

## Guidelines for Carrying Out the “Prescribed Ash Disposal Procedures”

<b>I. Preamble:</b>	
<b>(1)</b>	Under the Private Columbaria Ordinance (the Ordinance), a person must obtain a “specified instrument” (i.e. a licence, an exemption or a temporary suspension of liability (TSOL)) for operating a private columbarium in Hong Kong. Failure to do so is an offence <sup>1</sup> .
<b>(2)</b>	<p>The Ordinance also provides that a person who has operated, kept, managed or in any other way had control of a columbarium or is operating, keeping, managing or in any other way having control of a columbarium (the operator) must not improperly dispose of ashes interred in the columbarium.</p> <p>For a private columbarium which falls within any of the following situations, the <b>operator</b> is required to carry out the “prescribed ash disposal procedures” as stipulated by the Ordinance:</p> <ul style="list-style-type: none"><li>● it commences operation on or after 30 June 2017 without any specified instrument in force;</li><li>● it was in operation before 30 June 2017, but continues to operate without any specified instrument in force after the grace period (see Note 1); or</li><li>● it is abandoned or ceases operation.</li></ul> <p>If the operator fails to carry out the “prescribed ash disposal procedures” according to the above requirements, he/she commits an offence and is liable on summary conviction to a fine of \$2,000,000 and to</p>

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<sup>1</sup> If the columbarium was in operation immediately before the enactment date, it is covered by a grace period (9 months in general beginning on the enactment date. If an application for a TSOL is made in respect of the columbarium by the expiry of those 9 months, the grace period will be extended to the time when the application is finally disposed of or withdrawn) under the Ordinance. During the grace period, if the columbarium does not sell or newly let out an interment right, it does not commit an offence under section 11 of the Ordinance by continuing its operation.

	imprisonment for 3 years; or on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.
(3)	The Ordinance also provides that any <b>person who takes possession of columbarium premises</b> (e.g. the owner, the mortgagee, the liquidator or the trustee in bankruptcy, etc.) must notify the Director of Food and Environmental Hygiene (the Director) within 7 days after the date of taking possession and carry out the “prescribed ash disposal procedures” as soon as possible. For further information, please refer to Part [VIII].
(4)	This pamphlet aims at providing guidelines for those who are required to carry out the “prescribed ash disposal procedures” under the Ordinance to facilitate their understanding of the requirements of the Ordinance. The guidelines are not a substitute for any provisions of the Ordinance. The trade should consider seeking legal advice to ensure compliance with the Ordinance should they have any enquiries on legal matters when carrying out the “prescribed ash disposal procedures”.
<b>II. General principles of ash disposal</b>	
	A person disposing of ashes interred in a columbarium must do so having regard to the respect for, and dignity of, the dedicated persons concerned. He/she shall also take appropriate measures to ensure the intactness of the ashes (including the ashes, containers of ashes and all items inside the containers) and keep a complete and accurate record of the disposal.
<b>III. How should the “prescribed ash disposal procedures” be carried out?</b>	
(1)	<b>Give a “commencement of ash disposal notice”:</b>
	The first step in carrying out the “prescribed ash disposal procedures” is to give a “commencement of ash disposal notice”. Under the Ordinance, an ash handler must give a “commencement of ash disposal notice” stating his intention of disposal of the ashes before opening the sealed

	niches in the columbarium or starting to handle the ashes in the columbarium in other manners.		
	(A)	<b>A “commencement of ash disposal notice” must contain the following:</b>	
		(a)	the name and address of the columbarium;
		(b)	a statement of the intention of the ash handler with respect to the manner of ash disposal specifying -
		(i)	that the “prescribed ash disposal procedures” are to be carried out;
		(ii)	which of section 7(2) <sup>2</sup> or section 7(3) <sup>3</sup> of Schedule 5 to the Ordinance are the ashes to be handled in accordance with or (if applicable) that the ashes are to be handled in accordance with sections 7(2) and 7(3);
		(iii)	the particulars relating to the intended handling of the ashes including - <ul style="list-style-type: none"> <li>● the date on which the claim period for the return of the ashes on-site (on-site claim period) begins (which must be no earlier than the expiry of 14 days, and no later than the expiry of 30 days, immediately after the date of</li> </ul>

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<sup>2</sup> The handling of ashes according to section 7(2) means (i) allowing for a claim period of at least 12 months for the return of the ashes on-site (no ashes should be returned in the first 2 months of the claim period); and (ii) after the claim period, delivering to the Director the ashes that are not returned to an eligible claimant.

