

Chapter 19: Conditions imposed on specified instruments

Under the Private Columbaria Ordinance (PCO), the Private Columbaria Licensing Board (PCLB) may, on application and subject to any conditions that the PCLB thinks fit to impose, issue a specified instrument (i.e. a licence, an exemption and a temporary suspension of liability), or renew/extend it. This chapter sets out some conditions that the PCLB will normally impose on specified instruments, and provide some reminders for reference.

Besides the conditions (and reminders) set out in this chapter, the PCLB may impose any other conditions on specified instruments as it thinks appropriate. Depending on the actual circumstances of each application and having regard to the views of relevant bureaux and departments and other parties concerned as well as the actual circumstances, the PCLB may impose other conditions as it thinks fit.

If the PCLB considers appropriate, it may publish in a manner as it thinks fit (such as posting on the internet) the conditions it has imposed on any specified instrument for public information.

Conditions applicable to all specified instruments (Conditions 1 - 14)

(1) Restriction on subletting or assignment of the columbarium premises

The holder of a specified instrument must ensure that the columbarium premises, or any part of them, will not be sublet or assigned in a manner that is inconsistent with the operation of a columbarium.

(2) Prohibition of use of the premises for purposes inconsistent with the operation of a columbarium

The holder of a specified instrument must ensure that the columbarium premises, or any part of them, will not be used for purposes inconsistent with the operation of a columbarium.

(3) Requirements relating to the approved plans

- (a) The holder of a specified instrument must ensure that the current site situation of the columbarium premises in all respects conforms to, or is not contradictory to, the particulars shown in the approved plans.
- (b) Except with the written permission of the PCLB, the holder of a specified instrument must not cause or permit any alteration or addition to the columbarium premises that would result in material deviation from the approved plans of the columbarium.

(4) Requirements on exhibiting the specified instruments

The holder of a specified instrument must exhibit the specified instrument at a conspicuous place in the columbarium.

The holder of a specified instrument must ensure that no person shall:

- (a) alter, deface or make any erasure on the specified instrument; and

- (b) use, or have in his possession with a view to using, a specified instrument on which an erasure has been made or which has been wilfully altered or defaced in any way.
- (5) Nomination of a person / persons to be in charge of the daily operation of the columbarium

The holder of a specified instrument must, within fourteen (14) days of notification of approval of the specified instrument, provide the name, office address, telephone number and mobile phone number of at least one person nominated by the columbarium to be in charge of the daily operation of the columbarium to the Director of Food and Environmental Hygiene for registration. The holder of a specified instrument should ensure that the person(s) in charge of the daily operation has/have been duly authorized to carry out the duties stated below effectively.

The registered person(s) in charge of the daily operation should personally oversee the daily operation and service delivery of the columbarium. The registered person(s) should also be responsible for assisting the holder of the specified instrument to comply with the requirements of the PCO as well as the particulars and conditions of the specified instrument. If a person in charge of the daily operation no longer performs the duties at any time during the validity period of the specified instrument, the holder of the specified instrument should appoint another person to take over the former person-in-charge's duties. If the holder of a specified instrument is a natural person and is also the person in charge of the daily operation, at least one more person must be nominated to register as a person in charge of the daily operation.

- (6) Records on interment and disinterment of ashes

The holder of a specified instrument must keep records of the following matters in respect of the columbarium (please refer to **Annex 32** for the “Template of Record of Interment and Disinterment of Ashes in and from the Private Columbarium”):

- (a) Details of “interment of ashes”: including the name of the dedicated person, the serial number of the niche, the location of the niche/the location of the area otherwise than a niche in

- which the ashes are interred and the date of the interment. (“Interment of ashes” includes each occasion on which ashes are interred in this columbarium (irrespective of whether the ashes are interred in a niche or an area otherwise than a niche), as well as the relocation of ashes in the columbarium from an area otherwise than a niche to a niche, or vice versa);
- (b) Details of “disinterment of ashes”: including the name of the dedicated person, the serial number of the niche, the location of the niche/the location of the area otherwise than a niche in which the ashes were interred before the disinterment and the date of and the reason(s) for the disinterment. (“Disinterment of ashes” refers to each occasion on which ashes are removed from the columbarium); and
- (c) The holder of a specified instrument must update the relevant records not later than ten (10) working days after each “interment of ashes” or “disinterment of ashes”. The holder of a specified instrument must make the above-mentioned records available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer.
- (7) Record of the particulars of the contact persons in respect of the ashes interred
- The holder of a specified instrument must keep records of the contact information (including name, telephone number and address) of the authorized representatives, purchasers of interment rights and other contact persons (such as the family members of the dedicated persons, if such information is available) in respect of the ashes interred in the columbarium. Such records should be made within ten (10) working days after the relevant ashes have been interred. The holder of a specified instrument must make the above-mentioned records available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer.
- (8) Notification of changes
- (a) If a change (including (but not limited to) a change of any director, manager, company secretary, other similar officer or

significant controller of the holder of a specified instrument) occurs that materially affects the accuracy of the information that the holder of a specified instrument has provided in connection with the application for the specified instrument, the holder of a specified instrument must notify the PCLB of the change, in writing, and submit the “Statement of Particulars of Applicant and Related Persons” duly completed and signed by the new director, manager, company secretary, other similar officer or significant controller¹ concerned (in the format specified at the appendix to the application form for the specified instrument) within fourteen (14) days after the date on which the change occurs.

