

LEGISLATIVE COUNCIL BRIEF

Private Columbaria Ordinance (Chapter 630)

PRIVATE COLUMBARIA (AMENDMENT) BILL 2024

INTRODUCTION

A At the meeting of the Executive Council on 3 December 2024, the Council **ADVISED** and the Chief Executive **ORDERED** that the Private Columbaria (Amendment) Bill 2024 (“Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. The existing regulatory regime on private columbaria underpinned by the Private Columbaria Ordinance (Cap. 630) (“Ordinance”) was first established in June 2017. In the light of operation experience, we have identified needs to enhance the Ordinance so as to achieve more effective execution of the regime. In particular, the Bill mainly seeks to:

- (a) provide pre-cut-off columbaria¹ meeting certain conditions an option to apply for exemption to avert the need for large-scale disposal of ashes already interred in these columbaria so that they could continue to operate at their current confined scale, as they may have difficulties in fulfilling all requirements for a licence;
- (b) enhance enforcement provisions for greater deterrent effects:

¹ Pre-cut-off columbaria refer to columbaria that were in operation, and in which ashes were interred in niches, immediately before 8 a.m. on 18 June 2014 (“cut-off time”). It was the moment when the Government first announced its proposal to establish a licensing regime regulating the operation of private columbaria.

- (i) increasing the penalty for non-compliance with enforcement notice concerning violation of a condition of a specified instrument² (“SI”) by private columbaria;
- (ii) introducing an offence prohibiting the sale of interment rights exceeding the approved ash interment capacity or sale of niches not covered in the plans approved by the Private Columbaria Licensing Board (“Licensing Board”) (i.e. “overselling niches”) and expanding the current offence prohibiting keeping of ashes exceeding the approved ash interment capacity to also cover keeping of ashes other than in niches covered in the plans approved by the Licensing Board (“approved plans”)(i.e. “over-placing ashes”);
- (iii) introducing an offence of selling interment rights when the authorisation to sell has been revoked or suspended by the Licensing Board;
- (c) stipulate that the Private Columbaria Appeal Board (“PCAB”) may receive and consider new materials only upon special grounds being shown; and
- (d) disapply the Ordinance from eligible masons’ workshops meeting certain conditions.

THE PROPOSALS

Provide eligible pre-cut-off private columbaria an option to apply for exemption

3. Since a considerable number of members of the public have purchased niches from, or have had the ashes of their ancestors interred in pre-cut-off columbaria before the enactment of the Ordinance, the Ordinance embraces a pragmatic and sympathetic approach in regulating pre-cut-off columbaria. It strives to avoid social disruption arising from massive displacement of interred ashes or losses incurred by persons who have purchased niches in these pre-cut-off columbaria; and at the same time, minimise the impact of these pre-cut-off columbaria to their neighbourhoods, thereby balancing the general public’s interest.

² SIs refer to a licence, an exemption or (during the application of either of the aforesaid) a temporary suspension of liability (“TSOL”). TSOL is valid for not exceeding three years and may not be extended more than once, unless exceptional circumstances exist.

4. As at 30 November 2024, there are 59 pre-cut-off columbaria (involving about 490 500 niches of which about 309 000 are sold niches) pursuing applications for licence. Among them, 11 had also applied for exemption. For the remaining 48 pre-cut-off columbaria which had only submitted licence applications (involving about 287 200 niches sold before the enactment of the Ordinance), they have yet to meet the requirements for a licence. In case these pre-cut-off columbaria eventually fail to fulfil all requirements for a licence, they will have to cease operation, triggering ash disposal as stipulated in the Ordinance and causing disturbance to the community in particular the families of the deceased with ashes already interred.

5. To avert the need for large-scale ash disposal whilst minimising impact on the communities in the vicinity of the private columbaria, it is proposed that pre-cut-off columbaria meeting certain conditions be provided with an option to apply for exemption, which if approved, would allow them to continue keeping the existing niches sold before 30 June 2017 (covering those sold before 30 June 2017 but with ashes interred subsequently). New sale or let out of niches is however not allowed. In other words, a pre-cut-off columbarium may only continue to operate at its current confined scale if its new application for exemption is approved. To further minimise the impact of pre-cut-off columbaria on traffic and environment, etc. to their neighbourhood and demonstrate deference to town planning procedures as manifested by the Town Planning Board (“TPB”)’s decisions, a pre-cut-off columbarium will need to meet the following conditions in order to be eligible for the proposed option:

