors can provide the Judiciary in due course with the legislative intent of Cap. 630 for reference, to facilitate the Judiciary's consideration as to whether there is a need to hand down appropriate judgments on a case-by-case basis.

Enforcement actions against unauthorized columbaria

51. Members are concerned as to whether law enforcement officers have encountered difficulties when they enter illegal columbaria in private premises for inspection. The Administration has advised that if FEHD suspects that there is a breach of regulations, it will apply to the Court for a search warrant to enter the premises to search for evidence. Based on their past experience, no practical difficulties have been encountered in investigation.

52. Some members have expressed worries that despite the increase in penalties, there may not be sufficient manpower for law enforcement. Members consider that PCAO should review its staffing arrangements, with a view to stepping up inspection and enforcement after the passage of the Bill to protect public interests. The Administration has advised that it will flexibly deploy resources to strengthen the manpower of the Enforcement Team to follow up on non-compliance and complaint cases, so as to ensure columbaria's compliance with the conditions approved by the Licensing Board.

Private Columbaria Appeal Board

53. Under the proposed new section 87(2A) of Cap. 630, the Appeal Board could, upon special grounds being shown, receive and consider any material that had not been made available to the Licensing Board before the decision under appeal was made. Members and the Legal Adviser have sought clarification from the Administration on what kind of circumstances would be considered "special grounds" (with examples).

54. The Administration has advised that the adoption of the words “special grounds being shown” is intended to enable the powers exercisable under Cap. 630 to invoke the common law principle of *Ladd v Marshall* [1952] 1 W.L.R. 1489 as applied in a series of cases in the local context, and allow section 87(2A) to keep pace with the development of such a series of cases. The articulation has also been seen in quite a number of local laws in the context of handling of new materials, including rule 30A(6) of the Lands Tribunal Rules (Cap. 17 sub. leg. A) and O.58 r.1(5) of the Rules of the High Court (Cap. 4 sub. leg. A). According to the current common law principle, the requirement of “special grounds being shown” would ask for the demonstration that: (i) the new evidence could not have been obtained with reasonable diligence for submission to the Licensing Board; (ii) the evidence, if it were given, would probably have an important influence on the decision of the Licensing Board; and (iii) the evidence must be such which is presumably to be believed, though it need not be incontrovertible. The Appeal Board will supplement the existing Rules on Practice and Procedure to facilitate prospective appellant’s understanding of the proposed new section 87(2A) of Cap. 630.

55. Members have pointed out that the Appeal Board currently has 22 panel members. Each appeal case is to be heard by an appeal panel that comprises five members, and each appeal panel may be differently constituted. Members are concerned how the Administration can ensure Board members have sufficient expertise in handling appeals and that a consistent standard will be adopted by appeal panels of different composition in handling appeals.

56. The Administration has advised that the Appeal Board currently has 22 panel members. Each appeal case will be heard by a presiding officer, who is either the Chairperson or a Deputy Chairperson of the Appeal Board and possesses the legal qualification as stipulated in Cap. 630 (i.e. to be qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336)); and four other panel members selected by the presiding officer. Panel members come from various professional disciplines, including legal, planning, surveying, architecture, engineering, accounting, business and social work sectors. As mentioned above, upon the passage of the Bill, the Appeal Board will amend the Rules on Practice and Procedure in relation to the new arrangement to ensure the adoption of a consistent standard by appeal panels of different composition in handling materials submitted by the appellant.

Keeping of ashes temporarily in eligible masons’ workshops

57. Clause 14 of the Bill seeks to add a new section 5A to Cap. 630 to provide

that Cap. 630 would not apply to eligible masons' workshops⁴ meeting certain conditions so that they could temporarily keep ashes of deceased persons in the workshops for the purposes of masonry work. There are views that the personnel of the workshop may not be able to cope with the conditions to be met by eligible masons' workshops under the proposed new section 5A, particularly subsection (1)(c) which relates to the requirements on the keeping of records of the deceased person in a workshop.

58. The Administration has explained that the proposed new section 5A is modelled on the existing arrangements for premises where ash transforming work is carried out as specified in section 5 of Cap. 630, stipulating that Cap. 630 is not applicable to masons' workshops meeting the specified conditions, with the Government's current administrative arrangements regulating masons' workshops being underpinned by legal provisions. As such, masons' workshops are already well versed with the entire operational procedures, and they are currently keeping the relevant records as well.

Protection of consumers

59. Members have expressed concern about the impact on members of the public who have purchased niches from and kept ashes of the deceased in such columbaria which, after the passage of the Bill, eventually fail to obtain SIs or cease operation due to factors such as poor operation. They have enquired whether measures are in place to protect or assist consumers, including resolving monetary disputes. Some members have also pointed out that as many elderly people are unfamiliar with the procedures and hence have not provided the information on their identity cards for registration when purchasing niches from private columbaria. As a result, their family members are unable to inter their ashes after their death. Some members have suggested that the Administration should create a template for the purchase contract of niches to assist the elderly in providing the required information.