- (b) If the holder of a specified instrument decides to cease operating the columbarium, the holder must notify the PCLB of the decision, in writing, within fourteen (14) days after the date of the decision.
- (c) If it is known to the holder of a specified instrument that bankruptcy, winding-up or similar legal proceedings have been instituted against the holder (whether a natural person, a partner in a partnership or a body corporate) or any other partner in the partnership (if applicable), or the holder is undergoing or is prepared to undergo bankruptcy, winding-up or similar legal proceedings, the holder of a specified instrument must notify the PCLB of that fact, in writing, within fourteen (14) days after the date of knowing that fact.

¹ Significant controllers include persons who satisfy one or more than one of the following conditions:

- (a) the person holds, directly or indirectly, more than 25% of the issued shares in the company (or if the company does not have a share capital, the person holds, directly or indirectly, a right or rights to share in more than 25% of the capital or profits of the company);
- (b) the person holds, directly or indirectly, more than 25% of the voting rights of the company;
- (c) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company (or if the company does not have a board of directors, the person holds the right to appoint or remove members of an equivalent management governing body holding a majority of the voting rights at meetings of the body on all or substantially all matters); or
- (d) the person has the right to exercise, or actually exercises, significant influence or control over the company.

If the holder of a specified instrument is a company, the facts mentioned above include but are not limited to the following:

- (i) a resolution for voluntary winding up (as defined by section 228(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)) is passed by the company;
- (ii) a winding-up statement in respect of the company is delivered to the Registrar of Companies under section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
- (iii) procedures for making arrangements or compromises are being or have been carried out under Part 13 of the Companies Ordinance (Cap. 622); or
- (iv) arrangements for a receiver or manager are being or have been made in respect of any property of the company under Part VI of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

If the holder of a specified instrument is a natural person, the facts mentioned above include but are not limited to the following: the holder of a specified instrument has entered into a composition or arrangement with his or her creditors without paying the creditors in full.

- (d) If the holder of a specified instrument (whether a natural person, a partner in a partnership or a body corporate) (including any partner in the partnership if the holder is a partnership) has gone bankrupt, or has been wound up or dissolved, the holder of a specified instrument and the directors, managers, senior management officers or staff members responsible for the daily operation of the columbarium (including the person in charge of the daily operation who has been registered with the Director of Food and Environmental Hygiene) or any other partner in the partnership must notify the PCLB of that fact, in writing, within fourteen (14) days after the date of occurrence of that fact. If the holder of a specified instrument is a company, the facts mentioned above include but are not limited to the following:

- (i) a winding-up order under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is made against the company;
 - (ii) the company is dissolved under the Companies Ordinance (Cap. 622); or
 - (iii) where the company is a registered non-Hong Kong company (as defined by section 2(1) of the Companies Ordinance (Cap. 622)) - the company's name has been struck off the Companies Register under section 798 of that Ordinance.
- (e) If the holder of a specified instrument, or a partner in a partnership (who is the holder of the specified instrument) or any other partner in the partnership is a natural person and –
- (i) dies;
 - (ii) is, in accordance with the Mental Health Ordinance (Cap. 136), found by the court to be of unsound mind and incapable of managing himself or herself and his or her affairs; or
 - (iii) is serving a sentence of imprisonment, whether in Hong Kong or elsewhere, at any time during the validity period of the specified instrument;
- for item (i) above, the staff members responsible for the daily operation (including the person in charge of the daily operation who has been registered with the Director of Food and Environmental Hygiene), managers, senior management officers or any other partner in the partnership must notify the PCLB of that fact, in writing, within fourteen (14) days after the date of occurrence of that fact. For items (ii) and (iii), the holder of a specified instrument must notify the PCLB, in writing, within fourteen (14) days after the date of occurrence of such facts.
- (f) If there is any change in the particulars contained in the Appendix “Statement of Particulars of Applicant and Related Persons” to the application form submitted in connection with

the application for the specified instrument, the holder of the specified instrument must notify the PCLB of the change, in writing, within fourteen (14) days after the date on which the change occurs.

In this condition, “the holder of a specified instrument” includes:

- if the holder of a specified instrument is a partner in a partnership -- any other partner in the partnership; or
- if the holder of a specified instrument is a body corporate -- directors, other officers concerned in the management of the body corporate (including manager, company secretary or other similar officer) and the significant controllers.

(9) Maintenance of the columbarium

All the buildings and structures in the columbarium and the related facilities must be inspected and repaired regularly, maintained properly and kept in good condition.

(10) Cleansing of the columbarium

Walls, floors, ceilings and false ceilings (if installed) of the buildings and structures in the columbarium must be kept clean at all times. The premises should not have visible obnoxious matters, objectionable odour, accumulation of refuse, food waste and foul water, and other substances that may adversely affect the hygiene of the premises, such as mould, cobwebs and persistent stains. Pest breeding and harbourage must, so far as is reasonably practicable, be prevented to avoid causing environmental nuisance. The holder of a specified instrument must arrange regular cleansing of the columbarium premises.

