



Public Consultation on Licensing Scheme for Private Columbaria

Food and Health Bureau

December 2011

Public Consultation on the Licensing Scheme for Private Columbaria

Contents

Chapter 1	Overview
Chapter 2	The Current Private Columbaria Landscape
Chapter 3	Private Columbaria Licensing Board
Chapter 4	Licence for Operating a Private Columbarium
Chapter 5	Exemption from the Licensing Scheme
Chapter 6	Temporary Suspension from Liability Arising from the Operation of a Private Columbarium without a Licence or an Exemption for Pre-existing Private Columbaria
Chapter 7	Transition, Appeals, Sanctions and Timetable
Chapter 8	Summary of questions

Annexes

Annex A	Review of Columbarium Policy – Summary of Opinions
Annex B	Code of Practice
Annex C	18 Columbaria Situated within Private Cemeteries Specified in Schedule 5 to the Public Health and Municipal Services Ordinance (Cap. 132) Regulated by the Private Cemeteries Regulation (Cap. 132BF)

CHAPTER 1 OVERVIEW

Purpose

- 1.1 The purpose of this consultation is to gauge public views on the details of a proposed licensing framework for private columbaria. The Food and Health Bureau (FHB) will conduct consultation from 13 December 2011 till 30 March 2012. Members of the public are welcome to give their views.

Outcome of the First Public Consultation and Updated Position

- 1.2 On 6 July 2010, FHB published a consultation document on review of columbarium policy and launched a three-month public consultation. In the consultation document, it was suggested that columbarium development should be primarily taken forward in the following directions:
- (a) increasing the supply of columbarium facilities to meet the overall public demand;
 - (b) encouraging public acceptance of more environmentally friendly and sustainable means of handling human cremains¹;
 - (c) enhancing consumer protection in the choice of private columbarium facilities; and
 - (d) enhancing the regulation of private columbaria.
- 1.3 The public welcomed the review of columbarium policy and over 500 submissions were received. Constructive feedback came through different channels, including the relevant Legislative Council Panel, the Town Planning Board (TPB) and other advisory bodies (e.g. the Land and Development Advisory Committee and the Advisory Council on Food and Environmental Hygiene), all 18 District Councils, various concern groups and representatives of the trade.

¹ “Human cremains” (人類骨灰) or “cremains” (骨灰) used in this consultation document mean ashes resulting from the cremation of human remains.

- 1.4 The mainstream opinion agreed to the need for increasing the supply of public columbaria, enhancing regulation and sustainable development of private columbaria and protecting consumer rights. A summary is at **Annex A**.
- 1.5 In the public consultation, the public expressed strong support for a licensing scheme to enhance regulation of the operation of private columbaria. However, views over the scope and intensity of regulation under the licensing scheme and the arrangements for pre-existing private columbaria were divergent. The interests of those columbarium operators who are subjects of future regulation, those living in the neighbourhood of columbaria that do not comply with current statutory and Government requirements and those who have made purchases with such columbaria are understandably very different.
- 1.6 To facilitate a focused and constructive discussion on the subject and to balance the interests of different stakeholders, we highlight the following main considerations –
- (a) **A robust but pragmatic way forward** - The operation of private columbaria, same as the operation of all trades in Hong Kong, must be in compliance with the statutory and Government requirements. Insofar as public safety is concerned, all prevailing policies and standards should be strictly followed. The licensing scheme should be a forward-looking and robust regulatory regime, proportional to the issues at stake. The trade and even more so the public have demanded us to be pragmatic and sensitive when dealing with those columbaria which had been in existence for many years.
 - (b) **Respect for arrangements already made under traditional customs** - Ancestral worship is an important value cherished by all of us. While there is indication that scattering of cremains and exhumation arrangements are gaining acceptance, and that ancestral worship may be taking new forms such as via internet services, there are still a large number of people, especially the older generation, who see it as their filial duty to ensure their ancestors can “rest in peace” (入土為安) after death. We have been reminded by community leaders, general public and the trade that we should respect the arrangements already entered into for the

deceased and that upsetting the resting place of the deceased should not be contemplated lightly.

- (c) **Due regard for the living** - Existence of a private columbarium in the neighbourhood may bring about impact on traffic, noise and environmental nuisance. It is important that a regulatory regime should have sufficient regard to such impact such that suitable management measures would be in place to address the plight of the neighbourhood. It should be pointed out that cremains are inorganic matter and should not cause concerns from the hygiene point of view.
- (d) **Sustainable development of the trade** - Private columbaria play an important role in the market, both in terms of supply and, more importantly, choice of niches. Some patrons prefer private columbaria mainly because of their personalised services such as pre-death purchase and daily worship services, etc. With a cremation rate of about 90% in Hong Kong, there is a pressing need for a steady niche supply in the coming years to meet demand. Private columbaria complement their public counterparts in boosting the supply of niches. Sustainable development of the trade is therefore important.

We need to work out a licensing scheme which satisfies the test of necessity, reasonableness and proportionality, and which strikes a balance between the interests of different stakeholders. It is a fine balancing act. We appeal to you to share your views with us.

CHAPTER 2 THE CURRENT PRIVATE COLUMBARIA LANDSCAPE

The Information on Private Columbaria

- 2.1 Since December 2010, the Development Bureau has been publishing and updating quarterly the Information on Private Columbaria (the Information) covering private columbaria known to the Government. The purpose of this measure is to assist members of the public to make informed decisions when purchasing niches. It is introduced as an interim measure before a licensing scheme for private columbaria is put in place. The latest edition of the Information is available at the website of the Development Bureau (www.devb.gov.hk).
- 2.2 There are two parts to the Information. Part A sets out private columbaria which are compliant with the user restrictions in the land leases and town planning requirements and are not illegally occupying Government land. Part B includes other private columbaria made known to the Lands Department (LandsD) and the Planning Department (PlanD) that do not fall under Part A. These may have been confirmed to be non-compliant with the user restrictions in the land leases and / or statutory town planning requirements and / or are illegally occupying Government land or are pending checking for compliance with the relevant requirements for inclusion in Part A. Private columbaria in Part B which have subsequently been confirmed to have met the relevant requirements for inclusion in Part A will be moved from Part B to Part A. As at 30 September 2011, there were 31 private columbaria on Part A and 65 on Part B. The information provided is not exhaustive. New cases will be included in the Information in subsequent updates subject to confirmation.
- 2.3 Members of the public who wish to purchase niche(s) at private columbaria are reminded of the importance to check whether the respective columbarium is compliant with all statutory and Government requirements, including town planning requirements and land leases. Members of the public are also reminded to ascertain from the operators of private columbaria how they would be compensated should the respective private columbarium be prohibited from operating or cease operation.

Outreaching to Private columbaria

2.4 To gather some basic information about existing private columbaria to assist us to work on a preliminary framework for the proposed licensing scheme, FHB and the Food and Environmental Hygiene Department (FEHD) visited a wide selection of the private columbaria covered by the Information. The key findings are summarised below –

- (a) the transaction of niches in almost all private columbaria run by commercial entities did not involve sale of undivided share of land or premises, but took the form of a service contract / agreement concerning the right to use the niche till a specified date (e.g. 30 June 2047). They usually could provide a clear price list;
- (b) for private columbaria operated by religious and / or charitable organisations, it was common for them to receive donation / incense money in exchange for the allocation of a niche. The only evidence of transaction was a receipt instead of a proper contract / agreement signed by both parties. Some of them had clearly listed prices. They were willing to comply with the proposed requirement concerning entering into contract with consumers under the future licensing scheme for new niche transactions;
- (c) among columbaria operated by religious and / or charitable organisations, it was quite common that sale and transfer of niches would only be conducted with dedicated nominees specified for each niche. In some extreme cases, no change in the nominee(s) was allowed. The purpose of such arrangement was to prevent speculation in the second-hand market;
- (d) as maintenance was a key issue, some operators required a one-off payment of maintenance fee upfront at the purchase. Some of them had set up a maintenance fund and kept separate accounts;
- (e) some private columbaria run by commercial entities relied on “agents” for referrals and payment of a commission amounting to 30 - 40% was quoted, while many private

columbaria run by religious and / or charitable organisations relied on direct sales;

- (f) short-term rental service of niches was not popular and definitely not the mainstream mode of operation for private columbaria;
- (g) operators considered that private columbaria played an important role in the market, both in terms of supply and choice of niches. Many of them provided personalised services such as pre-death purchase, daily / bi-monthly worship service or commemorative service on special occasions / anniversaries, etc.;
- (h) operators were generally supportive of a licensing scheme to enhance regulation of private columbaria and some of them were keen to pursue regularisation. However, many pre-existing private columbaria pointed out that when they started operation several decades ago, there were no such elaborate licensing requirements and they might have difficulties in fulfilling them; and
- (i) some private columbaria operated by religious and / or charitable organisations had the niches solely for their disciples and not for sale to the public when they started operation decades ago. They wished to be exempted from the licensing scheme.

