

Private Columbaria (Amendment) Bill 2024

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A BILL

To

Amend the Private Columbaria Ordinance to enable private columbaria meeting certain conditions to apply for an exemption; to increase the penalty for existing offences relating to interment of ashes and the failure to comply with an enforcement notice; to introduce new offences relating to the sale of interment rights and interment of ashes; to stipulate that the Private Columbaria Appeal Board may receive and consider new materials upon special grounds being shown; to disapply the Ordinance from eligible masons' workshops that temporarily keep ashes for masonry work; to update certain references relating to company secretaries; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Private Columbaria (Amendment) Ordinance 2024.

2. Private Columbaria Ordinance amended

The Private Columbaria Ordinance (Cap. 630) is amended as set out in Parts 2 to 6.

Part 2

Amendments relating to Application for Exemption

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *enactment date*, after “Gazette”—

Add

“, that is to say, 30 June 2017”.

- (2) Section 2(1)—

Add in alphabetical order

“*specified date* (指明日期) means the date on which the Private Columbaria (Amendment) Ordinance 2024 (of 2024) comes into operation;”.

4. Section 14 amended (time limit for application for specified instrument)

Section 14(6)(b), Chinese text—

Repeal

“發牌委員會認為，在有關個案的整體情況下”

Substitute

“在有關個案的整體情況下，發牌委員會認為”.

5. Section 14A added

After section 14—

Add

“14A. Supplementary provisions to section 14: application for exemption

- (1) Despite section 14(2), an application for the issue of an exemption in respect of a pre-cut-off columbarium may also be made—
 - (a) after the specified date; and
 - (b) within a period to be specified by the Licensing Board.
- (2) The Licensing Board may consider an application under subsection (1) out of time if—
 - (a) the applicant has a reasonable excuse for failing to make the application within time; and
 - (b) in all the circumstances of the case, the Licensing Board considers that it is just and equitable to consider the application.”.

6. Section 20A added

After section 20—

Add**“20A. Supplementary provisions to section 20: application for exemption under section 14A**

- (1) The Licensing Board may refuse an application made under section 14A if—
 - (a) the applicant fails to prove to the satisfaction of the Licensing Board one or more of the matters mentioned in section 20(1)(a), (b), (c), (d), (e), (f), (g) and (h) on the basis that, subject to subsection (3), those matters apply to such an application as they apply to an application made under section 20; and

- (b) the applicant fails to prove to the satisfaction of the Licensing Board, as at the specified date—
 - (i) that an application for the issue of a licence in respect of the pre-cut-off columbarium (*licence application*) has been made by the applicant, and that—
 - (A) the licence application has not been determined, granted or refused by the Licensing Board; and
 - (B) the licence application has not been withdrawn;
 - (ii) that the columbarium 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 Cap. 131; and
 - (iii) that either Condition 1 or Condition 2 specified in subsection (2) is satisfied.
- (2) For the purposes of subsection (1)(b)(iii)—
 - (a) Condition 1 is that a planning application in respect of the pre-cut-off columbarium has been accepted or granted by the Town Planning Board, regardless of whether or not there had been any other planning application in respect of the columbarium that had been refused;
 - (b) Condition 2 is that no planning application in respect of the columbarium has been refused by the Town Planning Board.
- (3) For the purposes of subsection (1)(a)—

- (a) section 20(1)(d) applies in relation to the application as if the words “the cut-off time” were substituted for the words “1 January 1990” in that section; and
 - (b) sections 20(1)(b) and (e), 23(1)(b)(ii), 24(1)(a) and (b) and 27(1)(c)(i) apply in relation to the application as if the words “beginning of the enactment date” were substituted for the words “cut-off time” in those sections.
- (4) For the purposes of subsection (2)(a) and (b)—
- (a) a reference to a planning application being accepted is a reference to an application under section 12A(1) of Cap. 131 being accepted, in whole or in part, under section 12A(23)(a) of Cap. 131;
 - (b) a reference to a planning application being granted is a reference to the permission applied for in an application under section 16(1) of Cap. 131 being granted under section 16(3) of Cap. 131; and
 - (c) a reference to a planning application being refused—
 - (i) if the planning application is an application under section 12A(1) of Cap. 131—is a reference to the application being refused under section 12A(23)(b) of Cap. 131; or
 - (ii) if the planning application is an application under section 16(1) of Cap. 131—is a reference to the refusal to grant the permission applied for in the application under section 16(3) of Cap. 131.

(5) If the Licensing Board grants an application made under section 14A, sections 54(2) and 55(a) apply in relation to the exemption as if the words “beginning of the enactment date” were substituted for the words “cut-off time” in those sections.

(6) In this section—

approved plan (核准圖) means a plan within the meaning of section 1A(2)(b) of Cap. 131;

Cap. 131 (《第131章》) means the Town Planning Ordinance (Cap. 131);

draft plan (草圖) means a draft plan prepared under section 3(1)(a) of Cap. 131;

partly approved plan (局部核准圖) means a plan within the meaning of section 1A(2)(a) of Cap. 131;

planning application (規劃申請), in relation to a pre-cut-off columbarium, means—

- (a) an application under section 12A(1) of Cap. 131 in respect of the columbarium; or
- (b) an application under section 16(1) of Cap. 131 in respect of the columbarium.”.