(11) Refuse collection and storage

The holder of a specified instrument must provide at suitable locations in the columbarium refuse bins with close-fitting lids and of sufficient quantity and capacity for the storage of all refuse and other waste generated or pending disposal in daily operation and during the peak grave sweeping periods. Refuse bins on the premises

must be kept clean. Refuse collected must be disposed of at least once daily and the frequency of disposal may be increased if necessary in the light of the refuse volume.

(12) Pest control measures

The holder of a specified instrument should carry out regular inspections and take effective pest control measures as necessary to ensure that the columbarium is free of rodent, mosquito and other pest infestation.

(13) Cleansing and maintenance of sanitary fitments (if applicable)

Toilets for visitors, if any, in the columbarium must be fitted with proper lighting and ventilation equipment, provided with proper repair and maintenance and kept in a clean and tidy condition. Each toilet compartment should be provided with sufficient toilet paper at all times.

(14) Portable toilets (if applicable)

If the columbarium provides portable toilets for visitors during the Ching Ming Festival, Chung Yeung Festival, the periods of these festivals and/or other days, the holder of a specified instrument must regularly conduct cleansing, water filling and desludging for the portable toilets, or arrange the deployment of toilet attendants, to ensure the cleanliness of the portable toilets.

Conditions applicable to a licence (Conditions 15 - 27)

(15) Number of sets of ashes restricted

The holder of a licence must 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 ash interment capacity in the approved plans.

(16) Restriction on sale or letting out of interment rights and interment of ashes

The holder of a licence must not sell or let out any interment right of a niche where the niche is not included in the part of niche information of the approved plans, nor should he/she permit the interment of ashes in such niches.

(17) Non-compliant structures (applicable to pre-cut-off columbaria)

The holder of a licence must ensure the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-cut-off columbarium shown in the approved plans.

(18) Agreements for sale of interment rights (only applicable to columbaria which licences permit the selling of interment rights of niches)

- (a) When selling interment rights in respect of a columbarium, the written agreements which a holder of a licence enter into with the purchasers must set out in clear language and with words which font size is no smaller than 12 points, the information and recommendations prescribed in Part 1 of Schedule 4 of the Private Columbaria Ordinance (PCO) and the essential terms prescribed in Part 2 of that Schedule.
- (b) Each agreement for sale of an interment right must meet the requirements on an enforceable agreement for the sale of an interment right under section 49 of the PCO.

- (c) After receiving a notice of cancellation given by a purchaser according to section 50(1) or 50(2) of the PCO, the holder of a licence must, within thirty (30) days after the date of receiving the notice, refund to the purchaser all money received under the agreement. If it is in the situation described in section 50(4) of the PCO, it is necessary to act according to that provision.
- (d) If the columbarium premises or part of the columbarium premises are occupied under a short term tenancy granted by the Government and/or the ash interment is permitted by a short term waiver/temporary waiver granted by the Government, the term of the interment rights sold must not extend beyond the fixed remaining term of that tenancy or waiver. Also, the method of charging payment payable for the interment right must be the same as that of the tenancy or waiver, i.e. for a shortterm tenancy, the payment payable for the interment right must be on the same periodic basis as that for the payment of rent forthat tenancy, and for a short term waiver/temporary waiver, thepayment payable for the interment right must be on the same periodic basis as that for the payment of waiver fee for that waiver.

[The content of Condition 18(d) was updated on 23 September 2019.]

- (e) The holder of a licence must adhere to the content of the sample of agreement for the sale of interment right (hereafter referred to as “the sample”) approved by the PCLB (attached at Appendix ____) in selling interment rights of niches. If the holder of a licence intends to make material amendments to the sample, the licence holder must give prior written notification to the PCLB and must obtain PCLB’s written confirmation of no objection to those amendments before adopting the content of the revised sample in selling interment rights of niches.

[The content of Condition 18(e) was updated on 26 July 2021.]

(Please refer to **Annex 17** for a template of the agreement for sale of interment right.)

(19) Keeping of record of agreements for the sale of interment rights (only applicable to columbaria which licences permit the selling of interment rights of niches)

A person holding a licence must keep copies of all agreements for the sale of interment rights in respect of the columbarium (including agreements avoided or cancelled) until the expiry of six (6) years beginning on the date the agreement is fully performed or is avoided or cancelled. A person holding a licence must make the copies of the agreements kept available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer.

(20) Register of agreements for the sale of interment rights (only applicable to columbaria which licences permit the selling of interment rights of niches)

A person holding a licence must keep a register for the agreements for the sale of interment rights in respect of the columbarium (see **Annex 33** for a template of the “Register of Agreements for the Sale of Interment Rights in Respect of the Private Columbarium”) and, within ten (10) working days after the completion of each transaction on the sale of interment right, record the following specified details of each agreement for sale of interment right into the register:

- (a) serial number of niche;
- (b) location of niche (please specify the serial number / name of the building block, floor, room, wall, etc.);
- (c) maximum number of sets of ashes that may be interred in the niche;
- (d) duration of interment right;
- (e) whether there are terms related to the right to renew interment rights;
- (f) all the fees for interment right of niche;
- (g) name and information of purchaser;
- (h) relationship between purchaser and dedicated person; and
- (i) name and information of authorized representative(s) (please refer to section 2 of the PCO for the definition).