The above findings relate to a number of existing private columbaria known to us and to which we have visited. The information by no means represents the situation of all private columbaria in Hong Kong.

- 2.5 We have also organised briefings for the licensed funeral parlours and undertakers of burials during the first consultation period. Given that they are already required to obtain licences under the Public Health and Municipal Services Ordinance (Cap. 132), they opposed to the proposal for putting them under the future licensing scheme for private columbaria. They considered that they had legitimate need for temporary storage of cremains in their licensed premises as a natural part of their routine business and opined that their mode of operation was substantially different from that of private columbaria.

CHAPTER 3 PRIVATE COLUMBARIA LICENSING BOARD

3.1 There was wide support for the suggestion to introduce a licensing scheme to regulate private columbaria during the first consultation. Building on such support, we now propose to introduce a statutory licensing scheme under a new piece of legislation to be entitled the Private Columbaria Ordinance. The objectives of the licensing scheme are to better regulate private columbaria, so as to –

- (a) ensure compliance with the statutory and Government requirements by the licensed private columbaria. These include the land lease, the statutory town planning, fire safety and building safety as well as environmental and traffic requirements;
- (b) ensure a sustainable mode of operation supporting a reasonable standard of service, management and maintenance; and
- (c) enhance the protection of consumer interests. This covers both the rights of the deceased who had paid for the niches before death and purchasers of niches earmarked for the future use by themselves or their relatives.

Private Columbaria Licensing Board

3.2 We propose that a statutory Private Columbaria Licensing Board (the Licensing Board) should be the licensing authority. A balanced mix of officials and non-officials from the wider community will be appointed by the Secretary for Food and Health as members to ensure that the Licensing Board would exercise its licensing duties in a fair and objective manner. The Licensing Board will decide on the merits of applications for licence / exemption² / temporary suspension from liability arising from the operation of a private columbarium without a licence or an exemption (temporary suspension from liability)³ having regard to all relevant factors which include compliance with different regulatory requirements,

² “Exemption” referred to in this document relates to exemption from the licensing scheme and includes (a) exemption without condition (paragraphs 5.2 to 5.4); and (b) exemption with conditions (paragraphs 5.5 to 5.13).

³ Giving temporary suspension from liability relates to the licensing scheme and may be accompanied by conditions (Chapter 6).

professional input from relevant disciplines and public interest considerations such as overall supply of and demand for columbarium niches, views of residents in the district, as well as interest of patrons of columbaria which came into existence before introduction of the licensing scheme. Representatives from relevant government bureaux and departments can be invited to attend meetings of the Licensing Board to provide information / expert advice to the Licensing Board on a need basis.

- 3.3 We further propose to designate the Licensing Board as a “public body” under the Prevention of Bribery Ordinance (Cap. 201), so that members of the Board would become public servants under Cap. 201 and be subject to the probity requirements prescribed thereat.
- 3.4 FEHD will be the executive arm of and secretariat for the Licensing Board. FEHD will also be the enforcement agency in respect of the licensing scheme under the new legislation. Other Government departments responsible for other statutory standards and requirements will continue to exercise their enforcement powers and take enforcement actions against unauthorised aspects of the columbaria concerned under their respective Ordinances and mandate. Insofar as public safety (such as building safety and fire safety) is concerned, all prevailing policies and standards will be strictly followed.

Powers of the Licensing Board and FEHD

- 3.5 To ensure that the Licensing Board would have the necessary but reasonable powers to perform its statutory duties, we propose that the Licensing Board should be empowered to, inter alia –
- (a) approve or reject an application for a licence / exemption / temporary suspension from liability;
 - (b) approve or reject an application to renew a licence or extend temporary suspension from liability;
 - (c) handle complaints, investigate into irregularities, and impose disciplinary sanctions including suspending or revoking a licence / exemption, or revoking temporary suspension from liability;

- (d) approve or reject an application for the transfer of a licence, as well as the cancellation of a licence / exemption / temporary suspension from liability;
- (e) exempt certain categories of private columbaria from the licensing scheme;
- (f) impose and vary conditions in a licence / exemption / temporary suspension from liability as the Licensing Board considers fit;
- (g) amend anything in a licence / exemption / temporary suspension from liability on its own motion or upon application;
- (h) deal with a licence which is surrendered by a licensee;
- (i) require and specify the information / documents to be furnished to the Licensing Board in any matter carried out pursuant to the Private Columbaria Ordinance;
- (j) determine the manners and procedures in which –
 - (i) applications are made;
 - (ii) the Licensing Board considers and determines applications; and
 - (iii) the Licensing Board conducts its business (including meetings and hearings);
- (k) issue a Code of Practice which in the opinion of the Licensing Board is suitable for providing practical guidance to the operators to ensure proper operation and management of private columbaria;
- (l) prescribe the level of the initial deposit and the percentage of sale proceeds to be deposited to the Maintenance Fund; and
- (m) prescribe forms for the purpose of implementing the provisions of the new legislation.

3.6 As the executive arm and enforcement agency of the Licensing Board, FEHD should have the power to, inter alia –

- (a) authorise any public officer to enter any premises or places in respect of which an application for a licence / exemption / temporary suspension from liability has been received or a licence / exemption has been granted or temporary suspension from liability has been given, or which are reasonably suspected to be used as a private columbarium without a licence / exemption / temporary suspension from liability, in order to –
 - (i) inspect the premises or places;
 - (ii) check any related documents therein for the purposes of the relevant legal provisions;
 - (iii) require any person found in the premises or places who is suspected to have committed an offence of operating a private columbarium without licence / exemption / temporary suspension from liability to produce name and address and proof of identity; and
 - (iv) inspect and seize anything which has evidential value to prove any offence committed under the relevant legal provisions and handle any relevant situation in situ for a period of not less than three months, such as contacting descendants for subsequent arrangement of the cremains if the situation warrants;
- (b) direct an operator granted a licence / exemption or given temporary suspension from liability to take effective remedial actions for proper management of a private columbarium within a specified period of time;
- (c) in case of serious and / or repeated violations of the relevant legal provisions or conditions in the licence / exemption / temporary suspension from liability, and in addition to suspending / revoking a licence / exemption / temporary suspension from liability as directed by the Licensing Board and as the circumstances warrant, close the private columbarium concerned, and direct the staff / management of an operator granted a licence / exemption or given temporary

suspension from liability to take remedial actions;

- (d) under exceptional circumstances, such as cessation of business due to closure of the private columbarium (both voluntary or as a result of (c) above or (e) below), FEHD may dispose of the human cremains deposited in a private columbarium, in the manner as FEHD considers fit;
- (e) may apply to court for a closure order in respect of any premises or places which are used as a private columbarium without a licence / exemption / temporary suspension from liability, and may as the circumstances warrant, direct the staff / management of columbarium concerned to take remedial actions, dispose of the human cremains left in a private columbarium in the manner as FEHD considers fit;
- (f) recover the cost plus a surcharge in respect of disposing of human cremains from an operator / ex-operator granted a licence / exemption or given temporary suspension from liability or an operator concerned under (c) to (e);
- (g) require any applicant or licensee or operator granted an exemption or given temporary suspension from liability to produce documents relevant to an application, the subject matter of a complaint or an investigation under the Private Columbaria Ordinance;
- (h) administer interrogatories on any applicant or licensee or operator granted an exemption or given temporary suspension from liability who is reasonably believed to be able to provide relevant information to enable FEHD to discharge its duties under the Private Columbaria Ordinance; and
- (i) obtain from other enforcement departments any information in the possession of such departments in relation to any private columbaria to enable FEHD to discharge its duties under the Private Columbaria Ordinance.

Invitation of Comments

3.7 Comments are invited on –

- (a) the proposed establishment and composition of a Licensing Board, as stipulated under paragraphs 3.2 to 3.4; and
- (b) the proposed powers of the Licensing Board and FEHD, as stipulated under paragraphs 3.5 and 3.6.

CHAPTER 4 LICENCE FOR OPERATING A PRIVATE COLUMBARIUM

Definition of Private Columbarium

- 4.1 We need to introduce a statutory definition of “private columbarium”. We propose to define private columbarium as any place which offers to store human cremains, but which is not built and / or operated / maintained by the Government. These private columbaria include those in existence before the enactment date of the new legislation, columbaria run by charitable organisations as well as religious institutions (e.g. temples and monasteries). The keeping of cremains of a limited number of deceased family members at home would normally not be covered by this definition.
- 4.2 Under the proposed licensing scheme, no person shall operate a private columbarium unless he / she is issued with a licence (Chapter 3), or is exempted from the licensing scheme without condition (paragraphs 5.2 to 5.4), or is granted an exemption with conditions (paragraphs 5.5 to 5.13) or given temporary suspension from liability with conditions (Chapter 6) by the Licensing Board. Failure to do so will be an offence.

