

**24th Meeting of  
the Business Facilitation Advisory Committee**

***Agenda Item 2 : Business Impact Assessment of the  
Proposed Private Columbaria Bill***

**Purpose**

This paper is to brief Members on the results of the consultation on the Private Columbaria Bill (the Bill) and the key findings and initial recommendations of the Business Impact Assessment (BIA) study.

**Background**

2. The Government proposed to enact a new piece of legislation to give effect to a licensing scheme, with the objective to regulate the operation of private columbaria, so as to –

- (a) ensure compliance on the part of the licensed private columbaria with the statutory and Government requirements in general. These include the land lease, the statutory town planning, building and fire safety as well as environmental and traffic requirements;
- (b) ensure a sustainable mode of operation that supports a reasonable standard of service, management and maintenance in the long run; and
- (c) enhance the protection of consumer interests. This covers the deceased who have paid for the niches before death and the purchasers of niches earmarked for future use by themselves and/or others.

**Public consultation**

3. The Food and Health Bureau (FHB) launched the second public consultation in December 2011 for three months<sup>1</sup>. We proposed to introduce

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<sup>1</sup> FHB launched the first public consultation in July 2010 for three months on review of columbarium policy. The public expressed strong support for a licensing scheme, but views were divergent over the scope and intensity of regulation and the arrangements for long-existing private columbaria.

a statutory licensing scheme (the licensing scheme) under a new Private Columbaria Ordinance. We acknowledged that private columbaria played an important role in the market, both in terms of supply, and more importantly, choice of niches and related services. Views collected from the consultation indicated general support for taking forward the licensing scheme and the proposed regulatory framework therein.

4. Apart from the over 150 written submissions from individuals and organisations, a lot of constructive feedback came through different channels, including the relevant Legislative Council Panel, the Town Planning Board, the Consumer Council and advisory bodies (e.g. the Advisory Council on Food and Environmental Hygiene), all 18 District Councils, various concern groups and representatives of the trade.

5. A detailed summary of the mainstream views collected during the second consultation is at **Annex**. It can be seen from Annex that while stakeholders were in general positive towards the proposed regulatory framework as proposed above, different respondents also raised various concerns. There were concerns that the proposed licensing requirements might create compliance burden and financial difficulties for private columbaria. Advocates who stressed the importance of respecting the arrangements already entered into under traditional customs for the deceased cautioned against any moves that would upset the resting place of the deceased. Advocates who preached protecting the rights of people living in close proximity to these columbaria were against exempting dated columbaria.

6. In the light of the views collected, the Government has been carefully deliberating the details of the licensing scheme. In parallel, we have also completed another round of visits to private columbaria which appear on the list of “Information on Private Columbaria” published by the Development Bureau (DEVB) (the List) to gain a better understanding of their operations. Based on such deliberation and further information gathered, we have come up with a more detailed framework of the proposed licensing scheme, and commissioned a BIA study, with a view to finalising a set of regulatory requirements which are reasonable, practicable and enforceable.

### **Business Impact Assessment**

7. In order to gain a better understanding of the situation, and to review whether changes should be made to the proposed regulatory scheme

having regard to the existing trade practices, we have appointed a consultant to conduct a BIA to study the implications of the proposals on the trade.

8. At the time of the consultancy study, there were 125 private columbaria on the List published by DEVB. The consultant conducted a total of 31 interviews<sup>2</sup> with a cross-section of stakeholders from the local columbarium industry, covering those known to the Government (on Part A and Part B of the List) and those not identified in the List (existing and potential (new) operators). The consultant segmented stakeholders based on their size (large operators, and small and medium sized operators) and four key criteria (i.e. whether they have new niches to sell; whether they had recurrent revenue streams; whether they had the practice of maintaining customer records; and whether they were operated on self-owned premises), for the purpose of ascertaining the potential challenges faced by operators in achieving compliance with the proposed licensing requirements.

### Key Findings

9. All the stakeholders the consultant interviewed agreed in principle about the need to regulate the private columbarium industry, and the benefits that regulation would bring. Their hope was that it could be done in a way that would not affect traditions, services and business. Like businesses in other industries, all 'existing' private columbaria should be abiding by existing statutory requirements even without the proposed Bill. The proposed Bill merely states that compliance with the requirements of the existing Ordinances was a prerequisite for obtaining a private columbarium licence.

10. That said, the consultant pointed out that the biggest challenges, burdens and costs to operators actually came from meeting the requirements of existing Ordinances (town planning (Cap. 131), building safety (Cap. 123), fire safety (Cap. 95, Cap. 295, Cap. 502, and Cap. 572), environmental hygiene (Cap. 132), and environmental protection (Cap. 311)) and not those of the proposed Bill (e.g. formulating a management plan, having a 'register of patrons', putting in place cessation of business arrangements, etc.). In this connection, the consultant opined that measures needed to be devised to reasonably facilitate compliance with the licensing requirements on the part of pre-existing private columbaria (in particular the smaller ones).