A person holding a licence must make the register available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer.

(21) Cooling-off period of 14 days

A person holding a licence must in each agreement for sale (under the definition of “sell” in section 2 of the PCO) of interment right in respect of the columbarium, specify the following terms on the cooling-off period of fourteen (14) days:

- (a) The Purchaser may cancel this Agreement within fourteen (14) days from the date of this Agreement by giving the Seller a written notice of cancellation effective forthwith without having to pay any unpaid fees or incurring any liability in respect of this Agreement.
- (b) The Seller shall, within thirty (30) days from the issue of a written notice by the Purchaser pursuant to term (a), refund all money received under this Agreement.
- (c) If the interment right has been exercised, *[Drafting note: If the interment right has been exercised, state whether (a) and (b) still apply; if not, the arrangement to be made]*.

Reminder

If the agreement for sale of interment right does not contain the above-mentioned terms on cooling-off period, according to section 49(3)(i) and 50(2) of the PCO, the agreement is not enforceable against the purchaser, and the purchaser under the agreement may cancel the agreement within six (6) months after the date of the agreement by giving the seller a written notice of cancellation.

(22) Management plan

- (a) A person holding a licence must operate and manage the columbarium according to the management plan approved by

the PCLB (Note: the approved management plan will be attached to the licensing conditions as an annex).

- (b) A person holding a licence must implement the following measures in relation to the management of the columbarium premises:
 - (i) Exhibit the opening hours at the entrances and exits, including the opening hours during the periods of the Ching Ming Festival and Chung Yeung Festival (if different from the opening hours on normal days). A person holding the licence must finish setting up these notices within thirty (30) working days after the date on which the licence comes into effect;
 - (ii) Exhibit the floors plans at the entrances of the columbarium, indicating the management measures of pedestrian flow, including entrances and exits, direction of pedestrian flow, waiting / queuing / restricted areas, location of staff on duty, first aid stations, evacuation routes / assembly points in cases of emergency, etc. A person holding a licence must finish setting up these notices within thirty (30) working days after the date on which the licence comes into effect;
 - (iii) During the periods of the Ching Ming Festival and Chung Yeung Festival (including the two weeks preceding and the two weeks following these festivals), exhibit sufficient quantities of direction signs showing the pedestrian flow in the licensed area and at the entrances;
 - (iv) To ensure the safety of the persons inside the premises and to maintain good order, always implement effective measures to manage the pedestrian and vehicular (if applicable) flow according to the actual situation; to prevent the operation of the columbarium affecting nearby communities, cooperate where practical with the relevant Government departments (e.g. Transport Department, Hong Kong Police Force, etc.) in the implementation of their measures;

- (v) Exhibit at conspicuous locations of the columbarium notices which provide to the public the job titles and telephone numbers of staff who can immediately handle enquiries and complaints. A person holding a licence must finish setting up these notices within thirty (30) working days after the date on which the licence comes into effect; and
 - (vi) Keep proper records on the training of the relevant staff, including the content of the courses, date of the courses, names of the staff who attended the courses, etc., and provide such records to the staff of the Private Columbaria Affairs Office when required.
- (c) Implementation of financial arrangements (if applicable, please refer to the appendix to Annex 16 for details):

A person holding a licence must effectively implement the “Financial Mechanism for Protection of Consumer Interests” promulgated by the PCLB and comply with the requirements which were imposed by the PCLB. (Note: According to the actual circumstances of each application, the PCLB may impose other conditions. Details will be provided in the conditions which are attached to the licence issued.)

Reminder

If a person holding a licence does not comply with the “Financial Mechanism for Protection of Consumer Interests” promulgated by the PCLB and relevant conditions, according to sections 49(3)(i) and 50(2) of the PCO, the relevant agreement for sale of interment right is not enforceable against the purchaser, and the purchaser under the agreement may cancel the agreement within six (6) months after the date of the agreement by giving the seller a written notice of cancellation. The person holding the licence may also have to face the consequences of breaching conditions of specified instruments.

According to the situation of each case, the PCLB may impose the following conditions:

(23) Review of licence

This licence will be reviewed during X (day) X (month) Y (year) and X (day) X (month) Y (year). The holder of a licence must submit to the PCLB the following documents and information before X (day) X (month) Y (year):

[According to the situation of each case, the PCLB will specify the documents and information which the holder or a licence must submit.]