Definition of Nominees and Purchasers

- 4.3 We also propose to set out a clear definition of the following terms in relation to sale and purchase of columbarium niches –
- (a) nominees are the individuals whose cremains are or are earmarked to be stored in the niches; and
 - (b) purchasers are the ones who pay for the niches –
 - (i) in pre-need contracts⁴, they could be the deceased before their death or those related to them (hereinafter called related persons); or

⁴ A pre-need contract refers to one where the transaction over the niche is completed but the niche will continue to be vacant pending occupation in some future date (when the purchaser or the person(s) for whom the niche is intended pass(es) away).

- (ii) in post-need contracts⁵, they are bound to be related persons.

Licence for Operating Private Columbaria

- 4.4 After the commencement of the licensing scheme, all private columbaria, except those exempted or given temporary suspension from liability (see Chapters 5 and 6), shall have to obtain a licence from the Licensing Board before they can start to operate. We propose that the Licensing Board shall be empowered to grant or renew a licence subject to payment of the prescribed fees and meeting of such requirements and conditions set by the Board. A licence for private columbarium shall be valid for five years, subject to renewal; or any shorter period as the Licensing Board considers appropriate.

Requirements for Licence Application

- 4.5 It is proposed the following should be required of applicants for a licence for private columbarium –
- (a) **Right to use the premises** - When a person purchases a niche for himself, a family member or a friend, at least in the past, he expects a long-term deposit of the cremains. The person is naturally unwilling to see any change which affects the deposit of the cremains as this may result in additional charges to them and go against their original expectation of long-term storage of cremains. Hence, we propose that in future the premises for operation as a private columbarium which offers storage services for human cremains should be self-owned by the operator, since self-ownership, as opposed to tenancy, provides more assurance of long term occupation. For application in respect of a pre-existing private columbarium which does not run on self-owned premises, the operator will be required to prove that he has the right to continue to use the premises / site involved for at least five years (i.e. the proposed licensing term). This is to ensure that the operator has a long-term commitment in providing columbarium services. A columbarium operator will be required by the

⁵ A post-need contract refers to one where the niche would be occupied immediately upon completion of transaction as the person(s) for whom the niche is intended has / have already passed away.

Licensing Board to inform purchasers of the operator's right to use the premises, and in the case of an existing operator whose site is obtained on a long lease / tenancy, the remaining period of the lease / tenancy.

- (b) **Statutory requirements** - premises for operation as a private columbarium shall comply with all statutory requirements such as those relating to town planning, building safety, fire safety, environmental hygiene and environmental protection, some of which are highlighted below –

Cap. 131 - the columbarium use should comply with all statutory planning requirements under the Town Planning Ordinance (Cap. 131), including obtaining the requisite planning permission from TPB and complying with the relevant planning conditions. For applications for licences from private columbaria located in areas without any statutory plans, FEHD shall seek the comments of PlanD in assessing the land use compatibility of a certain site before submitting the case to the Licensing Board for consideration.

Cap. 123 - the relevant provisions in the Buildings Ordinance (Cap. 123) relating to building safety (including structural and fire safety) shall be complied with where the related buildings / premises were constructed according to the provisions of Cap. 123, and the Buildings Department (BD) would offer advice upon request of the Licensing Board. There is an established mechanism for licences for restaurants and other food business premises with certain Unauthorised Building Works (UBWs) in or associated with the licensed premises to be tolerated, subject to BD's prevailing enforcement policy against UBWs. We intend to adopt a similar mechanism for private columbaria under BD's prevailing enforcement policy against UBWs. Moreover, any Code of Practice published by the Director of Fire Services under section 16(1)(b) of Cap. 123 or any fire safety requirements imposed by the Director of Fire Services for ensuring the safety standards of the columbaria for licensing purpose shall be complied with.

- (c) **Lease conditions and land occupation** - the use and development of premises / site as a columbarium and / or other aspects of the land use should be permitted under the lease conditions. If not, the lease should have been modified first to allow for such columbarium use. In addition, there should not be any unlawful occupation of Government land for purposes relating to the operation of the columbarium.
- (d) **Management plan** - as part of the licence application, the operator should submit to the Licensing Board a management plan for the columbarium covering, among other things, holding capacity for visitors, admission control, traffic and public transport arrangement / management, crowd management, security management, manpower deployment on both peak and normal grave sweeping days; and measures to ensure compliance with the Code of Practice detailed in paragraph 4.7(j) below.

Information to be furnished to the Licensing Board for a Licence Application

4.6 Application for a licence shall include information as specified and required by the Licensing Board. Information required will be set out in the application form instead of the legislation, including –

- (a) copies of land lease and tenancy documents, and other supporting documents if applicable, to demonstrate that the use and development of premises / site as a columbarium and / or other aspects of the land use are permitted under the lease conditions, and not occupying Government land illegally;
- (b) copies of site / building plans and layout plans showing the number and configuration of niches and are drawn to the appropriate scale and in metric units;
- (c) relevant documents showing the location and boundary of the columbarium and its compliance with the statutory town plan, such as planning permission granted by TPB and proof of planning conditions being complied with or that the columbarium is an “existing use” under Cap. 131;
- (d) certification by an Authorised Person (AP) and a Registered

Structural Engineer (RSE) and / or a Registered Geotechnical Engineer (RGE), where applicable (such as where structural and geotechnical matters are involved), that the premises referred to in (b) above are in compliance with the prevailing statutory requirements prescribed under Cap. 123, the Fire Services Ordinance (Cap. 95) and its subsidiary legislation, the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and / or the Fire Safety (Buildings) Ordinance (Cap. 572) as the case may be;

- (e) a proposed management plan as stipulated under paragraph 4.5 (d) above;
- (f) for columbaria which existed before commencement of the licensing scheme, a maintenance report certified by an AP and a RSE, where applicable, to certify the building safety and continued compliance with the prevailing building and fire safety standards as well as drainage and sewerage requirements and certificates of fire service installations and equipment to prove that the fire service installations and equipment are in efficient working order. The AP should also certify that the building concerned is free of UBWs;
- (g) relevant documentary proof regarding the setting up of a Maintenance Fund as stipulated under paragraph 4.7 (h) and details concerning the arrangements catering for unforeseen winding up or cessation of business; and
- (h) such other information as required by the Licensing Board.

The legislation will confer powers on the Licensing Board to make public such information as appropriate for reference by the consumers and the public.

Licensing Conditions

- 4.7 Throughout the licensing period, the licensee has to continue meeting the proposed requirements set out in paragraph 4.5 above. In addition, the licensee has to comply with a list of conditions attached to the licence, some of which are proposed below –

- (a) **Number and location of niches** - the operator should adhere

to the number and location of niches as approved by the Licensing Board. Any variation in the number and location should be subject to prior approval by the Licensing Board. Every niche should be properly numbered in logical sequence for easy identification and locating by the Board and the consumers. There should be a site plan clearly indicating the location of the niches on site.

- (b) **Transfer of the licence** – the licence is issued to a specified licensee in relation to specified premises. In response to an application, the Licensing Board may approve the change of licensee subject to any conditions it may impose.
- (c) **Cancellation of the licence** – the licensing conditions will prohibit the subletting of premises and assignment of the property (i.e. transfer of legal interest in the property) designated in the licence for columbarium purpose, and any subletting and assignment would lead to the cancellation of the licence by the Licensing Board. This applies to both new and pre-existing private columbaria. In addition, a licensee of a new or pre-existing columbarium, who wants to move to new premises for the continued operation of a columbarium during the term of a licence, will have to apply to the Licensing Board for cancellation of the licence and grant of a fresh licence in relation to the new premises.
- (d) **Contract with consumers** - operators will be required to enter into contract with consumers over the ownership / terms of use of a niche. The contract should also cover clearly –
 - (i) the end date (if any) of ownership or use (e.g. due to lease expiry, if applicable) and what the consumers need to do to secure continued ownership or use;
 - (ii) the arrangements in case of cessation and winding up of business, communication with purchasers / related persons under normal circumstances and in circumstances where the operator would cease its business, etc;
 - (iii) the precise purpose for which the various charges are imposed and paid by the consumer;

- (iv) the operators' duty to fulfil all statutory and Government requirements in respect of the columbarium to maintain it in a safe and decent state and to provide satisfactory service in its day-to-day management as well as in relation to items for which charges have been paid under (iii) above; and
- (v) the arrangement for sale of niches, transfer of niches in case of termination of contract and, where applicable, change of the dedicated nominee for a niche.

Niches cater for a special need which is different from other consumer products. The Government wants to minimise as far as possible speculation in niche transaction. At the same time, we appreciate the fact that some consumers may have genuine need to change the nominee of the niche in special circumstances. Commensurate with our policy intention to protect consumer interests, we intend to impose a requirement that all new private columbarium operators should sell niches to patrons with a dedicated nominee specified for each niche.

For those pre-existing private columbaria which apply for a licence, they will also be required to adopt this sale mode for their remaining niches yet to put to sale. The operator shall keep a full and proper record of the transactions and nominees.

The Licensing Board will promulgate some templates and standard clauses to be included in contracts as best practices for reference by the operators and the consumers. These would cover the land ownership, terms and conditions to use the niche, fee and service levels and recurrent payments if applicable, keeping of a full register, maintenance fund and consumer protection clauses in case of winding up or cessation of business, etc. Disputes between the operators and the consumers on contents of the contracts and the putting into effect of the relevant terms should be a matter for private law and civil remedy, as is the case for contractual disputes in other areas of service or business.