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<sup>2</sup> In addition to the views collected from the 31 interviews conducted, a stakeholder provided written views to the consultant, and another stakeholder gave a short telephone interview (both of them are on the List).

11. The consultant opined that potential operators (investors or interested parties) would likely be discouraged from entering the market given the shortage of land with suitable zoning in Hong Kong. Many were concerned about having to acquire a piece of land (a significant investment) without knowing with certainty whether or not they would be able to obtain the required approvals from the planning and lands aspects.

12. The consultant has estimated the compliance cost associated with the proposed licensing scheme. The total 'one-off cost' is \$158.0 million and the total 'recurrent cost' (on an annualised basis) is about \$7.2 million.

### Initial Recommendations

13. Based on the findings and the feedback of the trade, the consultant has made a number of initial recommendations including the following: (a) consider lengthening the minimum tenancy period requirement from 5 to 10 (or even 20) years for operators operating on leased premises (privately owned); (b) consider extending the licence period from 5 years to 10 years; (c) consider whether there is room to lower the licence fee; and (d) instead of requiring the setting up of a maintenance fund, consider adopting an 'outcome-based approach' for ensuring that operators achieve long-term building/structural soundness for their columbarium facilities by submitting regular structural maintenance reports that are certified by qualified professionals (e.g. Authorised Persons), etc.

14. The Government will take into account the consultant's findings and recommendations, where applicable, when drawing up the detailed features of the Bill.

### **Way forward**

15. We plan to introduce the Bill into the Legislative Council by the second quarter of 2014.

## **Public Consultation on Licensing Scheme for Private Columbaria Summary of Opinions**

On 13 December 2011, the Food and Health Bureau (FHB) published the consultation document on the proposed licensing scheme for private columbaria and launched a public consultation for about three and a half months until 30 March 2012.

2. The consultation document set out a number of detailed proposals relating to the regulatory framework of the licensing scheme for private columbaria. The Government proposed to formulate a new piece of legislation titled the *Private Columbaria Ordinance*, under which all private columbaria (unless exempted) should be subject to regulation under the licensing scheme. A statutory Private Columbaria Licensing Board would also be set up as the licensing authority. The licensing scheme would impose regulation on private columbaria on various aspects, including the right of the columbarium operator to use the premises, compliance with statutory requirements and land lease conditions, management of the columbaria and consumer protection, etc. In addition, the consultation document proposed to exempt those columbaria situated within private cemeteries listed in Schedule 5 to the *Public Health and Municipal Services Ordinance*, as well as undertakers of burials, from the licensing scheme. Arrangements for long-existing private columbaria were also covered in the consultation document. At present, there were many private columbaria which had been operating for years in the market, providing a place for the storage of cremains of deceased family members for many members of the public. However, some of these columbaria did not meet all the statutory and Government requirements and land lease conditions. These columbaria should first of all actively seek regularisation in order to obtain a licence for continued operation and sale of niches under the future regulatory regime. As it took time to apply for regularisation, the licensing regime would provide for arrangements on temporary suspension of liability with the purpose allowing the operators to continue maintaining the operation of the niches already sold while working to regularise their columbaria in order to rectify the irregularities. Private columbaria given exemption or

temporary suspension of liability would still be required to comply with the conditions imposed by the licensing authority, including cessation of sale of their remaining niches, reduction of noise and air pollution, etc. While keeping an open mind about the concept, arrangements and conditions of exemption, the Government would like to gauge public views before proceeding to the formulation of the relevant policy and various details.

3. During the consultation, the Government received over 150 submissions from individuals and organisations through various channels. FHB and relevant officials also widely consulted different sectors of the community and obtained a good deal of constructive views through various channels, including the relevant Legislative Council Panel, the Town Planning Board, the Consumer Council and relevant advisory bodies (e.g. the Advisory Council on Food and Environmental Hygiene), all 18 District Councils, various concern groups, representatives of the trade and a number of relevant stakeholders.

### **Summary of Opinions**

4. A wide range of views and suggestions on various aspects of the licensing scheme for private columbaria were collected. The public and stakeholders from various sectors expressed unanimous support for taking forward the licensing scheme for private columbaria and were in general positive towards the proposed regulatory framework. The mainstream opinions are summarised in the ensuing paragraphs.