(24) Fulfilling the undertaking and restrictions on “pre-cut-off sold niches” with land regularisation fees waived by the Government (applicable to “pre-cut-off sold niches” with land regularisation fees waived by the Government)

The holder of a licence must comply with the following restrictions on the niches in the register entitled “**endorsed registers on pre-cut-off sold niches covered by the land regularization fees waiving arrangement**” endorsed by the PCLB (hereafter referred to as the “**endorsed registers**”) (Note: the “endorsed registers” will be attached to the licensing conditions):

- (a) For niches which are not yet filled or partially filled, the name of a dedicated person whose ashes have not been interred yet may be replaced only by that of another person who is his/her relative (in accordance with the definition of “relative” under section 6(2) of Schedule 5 of the PCO) while complying with the following requirements—
 - (i) the change of dedicated person has been requested by the purchaser;
 - (ii) that other person is a relative (as defined by section 6(2) of Schedule 5 to the PCO) of the dedicated person in the “endorsed registers”, whether or not living, and the

purchaser has made a statutory declaration to confirm that fact; and

- (iii) the arrangements for effecting changes of the dedicated person set out in the agreement for the sale of the interment right (if applicable) have been followed.
- (b) For filled niches, no re-interment of ashes is allowed if any interred ashes are removed subsequently (e.g. claimed back by descendants);
- (c) After ashes have been interred in the niche(s) referred to in item (a) above, the restriction set out in item (b) above will apply to the niche(s); and
- (d) The imposition of additional fees or charges beyond the amounts specified in the agreements for the sale of interment right of the niches in the “endorsed registers” is not permitted.

The holder of a licence must fulfill the written undertaking made to the Government on the Government’s waiving of land regularisation fees: The holder of a licence will take full responsibility for any claims, demands for compensation, legal actions or complaints made or taken against the Government or the PCLB arising from the compliance of the holder of a licence with the restrictions set out in items (a) to (d) above or the approval granted to the application for waiving the regularisation fees, including handling all such claims, demands for compensation, legal actions or complaints, bearing all relevant costs and compensating the Government or the PCLB for all losses they may suffer.

The holder of a licence has consented to the PCLB’s promulgation on the internet and in other manners that the PCLB thinks fit to the public of the number and other relevant information (such as the location and serial numbering of the niches) of the pre-cut-off sold niches in the columbarium covered by the waiving arrangement of land regularisation fees and subject to the restrictions set out in items (a) to (d) above.

The holder of a licence must submit to the PCLB a written declaration annually at the same time when he/she submits the annual compliance report mentioned below, after the issue of the licence to confirm that the columbarium has complied with the restrictions set out in items (a), (b), (c) and (d) above since the commencement of the validity period of the licence.

The holder of a licence must submit to the PCLB annually within six months after the end of each financial year (except otherwise specified by the PCLB), after the issue of the licence a written report on the compliance by the columbarium with the restrictions set out in item (d) above (i.e. no additional fees or charges beyond the amounts specified in the agreements for the sale of interment right of the niches in the “endorsed registers” is charged) in respect of the niches in the “endorsed registers” (i.e. endorsed registers on pre-cut-off sold niches covered by the land regularization fees waiving arrangement”) attached to the licensing conditions in the respective preceding 12-month period. The report must be prepared by a certified public accountant holding a practicing certificate or a firm or a corporate practice registered under the Accounting and Financial Reporting Council Ordinance (Cap. 588) (hereafter referred to as the “qualified accountant”). The report must be prepared in accordance with the relevant standards and guidance issued by the Hong Kong Institute of Certified Public Accountants. The holder of a licence must keep a register of all payments received in respect of each of the niches in the above mentioned “endorsed registers” using the template at **Annex 38** and must provide to the qualified accountant responsible for producing the report all relevant information and documents, including but not limited to the full content of this condition, the “endorsed registers” and register of payments, all the documents submitted in support of the application for waiving of land regularisation fees and all relevant agreements for the sale of interment rights, receipts of payments, accounting entry records, etc.

The holder of a licence must keep the above-mentioned “endorsed registers” and, if there are any changes, must update the above-mentioned register as soon as practicable. If the changes involve changing a dedicated person, the holder of a licence must notify the

Director of Food and Environmental Hygiene of the change, in writing, within ten (10) working days after the date on which the register has been updated. The holder of a licence must make the updated register available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer.

Reminder

If the columbarium breaches the above-mentioned licensing condition, the operator must bear the consequences of breaching licensing conditions as specified in the PCO. The PCLB may also change the total number of sets of ashes that may be interred approved under the licence and remove niches which contravene the restrictions, and the operator is obliged to propose amendment to the land instrument concerned to the relevant District Lands Office of the Lands Department.

- (25) To exhibit notice on restrictions on selling niches with land regularisation fees waived (applicable to “pre-cut-off sold niches” with land regularisation fees waived by the Government)

The holder of a licence must exhibit at a conspicuous place in the columbarium the notice at **Annex 34** and ensure that the notice is kept in a complete and good condition.

- (26) Fulfilling the undertaking and restrictions / requirements on a pre-cut-off columbarium’s religious ash pagoda with land regularisation fees waived by the Government (applicable to a religious ash pagoda with land regularisation fees waived by the Government)

The holder of a licence must comply with the following restrictions / requirements / undertaking on the pre-cut-off columbarium’s religious ash pagoda with land regularisation fees waived by the Government (the religious ash pagoda concerned):

- (a) The interment of ashes in the religious ash pagoda concerned is permitted only after the specification of the religious ash