(e) **Handling of cremains upon business cessation** - due to the concern expressed during the public consultation about proper handling of human cremains arising from closure of private columbaria, we propose that the future legislation should require the licensee to handle interred cremains before he / she ceases operation under different situations. The examples of voluntary or compulsory winding up are quoted below, but there may be other situations, such as revocation of licence. In such cases, the licensee shall –

- (i) in the case of voluntary winding up, notify the Licensing Board in advance as soon as practicable as and when he / she has decided that the private columbarium would cease operation (say, when the notice for convening of the general meeting (or board meeting in the case of winding up under section 228A of the Companies Ordinance (Cap. 32)) is sent);
- (ii) in the case of compulsory winding up, notify the Licensing Board no later than seven days after he / she presents the petition for compulsory winding up under section 179 of Cap. 32 or he / she is served with the petition under Rule 25 of the Companies (Winding-up) Rules (Cap. 32H) as the case may be;
- (iii) contact the relatives / descendants of the deceased according to the information provided in the register (see paragraph 4.7(f)) and inform them of the impending cessation of business of the private columbarium as soon as practicable; and
- (iv) arrange retrieval and re-interment of the interred cremains by the niche owner / descendant in accordance with prior agreement with the niche owner / descendant.

It would be the responsibility of the operator to exert all reasonable efforts to get in touch with the owners / descendents, and to sustain such efforts over a period of time while keeping the interred cremains intact. The operator's task would only be completed when satisfactory arrangements in respect of all the interred cremains have been made with the owners / descendents. Failure to do so would be an offence. We recommend that the maximum penalty for such offence

should be pitched at a relatively heavy level which includes imprisonment sentence.

The proposal above is not without difficulties when it comes to implementation. First, in the business world, it might not always be possible for the operator to settle everything with their clients before they cease business. This is particularly relevant when the operator is an unscrupulous one. Both the licensing scheme and the civil litigation system have their part to play in assisting consumers in this respect. If clients are aggrieved by the handling of cremains by operators, they can pursue their case through the civil litigation route. The Licensing Board can also take appropriate action within its purview. Secondly, columbaria which started operating before commencement of the licensing scheme may be operating in premises on tenancies only (paragraph 4.5(a) refers). When they cease business without making satisfactory arrangements with regard to the interred cremains, the legal rights and obligations in respect of the cremains which remain on the premises vis-à-vis the operator, the owner of the premises and the patrons can be quite complicated.

There have been suggestions during the first public consultation that in the event that cremains are displaced due to enforcement actions by FEHD and other relevant Government departments or cessation of business of private columbaria, the Administration should undertake to provide niches for those affected in public columbarium facilities. We are of the view that acceding to this request will further fuel unauthorised activities if the displaced cremains have priority over others in the allocation of public niches.

- (f) **Register of patrons** - licensees will be required by law to keep a register recording the niche number / label / identification, the name of the buyers and / or the owners / descendants of respective niches, date of purchase of the niche and contact details (such as name, address, telephone number and / or email address, etc.) of the buyer or the person nominated by the buyer to manage the niche, and such other information as required by the Licensing Board. The register shall be made readily available for inspection by any public officer authorised by the Director of Food and Environmental Hygiene (DFEH). Provided that the data in the register are

used for discharging the duties under the new legislation, FEHD should be empowered to make use of such data in its work. The contract between the columbarium operator and clients should preferably include a provision to empower the former to divulge any personal data to the Licensing Board and relevant public officers necessary for the proper discharge of their powers under the new legislation.

- (g) **Management plan** - adherence to the plan submitted to the Licensing Board (as mentioned in paragraph 4.5(d)) as approved by the Licensing Board should be part of the licensing conditions. Prior approval of the Licensing Board would be required for variation to the plan.
- (h) **Maintenance fund** - during the public consultation, some respondents expressed concern about the sustainable operation of private columbaria pertaining to their building and fire safety as well as on-going upkeep of the physical structure, particularly in respect of those where all niches have been sold and hence may no longer have a steady revenue source. One possible proposal to address this issue is to require the private columbarium operator to set up a maintenance fund on separate accounts which should be used exclusively for major repairs, such as inspection and maintenance of the fire service installation and equipment and long term maintenance of the private columbarium concerned, but not its day-to-day operation, such as paying for staff salary and utility charges, etc. If such a fund is to be set up, the operator should be required to make an initial deposit to set up the fund as part of the licensing conditions which would also prescribe the level of the deposit. A certain percentage, e.g. 15%, of the sales proceeds received from subsequent transactions should be deposited to the fund at a monthly interval. The income or interest of the fund should be devoted to the care and maintenance of the columbarium. Annual audited accounts will have to be submitted to the Licensing Board.
- (i) **Maintenance report** - submission of a biennial report certified by an AP and a RSE, where applicable, to certify the building safety would be required, so as to ensure continued compliance with the prevailing building and fire safety standards as well as drainage and sewage requirements.

- (j) **Code of Practice** - the Licensing Board will promulgate a Code of Practice to provide guidance to the applicants and licensees on different aspects of the operation of the columbarium. The key provisions are set out in **Annex B**. We propose that the Code of Practice should not form part of the licensing conditions. If however there is wide disregard of the provisions of the Code of Practice among licensed columbaria, the Licensing Board may consider incorporating the Code as part of the licencing conditions.

Breach of licensing conditions may lead to suspension or cancellation of a licence subject to the decision of the Licensing Board. Where expressly provided for in the future legislation, breach of certain licensing conditions such as those pertaining to the proper handling of interred cremains upon cessation of business shall constitute an offence as stated in paragraph 4.7(e).

***Considering Licence Application:
Public interest***

- 4.8 In considering a licence application, the Licensing Board would have to be satisfied, among other things, that granting the licence would not be contrary to public interest. “Public interest” generally means “common well-being” or “general welfare” of the general public. Such public interest considerations may include but are not limited to the overall supply of columbarium niches in the territory, views from residents or district bodies, as well as the interest of patrons of columbaria which came into existence before commencement of the licensing scheme. The Licensing Board will also weigh the factors outlined in paragraph 1.6 in Chapter 1 of this document in respect of each case. Each case will be considered on its own merits.

Other Duties of licensees

- 4.9 Management responsibilities of licensees include displaying the following materials at a conspicuous location for information of the prospective buyers -
 - (a) original copy of licence;
 - (b) total number of niches available for sale;

- (c) position, size and price (including required donation, deposit, rental, etc.) of niches available for storage of cremains;
- (d) services to be provided and the charges;
- (e) rules regulating visits to the facilities, e.g. arrangement for visitors paying respect to ancestors particularly during normal days and the peak festive days, visitor guidelines on use of niches, incense and joss paper burning and behaviour, etc.; and
- (f) other conditions which may be specified / tailor-made for private columbaria in multi-storey buildings.

Invitation of Comments

4.10 Comments are invited on –

- (a) the proposed definition of private columbarium as well as nominees and purchasers, as stipulated under paragraphs 4.1 and 4.3. If the keeping of cremains of deceased family members at home were not to be defined as a “private columbarium”, and in order to avoid abuse, should we set a number above which the keeping of the cremains of family members at home would be defined as “private columbarium”? If so, what should the number be?
- (b) the proposed licensing period to be set at five years in paragraph 4.4;
- (c) the proposed requirements for licence application in paragraph 4.5 (in particular that on the right to use the premises);
- (d) the proposed licensing conditions in paragraph 4.7; and
- (e) the proposed arrangements in case of cessation of business in paragraph 4.7(e).

CHAPTER 5 EXEMPTION FROM THE LICENSING SCHEME

Private Columbaria Operated by Private Cemeteries

- 5.1 By definition, public columbaria built and / or operated / maintained by the Government are not private columbaria and hence should not be subject to the licensing scheme. Apart from public columbaria, there are 18 columbaria situated within private cemeteries specified in Schedule 5 to Cap. 132, mainly operated by religious or ethnic organisations for non-profit making purposes. **Annex C** sets out these 18 columbaria. Private columbaria of private cemeteries are regulated under the Private Cemeteries Regulation (Cap. 132BF).

The Board of Management of the Chinese Permanent Cemeteries

- 5.2 Among them, the non-governmental Board of Management of the Chinese Permanent Cemeteries (BMCP) is established under the Chinese Permanent Cemeteries Ordinance (Cap. 1112) to provide and manage cemeteries for persons of the Chinese race permanently residing in Hong Kong. BMCP manages four cemeteries with columbaria providing about 216 500 niches. The niches in its columbaria are open to members of the public of the Chinese race, and their prices are comparable to those of public niches.