7. Section 55 heading amended (interment of ashes by exercising interment right sold before cut-off time)

Section 55, heading—

Repeal

“before cut-off time”.

Part 3

Amendments relating to Offences and Penalty

Division 1—Offences relating to Sale of Interment Rights and Interment of Ashes Exceeding Ash Interment Capacity and Not Covered in Approved Plans etc.

8. Section 30 amended (licence—conditions about ash interment, non-compliant structures and management plan)

- (1) Section 30, heading, after “**interment,**”—

Add

“sale of interment rights,”.

- (2) After section 30(a)—

Add

- “(ab) that 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;
- (ac) that 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;
- (ad) that 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;
- (ae) that the licence holder—
- (i) must not sell any interment right in respect of the columbarium without an authorization under the licence to sell the interment rights; and

- (ii) must not sell any interment right in respect of the columbarium when the authorization has been revoked or suspended under section 40(1)(a)(ii);”.

9. Section 54 amended (number of sets of ashes interred restricted)

- (1) Section 54, heading, after “**interred**”—

Add

“**and number of interment rights sold**”.

- (2) Section 54(1)—

Repeal

“and”.

- (3) Section 54(1)—

Repeal

everything after “than in niches,”

Substitute

“and the number of interment rights sold in respect of the columbarium, are limited to the ash interment capacity shown in the approved plans.”.

- (4) After section 54(1)—

Add

“(1A) The holder of a licence 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.

(1B) The holder of a licence in respect of a columbarium 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.”.

- (5) Section 54(6), after “(1)”—

Add

“, (1A), (1B)”.

- (6) Section 54(6)—

Repeal

everything after “and is”

Substitute

“liable—

- (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 6 months; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

Division 2—Penalty for Non-compliance with Enforcement Notice

10. Section 64 amended (enforcement notice)

Section 64(3)—

Repeal

everything after “and is”

Substitute

“liable—

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 6 months; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

**Division 3—Offence relating to Sale of Interment Rights
without Authorization or when Authorization has been
Revoked or Suspended**

11. Section 99A added

After section 99—

Add

**“99A. Offence relating to sale of interment rights without
authorization or when authorization has been revoked or
suspended**

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
interment rights, or when the authorization has been
revoked or suspended under section 40(1)(a)(ii), commits
an offence and is liable—

- (a) on summary conviction to a fine of \$2,000,000
and to imprisonment for 6 months; or
- (b) on conviction on indictment to a fine of
\$5,000,000 and to imprisonment for 2 years.”.

Part 4

Amendments relating to Private Columbaria Appeal Board

12. Section 87 amended (powers of Appeal Board)

(1) Section 87(1)(a)—

Repeal

“subsection (2)”

Substitute

“subsections (2) and (2A)”.

(2) After section 87(2)—

Add

“(2A) Despite subsection (2), the Appeal Board may, 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.

(2B) However, to avoid doubt, the power under subsection (2A) is not exercisable in an appeal if—

- (a) the period within which the notice of appeal may be lodged with the Appeal Board under section 84(2) begins before the specified date; and
 - (b) the notice of appeal is lodged within that period.”.
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Part 5

Amendments relating to Masons' Workshops

13. Section 5 amended (Ordinance not applicable to premises where ash transforming work is carried out)

Section 5(1), Chinese text—

Repeal paragraph (d)

Substitute

“(d) 不得准許任何人在工場內拜祭任何死者，亦不得在工場內向任何死者供奉祭品；及”.

14. Section 5A added

After section 5—

Add

“5A. Ordinance not applicable to eligible masons' workshops in relation to individual sets of ashes

(1) This Ordinance does not apply to an eligible masons' workshop in relation to a set of ashes of a deceased person kept in the workshop if—

- (a) the set of ashes is kept 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 particulars on the matters specified in subsection (3);
 - (ii) has kept copies of the relevant documents of the deceased person for at least 3 months after the date of removal of the ashes from the workshop; and
 - (iii) makes the following available for inspection, on request, by the Director or an authorized officer—
 - (A) the register;
 - (B) copies of the relevant documents kept by the operator for the purposes of subparagraph (ii); and
 - (d) no interment right in respect of the workshop is sold.
- (2) In subsection (1)(b), a reference to giving ritual offerings includes—
 - (a) laying flowers or wreaths; or
 - (b) burning candle-sticks, joss paper, incense or sacrificial articles.
- (3) For the purposes of subsection (1)(c)(i), the matters in relation to the delivery of the ashes to, and the removal of the ashes from, the eligible masons' workshop are—
 - (a) details of the delivery and the removal;
 - (b) the identity of the deceased person;
 - (c) descriptions of the relevant documents of the deceased person; and

