

## Useful Advice for Consumers

### **Points to Note When Purchasing Private Columbarium Niches (updated upon announcement of the Private Columbaria Bill)**

The Government announced at 8:00 a.m. on 18 June 2014 that the Chief Executive in Council (ExCo) has approved the Private Columbaria Bill (the Bill) for introduction into the Legislative Council (LegCo). Through the Bill, the Government proposes to establish a licensing scheme to regulate the operation of private columbaria. Under the proposed licensing scheme, no person may be engaged in the operation of a private columbarium in Hong Kong, unless such operation is covered by a licence, exemption or temporary suspension of liability.

The Bill has proposed certain special arrangements for “pre-Bill columbaria”. In this connection, the Government announced at 8:00 a.m. on 18 June 2014 that ExCo has approved setting the Bill announcement time as the cut-off time for determining whether a private columbarium is eligible to seek the “pre-Bill columbaria” status.

Under the Bill, in order to obtain a licence, a columbarium must comply with the requirements in respect of land (including land instruments), town planning and building safety and submit a management plan, etc. The Bill also stipulates that columbarium premises must be self-owned by the operator. These stringent requirements will apply to all private columbaria, except the following two aspects which, as special arrangements, are applicable to “pre-Bill columbaria” only :

- (a) if the columbarium does not run on self-owned premises, the operator must have the right to continue to use the premises for at least five years; and
- (b) non-compliant structures (if any) as defined in the Bill may be allowed to stay, subject to certification by qualified professionals as being structurally safe.

With regard to dated private columbaria, the Bill proposes to exempt them subject to their meeting the following eligibility requirements:

- (a) the columbarium has commenced operation before 1 January 1990;
- (b) it has ceased the sale (including letting-out) of new or vacant niches since 8:00 a.m. on 18 June 2014; and
- (c) it fulfils other requirements under the Bill (e.g. the operator must have the right to continue to use the premises for at least five years).

Non-compliant structures (if any) as defined in the Bill may be allowed to stay, subject to certification by qualified professionals as being structurally safe.

At present, private columbarium operations are required to comply with the existing requirements in respect of land (including land instruments), town planning and building safety. Before the commencement of the new legislation, consumers who have a need to consider purchasing or renting a private niche are advised to exercise care to protect their own interests :

- (a) consumers should seek clarification on what it is that they are going to acquire, including whether it is the right to use the niche or its ownership. They should also pay attention to the term of the lease/ licence/short-term tenancy/short-term waiver etc. of the land on which the private columbarium is located including the termination arrangement (if applicable), and ascertain from the operator of the private columbarium the arrangement that will apply to the niche upon expiry of the term;
- (b) at present, some private niches available in the market are put on sale through management companies. Consumers are advised to seek clarification about the relationship between the companies responsible for the sale and the respective private columbaria;
- (c) consumers should seek clarification on the details of various payable charges imposed by the private columbarium, including the nature of the charges, the services covered, etc.;
- (d) with regard to the private columbaria listed in Part A of the Information on Private Columbaria published by the Development Bureau, consumers should enquire with the operator about the number of niches sold and remaining niches in the respective private columbarium, and check whether the niche they intend to purchase falls within that part of the columbarium which has complied with the relevant statutory requirements and the conditions prescribed in land instruments;
- (e) as for the private columbaria listed in Part B of the Information on Private Columbaria, consumers should enquire with the operator about the number of niches sold and remaining niches in the respective private columbarium, the reasons for non-compliance with the relevant statutory requirements and/or the conditions prescribed in land instruments, and whether applications have been submitted to the Lands Department (LandsD), the Town Planning Board (TPB) and/or the Buildings Department (BD) to rectify the non-compliance as well as the progress of the applications. It would be desirable to know the result of their applications. Moreover, consumers should check whether the niche they intend to purchase falls within that part of the columbarium which has complied with all other relevant statutory requirements;
- (f) irrespective of whether the relevant private columbarium is listed in the published Information on Private Columbaria published by the Development Bureau, consumers should obtain from the operator comprehensive information

so as to check whether it is in compliance with all the statutory and Government requirements;

- (g) if there is a need to store the ashes of the deceased in a private columbarium niche before the above information can be verified, consumers should consider liaising with the operator to rent the niche on a short-term basis so as to provide protection and flexibility for themselves;
- (h) detailed sales information will help minimise the risk of disputes in future. Consumers should demand to enter into, with the operators, a contract in which all related matters are clearly covered;
- (i) consumers should ascertain from the operators how they would, in the event that the respective private columbarium for various reasons ceases operation or is wound up or unsuccessful in its application for regularisation/licence/licence renewal, handle the interred ashes properly as well as deal with the interests of the affected consumers and relevant arrangements, including whether and how a refund or compensation would be made to the affected consumers. Consumers should pay attention and ascertain if contract terms are in place to protect the interests of consumers in this respect;
- (j) consumers should enquire with the operators on the arrangement for sale of niches, transfer of niches in case of termination of contract during the contract period and, where applicable, arrangement for change of the dedicated nominee for a niche (if applicable);
- (k) the Government notes that individual private columbaria have been disseminating messages in the market claiming that the implementation of the statutory regulatory scheme on private columbaria would cause the price of niches to rise. They have also offered guarantees of a full refund and replacement niche as a means to promote sales. When in fact their columbarium operations are yet to comply with the relevant requirements (e.g. those on town planning), the Government considers it unacceptable for the operators to make claims about the certainty of their being granted a licence and a surge in niche prices, as a means to boost sales. If in doubt, consumers should seek independent legal advice;
- (l) pending the passage of the Bill by the LegCo and the implementation of the licensing scheme for private columbaria, various Government departments would continue to carry out inspections to and take enforcement actions against private columbaria according to relevant existing laws; and
- (m) if necessary, consumers should seek independent legal advice on their rights. They are advised to refrain from making any purchase rashly.