Other private cemetery operators

- 5.3 Other cemeteries regulated under Cap. 132BF as managed by Catholic, Christian and Buddhist religious bodies provide about 126 700 niches in total. Prior approval from DFEH is needed for the prices of their niches⁶.
- 5.4 Given that BMCP and other private cemeteries are currently governed by the relevant legislation and that these operators have proven track record in building and operating cemeteries and large scale columbaria, we propose that these cemetery operators should continue to be governed by the existing legal framework. We propose that private columbaria run by BMCP and others within

⁶ Section 15(2) of Cap. 132 BF stipulates that DFEH may approve the table of fees with or without modification.

private cemeteries listed in Schedule 5 of Cap. 132 be exempted from the future Private Columbaria Ordinance.

Undertakers of Burials

- 5.5 The undertakers of burials are regulated under the Undertakers of Burials Regulation (Cap. 132CB). Most of the licences of undertakers of burials issued before December 2008 do not prohibit temporary storage of cremains. Starting from December 2008, all new applications for the licences of undertakers of burials are subject to a restriction on any storage of cremains as one of the licensing conditions.
- 5.6 Many members of the public choose to entrust undertakers of burials to arrange one-stop after-death services, including booking of cremation, transportation of the deceased to crematorium as well as collection and temporary storage of cremains for the bereaved families before they arrange for interment of cremains into niches in public or private columbaria. The licensed undertakers of burials whose licences do not forbid storage of cremains thus have all along been performing an important function of providing temporary storage of cremains in their licensed premises as part of their operation.
- 5.7 Given the above, it may not be appropriate for the proposed licensing scheme to cover licensed undertakers of burials. We therefore propose to consider granting licensed undertakers issued with undertakers' licences for which no restriction on storage of cremains on the premises had been imposed and which fulfill the following criteria exemption from the licensing scheme –
- (a) the cremains stored are limited to the cremains of those deceased for whom the undertaker of burials concerned is providing other services within the scope of his licence;
 - (b) the storage service is temporary in nature, pending the availability of a proper niche elsewhere for long-term interment. Such temporary storage is of open type and it does not involve the storage of cremains inside structures / enclosures affixed to the wall that resemble individual niches with or without plaque; and

- (c) there is an undertaking from the operator to comply with any management and / or mitigation measures prescribed by the Licensing Board to address any safety concerns of the premises and to minimise the nuisance, if any, being caused to the neighbourhood arising from the temporary storage services. These measures may include the prohibition of burning of joss papers and incense by patrons within the premises and in the vicinity (e.g. outside the building), and would become part of the conditions subject to which exemption is granted.

Other Pre-existing Private Columbaria

- 5.8 The public are concerned about the management of some privately owned or operated columbarium facilities which may not meet all the applicable statutory and Government requirements and / or which cause nuisance (such as air and noise pollution), serious traffic congestion, particularly during traditional and annual festivals for paying respect to the ancestors, and / or whose management standards may not be assuring from the consumer protection point of view. There may also be cases involving non-compliance with lease conditions or illegal occupation of Government land. The various authorities are taking vigorous enforcement action against such private columbaria. We believe that the introduction of a licensing scheme to enhance regulation of private columbaria should be able to alleviate, if not rectify, many of the problems posed by these columbaria which do not comply with relevant statutory and Government requirements.
- 5.9 The proposed licensing scheme, however, has to be reasonable and proportional to the problems posed by such columbaria. We have to ensure that columbaria to be subject to the licensing scheme are those which warrant such level of regulatory attention so that the scheme operates in a focused and targeted manner.
- 5.10 During the public consultation, views have been expressed that a pragmatic way to deal with the historical legacy problems of certain pre-existing private columbaria was called for. In order not to upset the final resting place of the deceased, it was suggested that consideration be given to empowering the authorities to exercise discretion (i.e. exempting on a permanent basis from the licensing scheme) towards certain private columbaria which meet specified

criteria but which are not in compliance with all the relevant statutory and Government requirements. In their views, private columbaria to be accorded such treatment should include those which have existed for a long time.

- 5.11 The proposal in paragraph 5.10 that suggests to exempt certain dated private columbaria is not without merits. It would be a pragmatic way to deal with some of the pre-existing private columbaria, and may to a certain extent lessen some of the social disruption which may result from enforcement action against these columbaria, including closing down of the operation and removal of the cremains therein. However, some members of the public, particularly those who live in the vicinity of these columbaria, may oppose any discretionary treatment towards these columbaria on the ground that their living environment needs to be improved.
- 5.12 The Government is open-minded about the proposal and has not come to a view as to whether this should be pursued or not. We are of the view however that under no circumstances should private columbaria which pose obvious or imminent danger in terms of building and fire safety be exempted from the licensing scheme. Besides, the criteria for exempting certain private columbaria should be clearly stated and sufficiently stringent so as to avoid abuse. In any case, in exercising discretion towards certain private columbaria (e.g. through exempting them from the licensing scheme), the Licensing Board should still be empowered to impose conditions on the private columbaria concerned which may, among other things, require them to contain their operation to the extent of the number of niches sold before a certain date. Sale of new / unoccupied niches may have to be frozen, and be prohibited forthwith.
- 5.13 The Government would like to invite views from the public as to whether the proposal in paragraph 5.10 above should be pursued, and if so, what should be the criteria for exempting the private columbaria from the licensing scheme. Different stakeholders would likely have different views on the proposal during the public consultation. It should be noted that the future licensing scheme, including the exemption arrangement under it, are subject to the Administration's detailed deliberation on the outcome of this consultation, and the subsequent legislative process. We strongly advise consumers that they should exercise caution and beware of any misinterpretation before making any decision to purchase niches from private columbarium operators.

- 5.14 For non-exempted private columbaria, they need to obtain a licence before they can continue their operation and sell new / unoccupied niches. For those which are currently in breach of statutory and Government requirements, they should seek regularisation to rectify their breaches with a view to applying for a licence. Indeed, during the first public consultation on review of columbarium policy, there was clear public support for pre-existing private columbaria to seek regularisation where appropriate from relevant authorities such as TPB and LandsD pending the introduction of a licensing scheme. Many of the operators to whom FHB and FEHD have outreached also indicated their intention to seek regularisation from the authorities. This is encouraging. As at 30 September 2011, a total of 21 operators from Part B of the Information on Private Columbaria are seeking regularisation. Regularisation should be the primary route for non-exempted pre-existing private columbaria which do not meet all the statutory and Government requirements to gain long-term legitimacy for their continued operation.

Summing Up

- 5.15 The proposed exemption to be granted to private columbaria run by BMCPC and others within private cemeteries specified in Schedule 5 to Cap. 132 (paragraphs 5.2 to 5.4) would be automatic and not be subject to any conditions. They would not need to come forward to apply for exemption. The proposed exemption to be granted to undertakers of burials licensed without restriction on storage of cremains (paragraphs 5.5 to 5.7) would be subject to conditions. The relevant operators would need to apply for exemption. We believe that if the proposal in paragraph 5.10 is implemented, the relevant operators would likewise need to apply for exemption which would be granted subject to conditions.
- 5.16 Upon the introduction of the licensing scheme, pre-existing private columbaria which intend to seek exemption would need to come forward to apply to the Licensing Board for the exemption and the sale of unsold niches will be frozen forthwith. A columbarium should apply for a licence under Chapter 4 should it wish to sell new niches. Any violation of the exemption conditions set by the Licensing Board constitutes an offence.

Invitation of Comments

5.17 Comments are invited on the following –

- (a) the comparative merits of adopting a pragmatic approach in dealing with the problem of pre-existing private columbaria; and
- (b) the proposed exemption arrangements from the licensing scheme, in particular the following –
 - (i) the proposed criteria for exempting licensed undertakers of burials, subject to conditions, from the licensing scheme, as stipulated under paragraph 5.7; and
 - (ii) apart from those in paragraphs 5.2 to 5.7, whether any specified category / categories of pre-existing private columbaria should be exempted from the licensing scheme, and if so, what the criteria for exemption should be.

CHAPTER 6 TEMPORARY SUSPENSION FROM LIABILITY ARISING FROM THE OPERATION OF A PRIVATE COLUMBARIUM WITHOUT A LICENCE OR AN EXEMPTION FOR PRE-EXISTING PRIVATE COLUMBARIA

Giving Temporary Suspension from Liability

- 6.1 We propose that pre-existing columbaria which do not comply with the current statutory and Government requirements but which are not exempted according to the arrangements in Chapter 5 and which do not pose obvious or imminent danger in terms of building and fire safety should be allowed time to seek regularisation with the relevant authorities, while continuing their operation (but excluding selling new / unoccupied niches). Upon attaining regularisation, their chances of obtaining a licence would increase considerably. We believe this pragmatic approach strikes a balance among the various considerations set out in paragraph 1.6 above.
- 6.2 A pre-existing private columbarium which cannot satisfy all the licensing criteria from the outset but which intends to work towards meeting such criteria with a view to obtaining a licence may apply, within a certain period of time, to the Licensing Board for consideration to give it temporary suspension from liability. Bearing in mind that the purpose of giving such temporary suspension from liability is to allow the operator to continue maintaining the operation of the columbarium (for niches already sold but not to sell new / unoccupied niches) while working to regularise its irregularities with a view to securing compliance with the licensing requirement(s) which it is meanwhile in breach of, it will be stipulated under the new legislation that the Licensing Board has full discretion in deciding, on the merits of each case, whether to give such temporary suspension from liability to a particular operator of a private columbarium, and if so, the period of such and the conditions to be attached. The basic factors which the Licensing Board would consider when assessing an application for such temporary suspension from liability are whether –
- (a) the private columbarium concerned was established before the commencement of the licensing scheme;
 - (b) the applicant can prove that he / she has the continued right to use the premises / site involved; and

- (c) the private columbarium poses no obvious or imminent danger in terms of building and fire safety.