- (d) the name and contact details of—
 - (i) the person who engages the workshop to provide masonry work in relation to the ashes; and
 - (ii) the person who collects the ashes from the workshop (if available).
- (4) In this section—
 - approved plan** (核准圖) means a plan within the meaning of section 1A(2)(b) of Cap. 131;
 - Cap. 131** (《第131章》) means the Town Planning Ordinance (Cap. 131);
 - Cap. 132** (《第132章》) means the Public Health and Municipal Services Ordinance (Cap. 132);
 - draft plan** (草圖) means a draft plan prepared under section 3(1)(a) of Cap. 131;
 - eligible masons' workshop** (合資格石廠) 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 Cap. 131;
 - masonry work** (石工作業), in relation to a set of ashes, means the process that consists of—
 - (a) collecting or returning the ashes;
 - (b) filling the ashes into a container; and
 - (c) any of the following—
 - (i) interring, burying or scattering the ashes at a columbarium specified in section 4(1)(a);

- (ii) interring, burying or scattering the ashes at a cemetery or garden of remembrance specified in Parts 1, 2, 4A and 7 of the Fifth Schedule to Cap. 132;
- (iii) interring, burying or scattering the ashes at a columbarium managed and controlled by a person specified in Part 2A of the Fifth Schedule to Cap. 132;
- (iv) interring, burying or scattering the ashes with the permission under section 118(1) of Cap. 132 at a place other than a cemetery;

operator (營辦人), in relation to an eligible masons' workshop, means a person who operates, keeps, manages or in any other way has control of the workshop;

partly approved plan (局部核准圖) means a plan within the meaning of section 1A(2)(a) of Cap. 131;

relevant documents (相關文件), in relation to a deceased person, means—

- (a) the Permit to Take Away Cremated Ashes of the deceased person; or
 - (b) if a Permit to Take Away Cremated Ashes is not available—
 - (i) the Certificate of Cremation of the deceased person; or
 - (ii) any document that shows the identity, and source of the ashes, of the deceased person.”.
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Part 6

Amendments relating to Company Secretary

15. Section 44 amended (notification of changes)

(1) Section 44(2)—

Repeal

“secretary”

Substitute

“company secretary”.

(2) Section 44(4)—

Repeal

“secretary”

Substitute

“company secretary”.

16. Section 100 amended (liability of directors, partners, etc. for offences)

Section 100(1)—

Repeal

“secretary” (wherever appearing)

Substitute

“company secretary”.

Explanatory Memorandum

The objects of this Bill are to amend the Private Columbaria Ordinance (Cap. 630) (***Ordinance***) 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 the Ordinance 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. The Bill contains 6 Parts.

Part 1—Preliminary (Clauses 1 and 2)

3. Clause 1 sets out the short title.

Part 2—Amendments relating to Application for Exemption (Clauses 3 to 7)

4. Clause 3 amends section 2(1) of the Ordinance to include a reference to “30 June 2017” in the definition of *enactment date* and to add a new definition of *specified date*.
5. Clause 4 makes a minor textual amendment to the Chinese text of section 14(6)(b) of the Ordinance.
6. Clause 5 adds a new section 14A to the Ordinance so that—
 - (a) new section 14A(1) enables applications for an exemption in respect of a pre-cut-off columbarium to be made after the specified date and within a period to be specified by the Private Columbaria Licensing Board (*Licensing Board*); and
 - (b) new section 14A(2) empowers the Licensing Board to consider such applications out of time.
7. Clause 6 adds a new section 20A to the Ordinance to enable applications for an exemption in respect of a pre-cut-off columbarium to be made and to set out the conditions for such applications.
8. Clause 7 amends the heading of section 55 of the Ordinance to remove the reference to “before cut-off time”.

Part 3—Amendments relating to Offences and Penalty (Clauses 8 to 11)

9. Clauses 8 and 9—
- (a) amend section 30 of the Ordinance to add certain conditions about sale of interment rights and interment of ashes for a licence in respect of a columbarium;
 - (b) add new section 54(1A) and (1B) to the Ordinance so that the holder of a licence 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 that the 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;
 - (c) provide that contravention of that new section 54(1A) or (1B) constitutes an offence; and
 - (d) increase the penalty for an offence under section 54 of the Ordinance.
10. Clause 10 amends section 64(3) of the Ordinance to increase the penalty for the failure to comply with an enforcement notice.
11. Clause 11 adds a new section 99A to the Ordinance to introduce a new offence against the sale of interment rights in respect of a columbarium without the Licensing Board's authorization under a licence in respect of the columbarium, or when the authorization has been revoked or suspended.

Part 4—Amendments relating to Private Columbaria Appeal Board (Clause 12)

12. Part 4 amends section 87 of the Ordinance so that the Private Columbaria Appeal Board may, only 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.

Part 5—Amendments relating to Masons’ Workshops (Clauses 13 and 14)

13. Clause 13 makes a minor textual amendment to the Chinese text of section 5(1) of the Ordinance.
14. Clause 14 adds a new section 5A to the Ordinance to disapply the Ordinance from eligible masons’ workshops so that they may retain ashes for the purposes of masonry work under certain conditions.

Part 6—Amendments relating to Company Secretary (Clauses 15 and 16)

15. Part 6 amends sections 44 and 100 of the Ordinance to replace references to “secretary” with “company secretary”.