- pagoda concerned by Secretary for Home Affairs (the specification) and during the validity period of the specification and the licence;
- (b) To comply with all the requirements and conditions imposed by the Secretary for Home Affairs on the specified religious ash pagoda, including but not limited to the following requirements:
 - (i) Only ashes of persons who fall within the definition of “religious practitioner” in section 57(14) of the PCO may be interred;
 - (ii) The number of sets of ashes that may be interred must not exceed the ceiling set by the Secretary for Home Affairs;
 - (iii) No fees, charges, or other sums are payable for the interment of the ashes;
 - (iv) A register on the ash interment must be kept; and
 - (v) The Secretary for Home Affairs and the persons authorized by him should be allowed to enter and inspect the columbarium and the religious ash pagoda, in order to examine the relevant registers and other information and confirm if the above requirements and conditions have been met;
 - (c) The holder of a licence must fulfill the written undertaking made to the Government on the Government’s waiving of land regularisation fees: The holder of a licence will take full responsibility for any claims, demands for compensation, legal actions or complaints made or taken against the Government or the PCLB arising from the compliance of the holder of a licence with the requirements and compliance imposed by the Secretary for Home Affairs (including but not limited to the requirements and conditions set out in items (a) to (d) above) or the approval granted to the application for waiving the regularisation fees, including handling all such claims, demands for compensation, legal actions or complaints, bearing all relevant costs and compensating the Government or the PCLB for all losses they may suffer; and
 - (d) The holder of a licence has consented to the PCLB’s promulgation on the internet and in other manners that the PCLB thinks fit to the public of the number and other relevant information (such as the location and serial numbering of the

niches) of the niches in the pre-cut-off religious ash pagoda covered by the waiving arrangement of land regularisation fees and subject to the restrictions of the requirements and conditions imposed by the Secretary for Home Affairs.

The holder of a licence must exhibit at a conspicuous place in the columbarium the notice at **Annex 35** and ensure that the notice is kept in a complete and good condition.

Reminder

If the Secretary for Home Affairs subsequently revokes the specification of the above-mentioned religious ash pagoda, the PCLB may change the ash interment capacity approved under the licence, delete the number of niches that the Secretary for Home Affairs originally specified in the religious ash pagoda and change the maximum number of sets of ashes that may be interred. The operator is obliged to propose amendment to the land instrument concerned to the relevant District Lands Office of the Lands Department.

- (27) Handling methods of niches not yet sold as at 30 June 2017 (if the approved ash interment capacity of the columbarium does not include niches which were not sold as at 30 June 2017)

[If there is an application for licence involving the not yet sold niches being processed:

The holder of a licence must exhibit at each of the niches which were not yet sold as at 30 June 2017 in the columbarium a notice clearly indicating that the niche “cannot be sold or let out”, with words which font size is no smaller than 48 points.]

[If there is not an application for licence involving the not yet sold niches being processed:

The holder of a licence must firmly seal each of the niches which were not yet sold as at 30 June 2017 in the columbarium to ensure that these niches cannot be used to inter ashes (e.g. seal with stone

plagues) and to indicate clearly with words which font size is no smaller than 48 points that that these niches cannot be sold or let out.]

Conditions applicable to an exemption (Conditions 28 - 36)

(28) Number of sets of ashes restricted

The holder of an exemption must ensure that the number of sets of ashes kept in the columbarium is limited to the following number of sets of ashes:

- (a) the number of sets of ashes interred as at the cut-off time, as shown in the approved plans;
- (b) the number of sets of ashes that were not interred as at the cut-off time but were interred before the enactment date as shown in the approved plans, and the holder of the exemption has confirmed in a written declaration submitted to the PCLB that the following conditions in relation to the number of sets of ashes concerned are met:
 - (i) the interment rights in respect of the niches in which the sets of ashes concerned were interred were sold before the cut-off time; or
 - (ii) the ashes were interred in a religious ash pagoda (as defined by section 57(14) of the PCO), where no fees or other sums were paid, or are payable, for the interment of the sets of ashes concerned; and
- (c) pursuant to section 55 of the PCO, the ashes of a dedicated person may be interred in a niche in a pre-cut-off columbarium in respect of which an exemption is in force if the interment right in respect of the niche was sold before the cut-off time, but has not been exercised or (if more than one set of ashes may be interred in that niche) has only been exercised partially; and the name of the dedicated person has been entered into the endorsed register under section 26(3)(b) of the PCO.

[The content of Condition 28 was updated on 3 October 2019.]

(29) Non-compliant structures

The holder of an exemption must ensure that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to the structures certifiable for a pre-cut-off columbarium shown in the approved plans.

(30) Notice to be exhibited

The holder of an exemption must exhibit at a conspicuous place in the columbarium the notice at **Annex 36** to the effect that any sale of an interment right in respect of the columbarium is an offence under section 11 of the PCO. The holder of an exemption must ensure that the notice is kept in a complete and good condition.

(31) Measures and guidelines on the management of the columbarium

The holder of an exemption must formulate guidelines concerning the management of the columbarium, covering admission control, traffic arrangement or management, crowd management, security management, manpower deployment on peak grave sweeping days or periods and other days or periods as well as contingency plan in the event of fire or other emergency situations during the operation of the columbarium, to ensure and maintain good order and public safety at the columbarium. The holder of an exemption must exhibit at a conspicuous place in the columbarium the guidelines concerned.