- (a) the applicant’s application for licence in respect of the pre-cut-off columbarium is still under processing by the Licensing Board (i.e. not rejected or voluntarily withdrawn);
- (b) the pre-cut-off columbarium under application is not located in any zone or district designated as “Residential (Group A)” on a draft plan, partly approved plan, or approved plan exhibited under the Town Planning Ordinance (Cap. 131) (“TPO”); and
- (c) as at the commencement date of the Bill, relevant planning application under TPO in relation to the pre-cut-off columbarium was not refused. This covers the scenarios of those pre-cut-off columbaria that, as at the commencement date, have planning permission whether with or without a history of rejection by the TPB, as well as those which have never had any record of rejection by TPB.

6. Under the proposed option, the two basic eligibility criteria for exemption currently in place would need to be adjusted, i.e. the date of

commencement of operation of the columbarium is proposed to be adjusted from before 1 January 1990 to before 8 a.m. of 18 June 2014 (i.e. cut-off time) and that the date of ceasing of sale of interment rights to be adjusted from the cut-off time to 30 June 2017 (i.e. the enactment date of the Ordinance), so that some of the pre-cut-off columbaria eligible for the new exemption option could fulfil the basic eligibility criteria for exemption. It is also proposed that the Licensing Board be empowered to set a new application period for making new applications for exemption in reliance of the proposed amendments.

7. As at 30 November 2024, it is anticipated that at least 38 pre-cut-off columbaria would be eligible for making new application for exemption in reliance of the proposed amendments, involving about 272 600 niches sold (with about 197 900 already interred) before the enactment date of the Ordinance.

8. For the avoidance of doubt, the land premium arrangement for pre-cut-off columbaria confirmed to be eligible for exemption or licence as endorsed by the Chief Executive in Council on 29 April 2014 and 21 November 2017³ will continue to be applicable to pre-cut-off columbaria pursuing new application for exemption under the Bill to the extent that their niches were sold before the cut-off time.

Enhance penalty provisions

(i) Non-compliance with enforcement notices

9. The Licensing Board imposes appropriate conditions to a private columbarium when approving its SI application, for example to require it to conduct periodical inspection and certification on building and fire safety and to provide 14-day cooling-off period for agreement for sale of interment rights, so as to ensure its compliance with all statutory and government requirements for protecting public safety and consumer interests. In case of non-compliance with the conditions, the Director of Food and Environmental Hygiene (“DFEH”) may issue an enforcement notice under section 64 of the Ordinance to require the holder of an SI to end such contraventions, remedy the consequences of such contraventions, and/or prevent the recurrence of such contraventions. Any person failing to comply with the enforcement notice is liable on conviction to

³ Pre-cut-off columbaria confirmed to be eligible for exemption or licence in all other aspects currently can apply to Lands Department (“LandsD”) for administratively regularising breach of the relevant lease conditions and / or unlawful occupation of unleased Government land concerning the niches sold before the cut-off time and those area necessary for / ancillary to their operation by way of a waiver and / or a short term tenancy (“STT”), with waiving of waiver fees and / or STT rentals, as well as administrative fees before and during the period of their SIs.

a fine at level 3 (i.e. \$10,000). The penalty is considered disproportionate to the benefits and consequences brought about by breaches of the conditions of the SIs. We therefore propose to increase the maximum penalty to a fine of \$500,000 and imprisonment for six months on summary conviction, or a fine of \$5,000,000 and imprisonment for two years on conviction on indictment⁴.

(ii) *Overselling niches or over-placing ashes*

10. At present, section 54 of the Ordinance only requires licence holders to ensure that the number of sets of ashes kept is limited to the maximum number shown in the approved plans (i.e. “approved ash interment capacity”); failing to do so will be liable to a fine at level 3 (i.e. \$10,000) and imprisonment for six months. Given that some people may purchase niches in advance to prepare for the death of their family members in the future and these sold niches will often be interred with ashes at a later time, the sale of interment rights exceeding the approved ash interment capacity, or sale of niches not covered in the approved plans by licence holders, will not immediately lead to contravention of the Ordinance. Agreements entered into between the purchasers and the sellers on such oversold niches are unenforceable, and the ashes interred pursuant to these agreements may also have to be displaced, undermining the concerned consumers’ interest. We therefore propose to introduce a new offence to prohibit sale of niches by licence holders which exceeds the approved ash interment capacity, or is not covered in the approved plans. In view of the potential harm to the consumers concerned, and the potential hefty financial gain for the private columbaria overselling the niches, it is proposed that the maximum penalty be set at a fine of \$2,000,000 and imprisonment for six months on summary conviction, or a fine of \$5,000,000 and imprisonment for two years on conviction on indictment⁵.