#### *Licensing Scheme*

5. The public and various stakeholders generally welcomed the introduction of the licensing scheme to enhance the regulation of private columbaria. While some respondents noted that the supply of columbarium facilities should be geared towards public columbaria, many felt that private columbaria also played an important role in the market in terms of providing choice of niches. Different stakeholders expressed divergent views over the scope and intensity of regulation under the licensing scheme. On the one hand, they hoped the Government would ensure that the impact of private columbaria on nearby residents and

environment could be minimised. On the other hand, they deemed it necessary that the Administration, while imposing effective regulation, should have regard to the interests of those who had already purchased niches, as well as the sustainable development of the trade. There were suggestions that operators providing niches on a tenancy basis or at a monthly rent should be regulated under the licensing scheme. Some members of the local communities considered that both the retail outlets and the agents of private columbaria should be covered under the licensing scheme.

### Composition of the Private Columbaria Licensing Board

6. On the composition of the Private Columbaria Licensing Board (“the Licensing Board”), the views collected were generally supportive of a balanced mix. Some respondents opined that members of the Licensing Board should include district representatives as well as representatives of relevant Government departments and professionals, such that public views could be taken into account when the Licensing Board considered applications from private columbaria for a licence/exemption/temporary suspension of liability. There were also proposals from the trade that members of the Licensing Board should comprise representatives of the trade, consumers and religious bodies.

### Licensing Conditions

7. On the proposed requirements of licence applications and licensing conditions, respondents were by and large of the view that given public expectation of long-term storage of cremains, in future the premises for operation as a private columbarium should be self-owned by the operator, since self-ownership, as opposed to tenancy, provided more assurance of long-term occupation of the premises. Besides, the public in general maintained that private columbaria should be located far away from residential areas and that improvement on the outlook, layout and management of these facilities should be made in order to minimise the nuisance (e.g. noise, air pollution and traffic congestion) to neighbouring residents. Some were of the views that when considering individual applications, the Licensing Board should consult the relevant districts extensively. The public also considered that applicants for a licence

should ensure that their premises were in compliance with all statutory and Government requirements such as those relating to town planning, building safety, fire safety, environmental hygiene and environmental protection, as well as land lease conditions. Some respondents indicated that an applicant for a licence should not contravene the deed of mutual covenant of the relevant building. As the overall supply of and demand for columbarium niches was included as one of the public interest considerations that the Licensing Board would take into account, some expressed concerns about the absence of clearly stated criteria in this regard. There were also suggestions that the Licensing Board should have regard to the applicants' background, financial position and integrity, e.g. whether they were involved in the practice of "violation first, application later" in columbarium development. Some respondents opined that since the supply of private columbarium facilities failed to meet the demand, the Administration should relax the licensing requirements for private columbaria. To enhance consumer protection, most respondents upheld the proposal that operators would be required to enter into contracts with consumers over the ownership/terms of use of niches. Respondents were also largely in favour of the setting up of a maintenance fund to be used for the long-term care and upkeep of the relevant facilities. In this connection, there were suggestions that steps should be taken to ensure that the money under the fund was properly maintained.

### Licensing Period

8. Regarding the proposal for the licensing period to be set at five years, there were views (mainly from the trade) that the licensing period should be extended to provide greater certainty for trade members investing in the operation of private columbarium business. On the other hand, some respondents argued for a shortening of the licensing period so that the Government could exercise regular monitoring to ensure that the operation of licensed private columbarium facilities continued to comply with the statutory and Government requirements and that timely remedial measures could be taken where necessary.



### Arrangements in Case of Cessation of Business

9. As for the proposed arrangements in case of cessation of business of private columbaria, some respondents (including the trade) opined that the Government should provide assistance to affected consumers (such as those who had suffered losses from purchasing niches of unauthorised private columbaria), including considering various means to protect consumer rights, such as requiring the establishment of a compensation fund by private columbarium operators. Some respondents, however, expressed concern that such a practice might in a way encourage the development of unauthorised columbaria or result in operators of soundly operated columbaria having to accept the liability of indemnities for operators of poorly-run columbaria. Thus, unauthorised columbaria failing to comply with the requirements would be able to evade their responsibility. The majority of the respondents agreed that the future legislation should require the licensee to handle interred cremains before he/she ceased operation under different situations. Failure to do so would be an offence. Meanwhile, some suggested that there should be more thorough discussion on handling of the affected cremains.

### Exemption Scheme

10. As regards the proposal for columbaria situated within private cemeteries listed in Schedule 5 to the *Public Health and Municipal Services Ordinance* to be exempted from the licensing scheme without condition and for licensed undertakers of burials to be exempted with conditions, most stakeholders considered such exemption reasonable, given that the former were currently governed by the relevant legislation and that these operators had proven track record in building and operating cemeteries and large scale columbaria while the cremains storage service provided by the latter was temporary in nature, pending the availability of proper niches elsewhere for long-term interment. However, some residents in Hung Hom expressed grave concern about granting licensed undertakers of burials exemption from the licensing scheme. Some suggested that the Licensing Board should require licensed undertakers of burials granted with exemption to take measures to minimise the nuisance being caused to the neighbourhood arising from their temporary storage

services, such as setting a time-limit of storage and the prohibition of burning of joss papers and incense by patrons within the premises and in the vicinity. On the other hand, some owners or residents of the relevant buildings objected to the granting of exemption to licensed undertakers of burials.