<sup>3</sup> The handling of ashes according to section 7(3) means (i) allowing for a claim period of at least 8 months for the return of the ashes on-site (no ashes should be returned in the first 2 months of the claim period); and (ii) after the claim period, removing the ashes from the original columbarium and arranging for reinterment of the ashes in another columbarium with a valid licence or in a columbarium listed in section 4 of the Ordinance.

			<p>the commencement of ash disposal notice) and the date on which the on-site claim period ends;</p> <ul style="list-style-type: none"> <li>● if handled in accordance with section 7(3) of Schedule 5 to the Ordinance - the date by which the ashes, if not returned to an eligible claimant, will be reinterred and the address of the columbarium in which the ashes are to be reinterred and the terms of reinterment<sup>4</sup>; and</li> <li>● if handled in accordance with section 7(2) of Schedule 5 to the Ordinance - the date by which the ashes, if not returned to an eligible claimant, will be delivered to the Director. The ashes are to be finally disposed of in a manner that the Director thinks fit.</li> </ul>	
		(c)	a statement that the carrying out of the “prescribed ash disposal procedures” does not affect any person’s right to compensation under an agreement for the sale of an interment right.	
		(d)	a statement that the claims for the return of ashes and “related items” will be handled in accordance with sections 9 and 10 of Schedule 5 to the Ordinance.	
			Samples of “commencement of ash disposal notice” are at <a href="#">Annex 1(A)</a> and <a href="#">Annex 1(B)</a> <sup>5</sup> .	<a href="#">Annex 1(A)</a> and <a href="#">Annex 1(B)</a>

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<sup>4</sup> The ash handler must arrange for the reinterment of the ashes on terms no less favourable than the terms governing interment of the ashes in the original columbarium.

	(B)	<b>How should a “commencement of ash disposal notice” be given?</b>	
		It is provided under the Ordinance that a “commencement of ash disposal notice” must be given in the following ways -	
	(a)	published in 3 newspapers (of which 1 must be in English and 1 must be in Chinese) in general circulation in Hong Kong at least once in each of 2 consecutive weeks;	
	(b)	posted at a conspicuous place outside the columbarium;	
	(c)	served on the Private Columbaria Licensing Board <ul style="list-style-type: none"> <li>- by mail to: Private Columbaria Licensing Board (c/o Private Columbaria Affairs Office) P.O. Box No. 80011, Cheung Sha Wan Post Office; or</li> <li>- in person (you must contact this office first at 2350 7319): Private Columbaria Licensing Board (c/o Private Columbaria Affairs Office) Units 501-502, 5/F, Trade Square 681 Cheung Sha Wan Road Cheung Sha Wan, Kowloon</li> </ul>	

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<sup>5</sup> If an ash handler wishes to handle ashes interred in the same columbarium in accordance with both sections 7(2) and 7(3) of Schedule 5, he must give the commencement of ash disposal notices at Annex 1(A) and Annex 1(B) at the same time. However, the locations where ash disposal procedures will be carried out according to sections 7(2) and 7(3) must be different, and the locations and the parts concerned must be clearly indicated in the “commencement of ash disposal notices” at Annex 1(A) and Annex 1(B) (e.g. ashes interred in blocks A, B and C of a columbarium will be handled in accordance with section 7(2), while ashes interred in blocks D and E will be handled in accordance with section 7(3)).

		(d)	served on each specified addressee <sup>6</sup> (if any)
<b>IV. Handling claims for ashes and any “related items”<sup>7</sup> :</b>			
<b>(1)</b>	Under the “prescribed ash disposal procedures”, the ash handler must handle the ashes in the specified manner within the meaning of section 7(2) or section 7(3) of Schedule 5 to the Ordinance as stated in the “commencement of ash disposal notice” and allow for an “on-site claim period” of not less than 12 months or 8 months respectively for the purposes of returning the <b>ashes or “specified items”<sup>8</sup></b> to the eligible claimants who have succeeded in their applications.		
<b>(2)</b>	When the “on-site claim period” in respect of the “prescribed ash disposal procedures” begins, an eligible claimant may start to make a claim to the ash handler for the return of ashes or “related items”.		
<b>(3)</b>	<b>Claims for the return of ashes or “related items”:</b> <u>The ash handler is required to note and observe the following in handling claims for the return of ashes or “related items”:</u>		

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<sup>6</sup> Specified addressee means: (i) an authorized representative who is authorized under an agreement for the sale of an interment right to claim for the return of ashes (if any); (ii) the purchaser; or (iii) any other person whose contact details have been entered into any register or record kept under this Ordinance (if any).