The Licensing Board will exercise its discretion in consultation with the relevant Government bureaux / departments and after having considered all relevant factors, including the wider public interest. It would be up to the operator of a private columbarium applying for temporary suspension from liability to satisfy the Licensing Board that he / she has a reasonable chance to regularise his / her operation within a reasonable period of time. It should be emphasised that giving temporary suspension from liability does not imply that the private columbarium in question is in full compliance with all statutory or Government requirements, or that it will be licensed at the end of the day. Temporary suspension from liability would only be relevant to pre-existing columbaria that are not private cemetery operators (paragraphs 5.2 to 5.4) nor licensed undertakers of burials (paragraphs 5.5 to 5.7) nor those exempted with conditions according to the arrangements in paragraphs 5.8 to 5.13, and which have yet to comply with the licensing requirements in paragraph 4.5 above. It will normally be a one-off situation not exceeding a specified fixed period, taking into account the time required for seeking regularisation. If the public has any views on how long such period should be, we would be pleased to consider such.

Conditions for Temporary Suspension from Liability

- 6.3 We propose that relevant conditions for temporary suspension from liability may include requiring the columbarium operator to take effective remedial actions for the effective management of the pre-existing columbarium and for mitigating nuisance to the neighbouring community, e.g. measures to minimise any noise, light, air pollution and to address any possible safety concerns (e.g. crowd management and fire risk). Non-compliance with any such conditions would be subject to a fine and may even risk revocation of the temporary suspension from liability in case of serious breach. The requirements for proper handling of cremains upon cessation of business in paragraph 4.7(e) above shall also be applicable to operators given temporary suspension from liability.

Extension of Temporary Suspension from Liability

6.4 As stated at the end of paragraph 6.2, temporary suspension from liability would normally be a one-off situation. In exceptional cases where extension to such temporary suspension from liability may be required, the Licensing Board has full discretion in deciding whether, upon application, a temporary suspension from liability which will soon expire should be extended, and if so, for how long. The Licensing Board will exercise its discretion in consultation with the relevant Government bureaux / departments and after having considered all relevant factors, including the wider public interest. An applicant for extension of temporary suspension from liability would need to demonstrate to the Licensing Board that he / she has a reasonable chance of regularising his / her operation within a reasonable period of time. In assessing an application to extend a temporary suspension from liability, the Licensing Board would take into account, among other things, whether –

- (a) the majority of relevant statutory / administrative requirements concerning columbarium development / operation (in particular those concerning building and fire safety) have been met and the columbarium operation would pose immediate safety hazards;
- (b) genuine efforts have been made to resolve the outstanding non-compliance;
- (c) all required documents relating to applications for regularisation, including compliance with land lease and statutory town planning requirements, have been submitted / re-submitted to the relevant departments; and
- (d) the operator given temporary suspension from liability has put in place mitigation measures required of him / her by the Licensing Board such as mitigating the fire risk, reducing the environmental, traffic and visual impact on the neighbourhood, etc.

If such extension is to be given, the Licensing Board may similarly impose conditions, as in the case of giving temporary suspension from liability as set out in paragraph 6.3. The Board will be very stringent in considering applications for extension of temporary suspension from liability. Extension would only be granted in exceptional cases.

Freeze of the Number and Sales of Niches

6.5 We propose to stipulate in the legislation that upon commencement of the legislation, as in the case for their exempted counterparts under paragraphs 5.8 to 5.13, private columbaria which have applied for or been given temporary suspension from liability or such extension should freeze the number and sale of their new / unoccupied niches. These would mean that all private columbaria should freeze the number of niches therein and be prohibited from selling niches until and unless they obtain a licence from the Licensing Board. This is meant to protect the interests of consumers. In future, consumers should check the status of a columbarium to see whether it is operated on licensed / exempted premises or premises which are the subject of temporary suspension from liability. If it is an exempted columbarium, the consumer would need to further find out if it falls under the category of exemption with conditions which would contain:

- (a) undertakers of burials licensed without restriction on storage of cremains (paragraphs 5.5 to 5.7); and
- (b) columbaria of specified type(s) which meet certain criteria and do not pose obvious or imminent danger in terms of building and fire safety (paragraphs 5.8 to 5.13).

If it falls under (a), consumers should note that such undertakers can only provide temporary storage of cremains as part of their service. If it falls under (b) or temporary suspension from liability, consumers should be aware that there should be no new transactions once the licensing scheme has been implemented. Consumers should only procure niches from licensed private columbaria or columbaria within private cemeteries specified in Schedule 5 to Cap. 132. In the run-up to the commencement of the legislation, the Administration will strengthen publicity to educate the public to exercise caution when choosing private columbaria.

Summing Up

6.6 Upon commencement of the new legislation, an operator given temporary suspension from liability or such extension is still operating a private columbarium in breach of the licensing requirements. The scheme of temporary suspension from liability is

intended only to be a transitional measure to be phased out at an appropriate time, taking into account the shortage of columbarium niches in general in the market.

Invitation of Comments

6.7 Comments are invited on –

- (a) the proposed arrangements for temporary suspension from liability under paragraphs 6.1 and 6.2;
- (b) the proposed conditions for temporary suspension from liability, as stipulated under paragraph 6.3;
- (c) the proposed arrangements for extension of temporary suspension from liability, as stipulated under paragraph 6.4;
- (d) the proposed freeze of the number and sales of niches as stipulated under paragraph 6.5; and
- (e) the proposed length of the specified fixed period applicable to giving temporary suspension from liability or such extension under paragraphs 6.2 and 6.4.

CHAPTER 7 TRANSITION, APPEALS, SANCTIONS AND TIMETABLE

Transition

- 7.1 We propose that the licensing scheme shall commence upon gazettal of the new legislation, with a transition period of 18 months from the commencement of the new legislation to allow time for the pre-existing columbaria to apply for a licence or exemption or temporary suspension from liability as appropriate and for the Administration to process these applications. During the transition period, any person relating to pre-existing columbaria who would be liable to be prosecuted for operating a columbarium without a licence or exemption or temporary suspension from liability should not be so liable.
- 7.2 For all pre-existing private columbaria, operators would need to apply to the Licensing Board for a licence / exemption / temporary suspension from liability, within three months from the commencement date of the licensing scheme if they wish to continue operation, with the exception of private columbaria run by BMCPC and others within private cemeteries specified in Schedule 5 to Cap. 132 which are exempted automatically. The Licensing Board will seek public comment on a licence application by placing a notice of the application, at the applicant's expense, in local newspapers. The notice will also be posted in the building where the private columbarium is located or in its proximity with convenient public access. Thereafter, the application, the departmental comments and the public comments shall be arranged for consideration by the Licensing Board. If public comments received point to objection against the application, the Licensing Board may arrange for the objectors to present their case to the Board at its meeting when the application is discussed. The applicant will be given the opportunity to present his case to the Board as well. Deliberations of the merits of a case will however be closed door. After the Licensing Board has taken a decision, the results will be communicated to the applicant and objectors. If the Licensing Board rejects an application (either for a full licence / exemption / temporary suspension from liability), it must send to the applicant a notice stating the reasons within a specified period of time. The time required for processing licence applications might take longer than those for exemption or temporary suspension from liability due to

the requirement for completeness of documentation for submission to the Licensing Board and the need for public inspection for licence applications.

Appeals

7.3 There should be an appeal mechanism for any applicant aggrieved by the decisions of the Licensing Board to –

- (a) reject an application for a licence / exemption / temporary suspension from liability;
- (b) reject an application to renew a licence / extend temporary suspension from liability;
- (c) suspend a licence, or revoke a licence / exemption / temporary suspension from liability;
- (d) reject an application for the transfer of a licence; or
- (e) cancel a licence / exemption / temporary suspension from liability.

In cases under appeal, it will be stipulated in the legislation that the operator should not be allowed to continue the sale of niches. This is to prevent the operator from making use of the processing window of the appeal to quickly dispose of the niches potentially non-compliant with statutory and Government requirements. We propose that the aggrieved applicant could appeal to the Municipal Services Appeals Board (MSAB). MSAB is an independent statutory body established under the Municipal Services Appeals Board Ordinance (Cap. 220) comprising individuals appointed by the Chief Executive. Appeals considered by MSAB at present include those arising from revocation / refusal of issue of an undertaker's licence and a funeral parlour licence. On average, an appeal to MSAB is heard in about three months' time upon the receipt of all relevant documents.