(32) Restriction on the imposition of any additional fees of interment rights of niches

In respect of an interment right, the holder of an exemption must not impose any additional fees, charges or other sums as described below:

- (a) any additional fees, charges or other sums beyond the amounts specified or otherwise contained in any agreement for the sale of the interment right entered into before the cut-off time (i.e. 8 a.m. of 18 June 2014); or
- (b) if any mechanism for the future revision of any fees, charges or other sums is specified or otherwise contained in the agreement for the sale of the interment right, any additional fees, charges or other sums not in accordance with such specified mechanism.

Starting from the date on which the exemption has come into effect, within the month after every 12 months have passed, the holder of an exemption must submit a duly completed and signed confirmation letter using the template at Annex 39, confirming that he/she has been complying with the above-mentioned conditions since the exemption has come into effect. When required by the Director of Food and Environmental Hygiene or an authorized officer, the holder of an exemption must provide all relevant information and documents, including but not limited to the registers related to the conditions, all relevant agreements for the sale of interment rights, receipts of payments, accounting entry records, etc.

[The content of Condition 32 was updated on 7 December 2020.]

(33) Unused or partially used niches

- (a) For niches in the columbarium in respect of which interment rights were sold before the cut-off time (i.e. 8 a.m. on 18 June 2014) and have not been exercised or have only been partially exercised, the holder of an exemption must keep the relevant registers endorsed by the PCLB. The holder of an exemption in respect of a pre-cut-off columbarium must not replace the name of a dedicated person contained in an endorsed register, or cause such a name to be replaced, by the name of another person unless—

- (i) the purchaser so requests;
 - (ii) that other person is a relative (as defined by section 6(2) of Schedule 5 to the PCO) of the dedicated person, whether or not living, and the purchaser has made a statutory declaration to confirm that fact; and
 - (iii) the arrangements for effecting changes of the dedicated person set out in the agreement for the sale of the interment right (if applicable) have been followed.
- (b) For the endorsed registers on unused or partially used niches, the holder of an exemption must update the endorsed registers as soon as practicable after effecting the changes of a dedicated person (the relative (as defined by section 6(2) of Schedule 5 to the PCO) of the original dedicated person) and notify the Director of Food and Environmental Hygiene of the change, in writing, within ten (10) working days after the date on which the change has been effected. The holder of an exemption must make the updated registers available for inspection, on request, by the Director of Food and Environmental Hygiene or an authorized officer

(34) No re-interment of ashes after the removal of ashes

The holder of an exemption must ensure that niches with ashes already interred, if those ashes are subsequently removed, are not re-interred with ashes.

(35) Handling of “niches not sold before the cut-off time” (if applicable)

The holder of an exemption must firmly seal the “niches not sold before the cut-off time” in the columbarium (e.g. seal with stone plaques) to ensure that these niches cannot be used to inter ashes and to indicate that these niches are not for sale / rental purposes.

(36) Religious ash pagoda

If there is a religious ash pagoda in the columbarium, the holder of an exemption must comply with the following requirements:

Only after the Secretary for Home Affairs has specified the religious ash pagoda according to section 57(2) of the PCO (the specification),

ashes can be interred in the religious ash pagoda during the validity period of the exemption and the specification and in compliance with all the requirements and conditions imposed by the PCLB and Secretary for Home Affairs.

The holder of an exemption must comply with section 57 of the PCO and any requirement or condition imposed by the Secretary for Home Affairs.

Reminder

If the specification is revoked by the Secretary for Home Affairs, no ashes may be interred in the originally specified religious ash pagoda, and the ashes already interred must be removed from the columbarium.

Conditions applicable to a temporary suspension of liability (Conditions 37 - 43)

(37) Number of sets of ashes restricted

The holder of a temporary suspension of liability must ensure that the number of sets of ashes kept in the columbarium is limited to the number of sets of ashes permitted under section 54(4) and (5) of the PCO.

(38) Extent of unlawful occupation of land

The holder of a temporary suspension of liability must ensure that the extent of unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of the columbarium must be limited to that as shown in the approved plans.

(39) Non-compliant structures

The holder of a temporary suspension of liability must ensure that the non-compliant structures necessary for, or ancillary to, the operation of the columbarium must be limited to those as shown in the approved plans.

(40) Notice to be exhibited

The holder of a temporary suspension of liability must exhibit at a conspicuous place in the columbarium the notice at **Annex 37** to the effect that any sale of an interment right in respect of the columbarium is an offence under section 11 of the PCO. The holder of a temporary suspension of liability must ensure that the notice is kept in a complete and good condition.

(41) Measures and guidelines on the management of the columbarium

The holder of a temporary suspension of liability must formulate guidelines concerning the management of the columbarium, covering admission control , traffic arrangement or management, crowd management, security management, manpower deployment on peak grave sweeping days or periods and other days or periods as

well as contingency plan in the event of fire or other emergency situations during the operation of the columbarium, to ensure and maintain good order and public safety at the columbarium. The holder of a temporary suspension of liability must exhibit at a conspicuous place in the columbarium the guidelines concerned.

- (42) Must take all necessary steps with reasonable expedition to meet application requirements of a licence (if there is a concurrent application for a licence)

The holder of a temporary suspension of liability must take, with reasonable expedition, all necessary steps towards meeting the requirements for applying for a licence according to the action plan with timetable submitted by the holder in the application for the temporary suspension of liability.