<sup>7</sup> “Related item” in relation to ashes, means - (i) the container of the ashes; or (ii) an item interred together with the ashes in the same container

<sup>8</sup> “Specified item” means the ashes of the deceased person, together with all “related items” (if applicable)

	<p>(A) The definition of “ashes” under the Ordinance: It generally means ashes resulting from the cremation of human remains, including synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes; and includes the container of such ashes, as well as any items interred together with such ashes in the same container (if applicable).</p>	
	<p>(B) If, after returning the ashes to eligible claimants according to the requirements of the Ordinance, the ash handler receives further claims for ashes or “related items”, such claims <b><u>need not be handled</u></b> even if they are made within the “on-site claim period”.</p>	
	<p>(C) In handling claims for the return of “ashes” or “related items”, unless the court instructs otherwise, the ash handler must return to the eligible claimants the ashes and the containers of the ashes together with the items therein (if any).</p>	
	<p>(D) In handling claims for and returning the “related items”, unless the court instructs otherwise, the ash handler <b><u>need not</u></b> open the container of the ashes to confirm whether there is any “related item” therein or return only the “related item” and not the ashes in the container.</p>	
<p>(4)</p>	<p><b>Receiving claims and the earliest time of returning the ashes/“specified items” (i.e. the ashes of the deceased person together with all “related items”)</b></p> <p>The ash handler should handle the related matters with reference to the table below:</p>	

	<b>The period in which claims for the return of ashes or “related items” can be made:</b>	<b><u>The earliest</u> time of returning the ashes or “specified items”</b>	
	The whole on-site claim period	After the expiry of the first 2 months of the on-site claim period	
	If the claim is made under section 7(2) of Schedule 5 to the Ordinance		At least 12 months
	If the claim is made under section 7(3) of Schedule 5 to the Ordinance		At least 8 months

**(5) Eligibility of claimants and items for which they can make a claim**  
The ash handler should handle related matters with reference to the table below:

<b>Who can make a claim</b>	<b>Items for which a claim can be made</b>	<b>Items that should be returned</b>	<b>The earliest time of collecting the items</b>
(A) “Prescribed claimant”  (For the definition of “prescribed claimant”, please refer to paragraph (6) on next page)	Ashes	Ashes, the container of the ashes, as well as items in the container.	After the expiry of the first 2 months of the “on-site claim period”
	“Related item”  (i.e. the container of the ashes; or an item interred together with the ashes in the same container)	Ashes, the container of the ashes, as well as items in the container.	Same as above



		(However, the claimant must state that he/she is the owner of the “related item”)		
	(B) The owner of the “related item” who is not a “prescribed claimant”	<p>“Related item” (i.e. the container of the ashes; or an item interred together with the ashes in the same container)</p> <p>(However, the claimant must state that he/she is the owner of the “related item”)</p>	Ashes, the container of the ashes, as well as items in the container.	After the expiry of the whole “on-site claim period”
	<b>(6) Definition of “prescribed claimant”</b>			
	Under the Ordinance, only “prescribed claimants” are eligible to make claims for ashes. “Prescribed claimant” only includes five types of persons below:			
	(A)	<b>Authorized representative</b> (i.e. a person who is authorized to claim for ashes under the agreement for the sale of an interment right, but the operator himself/herself or his/her agent cannot be an authorized representative )		

	(B) <b>Personal representative</b>	
	(C) <b>Relative</b> “Relative” means a “relative” as defined in section 6(2) of Schedule 5 to the Ordinance. Please refer to <a href="#">Annex 2</a> for details.	<a href="#">Annex 2</a>
	(D) <b>“Related person”</b> “Related person”, in relation to a deceased person, means a person who - (i) was living with the deceased person in the same household immediately before the date of the death of the deceased person; and (ii) had been living with the deceased person in the same household for at least 2 years before that date;	
	(E) <b>The purchaser of the interment right</b>	
(7)	<b>Points to note in handling claims for ashes and any “related items”:</b>	
	Please refer to <a href="#">Annex 3</a> .	<a href="#">Annex 3</a>
(8)	<b>Procedures for handling claims:</b>	
	Please refer to <a href="#">Annex 4</a> .	<a href="#">Annex 4</a>
(9)	<b>Personal data collection statement concerning the personal data of claimants collected in the course of handling claims</b>	
	An ash handler, in the course of handling all types of claims, will collect the personal data of claimants, including their names, identity card numbers, contact telephone numbers, for making a detailed record of each claim and will deliver the records of claims to the Director as required by the Ordinance.	<a href="#">Annex 5</a>