⁴ Under the proposed new section 5A(1), such conditions include: (a) the set of ashes of a deceased person is kept in the workshop for a period of not more than 14 days, and its keeping is incidental to the carrying out of masonry work in relation to the set of ashes; (b) no person may be allowed to pay worship, and no ritual offerings may be given, in the workshop to the deceased person; (c) the operator of the workshop (i) has kept a register of the delivery of the ashes to, and the removal of the ashes from, the workshop containing specified particulars; (ii) has kept copies of the relevant documents of the deceased person for at least three months after the date of removal of the ashes from the workshop; and (iii) makes the said register and copies of the relevant documents available for inspection, on request, by the Director of FEHD or an authorized officer; and (d) no interment right in respect of the workshop is sold.

60. The Administration has advised that the existing Cap. 630 provides for the agreement for the sale of a niche entered into on or after the enactment date of Cap. 630 (i.e. 30 June 2017), including the requirement that the agreement must be in writing and set out the information (i.e. details of the licence granted to the seller, land arrangements and restrictions), recommendations and essential terms (e.g. a full description of the interment right sold, a comprehensive list of all fees payable by the purchaser, and the arrangements for naming and effecting changes of a dedicated person) as prescribed in Cap. 630. The Administration will continue to remind the public through publicity and education to pay attention to relevant consumer interests and remain vigilant when purchasing niches. As the purchase of private niches involves private contracts between buyers and sellers, members of the public may rely on the terms of their purchase agreement or such other documents that constitute the agreement for protection of their interests. In cases involving compensation, purchasers of niches should approach the operator of the private columbarium concerned for negotiation and seek legal advice if necessary.

61. The Administration has further supplemented that under Cap. 630, in case of cessation of columbarium operation, the operator has to notify those persons eligible for collection of the ashes to claim back the ashes within a claim period, including the publication of a notice in newspapers in the specified manner. Upon collection of the ashes of the deceased, members of the public may follow their will and consider purchasing or renting other private niches, or applying with FEHD for public niches. They may also consider using green burial services provided by FEHD and other options. As regards the unclaimed ashes after the expiry of the claim period, the operator has to deliver them to FEHD for temporary storage in the ash storage facilities provided by FEHD (with a capacity of about 77 300 sets of ashes)⁵. If the ashes remain unclaimed after a certain period of time (at least 24 months), the Director of Food and Environmental Hygiene may dispose of the ashes in a manner that he/she thinks fit.

62. Some members have pointed out that some columbaria have a large number of niches, resulting in narrow passageways which may pose fire safety hazards, and thus urged the Administration to take serious actions to protect users' safety. The Administration has explained that when issuing an SI to a private columbarium, the Licensing Board will impose appropriate conditions on it, including requiring it to conduct periodical inspection and certification on building and fire safety, with a view to protecting public safety and consumer interests. pre-cut-off columbaria that are currently applying for a licence or

⁵ As at 30 November 2024, less than 4% of temporary ash storage facilities was taken up.

exemption are found to be in compliance with relevant basic requirements for building, fire, and electrical and mechanical safety.

63. Some members have suggested that the Administration should consider studying the feasibility of setting up a registration system for ownership of columbarium niches in the long run, so as to enable the public to freely resell niches or freely decide on the quantity of ashes to be kept in the niches, thereby reducing over-sale of niches by columbaria and minimizing the risk of consumers being defrauded.

64. According to the Administration, if the Bill is passed, the Government will issue a press release and make an announcement through FEHD's thematic website to inform the public of the proposals and new arrangements under the Bill.

Proposed amendments to the Bill

65. The Bills Committee has examined and raised no objection to the Administration's proposed amendments to the Bill, as set out in paragraphs 27, 29, 31 and 32 above. The Bills Committee will not move any amendment to the Bill.

Resumption of Second Reading debate

66. The Bills Committee supports the Administration to resume the Second Reading debate on the Bill at the Council meeting of 21 May 2025.

Consultation with the House Committee

67. The Bills Committee reported its deliberations to the House Committee on 25 April 2025.

Council Business Divisions
Legislative Council Secretariat
15 May 2025

Bills Committee on Private Columbaria (Amendment) Bill 2024

Membership list

Chairman Hon YUNG Hoi-yan, JP

Members Dr Hon Starry LEE Wai-king, GBS, JP
 Hon Paul TSE Wai-chun, JP
 Hon Steven HO Chun-yin, BBS, JP
 Dr Hon Junius HO Kwan-yiu, BBS, JP
 Hon Tony TSE Wai-chuen, BBS, JP
 Hon LAM San-keung, JP
 Hon CHAN Hoi-yan
 Hon Joephy CHAN Wing-yan
 Hon Benson LUK Hon-man
 Prof Hon CHAN Wing-kwong

(Total : 11 members)

Clerk Ms Angel WONG

Legal Adviser Miss Emily MOK