Sanctions

7.4 We recommend making it an offence to operate a private columbarium without a licence, exemption or temporary suspension

from liability. The operator will be liable to ascending daily fines and / or imprisonment. It should also be noted that the licensing scheme should not preclude other enforcement authorities from taking enforcement actions against any private columbarium, whether licensed, exempted or given temporary suspension from liability, that has breached the legislation, the land lease and requirements under their respective mandate. Indeed, the relevant authorities are taking vigorous enforcement action against private columbaria in breach of the respective statutory and Government requirements. Such action will continue.

Timetable

- 7.5 After collecting your views, we will analyse and finalise the licensing scheme for private columbaria. FEHD has been laying down the ground work for setting up the licensing scheme. We aim to introduce the Bill into the Legislative Council in the fourth quarter of 2013.

Invitation of Comments

- 7.6 Comments are invited on –
- (a) the proposed duration of transition period, i.e. 18 months, as stipulated under paragraph 7.1;
 - (b) the proposed appeal mechanism, as stipulated under paragraph 7.3; and
 - (c) the proposed sanctions, as stipulated under paragraph 7.4.

CHAPTER 8 SUMMARY OF QUESTIONS

8.1 Comments are invited on the following issues –

Chapter 3 Private Columbaria Licensing Board

- (a) the proposed establishment and composition of a Licensing Board, as stipulated under paragraphs 3.2 to 3.4; and
- (b) the proposed powers of the Licensing Board and FEHD, as stipulated under paragraphs 3.5 and 3.6.

Chapter 4 Licence for Operating Private Columbaria

- (a) the proposed definition of private columbarium as well as nominees and purchasers, as stipulated under paragraphs 4.1 and 4.3. If the keeping of cremains of deceased family members at home were not to be defined as a “private columbarium”, and in order to avoid abuse, should we set a number above which the keeping of the cremains of family members at home would be defined as “private columbarium”? If so, what should the number be?
- (b) the proposed licensing period to be set at five years in paragraph 4.4;
- (c) the proposed requirements for licence application in paragraph 4.5 (in particular that on the right to use the premises);
- (d) the proposed licensing conditions in paragraph 4.7; and
- (e) the proposed arrangements in case of cessation of business in paragraph 4.7(e).

Chapter 5 Exemption from the Licensing Scheme

- (a) the comparative merits of adopting a pragmatic approach in dealing with the problem of pre-existing private columbaria; and
- (b) the proposed exemption arrangements from the licensing scheme, in particular the following –

- (i) the proposed criteria for exempting licensed undertakers of burials, subject to conditions, from the licensing scheme, as stipulated under paragraph 5.7; and
- (ii) as set out in paragraphs 5.8 to 5.13, whether any specified category / categories of private columbaria should be exempted from the licensing scheme, and if so, what the criteria for exemption should be.

Chapter 6 Temporary Suspension from Liability Arising from the Operation of a Private Columbarium without a Licence or an Exemption for Pre-existing Private Columbaria

- (a) the proposed arrangements for temporary suspension from liability under paragraphs 6.1 and 6.2;
- (b) the proposed conditions for temporary suspension from liability, as stipulated under paragraph 6.3;
- (c) the proposed arrangements for extension of temporary suspension from liability, as stipulated under paragraph 6.4;
- (d) the proposed freeze of the number and sales of niches as stipulated under paragraph 6.5; and
- (e) the proposed length of the specified fixed period applicable to giving temporary suspension from liability or such extension under paragraphs 6.2 and 6.4.

Chapter 7 Transition, Appeals, Sanctions and Timetable

- (a) the proposed duration of transition period, i.e. 18 months, as stipulated under paragraph 7.1;
- (b) the proposed appeal mechanism, as stipulated under paragraph 7.3; and
- (c) the proposed sanctions, as stipulated under paragraph 7.4.

8.2 The questions in paragraph 8.1 above are by no means exhaustive. We welcome other views on the proposed licensing scheme for

private columbaria. We are prepared to consider these views as and when appropriate.

- 8.3 Please forward your views and comments to us by mail, facsimile or email on or before 30 March 2012:

Address: Food Branch, Food and Health Bureau
17/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Fax number: 2136 3282

Email Address: ccc@fhb.gov.hk

- 8.4 It is voluntary for any member of the public to supply his / her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise.
- 8.5 The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purpose directly related to this consultation exercise. The Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.
- 8.6 The names and views of individuals and organisation which put forth submissions in response to the consultation document (“senders”) may be published for public viewing after conclusion of the public consultation exercise. This Bureau may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. We will respect the wish of senders to remain anonymous and / or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named.
- 8.7 Any sender providing personal data to this Bureau in the submission will have right of access or correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing to –

Assistant Secretary for Food and Health (Food) 3
Food Branch, Food and Health Bureau
17/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong
(Fax Number: 2136 3282)
(Email Address: ccc@fhb.gov.hk)

Food and Health Bureau
December 2011

**Review of Columbarium Policy
Summary of Opinions**

On 6 July 2010, the Food and Health Bureau published a consultation document on review of columbarium policy and launched a public consultation for about three months until 30 September 2010.

2. The purpose of the consultation is to gauge the public's views and engage them in discussion of this subject which pertains to traditional customs and the provision of district facilities. We aim to foster a consensus in the community to provide a basis for policy formulation by the Government.

3. In the consultation document, it is suggested that columbarium development should be primarily taken forward in the following directions:

- (A) increasing the supply of columbarium facilities to meet the overall public demand;
- (B) encouraging public acceptance of more environmentally friendly and sustainable means of handling cremains;
- (C) enhancing consumer protection in the choice of private columbarium facilities; and
- (D) enhancing the regulation of private columbaria.

4. The public in general welcomed the Administration to review the columbarium policy. During the consultation, various proposed measures have been widely publicised and discussed, raising broad awareness in the community about the policy review. The Government has received over 500 submissions from individuals and organisations. Besides, officials of the Food and Health Bureau have also widely consulted different sectors of the community and received many constructive views through various channels, including the relevant Legislative Council Panel, the Town Planning Board and other advisory bodies (e.g. the Land and Development Advisory Committee and 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.

5. A wide range of views and suggestions on the review of columbarium policy have been collected. By and large, the key concepts and directions of the proposals to increase the supply of columbarium facilities, promote their sustainable development, protect consumer rights and enhance regulation of private columbaria were broadly endorsed by the public and stakeholders across different sectors. The mainstream opinions are summarised in the ensuing paragraphs:

Increasing the supply of columbarium facilities

6. The public and various stakeholders recognised that the problems besetting the columbarium landscape in Hong Kong are the result of inadequate supply, and therefore were generally supportive of measures to increase the supply of columbarium facilities. To expedite the provision of niches, a broad spectrum of the community agreed that different districts should collectively share the responsibility of developing columbarium facilities so as to meet the overall public demand, while the site selection would have to depend on its feasibility as well as the local circumstances.

7. The public and stakeholders in general supported the proposal to expand existing columbarium facilities and build additional facilities in existing cemeteries and areas nearby. They also expressed general support for the Board of Management of the Chinese Permanent Cemeteries and non-profit making religious bodies to expand their scale of operation.

8. Many respondents hoped that the Government could improve on the outlook, layout and management of columbarium facilities in order to minimise the nuisance (e.g. air and noise pollution) to neighbouring residents and ease their concern and anxiety, thus enhancing public acceptance of these facilities. Many were also supportive of the proposal to build multi-storey columbarium facilities.

9. For the 12 potential sites in seven districts shortlisted in the consultation document, most of the District Councils have given in-principle support to the sites in the respective districts for columbarium development. There were, however, also local residents expressing reservation on individual sites.

10. Some respondents welcomed the proposal to convert industrial buildings into columbarium facilities. Among them, some opined that wholesale conversion of industrial buildings located away from residential areas would be more acceptable.

11. Some respondents considered that the Administration could explore the option of developing relevant facilities on outlying islands or at remote sites far away from residential areas. At the same time, the community at large were concerned about the relevant technical issues (e.g. infrastructural support and transport capacity in the district especially during the Ching Ming and Chung Yeung Festivals). A small number of respondents suggested that the Administration could consider building columbarium facilities on the Mainland.

12. Divergent views were expressed in various districts on the proposal to reserve a certain portion of niches for priority allocation to local residents in need with a view to fostering local acceptance of columbarium development in their districts.

Sustainable development of columbarium facilities

13. On sustainable development of columbarium facilities, the public and stakeholders generally considered that the Government should continue its efforts in promoting the transformation of social customs and encouraging the public to use sustainable means of handling cremains (such as scattering of cremains at Gardens of Remembrance or at designated Hong Kong waters) and paying tribute to the deceased.

14. Given that there is a growing shortage of niches, for the purpose of relieving the shortage and increasing the turnover of niches, it was suggested in the consultation document that we needed to consider whether the existing arrangement of providing permanent niches should be changed, with reference made to overseas and Mainland experience of introducing time-limited lease or annual management fee for new niches. Many respondents expressed reservation on the above proposals on the ground of traditional Chinese customs.