	As such, the ash handler has the responsibility to inform each claimant for ashes/“related items” of the purpose of collecting their personal data and the use of such data. The ash handler may consider issuing to each claimant a copy of “Purpose and statement of collection of personal data” with reference to the sample at <a href="#">Annex 5</a> .	
<b>(10)</b>	<b>Records to be kept and subsequently submitted to the Director in relation to the return of ashes or “specified items” to eligible claimants</b>	
	When returning the ashes or “specified items” to the eligible claimants, the ash handler must, according to <a href="#">Annexes 6(A) and 6(B)</a> , properly prepare and keep all records, including records on the steps taken to carry out “prescribed ash disposal procedures”, the claims for the return of ashes and the competing claims for ashes. The ash handler shall deliver the records to the Director at different specified times.	<a href="#">Annexes 6(A) and 6(B)</a>
<b>V. Delivering the ashes to the Director</b>		
<b>(1)</b>	<b>In the following circumstances, the ash handler is required to deliver the ashes to the Director:</b>	
	(A) if the ash handler has stated in the “commencement of ash disposal notice” his intention to handle the ashes in accordance with section 7(2) of Schedule 5 to the Ordinance, but no claim for such ashes has been received by the expiry of the “on-site claim period”;	
	(B) if competing claims for the ashes were received during the “on-site claim period”, but none of the claims from the “prescribed claimants” has a higher priority over the claims from all other claimants and no court proceedings in respect of the ashes have been instituted by the expiry of the 12 months after the “on-site claim	

	period”; and	
(C)	if competing claims for “related items” were received, but no court proceedings have been instituted by the expiry of 12 months after the “on-site claim period”.	
<b>(2)</b>	<b>Specified steps to be taken for the delivery of ashes or “specified items” to the Director</b>	
	<p>If the ash handler handles the ashes according to section 7(2) of Schedule 5 to the Ordinance, he/she should take the steps prescribed in <a href="#">Annex 7</a> when delivering the ashes or “specified items” to the Director.</p> <p>These specified steps are also applicable to competing claims for ashes or “related items” referred to in sections 9(6)(b) and 10(5)(b)(ii) of Schedule 5 to the Ordinance. In other words, if no court proceedings in respect of the competing claims have been instituted by the expiry of 12 months after the “on-site claim period”, the ash handler is required to deliver the ashes or “related items” to the Director according to the steps prescribed in Annex 7.</p>	<a href="#">Annex 7</a>
<b>VI. Reinterment of the ashes</b>		
	If the ash handler chooses to handle the ashes according to section 7(3) of Schedule 5 to the Ordinance, arrangement shall be made for the ashes which have not been returned to eligible claimants on the expiry of the “on-site claim period” (of at least 8 months) to be reinterred in another columbarium with a valid licence or one of the columbaria listed in section 4 of the Ordinance.	
<b>VII. Simplified flow chart of the “prescribed ash disposal procedures”</b>		
	A simplified flow chart is provided at <a href="#">Annex 8</a> to facilitate ash handlers’ easy understanding of the “prescribed ash	<a href="#">Annex 8</a>

	disposal procedures”.	
<b>VIII. Obligations of the third party (i.e. persons other than the operator) taking possession of the columbarium premises</b>		
	<ul style="list-style-type: none"> <li>● These persons include the owner, mortgagee, liquidator and trustee in bankruptcy who takes possession of columbarium premises (hereinafter known as “person in possession”).</li> <li>● The person in possession must carry out the “prescribed ash disposal procedures”<sup>9</sup> as soon as practicable after taking possession of the premises.</li> <li>● The person in possession is required to notify the Director in writing within 7 calendar days after the date of taking possession of the premises (7-day notification requirement). Nevertheless, since the Ordinance is an entirely new law, the Government understands that some persons in possession may not be familiar with the 7-day notification requirement of the Ordinance during the early days of its implementation. Therefore, within the first year of the implementation of the Ordinance (i.e. from 30 June 2017 to 29 June 2018), if a person who takes possession of a columbarium during this period fails to give the required notification to the Director within 7 days after the date of taking possession, but manages to do so within 30 calendar days after that date, the Government will not take enforcement against him/her for failing to comply with the 7-day notification requirement of the Ordinance.</li> <li>● The person in possession is required to give a “commencement of ash disposal notice” (See <a href="#">Annex 1(A)</a> and <a href="#">Annex 1(B)</a>) within 30 days after the date of giving the notification of taking possession, unless</li> </ul>	

<sup>9</sup> If the person in possession is not a person who takes possession of the columbarium premises subject to the obligation to carry out the “prescribed ash disposal procedures” (please refer to Note 11 for details), he may invite, in writing, the Director to assist in carrying out the steps necessary for disposal of the ashes on-site.