11. We also propose to expand the existing Section 54 of the Ordinance to also prohibit keeping of ashes other than in niches covered in the approved plans, i.e. in addition to limiting the keeping of ashes to the approved ash interment capacity. The relevant penalty under Section 54 of the Ordinance will also be increased correspondingly to the same level of the new offence against “overselling niches” in view of their similarity in nature and severity.

⁴ Taking reference from the offence under section 56(3) of the Ordinance in relation to illegal replacement of the name of a dedicated person contained in an endorsed register, and that under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

⁵ Taking reference from the offence under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

(iii) Sale of interment rights when authorisation to sell has been revoked or suspended

12. A licensed private columbarium should have authorisation from the Licensing Board before selling interment rights. At present, there is no standalone offence targeting licence holders' selling interment rights when such authorisation has been revoked or suspended by the Licensing Board in which case the sale agreement signed with the consumers will be unenforceable. DFEH can only issue an enforcement notice under the Ordinance to prohibit such sale and requires appropriate remedy. In view of the potential harm to concerned consumers and the potential hefty financial gain for the licence holders, we propose to introduce an offence prohibiting the sale of interment rights when authorisation to sell has been revoked or suspended. The maximum penalty for an offender will be a fine of \$2,000,000 and imprisonment for six months on summary conviction, or a fine of \$5,000,000 and imprisonment for two years on conviction on indictment⁶.

Consideration of new material by PCAB in relation to appeals

13. PCAB is responsible for handling appeals lodged against decisions made by the Licensing Board or DFEH according to the appeal mechanism under the Ordinance. PCAB currently has 22 members, with each appeal case to be heard by an appeal panel comprising five PCAB members. The composition of the appeal panel may be different in each case.

14. To ensure the adoption of a consistent standard by appeal panels of different composition in handling materials submitted by an appellant, it is proposed to take reference from other legislation⁷ and explicitly stipulate that PCAB may receive and consider new materials that had not been made available to the Licensing Board only upon "special grounds" being shown.

15. The proposed amendments will only affect appeals with lodging period⁸ beginning on or after the commencement date of the Bill.

⁶ Taking reference from the offence under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

⁷ For example, section 30A(6) of the Lands Tribunal Rules (Cap. 17A), section 29(4) of Architects Registration Ordinance (Cap. 408), section 33(4) of Social Workers Registration Ordinance (Cap. 505) and section 23(4) of Veterinary Surgeons Registration Ordinance (Cap. 529).

⁸ Section 84(2) of the Ordinance requires appeal to be lodged within 21 days after the date on which the notice of decision under appeal is given to the applicant.

Ordinance not applicable to eligible masons' workshops meeting certain conditions

16. Masons are contractors in the business of manufacturing and restoring of headstones and grave coverings, as well as assisting families in the interment of ashes of their ancestors. During their operation (e.g. handling of ashes after cremation of exhumed remains), they need to handle ashes temporarily kept within their workshops. Sale of interment rights is not part of the mason trade. After the enactment of the Ordinance, the Government has put in place administrative measures to allow eligible masons' workshops, not located in any zone or district designated as "Residential (Group A)" on a draft plan, partly approved plan, or approved plan, exhibited under the TPO, to temporarily keep ashes for the purpose of conducting relevant permitted works at cemeteries, on the condition of their compliance with certain conditions (including keeping each set of ashes not more than seven calendar days and maintaining a register of the delivery of ashes to and from eligible masons' workshops, etc.).

17. The current administrative arrangements are effective in balancing the operational needs of the mason trade arising from their services to the general public, whilst not compromising the regulation of private columbaria under the Ordinance. Referencing similar exclusion for premises conducting ash transforming work (i.e. transforming ashes into synthetic materials such as synthetic diamond) in section 5 of the Ordinance, it is proposed that the Ordinance will not be applicable to eligible masons' workshops with the current administrative arrangements regulating temporary ash-keeping to be underpinned by the Ordinance. The arrangements will remain largely unchanged with the time limit for keeping each set of ashes to be revised to fourteen calendar days from the existing seven calendar days to address the trade's request for more flexibility for scheduling ash-handling procedures.

