

**立法會**  
***Legislative Council***

LC Paper No. LS82/2024

**Paper for the House Committee Meeting  
on 3 January 2025**

**Legal Service Division Report on  
Private Columbaria (Amendment) Bill 2024**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Private Columbaria Ordinance (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 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.
- 2. Public Consultation**

The Administration conducted a public consultation from 2 May to 2 June 2024, and met with various stakeholders during the consultation period to explain to them the legislative proposals and exchange views. The majority of the respondents supported the legislative proposals.
- 3. Consultation with LegCo Panel**

The Panel on Food Safety and Environmental Hygiene was consulted on 19 February and 9 July 2024. Members generally supported the legislative proposals, but expressed concern on the adjustment of eligibility criteria for applications for exemption.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to allow eligible private columbaria to apply for exemption and to enhance the enforcement provisions under Cap. 630, Members may wish to form a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 18 December 2024. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: EEB (F) CR 1/3231/21) issued by the Environment and Ecology Bureau on 4 December 2024 for further details.

### Object of the Bill

2. The Bill seeks to amend the Private Columbaria Ordinance (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 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.

### Background

3. The Private Columbaria Ordinance (Cap. 630) was enacted on 30 June 2017 to establish a regulatory regime on private columbaria. According to paragraph 2 of the LegCo Brief, in the light of operation experience, the Administration has identified needs to enhance Cap. 630 so as to achieve more effective execution of the regime. The Bill is thus introduced into LegCo to provide for the enhancement of the regime. Key provisions of the Bill are summarized in the ensuing paragraphs.

### Provisions of the Bill

#### Proposed amendments relating to applications for exemption (Part 2 of the Bill)

4. 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 licence, an exemption or a temporary suspension of liability (“TSOL”)<sup>1</sup> 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. According to paragraph 4 of the LegCo Brief, for those pre-cut-off columbaria (i.e. columbaria that were in operation, and in which ashes

---

<sup>1</sup> 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.

were interred in niches, immediately before 8:00 am on 18 June 2014 (“cut-off time”)) which had only submitted applications for licence but not for exemption, if they eventually fail to fulfil all the requirements for a licence, they will have to cease operation and will trigger ash disposal as stipulated in Cap. 630 and cause disturbance to the community.

5. The Bill seeks to provide that a pre-cut-off columbarium meeting certain conditions would be eligible to 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).

6. 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 Private Columbaria Licensing Board (“Licensing Board”).

7. 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, which mainly include the following:

- (a) the applicant would need to prove to the satisfaction of the Licensing Board that the prescribed requirements (e.g. land-related and building-related requirements) as mentioned in the existing section 20(1)(a) to (h) of Cap. 630 are met, subject to certain proposed adjustments applicable to such an application. The adjustments include that the date of commencement of operation of the columbarium be adjusted from before “1 January 1990” to before the “cut-off time”; and that 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) (proposed new sections 20A(1)(a) and 20A(3));
- (b) as at the specified date, the applicant’s application for the issue of a licence in respect of the pre-cut-off columbarium is still under processing (i.e. the application has not been determined, granted or refused by the Licensing Board and has not been withdrawn by the applicant) (proposed new section 20A(1)(b)(i));
- (c) as at the specified date, the columbarium under application is not located in a zone or district designated as “Residential (Group A)” on a draft plan, partly approved plan or approved plan exhibited under the Town Planning Ordinance (Cap. 131) (proposed new section 20A(1)(b)(ii)); and
- (d) as at the specified date, either a planning application in respect of the pre-cut-off columbarium has been accepted or granted by the Town Planning Board, or no planning application in respect of the columbarium has been refused by the Town Planning Board (proposed new sections 20A(1)(b)(iii) and 20A(2)).

Proposed amendments relating to offences and penalty (Part 3 of the Bill)

*Licence conditions relating to sale of interment rights and interment of ashes (clause 8)*

8. Pursuant to the existing section 30 of Cap. 630, a licence in respect of a columbarium is subject to various conditions, e.g. the number of sets of ashes kept in the columbarium must be limited to the ash interment capacity shown in the approved plans annexed to the licence (“approved plans”). Clause 8 of the Bill seeks to amend section 30 of Cap. 630 to provide for additional conditions, namely (a) the number of interment rights that is sold in respect of the columbarium must be limited to the ash interment capacity shown in the approved plans; (b) the licence holder 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; (c) the licence holder 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; and (d) the licence holder must not sell any interment right without an authorization under the licence to sell the interment rights or when the authorization has been revoked or suspended by the Licensing Board.