- (43) Must take all necessary steps with reasonable expedition to meet application requirements of an exemption (if there is a concurrent application for an exemption)

The holder of a temporary suspension of liability must take, with reasonable expedition, take all necessary steps towards meeting the requirements for applying for an exemption according to the action plan with timetable submitted by the holder in the application for the temporary suspension of liability.

Important Reminder

Where an application for the issue of a specified instrument is granted by the PCLB, there is no implication that the columbarium relating to such application has complied with all the statutory and Government requirements in Hong Kong. Granting the application for the issue of a specified instrument does not affect any enforcement action and decision as a result of the violation of any statutory and Government requirements. It is the responsibility of the operator of a columbarium to ensure that the columbarium satisfies all the statutory and Government requirements, and to comply with all the requirements and conditions imposed by all the relevant authorities (including but not limited to the Building Authority, Director of Lands, Director of Planning, Director of Fire Services, Commissioner of Police, Commissioner for Transport, Director of Environmental Protection, Director of Electrical and Mechanical Services, or other bureaux, Government departments and relevant authorities) according to the legislation that they are enforcing or under their power, and be responsible for any penalties and legal liabilities resulting from any contravention of those requirements and conditions.

Means of Communication

Where it is mentioned in this document that certain information has to be provided to the Private Columbaria Licensing Board (PCLB) or the Director of Food and Environmental Hygiene in writing, it should be provided through the following ways:

By mail to :

Private Columbaria Affairs Office
P.O. Box 80011
Cheung Sha Wan Post Office

If one would like to submit information in person, please make an appointment by calling 2350 7319 before coming to the following address at the appointed time:

Private Columbaria Affairs Office
Units 501-502, 5/F, Trade Square,
681 Cheung Sha Wan Road, Cheung Sha Wan, Kowloon

By email to : pc_app@fehd.gov.hk

By fax to : 2893 7683

For any enquiry on this document, please contact the Licensing Team of the Private Columbaria Affairs Office

Telephone number : 2892 2731
Email address : pc_app@fehd.gov.hk

If there is any change on the above means of communication, the latest written notice issued by the Private Columbaria Affairs Office shall prevail.

Consequences of breaching conditions of specified instruments

A person holding a specified instrument must comply with the conditions imposed on the specified instrument. Otherwise, he/she has to bear one or more than one of the following consequences.

- (1) According to section 40 of the PCO, if the person holding a specified instrument has failed to comply with a condition to which the instrument is subject or an enforcement notice served under section 64, the PCLB may:
 - (a) revoke, or suspend for a period the PCLB thinks fit—
 - (i) a licence; or
 - (ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned,
 - (b) revoke, or suspend for a period the PCLB thinks fit, an exemption or temporary suspension of liability;
 - (c) refuse to renew a licence or exemption or refuse to extend a temporary suspension of liability;
 - (d) vary any conditions to which any of the following is subject or impose new conditions on it—
 - (i) a licence;
 - (ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;
 - (iii) an exemption;
 - (iv) a temporary suspension of liability.
- (2) According to section 64 of the PCO, the Director of the Food and Environmental Hygiene (Director) may, by notice (enforcement notice) served on the holder of a specified instrument in respect of a columbarium (recipient), require the recipient to do one or more of the following—
 - (a) to end a contravention of a condition to which the instrument is subject;

- (b) to remedy the consequences of such a contravention;
- (c) 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 and is liable on conviction to a fine at level 3.

If the recipient of an enforcement notice fails to take the action stated in the notice within the stated time for remedying the consequences of a contravention stated in the notice or for preventing the recurrence of such a contravention, the Director may arrange for any action that the Director considers necessary or desirable to be taken to remedy the consequences of the contravention or to prevent the recurrence of the contravention. The expenses of any action taken as described above are recoverable as a civil debt from the recipient of the enforcement notice.

- (3) When breaching certain condition(s) imposed on a specified instrument, the holder of the specified instrument may, at the same time, commit relevant offences as specified in the PCO. For example:
 - (a) When breaching Condition 3 as mentioned above, a person may also commit the offence under section 53(2) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 6 months;
 - (b) When breaching Condition 4, 30 or 40 as mentioned above, a person may also commit the offence under section 52(4) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 3 months;
 - (c) When breaching Condition 6, 7, 19 or 20 as mentioned above, a person may also commit the offence under section 51(6) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 6 months;
 - (d) When breaching Condition 8 as mentioned above, a person may also commit the offence under section 44(6) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 3 months;

- (e) When breaching Condition 9, 10, 11, 12, 13 or 14 as mentioned above, a person may also commit the offence under section 58(2) of the PCO at the same time and is liable on conviction to a fine at level 2 and to imprisonment for 6 months;
- (f) When breaching Condition 15, 28 or 37 as mentioned above, a person may also commit the offence under section 54(6) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 6 months;
- (g) When breaching Condition 33(a) as mentioned above, a person may also commit the offence under section 56(3) of the PCO at the same time and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (h) When breaching Condition 33(b) as mentioned above, a person may also commit the offence under section 56(4) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 6 months; and
- (i) When breaching Condition 36 as mentioned above, a person may also commit the offence under section 57(13) of the PCO at the same time and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.