COMMENCEMENT

18. We propose that the Bill should take effect upon gazettal following its passage by LegCo.

OTHER OPTIONS

19. Legislative amendments are required to provide an option for pre-cut-off columbaria to make new applications for exemption that involves the adjustment of two basic eligibility criteria, etc. stipulated in the Ordinance. Legislative amendments are also required for strengthening the regulatory regime by enhancing deterrent effects and for bringing about other changes. There is no other alternative.

THE BILL

20. The main provisions of the Bill are highlighted as follows –

- (a) Part 1 (Clause 1) sets out the short title;
- (b) Part 2 (Clauses 3 to 7) adds a new section 20A to the Ordinance to enable private columbaria meeting certain conditions to apply for exemption;
- (c) Part 3 (Clauses 8 to 11) sets out the amendments relating to offences, including the increase of penalties for existing offences in sections 54 and 64 of the Ordinance; and the introduction of new offences in new section 54(1A) and (1B) and new section 99A of the Ordinance relating to sale of interment rights;
- (d) Part 4 (Clause 12) amends section 87 of the Ordinance so that PCAB may only, upon special grounds being shown, receive and consider new material that had not been made available to the Licensing Board;
- (e) Part 5 (Clauses 13 and 14) introduces a new section 5A to the Ordinance to disapply the Ordinance to eligible masons' workshops so that they may retain ashes for purposes of masonry work under certain conditions; and
- (f) Part 6 (Clauses 15 and 16) provides for miscellaneous amendments to replace references to “secretary” with “company secretary” in sections 44 and 100 of the Ordinance.

B 21. The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

22. The legislative timetable will be –

Publication in the Gazette	6 December 2024
First Reading and commencement of Second Reading debate	18 December 2024
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

23. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the Ordinance. It has no environmental, productivity or gender implications. There is no sustainability implications other than the economic implications. The financial, civil service, economic and family implications are set out at Annex C.

C

PUBLIC CONSULTATION

24. We presented the preliminary legislative proposal to the Panel on Food Safety and Environmental Hygiene of LegCo (“FSEH Panel”) on 19 February 2024. With the FSEH Panel’s support, we conducted a public consultation from 2 May to 2 June 2024 on the legislative proposals. During the public consultation, we met with stakeholders, including private columbaria operators, representatives of the mason trade, concern groups and LegCo members, to explain to them the legislative proposal and exchange views. Each of the proposals was supported by at least 85% of written responses of the public consultation. The FSEH Panel also indicated support when we briefed them of the outcome of the public consultation and the legislative proposal on 9 July 2024.

PUBLICITY

25. A press release will be issued on 6 December 2024 and a government spokesperson will also be available to answer media and public enquiries.

BACKGROUND

26. To tackle the problems caused by non-compliant private columbaria, the Government introduced the Ordinance to establish a regulatory regime for ensuring private columbaria’s compliance with statutory and government requirements, enhancing protection of consumer interests, and fostering sustainable operation by the industry. The Ordinance came into effect on 30 June 2017.

27. Under the Ordinance, a person is required to obtain an SI in order to operate, keep, manage or in any other way have control of a private columbarium; among which only a licence holder is allowed to make new sales or let out niches. As at 30 November 2024, the Licensing Board has approved licences of 13 private columbaria (involving about 193 000 niches) and exemption of five pre-

cut-off columbaria (involving about 9 800 niches). The Licensing Board is still processing the applications for SIs of 78 private columbaria (involving about 534 300 niches).

28. Since the enactment of the Ordinance, at least 87 private columbaria had ceased to operate, as they did not submit application for SIs, or its application for SIs had been refused by the Licensing Board or voluntarily withdrawn, involving about 11 700 sets of ashes. Amongst which 78 private columbaria (i.e. 90%) had completed the ash disposal procedures pursuant to the Ordinance, with majority of the interred ashes smoothly returned to the eligible claimants. If these claimants require public niches to accommodate the ashes, there is sufficient supply of public niches for accommodating their needs. The Food and Environmental Hygiene Department also provides temporary ash storage facilities with a capacity of about 77 300 sets of ashes for keeping unclaimed ashes from private columbaria, and for temporary storage of ashes by the general public. As at 30 November 2024, less than 4% of these storage spaces was taken up.

D 29. A list of abbreviations used in this paper is at **Annex D**.

ENQUIRY

30. For any enquiries, please contact Ms Wendy AU, Principal Assistant Secretary for Environment and Ecology (Food) 2, at 3509 8926.

