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29/03/2012 00:05

To ccc@fhb.gov.hk
cc
bcc
Subject Submission of comments on Public Consultation on Licensing Scheme for Private Columbaria
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Dear Sir

I have the following comments:

Para 3.7 a) - proposed establishment and composition of Licensing Board (paras 3.2 to 3.4)
I support this.

Para 3.7 b) - proposed powers of Licensing Board and FEHD (paras 3.5 to 3.6)
I support this.

Para 4.10 a) - proposed definition of private columbaria (paras 4.1 and 4.3)
I believe the number should be set at not exceeding eight urns of cremains representing father and mother, paternal grandparents and maternal grandparents and two other relatives. The deceased should have a family link.

Para 4.10 b) - proposed licensing period at five years (para 4.4)
I believe that columbaria that started operations before clearing government lease and town planning approvals first (but which obtained approvals before the licensing scheme started) should be given a shorter licensing periods as penalty for ignoring the government lease and town planning in the first place. The licensing period in this respect should be five years only, subject to renewal. For columbaria that played by the rules in clearing government lease, town planning and building regulations first before starting operations should be given a longer licensing period, say at 20 years, subject to renewal. This will encourage those operators planning to start an operation to first get approvals first before starting columbarium operations.

Para 4.10 c) - proposed requirements for licence application (para 4.5)

Right to use premises - I believe this proposal was made to allow for the circumstances such as that found at Lung Shan Temple in Fanling. The operator at this temple has a 60 year lease commencing 1 July 1987.

Columbarium operators should show long term commitment to their business and as such they should be owners of their premises or the ownership should be vested in the operator's holding company. Perhaps the ownership is vested in a subsidiary of the operator. This is also acceptable. If a leasehold interest is necessary, then the operator must be able to show at least 20 years remaining on the lease. Currently in the New Territories, since most of the government leases expire on 30 June 2047, then any would-be columbarium operators must secure their premises by 30 June 2027 at the latest.

I support the proposal to require operators inform potential buyers of the ownership details or leasehold arrangements.

Para 4.10 d) - proposed licensing conditions (para 4.7)

I generally support the various points in para 4.7. However I would add the following comments:

Transfer of licence - columbarium operators should show long-term commitment to their business. If they are given the opportunity to transfer their licence, it may encourage some of the more unscrupulous operators to transfer their licence to another operator in order to exit the columbarium business. This would be especially so when all the niches have been sold and there is no more recurring income from the sale of niches. Let us be realistic. No person would buy a business that has little prospect for any growth in profit. At this point, the investors in the columbarium operator may be inclined to sell the business.

Contract with consumers - I would strongly suggest that any contract with customers should make it clear that it is a contract for services. This was the preliminary legal advice given by the Consumer Council at a recent meeting with a columbarium concern group. The advice given at the meeting was that the niche is in fact, merely a licence to occupy and does not confer any legal interest in real property. This point must be made clear to all new buyers of niches. Spending HK\$500,000 for a niche that is in fact only a licence to occupy may prompt any potential buyers to think more carefully before agreeing to buy a niche.

Columbaria operators should be locally registered companies with registered capital of at least HK\$10 million. This is to ensure that the columbaria operators put their money where their mouth is and deter the get-rich-quick operators! Some operators are registered overseas on the British Virgin Islands and other places and this makes it difficult for buyers to chase them should problems arise.

The contract document should also be made on government approved standard contracts in order to protect the interests of buyers. \

I would recommend strict background checks on all shareholders and directors of the private columbaria operators. Anyone associated with criminal groups or those persons with a less than assuring reputation should be rejected.

Para 4.10 e) - business cessation

One scenario not envisaged is land resumption by the government. What would be the arrangements for the removal and re-interment of the cremated remains? Will any compensation be paid by the operator or would the niche owner have to submit a claim for compensation to the government. Normally only registered property owners, businesses and holders of leases are entitled to any substantial compensation in the event of land resumption. Any person holding merely a licence to occupy has far less avenues to claim for compensation.

Para 5.17 a) - merits of pragmatic approach to dealing with pre-existing private columbaria

Public columbaria built/operated/maintained by Government

I agree with the proposal that they should not be subject to the licensing scheme

18 columbaria within private cemeteries regulated under CAP132

I agree that with the proposal that they should not be subject to the licensing scheme.

Undertakers of Burials

I would prefer that the undertakers with the licences issued before December 2008 should be revoked and be reissued with new licences that have restrictions on any storage of cremains as one of the licensing conditions. This is necessary in order to remove any temptation to abuse any exemptions granted as proposed in para 5.7a) and b). There have been many complaints by residents at Hung Hom at the burning of joss papers and incense by visitors to the undertaker's business premises. A licence that imposes clear restrictions will be more effective than appealing for voluntary restraint.

Private columbaria pre-existing

I would prefer that all private columbaria that do not qualify as public columbaria or as one of the columbaria in private cemeteries should not be rewarded with a "pragmatic approach" as suggested in paras 5.9, 5.10. This is because if these columbaria are indeed given exemption, they will become acquisition targets by the operators of the unauthorised columbarium which cannot meet the licensing criteria.

If the Government prefers the "pragmatic approach" then I would suggest that they should be subject to strict tests for background of the operators, ownership history of the properties. If they are granted exemption, they must not be allowed to change ownership either through a sale

of shares or have their properties sold without prior Government approval. If the niches are meant only for deceased Buddhist monks then this should be strictly enforced. Their prices must also be regulated by the Government. These measures are necessary so that they do not become the acquisition targets of unscrupulous operators.

Para 5.17 b) ii) - Exempting any specified categories of pre-existing private columbaria from the licensing scheme.