*Offences relating to sale of interment rights and interment of ashes (clause 9)*

9. At present, section 54(1) of Cap. 630 only requires the holder of a licence in respect of a columbarium to ensure that the number of sets of ashes kept in niches, and the number of those kept otherwise than in niches, are limited to the respective maximum numbers shown in the approved plans. Clause 9(3) of the Bill seeks to amend section 54(1) of Cap. 630 to provide that the licence holder would also be required to ensure that the number of interment rights sold in respect of the columbarium is limited to the ash interment capacity shown in the approved plans. Clause 9(4) of the Bill further proposes to add new section 54(1A) and (1B) to Cap. 630 to provide that the holder of a licence in respect of a columbarium (a) 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 (b) 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.

10. 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.

*Non-compliance with enforcement notice (clause 10)*

11. Under the existing section 64 of Cap. 630, the Director of Food and Environmental Hygiene (“Director”) may, by serving an enforcement notice on the holder of a licence, an exemption or TSOL in respect of a columbarium, require the recipient of the notice to end a contravention of a condition to which the licence, exemption or TSOL is subject, to remedy the consequences of such a contravention, and/or to prevent the

recurrence of such a contravention. The recipient of an enforcement notice who, without reasonable excuse, fails to comply with the notice commits an offence under section 64(3) of Cap. 630. Clause 10 of the Bill seeks to increase the maximum penalty for the offence 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.

*New offence relating to sale of interment rights without authorization (clause 11)*

12. Clause 11 of the Bill seeks to add a new section 99A to Cap. 630 to make it an offence for the holder of a licence in respect of a columbarium who sells any interment right in respect of the columbarium without an authorization under the licence to sell the rights, or when the authorization has been revoked or suspended under section 40(1)(a)(ii) of Cap. 630. It also seeks to provide that the maximum penalty for the offence would be 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.

Power of the Private Columbaria Appeal Board (Part 4 of the Bill)

13. Clause 12 of the Bill seeks to amend section 87 of Cap. 630 to provide that the Private Columbaria 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. According to paragraph 14 of the LegCo Brief, the proposed amendment seeks to ensure the adoption of a consistent standard by appeal panels of different composition in handling materials submitted by an appellant.

Keeping of ashes temporarily in eligible masons' workshops (Part 5 of the Bill)

14. 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' workshops<sup>2</sup> meeting certain conditions so that they could temporarily keep ashes of deceased persons in the workshops for the purposes of masonry work. 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 or an authorized officer; and (d) no interment right in respect of the workshop is sold.

---

<sup>2</sup> Under the proposed new section 5A(4) of Cap. 630, "eligible masons' workshop" means any premises (a) where a business primarily providing services in masonry work is operated; and (b) that are not located in a zone or district designated as "Residential (Group A)" on a draft plan, partly approved plan or approved plan exhibited under the Town Planning Ordinance (Cap. 131).

### Related and technical amendments

15. The Bill also proposes to make other related and technical amendments, including specifying “30 June 2017” in the definition of “enactment date” under section 2(1) of Cap. 630 (clause 3(1)), replacing references to “secretary” with “company secretary” in sections 44 and 100 of Cap. 630 (clauses 15 and 16), and making certain textual amendments to the Chinese text of certain provisions of Cap. 630 (clauses 4 and 13).

### Commencement

16. The Bill contains no commencement provision. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill (if passed) would come into operation on the day the enacted Ordinance is published in the Gazette.

### **Public Consultation**

17. According to paragraph 24 of the LegCo Brief, the Administration conducted a public consultation on the legislative proposals from 2 May to 2 June 2024. During the public consultation, the Administration met with stakeholders (including private columbaria operators, representatives of the mason trade, concern groups and Members of LegCo) to explain to them the legislative proposals and exchange views. The majority of the respondents supported the legislative proposals.

### **Consultation with LegCo Panel**

18. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Administration consulted the Panel on the legislative proposals at its meetings on 19 February and 9 July 2024. Members generally supported the proposals, but expressed concern over the fairness of the proposal to provide eligible pre-cut-off columbaria an option to make new applications for exemption that involved the adjustment of certain basic eligibility criteria currently in place.

### **Conclusion**

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to allow eligible pre-cut-off columbaria to apply for exemption and to enhance the enforcement provisions under Cap. 630, Members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

Emily MOK  
Assistant Legal Adviser  
Legislative Council Secretariat  
31 December 2024