Upon enactment of the Bill, except in those cases where the two special

arrangements for “pre-Bill columbaria” are applicable, private columbaria not compliant with the licensing requirements listed in the Bill (including the requirements described above) will not be granted a licence. Consumers should be mindful of the risks involved and refrain from making any purchase rashly so as to avoid possible loss in the event that the operator fails to obtain a licence in future.

The Government reminds members of the public that the Bill imposes certain requirements applicable to pre-Bill columbaria. Consumers should not assume that these columbaria would definitely be able to obtain a licence in future. Even if a licence is granted, one could not foretell the maximum ash-keeping capacity that would be allowed under the licence.

Prior to the passage of the Bill by LegCo and implementation of the licensing scheme, in order to assist members of the public to acquire the relevant information, the Development Bureau has published on its website ([www.devb.gov.hk](http://www.devb.gov.hk)) and updated regularly information on land/lease (user restriction) and town planning on the private columbaria made known to LandsD and/or Planning Department (PlanD).

There are two parts to the information:

**Part A** includes private columbaria which are compliant with the user restrictions in the land leases and the statutory town planning requirements and are not illegally occupying Government land; and

**Part B** includes other private columbaria made known to PlanD and LandsD that do not fall under Part A (i.e. those which are pending checking for compliance with the relevant requirements for inclusion in Part A; or have been confirmed to be not compliant with the user restrictions in the land leases and/or statutory town planning requirements and/or are illegally occupying Government land).

Members of the public may obtain more information about private columbaria in respect of town planning, land lease and building safety through the following channels:

- (a) On town planning:  
Members of the public may visit the website of the TPB ([www.ozp.tpb.gov.hk](http://www.ozp.tpb.gov.hk)), call PlanD’s enquiry hotline 2231 5000, or visit the Planning Enquiry Counters at the North Point Government Offices and Shatin Government Offices.
- (b) On land lease:  
To acquire further information about the land leases, members of the public may conduct land search at the Land Registry and obtain copies of the land lease.
- (c) On building safety:  
Members of the public may, after making an application and paying the relevant fees, inspect the approved plans for private columbaria or minor works completion records at the Building Information Centre of BD, or obtain such

information from the “Bravo System” via the Internet ([www.bravo.bd.gov.hk](http://www.bravo.bd.gov.hk)). Regarding general enquiries on unauthorised building works (UBWs) and the associated building safety of such UBWs, the public may visit BD’s website ([www.bd.gov.hk](http://www.bd.gov.hk)). If there are any queries, they may consult qualified building professionals as appropriate.

Members of the public should take note of the following:

- (a) the third phase allocation of new public niches at Wo Hop Shek Cemetery and Diamond Hill Columbarium under the Food and Environmental Hygiene Department (FEHD) has commenced (Application period: from 9:00 am on 24 June 2014 (Tuesday) to 5:00 pm on 24 July 2014 (Thursday)), providing about 24 000 new niches;
- (b) the public may also apply to wait for re-allocated niches managed by FEHD, or consider using the FEHD’s services for the scattering of ashes of the deceased at sea free of charge or in the 11 Gardens of Remembrance operated by FEHD;
- (c) to encourage the public to better utilise the existing resources, FEHD has, with effect from 2 January 2014, relaxed the arrangement of placing additional ashes into public niches, including (i) relaxation of the definition of “close relative”; and (ii) if the applicant prefers, each standard niche and large niche may deposit more than two and four sets of cremated ashes respectively;
- (d) columbaria in private cemeteries also help meet part of the public demand; and
- (e) FEHD provides temporary storage facility for ashes at a monthly charge of \$80, but no on-site worshipping is allowed. The public may call 2150 7502/2570 4318/2365 5321 for enquiries.

Detailed legislative proposals under the Bill have been uploaded to the webpage of the Food and Health Bureau ([www.fhb.gov.hk](http://www.fhb.gov.hk)). Members of the public may make enquiries by calling the government hotline (3142 2300) or email to the Food and Health Bureau (email address: [enquiry@fhb.gov.hk](mailto:enquiry@fhb.gov.hk)).

**Food and Health Bureau  
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