Pre-existing private columbaria which are not one of the 18 columbaria within the private cemeteries regulated under Cap 132 should as a matter of principle NOT be given exemption from the licensing scheme. There have been suggestions that small temples that contain a small quantity of niches for deceased monks and nuns should be given exemptions due to their long history, lack of conflict with neighbouring residents, lack of adverse impact on the environment and their limited financial resources. While such cases deserve sympathy for their plight, I would suggest that they be given government financial assistance so that they comply with all relevant conditions of the government lease and statutory requirements. Granting exemptions to such cases will make them a target for acquisition from commercial columbarium operators.

Para 6.7 a) - Proposed arrangements for temporary suspension from liability - paras 6.1 and 6.2

As a matter of principle, I would not support any proposals to grant temporary suspension from liability to a private columbarium without a licence or to those private columbaria that are not exempted from the licensing scheme.

Those private columbaria that have simply flouted the terms of the government leases and ignored town planning rules and other statutes should not be rewarded with a chance to gain regularisation provided by granting of a temporary suspension. These operators should have known better than to start their operations without first getting all statutory and other approvals.

Should the Government prefer the proposal of granting temporary suspension, then I would add the condition that columbarium concerned cease all active operations. When I mean cease active operations, I mean the columbarium should be locked up for the duration of temporary suspension with no visits allowed by any visitors even on Ching Ming and Chung Yeung festivals.

Para 6.7 b) - Proposed conditions for temporary suspension - para 6.3

I do not support granting temporary suspension, therefore there is no need for me to comment on the proposed conditions.

Para 6.7 c) - Proposed arrangements for extension of temporary suspension - para 6.4

I do not support granting temporary suspension, therefore there is no need for me to comment on the proposed arrangements.

Para 6.7 d) - Proposed freeze in sales of niches - para 6.5

I do not support granting temporary suspension, therefore there is no need for me to comment on the proposal to freeze sales.

Para 6.7 e) - Proposed length of the specified fixed period applicable for temporary suspension

I do not support granting temporary suspension, therefore I do not support the proposals in paras 6.2 and 6.4.

However should the Government prefer granting temporary suspension, the period of temporary suspension should also not be generous, at the most one year, more than enough time especially for getting planning permission approval. The period granted for the extension should also not be generous, at the most 6 months.

Para 7.6 a) - proposed duration of transition period - para 7.1

I have reservations regarding proposing a transition period of 18 months from the commencement of new legislation to allow time for pre-existing columbaria to apply for a licence or exemption or temporary suspension from liability. As I said above, as a matter of principle, I do not support granting exemptions to private columbaria.

If the government prefers to give a transition periods, this period should be as short as possible, no more than one year.

Para 7.6 b) - Proposed appeal mechanism - para 7.3

The proposals for the appeal mechanism are generally acceptable.

Para 7.6 c) - Proposed sanctions - para 7.4

I support the proposal to make it a criminal offence to operate a private columbarium without licence, exemption or temporary suspension.

I support the proposal to levy daily fines and for offenders to be liable for imprisonment. The fines should be hefty enough to ensure that the

operators comply with the licensing scheme.

Other measures

I believe the Government should provide grants to smaller temples to remove the temptation to provide niches for raising funds for upkeep and maintenance. The commercial columbarium operators frequently offer to provide funds for maintenance and upkeep in return for the right to operate a columbarium in the temple.

The Government should make greater effort to promote alternatives to columbaria such as Remembrance Gardens and sea burial.

The Government should make greater effort to demonstrate the financial impact of spending hundreds of thousands of dollars on a niche, one that does not convey any real property rights. No financial consultant would recommend investing HK\$500,000 on a niche. That was one anecdote that was told to me at Lung Shan Temple. Apparently five niches were bought for a total of HK\$2.5 million. You could buy a small flat for that sum. That money could have been better spent on a child's education or given to charities.

I would refer you to my letter submitted to the South China Morning Post published on 24 December 2011:



letter to SCMP dated 24 Dec 2011.pdf

Reducing the demand for columbarium niches will cause prices to fall and prompt the commercial columbarium operators to think more carefully before committing to new columbarium projects.

Yours faithfully

Danny Chung

No room for dead tradition in a city that must make space for the living

I refer to your editorial ("A problem that won't be buried", December 19).

I could not agree more with your call for greater use of scattering ashes to ease the demand for niches in columbariums.

Unlike other forms of property, a columbarium is essentially a use-once-only property.

Residential, commercial, office and industrial buildings can be reused repeatedly as ownership and tenants change.

Even flats that were the scene of a violent death can be used again if the price or rent is low enough.

And, if a property's use is no longer economically viable, it can be redeveloped by, for example, switching it from industrial use to a hotel.

However, because of the tradition of not disturbing the deceased, once a columbarium niche is occupied, it simply cannot be used again by moving out the original urn and putting in another urn.

It goes without saying that redevelopment of a columbarium for another use is out of the question.

This is an extremely wasteful use of land and ultimately it is unsustainable.

It means that the building of columbarium niches has to continue uninterrupted just to keep pace with the annual number of cremations, currently running at about 40,000 a year, according to government figures.

As the population is set to increase, the number of cremations will naturally go up. The government is already running into difficulties convincing district councils about suitable sites.

Even if the plan to house columbariums in rock caverns goes ahead, nearby residents will still grumble since an approach road will have to be built for access.

There will also be the usual ridiculous complaints about fung shui, even for a rock cavern.

If a tradition has outlived its usefulness, then it should be swept away.

The tradition of burial eventually gave way to cremation. In time, cremation will be replaced by the scattering of ashes.

A small place like Hong Kong simply can no longer afford the luxury of reserving land for the dead when it can be put to more productive use for the living.

Danny Chung, Tai Po