Environment and Ecology Bureau
4 December 2024

PRIVATE COLUMBARIA (AMENDMENT) BILL 2024

Annexes

- Annex A – Private Columbaria (Amendment) Bill 2024
- Annex B – Existing Provisions being Amended
- Annex C – Implications of the Proposal
- Annex D – List of Abbreviations

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.”.
-

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.”.

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”.

2. Interpretation

(1) In this Ordinance—

Appeal Board (上訴委員會) means the body established under section 83(1);

approved management plan (經批准管理方案), in relation to a columbarium, means—

- (a) the management plan required under section 18(2) that is approved for the purpose of an application for the issue of a licence in respect of the columbarium; or
- (b) if such a plan is varied under section 42, the plan as varied;

approved plans (經批准圖則), in relation to a columbarium, means —

- (a) plans approved under section 26 (as read with section 27(3), if applicable) in respect of the columbarium that are, on the issue of a specified instrument in respect of the columbarium, annexed to the instrument; or
- (b) if such plans are varied under section 42, the plans as varied;

ashes (骨灰)—

- (a) means ashes resulting from the cremation of human remains, and (except in section 5) includes synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes; and
- (b) includes the container of such ashes, as well as any items interred together with such ashes in the same container (if applicable), except for the following provisions—
 - (i) section 68(3)(d)(iv) and (v);
 - (ii) the definitions of ***eligible claimant*** and ***related item*** in section 6(2) of Schedule 5; and
 - (iii) sections 10, 11(4)(b)(i) and 12(4) of Schedule 5;

authorized officer (獲授權人員) means any officer appointed under section 93(3);

authorized representative (獲授權代表), in relation to an agreement for the sale of an interment right, means a person who is authorized under the agreement to claim for the return of ashes interred under the agreement (other than the person who operates, keeps, manages or in any other way has control of the columbarium in which the ashes are, or are to be, interred or an agent of such a person);

building (建築物) (except in paragraph (b) of the definition of ***structures certifiable for a pre-cut-off columbarium*** in section 4(1) of, and in section 4(2) of, Schedule 2) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

building works (建築工程) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

columbarium (骨灰安置所)—

- (a) means any premises that are used, or claimed, represented or held out to be used, for keeping ashes;

- (b) includes furnaces for burning offerings and any other essential ancillary facilities supporting the premises to be so used; and
- (c) in relation to an application for a licence, includes—
 - (i) any premises that are indicated in the application as being intended to be used for keeping ashes; and
 - (ii) furnaces for burning offerings and any other essential ancillary facilities that are indicated in the application as being intended to support the premises to be so used; but
- (d) excludes premises used or to be used for scattering ashes with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

columbarium premises (骨灰安置所處所) means the premises comprising a columbarium;

commencement of ash disposal notice (展開骨灰處置通告)—see section 8 of Schedule 5;

cut-off time (截算時間) means 8 a.m. on 18 June 2014;

dedicated person (受供奉者) means—

- (a) in relation to a niche or any other area in a columbarium in which ashes of a person are interred—the person; or
- (b) in relation to an interment right (whether in respect of a niche or any other area in a columbarium)—a person whose ashes are to be interred by exercising the interment right, whether or not the person is living and whether or not a specific niche or area is allocated;

deed of mutual covenant (公契) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

Director (署長) means the Director of Food and Environmental Hygiene;

enactment date (刊憲日期) means the day on which this Ordinance is published in the Gazette;

endorsed register (經批註登記冊), in relation to a pre-cut-off columbarium, means—

- (a) a register required under section 24 that is endorsed and attached to the approved plans of the columbarium, as referred to in section 26(3)(b); or
- (b) if such a register is varied under section 42 or updated under section 56(2)(a), the register as varied or updated;

exemption (豁免書) means an exemption issued or renewed under section 13;

in force (有效), in relation to a specified instrument—see section 16;

inter (安放), in relation to ashes of a person—

- (a) means keep the ashes in, on or at any premises in any manner—
 - (i) whether or not the ashes are kept in a container; and
 - (ii) whether or not the ashes or container of ashes are or is kept in a niche; but
- (b) excludes scatter ashes in, on or at any premises with the permission of the Director under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

interment right (安放權), in relation to a columbarium, means the right to inter ashes in the columbarium—

- (a) whether or not in a specific niche or area; and
- (b) whether or not for a definite period;

lease (租契)—

- (a) means a Government lease; and
- (b) includes any undivided share in a Government lease;

licence (牌照) (except in section 4(2) and in section 4(2)(a) of Schedule 2) means a licence issued or renewed under section 13;

Licensing Board (發牌委員會) means the board established under section 8;

niche (龕位) means a compartment, cubicle or vault that is used, or claimed, represented or held out to be used, for keeping ashes of one or more persons usually with the ashes of each person in a container;

non-compliant structures (違規構築物)—see section 4(1) of Schedule 2;

owner (擁有人), in relation to any premises—

- (a) means—
 - (i) a person holding the premises directly from the Government, whether under a lease, short term tenancy or otherwise;
 - (ii) a mortgagee in possession; or
 - (iii) a person who receives the rent of the premises, solely or with another, on the person's own behalf or that of another person, or who would receive the rent if the premises were let to a tenant; and
- (b) if a person referred to in paragraph (a) cannot be found or ascertained or is absent from Hong Kong or is under a disability—also means the agent of the person; but
- (c) excludes the Government;

pre-cut-off columbarium (截算前骨灰安置所) means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the cut-off time;

premises (處所) includes a place and, in particular, includes—

- (a) any land or building;
- (b) a vehicle, vessel, aircraft, hovercraft or other conveyance, if stationary;
- (c) a structure (whether or not movable or offshore); and
- (d) a part of any of the premises described in paragraph (a), (b) or (c);

purchaser (買方), in relation to an interment right in respect of a columbarium, (except in Division 1 of Part 5 and in Schedule 4) means the person to whom the right is sold, whether or not to the person as dedicated person;

qualified professional (合資格專業人士), in relation to any provision of this Ordinance, means the person or persons specified under section 98 in relation to that provision;

Secretary (局長) means the Secretary for Environment and Ecology; (*Amended L.N. 144 of 2022*)

sell (出售)—see section 3;

- seller*** (賣方), in relation to an interment right in respect of a columbarium, (except in Division 1 of Part 5 and in Schedule 4) means the person by whom the right is sold;
- specified form*** (指明格式) means the form specified by the Licensing Board;
- specified instrument*** (指明文書) means—
- (a) a licence;
 - (b) an exemption; or
 - (c) a temporary suspension of liability;
- specified officer*** (指明人員) means the Director, an authorized officer or a public officer;
- structures certifiable for a pre-cut-off columbarium*** (可就截算前骨灰安置所核證的構築物)—see section 4 of Schedule 2;
- temporary suspension of liability*** (暫免法律責任書) means a temporary suspension of liability issued or extended under section 13;
- tenancy*** (租賃) (except in section 2(b)(ii)(B) of Schedule 4) means—
- (a) a short term tenancy granted by the Government; or
 - (b) an agreement entered into between private parties for the letting or leasing of any premises;
- unauthorized development*** (違例發展) has the meaning given by section 1A of the Town Planning Ordinance (Cap. 131);
- unleased land*** (未批租土地) has the meaning given by section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28);
- validity period*** (有效期)—see section 15.
- (2) In this Ordinance, a reference to an application for a specified instrument is a reference to—
 - (a) an application for the issue or renewal of a licence;
 - (b) an application for the issue or renewal of an exemption; or
 - (c) an application for the issue or extension of a temporary suspension of liability.
 - (3) In this Ordinance, a reference to any of the following is to be construed in accordance with the provisions of Part 1 of Schedule 2—
 - (a) compliance with the land-related requirements;
 - (b) compliance with the planning-related requirements;
 - (c) compliance with the building-related requirements.
 - (4) In this Ordinance, a reference to unlawful occupation of unleased land is a reference to the occupation of unleased land in contravention of section 4 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).
 - (5) In this Ordinance, a reference to occupation of land as is necessary for, or ancillary to, the operation of a columbarium is a reference to the occupation of land by—
 - (a) any building or building works containing niches used or intended to be used for the interment of ashes;
 - (b) any area other than a niche used for the interment of ashes; or

- (c) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a), or the area referred to in paragraph (b), to be used as referred to in that paragraph.

Unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of a columbarium is to be construed accordingly.

- (6) In this Ordinance, a reference to unauthorized development undertaken or continued as is necessary for, or ancillary to, the operation of a columbarium is a reference to the unauthorized development in the form of—
 - (a) any building or building works containing niches used or intended to be used for the interment of ashes; or
 - (b) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.
- (7) In this Ordinance, a reference to structures necessary for, or ancillary to, the operation of a columbarium is a reference to —
 - (a) building or building works—
 - (i) that contain niches used or intended to be used for the interment of ashes; or
 - (ii) that are otherwise used for the interment of ashes; or
 - (b) building or building works that are furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.
- (8) In this Ordinance, a reference to non-compliant structures necessary for, or ancillary to, the operation of a columbarium is a reference to non-compliant structures that are structures necessary for, or ancillary to, the operation of the columbarium within the meaning of subsection (7).
- (9) If a specified instrument is transferred under section 39, a reference in this Ordinance to the person holding the instrument is to be construed as a reference to the person to whom it has been transferred.

30. Licence—conditions about ash interment, non-compliant structures and management plan

A licence in respect of a columbarium is subject to the following conditions—

- (a) that the number of sets of ashes kept in the columbarium must be limited to the ash interment capacity shown in the approved plans;
- (b) for a pre-cut-off columbarium—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; and

- (c) that the licence holder must operate and manage the columbarium in accordance with the approved management plan of the columbarium.

44. Notification of changes

- (1) If—
- (a) a person has made an application for a specified instrument; and
 - (b) a change occurs that materially affects the accuracy of the information that the person has provided in connection with the application,
- the person must notify the Licensing Board of the change, in writing, within 14 days after the date on which the change occurs.
- (2) A change referred to in subsection (1)(b) includes (but is not limited to) a change of any director, manager, secretary or other similar officer of the applicant.
- (3) If—
- (a) a specified instrument has been issued, renewed or extended; and
 - (b) a change occurs that materially affects the accuracy of the information that the holder of the specified instrument has provided in connection with the application on the basis of which the specified instrument has been issued, renewed or extended, the holder must—
 - (i) notify the Licensing Board of the change, in writing, within 14 days after the date on which the change occurs; and
 - (ii) provide the information required by the Licensing Board within the time specified by it.
- (4) A change referred to in subsection (3)(b) includes (but is not limited to) a change of any director, manager, secretary or other similar officer of the holder of the specified instrument.
- (5) If the holder of a specified instrument in respect of a columbarium decides to cease operating the columbarium, the holder must notify the Licensing Board of the decision, in writing, within 14 days after the date of the decision.
- (6) A person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

54. Number of sets of ashes interred restricted

- (1) The holder of a licence in respect of a columbarium 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 respective maximum numbers shown in the approved plans.

- (2) Subject to subsection (3), the holder of an exemption in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the cut-off time, as shown in the approved plans.
- (3) The holder of an exemption does not contravene subsection (2) if—
 - (a) any increase in the total number of sets of ashes since the cut-off time is caused only by—
 - (i) sets of ashes interred in the columbarium before the enactment date; or
 - (ii) sets of ashes interred in the columbarium under section 55 or 57; and
 - (b) for each set of ashes mentioned in paragraph (a)(i), it is either—
 - (i) ashes interred or to be interred in a niche, where—
 - (A) the interment right in respect of the niche was sold before the cut-off time; and
 - (B) the name of the dedicated person has been entered into an endorsed register; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 57(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- (4) Subject to subsection (5), the holder of a temporary suspension of liability in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the following time, as shown in the approved plans—
 - (a) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the beginning of the enactment date; or
 - (b) if an application for the issue of an exemption is pending in respect of the columbarium—the cut-off time.
- (5) The holder of a temporary suspension of liability does not contravene subsection (4)(b) if—
 - (a) any increase in the total number of sets of ashes since the cut-off time is caused only by sets of ashes interred in the columbarium before the enactment date (*new sets of ashes*); and
 - (b) each new set of ashes is either—
 - (i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 57(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- (6) A person who contravenes subsection (1), (2) or (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

55. Interment of ashes by exercising interment right sold before cut-off time

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 —

- (a) 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
- (b) the name of the dedicated person has been entered into an endorsed register.

64. Enforcement notice

- (1) The 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.
- (2) The enforcement notice must state—
 - (a) the particulars of the contravention concerned and (if applicable) the time within which the contravention must end;
 - (b) if applicable—the action that the recipient must take to remedy the consequences of the contravention and the time within which the action must be taken;
 - (c) if applicable—the action that the recipient must take to prevent the recurrence of the contravention and the time within which the action must be taken;
 - (d) that a failure, without reasonable excuse, to comply with the notice is an offence; and
 - (e) if paragraph (b) or (c) applies—
 - (i) that, if the recipient fails to take the action referred to in that paragraph within the stated time, 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; and
 - (ii) that the recipient will be liable for the expenses of taking the action.
- (3) 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.