	<p>he/she is eligible to invite the Director to assist in the disposal of ashes according to section 75(4) of the Ordinance and has sent such an invitation in writing.</p> <ul style="list-style-type: none"> <li>● If the Private Columbaria Licensing Board has received an application for transfer of the specified instrument in respect of the columbarium, the person in possession is not required, with the written permission of the Director, to (a) carry out the “prescribed ash disposal procedures”; or (b) so act until after the period specified by the Director.</li> <li>● If an owner or a mortgagee in possession of the columbarium premises who is subject to the obligation to carry out the “prescribed ash disposal procedures”<sup>10</sup> fails to (i) give a “commencement of ash disposal notice” within the specified period set out in the Ordinance, or (ii) carry out the steps specified in the “commencement of ash disposal notice” within the timeframe stated in the notice in accordance with Part 2 of Schedule 5 to the Ordinance, he/she commits an offence and is liable to a maximum fine of HK\$500,000.</li> <li>● If a person in possession other than an owner or a mortgagee fails to (i) carry out the “prescribed ash disposal procedures” or (ii) invite the Director in writing to assist in carrying out the steps considered necessary for disposal of the ashes on-site, he/she commits an offence and is liable to a maximum fine of HK\$250,000.</li> <li>● If the person in possession fails to carry out the “prescribed ash disposal procedures” according to section 75(2) of the Ordinance and the Director has</li> </ul>	
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<sup>10</sup> “The person in possession of the columbarium premises who is subject to the obligation to carry out the ‘prescribed ash disposal procedures’” refers to the owner or mortgagee who acquired an interest in the columbarium premises subject to the obligation to carry out the “prescribed ash disposal procedures”. In other words, at the time of acquisition of such interest, a certificate of columbarium use in respect of the columbarium premises was registered against the premises in the Land Registry, and no certificate of cessation of columbarium use in respect of the columbarium premises was registered against the premises in the Land Registry.

carried out the steps that he/she considers necessary for disposal of ashes in respect of the columbarium, the person in possession is liable to pay to the Director all expenses incurred in carrying out these steps.

- If the person in possession meets the criteria set out in section 75(4) of the Ordinance, and he/she has invited the Director in writing to assist in carrying out the steps necessary for disposal of the ashes, he/she is **not** liable to pay to the Director all expenses incurred in carrying out these steps.
- Where the person liable to pay the expenses is the owner of the columbarium premises, then at any time before the expenses (including the interest accrued) have been recovered in full, the Director may issue a certificate to certify the expenses incurred in respect of the columbarium and register the same in the Land Registry against the premises.

**Note:**

“Owner” referred to in section 75(3)(a) of the Ordinance does not include trustee in bankruptcy, provisional trustee in bankruptcy, liquidator or provisional liquidator who are vested with the property under section 58 of the Bankruptcy Ordinance (Cap. 6) or section 198 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). In other words, when a columbarium is abandoned or ceases operation, the above persons may choose to invite the Director to assist in carrying out the steps for disposal of ashes according to section 75(4) of the Ordinance for compliance with section 75(2) of the Ordinance. As for other third party who takes possession of the columbarium premises and becomes the owner of the premises by virtue of his statutory obligation under the law, this party is not within the meaning of “owner” referred to in section 75(3)(a) of the Ordinance.

<p><b>IX. Alternative ash disposal procedures</b></p>	
<p>The ash handlers may, depending on their own situation and actual needs, apply to the Director under section 18 of Schedule 5 to the Ordinance, in writing, for approval of an alternative plan for ash disposal procedures in replacing the “prescribed ash disposal procedures”. The Director may consider approving the ash disposal plan in respect of a columbarium if the Director is satisfied that the procedures specified in the plan are as effective as the “prescribed ash disposal procedures” in facilitating the return of the ashes interred in the columbarium, or the reinterment of those ashes according to that Schedule.</p> <p>The application has to be submitted in writing to the Director within the specified timeframe. For the “person in possession” referred to in the Ordinance, the application must be made within 30 days after the notification of taking possession is served on the Director. For operators who have received a “notice about suspected abandonment” and undertaken to carry out the “prescribed ash disposal procedures”, the application must be made within 30 days after the undertaking is given in writing.</p> <p>The ash handler is treated as having carried out the “prescribed ash disposal procedures” if he has carried out, in respect of the columbarium, the procedures specified in the ash disposal plan approved by the Director.</p>	