11. On the arrangements for long-existing private columbaria, there were divergent views in the community. At meetings of various District Councils, members largely subscribed to a pragmatic way to deal with the long-existing private columbaria, but expressed conflicting stance over the exemption conditions. District Councils with private columbaria in their districts generally expected more stringent exemption conditions. Similarly, some respondents (mainly neighbouring residents of private columbaria) were opposed to allowing certain private columbarium facilities to continue with their operation and urged law enforcement departments to take vigorous enforcement actions against irregularities of the private columbaria in question. Besides, some respondents believed that the exemption scheme would be unfair to those operating their private columbarium facilities in an authorised manner. Various political parties also put forth different views on this issue in their submissions. Some suggested scrapping unauthorised columbaria; some maintained that consideration might be given to replacing exemption with regulation by the issue of different types of licences; and some recognised that the historical legacy of the existing columbaria should be dealt with in a balanced and pragmatic way (such as granting exemption). Meanwhile, other respondents (mainly the trade and those who had already purchased private columbarium niches) were concerned about the possible relocation of cremains, which contradicted the traditional Chinese notion of “letting the deceased rest in eternal peace”. On account of this, they proposed that the long-existing private columbaria should be dealt with in a pragmatic way. They opined that consideration should be given to exercising discretion towards certain existing private columbaria which meet specified criteria but which were not in compliance with all the relevant statutory and Government requirements (e.g. exempting on a permanent basis from the licensing scheme). At the same time, they noted that in any case, the issue of unauthorised columbaria had been in existence for some time, in taking any enforcement action against existing columbaria, the authorities needed to

take into account the shortage of such facilities in the market. In this connection, some respondents submitted that consideration might be given to granting exemption to columbaria which had been in existence for over 10 to 20 years before commencement of the new legislation. Besides, the trade pointed out that if columbaria which had been given exemption or temporary suspension of liability or were applying for a licence were requested to freeze the sale of their unoccupied niches, they would have insufficient funds to remain in operation.

12. Some respondents were of the view that consideration should be given to granting exemption to columbarium facilities run by religious or charitable organisations (e.g. columbaria situated in temples and monasteries), while others held that whether a columbarium was run by religious bodies should not be a criterion for exemption given the difficulty in devising an objective standard and the fact that the operators might change from time to time. Some representatives of the trade advocated early implementation of a “registration scheme for private columbaria” and suggested that a general register of all private columbaria should be centrally publicised by FHB to replace Parts A and B of the Information on Private Columbaria kept by the Development Bureau.

#### *Mechanism for Temporary Suspension of Liability*

13. On the proposed mechanism for temporary suspension of liability, some respondents agreed with allowing unauthorised private columbaria to apply to the departments concerned for regularisation in respect of their operation (e.g. applying for the relevant planning permission and/or lease modification) through established channels and procedures, but pointed out that these unauthorised private columbaria should have had sufficient time to apply for regularisation before commencement of the new legislation. Hence, they either objected to the implementation of the mechanism for temporary suspension of liability or suggested tightening the mechanism in order to guard against abuse. Some respondents, however, considered it appropriate to allow unauthorised private columbaria a reasonable period of time to apply for regularisation. There were also propositions to give temporary suspension of liability to those private columbaria which already met town planning and lands

requirements but had yet to satisfy other requirements (such as environmental requirements), instead of adopting a one-size-fits-all approach in granting the temporary suspension of liability.

### *Penalty and Appeal Mechanism*

14. Some respondents supported the provision for sanctions that had a deterrent effect in the legislation. There were also submissions calling for the establishment of an appeal mechanism for those affected to lodge appeals against the decisions of the Licensing Board.

### *Legislative Timetable*

15. The respondents generally expected the Government to speed up the legislative process for the early introduction of the Bill into the Legislative Council. Many respondents pointed out that the proposed transition period of 18 months was too long and likely to create a lacuna before commencement of the legislation during which unauthorised private columbaria would be able to continue with their development and operation and expedite the sale of niches.

### **Other Views**

16. During the consultation, there were views which suggested that the Government should continue to increase the supply of columbarium facilities to meet the overall public demand; encourage public acceptance of more environmentally friendly and sustainable means of handling cremains; and further strengthen consumer education to better protect consumers who purchased niches in private columbarium facilities.

### **Conclusion**

17. Based on the consultation outcome above, FHB is drafting the relevant legislation. We will exercise prudence in balancing the views of various stakeholders in order to ensure that the scope and level of regulation under the relevant legislation is appropriate and in the overall interests of the community.