- (4) 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.
- (5) The expenses of any action taken under subsection (4) are recoverable as a civil debt from the recipient of the enforcement notice.
- (6) An appeal under section 84 against a decision to serve an enforcement notice does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise.

Chapter 630

Private Columbaria Ordinance

30/06/2017

87. Powers of Appeal Board

- (1) Subject to sections 88 and 92, in the hearing of an appeal, the Appeal Board may—
 - (a) subject to subsection (2), receive and consider any material—
 - (i) whether by way of oral evidence, written statements, documents or otherwise; and
 - (ii) whether or not it would be admissible in a court;
 - (b) by notice in writing, summon a person—
 - (i) to produce to the Appeal Board any document (including material and information referred to in section 94) that is relevant to the appeal and is in or under the custody or control of the person; or
 - (ii) to appear before the Appeal Board and to give evidence relevant to the appeal;
 - (c) administer oaths and affirmations;
 - (d) require evidence to be given on oath or affirmation; or
 - (e) make an order prohibiting a person from publishing or otherwise disclosing any material the Appeal Board receives.
- (2) Subsection (1)(a) does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made.
- (3) Any notice or order of an Appeal Board hearing an appeal is to be issued by the presiding officer of the Appeal Board.

Chapter 630

Private Columbaria Ordinance

30/06/2017

100. Liability of directors, partners, etc. for offences

- (1) If—
 - (a) a body corporate commits an offence under this Ordinance; and

- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate,

the director, manager, secretary or other similar officer commits the like offence.

(2) If—

- (a) a partner in a partnership commits an offence under this Ordinance; and

- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other partner in the partnership or any other person concerned in the management of the partnership,

the other partner or the other person concerned in the management of the partnership commits the like offence.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(4) If—

- (a) a member of an unincorporated body commits an offence under this Ordinance; and

- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other member or any manager, secretary or other similar officer of the unincorporated body,

the other member or the manager, secretary or other similar officer commits the like offence.

Implications of the Proposal

Financial and Civil Service Implications

The additional resources required by concerned bureau / departments arising from the proposed amendments are minimal and will be absorbed through internal redeployment as appropriate.

2. The actual financial implications of the proposed penalties are subject to amount of fine imposed by the Court in the event of prosecution. In any case, raising government revenue is not the policy intent behind the proposal.

3. From land premium perspective, it is the prevailing policy that the pre-cut-off columbaria, confirmed to be eligible for exemption or licence in all other aspects, can apply to LandsD for administratively regularising breach of the relevant lease conditions and / or unlawful occupation of Government land concerning the niches sold before the cut-off time and those area necessary for / ancillary to their operation by way of a waiver and / or a STT, with waiving of waiver fees and / or STT rentals, as well as administrative fees before and during the period of their SIs. The proposal in this paper will not entail additional financial implications in this regard.

Economic Implications

4. The proposal would provide an option for eligible pre-cut-off columbaria currently pursuing licence to continue to operate at a confined scale if their new applications for exemption are approved. This may also help protect the customers who have acquired interment rights or interred ashes in these pre-cut-off columbaria.

Family Implications

5. The proposal could potentially avert the disposal of or voiding of sale agreements concerning at least about 272 600 sold niches at pre-cut-off columbaria. This would help reduce worries from these families over their ancestors' ashes.

List of Abbreviations

Approved ash interment capacity	–	Maximum number of sets of ashes shown in the approved plans
Approved plans	–	Plans of a private columbarium approved by the Private Columbaria Licensing Board
Bill	–	Private Columbaria (Amendment) Bill 2024
Cut-off time	–	8 a.m. on 18 June 2014
DFEH	–	Director of Food and Environmental Hygiene
FSEH Panel	–	Panel on Food Safety and Environmental Hygiene
LandsD	–	Lands Department
LegCo	–	Legislative Council
Licensing Board	–	Private Columbaria Licensing Board
Ordinance	–	Private Columbaria Ordinance (Cap. 630)
Over-placing ashes	–	Keeping of ashes exceeding the approved ash interment capacity or in niches not covered in the approved plans
Overselling niches	–	Sale of interment rights exceeding the approved ash interment capacity or of niches not covered in the approved plans
PCAB	–	Private Columbaria Appeal Board
PCAO	–	Private Columbaria Affairs Office of the Food and Environmental Hygiene Department

SI	–	Specified Instrument
STT	–	Short-term Tenancy
TPB	–	Town Planning Board
TPO	–	Town Planning Ordinance (Cap. 131)
TSOL	–	Temporary Suspension of Liability