Enhancing consumer protection

15. Some respondents expected the Government to take the lead in the supply of columbarium facilities, while many felt that private columbaria also played an important role in the market in terms of choice of niches. On enhancing consumer protection, there was broad consensus in the community that the Government should release more information on private columbaria for public reference as soon as possible, so as to help those who are considering purchasing / going to purchase private columbarium niches to make informed choices as well as to remind them to exercise caution when purchasing these niches.

16. There were suggestions that the Government should provide assistance to consumers who had suffered losses from purchasing niches of private columbaria which do not comply with relevant statutory requirements. Some respondents, however, expressed concern that such practice might in a way encourage the development of such columbaria since relevant operators might not be held responsible for their misconduct. Besides, there were also suggestions that the Government could consider protecting consumer rights through requiring the establishment of a trust fund by the private columbarium operators.

Enhancing regulation of private columbaria

17. Most submissions supported a licensing scheme to enhance regulation of private columbaria. However, the public expressed divergent views over the scope and level of regulation under the licensing scheme and the arrangements for pre-existing private columbaria.

18. Some respondents (mainly the neighbouring residents of private columbaria) opposed to the continued operation of certain private columbarium facilities. Meanwhile, other respondents were concerned about the possible relocation of cremains, which was in contravention of the traditional Chinese notion of “letting the deceased rest in eternal peace”. They hoped that the Government could allow private columbaria a reasonable period of time to rectify the irregularities and even exercise discretion towards certain types of private columbaria. Some representatives of the trade considered that a “registration scheme for private columbaria” should be implemented.

Conclusion

19. Based on the consultation outcome summarised above, the Government, in working out the details of the licensing scheme for private columbaria and drafting the relevant legislation, will exercise prudence in balancing the views of various stakeholders in order to ensure that the scope and level of regulation under the licensing scheme would be appropriate.

Code of Practice

1. **Building design**: The private columbaria should comply with the relevant building and fire safety requirements under the Buildings Ordinance (Cap.123) including planning, construction and structural aspects. The operators should also pay attention to exterior design of the columbarium and greening of the surrounding area to mitigate the visual impact on the nearby residents. The shop sign should be determined having regard to, *inter alia*, promoting harmony of the local community.
2. **Operation**: The operation of the private columbaria should not cause nuisance nor pose undue fire risk. For example, all smoke and fumes from burning joss sticks and candles shall be extracted from the premises, with the exhaust outlets so designed with installation of suitable pollution control equipment if necessary, as not to cause nuisance to the public. The lighting of the private columbarium that can be seen from the outside should be kept at such an intensity as not to be nuisance. Altars and incinerators for burning joss sticks, incense, offerings and candles shall be suitably located and constructed of fire resisting materials and preferably equipped with air filtering system.
3. **Transparency**: A leaflet detailing the information of licensee, total number of niches available for sale, position, size and price (including required donation, deposit, rental, etc.) of niches available for sale, services to be provided and the charges (services may include the standard ritual services in a year, daily incense burning for deceased in group, routine cleaning, any special ritual services, additional interment of human cremains, transfer of agreement / right of use of niche, etc.) should be provided to consumers for information and reference.
4. **Admission control**: The operator shall introduce ways to institute effective admission control, including spreading out visitors over the whole year instead of concentrating on the peak festive days. For example, visitors paying respect to ancestors can be spread out if they are assigned according to the end digit of the niche registration number to visit the columbarium on different days. Consideration may also be given to bringing in different charging mechanism for the price of niches with reference to the pre-fixed date of paying tribute at the private columbarium. The date nearer to the peak festive days will attract a higher niche price. The operator shall cooperate with the Police on any specific traffic control measures.

5. Security: Sufficient security measures, such as perimeter fencing, lockable metal gates at entrances, installation of CCTV, deployment of security patrol, etc. should be put in place.
6. Fire prevention and drill: All fire service installation and equipment shall be maintained in efficient working order at all times and be inspected by a registered contractor at least once every 12 months. All exits shall be free from obstruction at all times. Training on fire prevention to staff should be conducted by the columbarium management. Regular fire drill should also be performed.
7. Training: Regular training and education on professional knowledge and courtesy to visitors should be given by the columbarium management.
8. Integrity management: The columbarium management should issue probity guidelines, enhance and regularly review the system control, and provide integrity training to staff to prevent corruption and other malpractices.
9. Guidelines to visitors: Guidelines to visitors may include the following and should be clearly displayed on the premises for their observance –
 - (a) not to place offerings on passageways / frontage of neighbouring niches causing obstruction;
 - (b) not to leave valuables inside the niches;
 - (c) not to leave offerings behind after paying respect to ancestors;
 - (d) not to conduct religious ceremony outside the permitted hours (say 8:00 a.m. – 8:00 p.m.);
 - (e) not to burn joss paper offerings other than inside the designated joss paper burners;
 - (f) not to burn incense when the premises are crowded with visitors as advised by the private columbarium operators; and
 - (g) not to conduct other non-columbarium related activities.

The operators should take all necessary steps to ensure that the visitor guidelines are observed at all times.

10. Hardware design and maintenance: Regular inspections should be conducted to identify any building and facility defects such as cracks on niches, broken staircase riser and tread, etc. for prompt repair. Any joss paper furnace should be so designed and maintained as not to cause environmental nuisance during operation and where practicable, visual

intrusion in the surrounding landscape.

11. Cleansing: The premises, including the sanitary fitments, should be maintained in a clean and tidy condition. The operator should ensure the aisles are free from obstruction by carrying out regular cleansing and removal of any offerings left behind by visitors. Frequency should be increased on the peak festive days. No offerings should be allowed to stay overnight in the passages.
12. Winding up of business: In the unfortunate event of winding up of business, the licensee should notify the Licensing Board as soon as practicable about the winding-up; contact the owners / descendants of the deceased according to the information provided in the register and inform them of the winding up of business of the private columbarium as soon as practicable; and arrange retrieval and re-interment of the interred human cremains by the niche owners / descendants in accordance with prior agreement with the niche owners / descendants.

Annex C

**18 Columbaria Situated within
Private Cemeteries Specified in Schedule 5 to
the Public Health and Municipal Services Ordinance (Cap. 132)
Regulated by the Private Cemeteries Regulation (Cap. 132BF)**

Serial No.	Name of Private Cemeteries
1	Roman Catholic Cemetery (Cape Collinson)
2	Roman Catholic Cemetery (Happy Valley)
3	Sai Kung Catholic Cemetery
4	Cheung Chau Catholic Cemetery
5	New Kowloon Inland Lot No. 2662 Cemetery (Roman Catholic Cemetery)
6	Chinese Permanent Cemetery (Aberdeen)
7	Chinese Permanent Cemetery (Cape Collinson)
8	Tsuen Wan Chinese Permanent Cemetery
9	Chinese Permanent Cemetery (Junk Bay)
10	Cheung Chau Christian Cemetery
11	New Kowloon Cemetery No. 1 (Christian Chinese Cemetery)
12	Christian Chinese Cemetery
13	Chiu Yuen Cemetery
14	Chuen Yuen Church Cemetery
15	Sung Him Tong Sung Chan Wui Kei Tuk Kau Fan Cheung
16	Tao Fong Shan Christian Cemetery
17	Buddhist Cemetery
18	Carmelite Cemetery

Information Form on Private Columbarium

The Government is consulting the public on the licensing scheme for private columbaria. To facilitate the Government to understand more about the situation of private columbaria in Hong Kong, we welcome the public to provide us, by completing this form, with information on more private columbaria. Your information would help the Government to formulate a licensing scheme for private columbaria commensurate with the actual situation.

I have the following information about private columbarium to report:

Name of the Columbarium : _____

Address or approximate location : _____

Name of the operator (if known) : _____

Year in which the columbarium started operation (if known) : _____

Any other information
(Please use additional sheet if needed) : _____

(The following personal information is optional.)

Name : _____ Contact number : _____

Contact e-mail : _____ Date : _____

Personal Information Collection Statement

1. You are not obliged to provide your personal data. The provision of your personal data to the Government by means of this Information Form is entirely voluntary.
2. If you choose to do so, it will be used by the Government for reference and further contact with you in relation to the information provided in this form only.
3. Your personal data may be transferred to other Government departments and/or bureaux for the purpose of further contact with you in relation to the information provided in this form.
4. Under Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap 486), you have a right to request access to your personal data provided in this Information Form and to request its correction.
5. Should you wish access to your personal data or to correct it, you should write to : Food Branch, Food and Health Bureau, 17/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

Please return the completed form to the Food and Health Bureau by post, by fax or by email. Thank you.

Address : Food Branch, Food and Health Bureau, 17/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

Fax Number : 2136 3282

E-mail : ccc@fhb.gov.hk

(Please fold and seal here)

(Please fold and seal here)

(Please fold and seal here)

**Please affix
stamp**

To :

**Food Branch, Food and Health Bureau
17/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong**