

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1063/17-18(04)

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**

**Information note prepared by the Legislative Council Secretariat  
for the meeting on 23 March 2018**

**Local legislation to implement the National Anthem Law**

The Panel on Constitutional Affairs ("the Panel") has not discussed the subject of local legislation to implement the National Anthem Law before. To facilitate members' deliberation on the subject, the relevant press releases issued by the Administration are attached in **Appendices I to VII** for members' reference. Dr Hon Helena WONG also raised an oral question on the enactment of a local national anthem law at the Council meeting of 1 November 2017. The question and the Administration's reply are attached in **Appendix VIII**.

2. The Administration will consult the Panel on local legislation to implement the National Anthem Law at the next meeting on 23 March 2018.

Council Business Division 2  
Legislative Council Secretariat  
16 March 2018

## Appendix I

### Press Releases

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HKSAR Government commences local legislation of National Anthem Law

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The 30th session of the Standing Committee of the 12th National People's Congress (NPC) today (November 4) adopted the Draft Decision of the Standing Committee of the NPC on Addition to the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), adding the National Anthem Law of the People's Republic of China to Annex III of the Basic Law.

In pursuance to Article 18 of the Basic Law, the National Anthem Law of the People's Republic of China will be applied in the Hong Kong Special Administrative Region (HKSAR) by way of appropriate local legislation consistent with the constitutional and legal regime of the HKSAR.

During the legislative process, the HKSAR Government will carefully consider the views of the public and members of the Legislative Council.

Ends/Saturday, November 4, 2017  
Issued at HKT 16:06

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附錄 II  
Appendix II

新聞公報

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政務司司長會見傳媒談話全文（只有中文）（附短片）  
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以下是政務司司長張建宗今日（十一月四日）下午出席香港婦女動力協會舞動全城慶回歸——千人健康操匯演2017後會見傳媒的談話全文：

記者：司長，想問《國歌法》剛剛通過納入附件三，其實在香港實行會不會有難度？現在是不是說在街上聽到國歌都要站起來？你認為這有多難實行？

政務司司長：人大常委會通過了決定，我們會展開跟進工作，跟進本地立法。第一件事我們要草擬草案，草擬草案之外，第二我們要在立法會，根據正常的途徑，在立法會進行諮詢工作，所以有這個程序需要一些時間。由草擬到引入立法會，有一段時間，當然我們盡量爭取盡早去做。在過程中一定要根據我們香港的憲制和香港的法律制度、我們香港自身的情況去訂法律。這就是我們會跟進的工作。

記者：《國歌法》會否有諮詢期或設立追溯期？

政務司司長：立法會過程中一定會聽大家的意見，是立法會審議和立法會討論，已經是一個公開聽市民意見的一個途徑。

記者：現時看到立法會有很多「拉布」的情況，是否擔心？會否甚至可能「打尖」讓《國歌法》先審議？

政務司司長：在這個階段是言之過早，因為第一我們要先草擬草案，現在草案也未有，草擬草案後，內容是怎樣。有了草案後，我們要經過行政會議的途徑，然後引入立法會。立法會一定會有條例草案委員會成立去審議。審議期間亦需要時間，時間不是我們能夠控制，時間在立法會的議程，我們一定要按程序諮詢立法會。

記者：有沒有時間表和立法有沒有甚麼原則？還有執法的時候用甚麼方式？

政務司司長：首先那個時間表，我剛才說，立法會何時批不是我們可以控制，第一。但是我們首先第一件事要展開立法工作、草擬工作，以及草擬了草案後跟着引入立法會，一步一步做。

記者：葉國謙說有機會操作上是市民一聽到國歌，就可能步行中都要站立，操作上會否是這樣？

政務司司長：實際的內容是怎樣，在立法的議程中我們會充分考慮實際的情況，在這個階段……

記者：會否做公眾諮詢？

政務司司長：在引入立法會的過程中，立法會即是一個公開的途徑，我們亦會在有關的委員會聽大家的意見。謝謝。

完

2017年11月4日（星期六）

香港時間17時48分

附錄 III  
Appendix III

新聞公報

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民政事務局局長會見傳媒談話全文（只有中文）

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以下是民政事務局局長劉江華今日（十一月五日）出席東華三院文武廟啟建一百七十周年暨香港特區政府成立二十周年文武二帝巡遊起步禮後會見傳媒的談話全文：

記者：《國歌法》納入《基本法》附件三，民政事務局轄下的活動哪些方面會受到影響？如何規管？因為有說法指重大活動才可以播放。觀眾應該怎樣做？

民政事務局局長：政府其實已講清楚一定在本地立法，亦會進行諮詢（聽取意見），在立法會將來訂定法例條文，其他部門會進行執法，當然會包括在民政事務局轄下如康文署（康樂及文化事務署）等這一類（部門）都會進行執法。但在整個過程中我們都要聽取各方面的意見。對於《國歌法》在香港實施，目標是希望能夠尊重國歌，亦尊重國家、尊重民族，我相信這是應有之義。至於詳細的情況怎樣做，必然在立法的過程中會體現到，我們會等等立法之後的做法。

記者：就青年加入諮詢架構，現已開始招募，初步反應如何？是否踴躍？

民政事務局局長：青年自薦計劃，我們已開始招募，（招募期）大概一個月，初步的反應非常熱烈，很多年青人希望把握這個機會，能夠進行自薦。就不同的委員會，由於有不同的範疇，年青人有不同的興趣，他們可以有選擇。雖然這次位不是太多，有十一個，只是初步的嘗試，亦是初步的突破，希望年輕的朋友可以把握這難得的機會報名。報名的手續很簡單，只要填寫不超過六百字的文字，或拍攝不超過三分鐘的影音。以影音作申請報名，過往政府都未試過，這次亦是第一次，這是符合青年人過往日常的工作習慣，所以我們很希望青年朋友可以把握這個機會，踴躍參與。

記者：《國歌法》在地區層面，局方如何推行？

民政事務局局長：現在剛剛有一個頒布，一切都是等立法之後，我們看看怎樣配合，但原則上《國歌法》的實施，我相信各個部門都會全面配合。

記者：會不會有公民教育推廣，或教育市民認識這條法例和國歌的基本背景？

民政事務局局長：這是好建議。我認為《國歌法》的推行，除了需要有立法，在教育的層面推動也是需要的。過往公民教育委員會在這方面不遺餘力，譬如我們在電視台每個新聞時段之前都播放國歌，這都是公民教育委員會的推廣。將來怎樣做推動的工作，我們都願意聽取各方面的意見，務求國歌法能夠完善和有效地在香港推行。

記者：除了在新聞時段前播放國歌之外怎樣加強宣傳？

民政事務局局長：我剛才說過，除了立法的過程，之後我們會看看推廣和教育的工作怎樣做。我希望公民教育委員會進行研究，如何加強推行工作。

記者：剛才提到康文署的職員都可以執法，是怎樣做？譬如在球賽賽事有人嘯國歌，康文署職員看到之後再報警處理？還是怎樣做？

民政事務局局長：我相信一切都是等待立法之後，我們可以再詳細知道情況是怎樣。

完

2017年11月5日（星期日）  
香港時間13時22分

附錄 IV  
Appendix IV

新聞公報

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律政司司長談《國歌法》（只有中文）

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以下是律政司司長袁國強資深大律師今日（十一月六日）離港前往吉隆坡前，於香港國際機場與傳媒談話的內容：

記者：司長，《國歌法》在上立法會之前，會否進行諮詢或者推出白紙草案寫清楚甚麼情況下會犯法？甚麼情況下不會犯法？

律政司司長：自從《國歌法》這法例在社會上有討論時，無論傳媒或其他平台的意見，特區政府也有留心，亦希望往後在立法工作時，可以做得順利一點。所以在立法過程中，我們一定會從不同途徑聽取市民和社會人士的意見。至於實際具體如何做，我相信往後有關的政策局會有具體的研究和考慮。但大原則是第一方面，要維持《國歌法》的立法目的和原意，另一方面，我們亦要兼顧香港獨有的普通法的法律制度，和我們法律制度之下有關的保障，所以兩者之間需要取得平衡。至於剛才這位傳媒朋友問，會否寫得清楚如何執法，我相信每一條法例訂立時，我們也會兼顧，但至於詳細程度就要視乎法律的性質，因為沒可能一條法例可以將所有以後會遇到的事情都寫得如此詳細，沒有一條法例可以（做到），所以我們要取得平衡。

記者：但有人擔心在茶餐廳播放國歌時突然間都要肅立，若立法之後，會否有此情況出現？

律政司司長：我相信最重要的是法例的原則是清楚的，若原則是清楚的話，大家就會知道如何做。至於個別具體情況，正如我剛才提及，法例無可能完全把所有具體情況逐一寫清楚，這不單是今次《國歌法》的情況，其他法例也有類似情況，亦相信在諮詢或聽取民意期間，會有相關討論。所以我相信大家往後跟有關原則就可以，我相信大家也會明白，《國歌法》最重要的目的是希望維護國歌的尊嚴，這是一個很基本的要求，很多時候我們對其他國家播放他們的國歌時，我們都會尊重，所以對自己國家的國歌作出尊重，這點十分合乎常理。

完

2017年11月6日（星期一）  
香港時間17時40分

## 附錄 V Appendix V

### 新聞公報

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行政長官於行政會議前會見傳媒談話全文（只有中文）（附短片）

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以下是行政長官林鄭月娥今日（十一月七日）上午出席行政會議前會見傳媒的談話全文：

行政長官：各位傳媒朋友，早晨。我說幾句關於《國歌法》的事項。就全國人大常委會在上星期六的會議通過將《中華人民共和國國歌法》按着《基本法》第十八條列入附件三。換句話說，將是一條適用於香港特別行政區的全國性法律。但鑑於我們兩地法律不同的制度，以及我們有先例可援，就是有關《國旗法》及《國徽法》的做法，所以我們會以本地立法形式將《國歌法》適用於香港，政制及內地事務局已經展開有關本地立法的工作。我當然希望立法工作能夠盡快完成，不過，大家都知道，所有立法工作都需要經過立法會討論然後通過，在立法過程中，最重要的當然是我們能夠實施這條法律的目的及原意。這條法律的目的和原意就是國歌一如國旗、國徽，都是我們國家的象徵和標誌，是需要得到尊重。所以怎樣透過立法規範國歌的奏唱，以防止、避免任何蓄意、故意貶損國家及做出一些這類故意的行為，侮辱我們國家象徵的行為是完全不能接受。但當然在立法過程中，我們亦會考慮香港的憲制和法律制度，以及在法律制度下得到的保障。所以政制及內地事務局聯同律政司在草擬有關的本地法律時，會按着我剛才所說的實施法例目的和原則，以致兼顧到香港自己的法律制度。我們希望能夠在本立法年度盡快把這個法案提交給立法會審議，在過程中，當然會有社會討論及有一定的諮詢，所以大家無需過分擔憂、焦慮在本地立《國歌法》會引致甚麼誤墮法網這些擔憂，我覺得這是完全沒有必要的顧慮。當然，要通過立法會來討論一條草案從而通過，這個立法程序現時似乎放在我們面前的情況並不是一個順暢的議事狀況，所以我希望在未來日子裏，立法會各位議員都履行他們的憲制責任，討論由政府提交的議案，從而可以有效率地通過相關議案。多謝大家。

記者：想問《國歌法》有否說會如何進行諮詢工作？以及有些人覺得會影響創作自由，其實在立法過程當中怎樣確保可以有效保障這些自由？第二，亦想問明日《施政報告》致謝議案，會否擔心民主派都會可能「拉布」，利用這個致謝議案去拖一地兩檢議案或修改《議事規則》？

行政長官：正如我剛才所說，《國歌法》的目的是對於國家這個標誌及象徵表示尊重，只會規範一些蓄意貶損國歌奏唱或故意侮辱國家象徵的行為，所以我看不到它與創作自由或表達意見的自由拉上任何關係。不過，這亦是突顯近年香港有一個現象，凡涉及香港與內地的政務或是特區與中央的事務，都無必要地甚至想好像製造一些社會恐慌式言語將它上綱上線，我不希望為《國歌法》做本地立法工作亦會受到這些不必要的干擾。

有關由明日開始，就着我首份《施政報告》議員提出的致謝動議，當然我很感激立法會議員按着立法會傳統，就着行政長官《施政報告》作致謝動議。但更加重要是希望在三日的致謝動議的討論過程中，我及我的司局長同事能夠更加多聆聽議員意見，吸納他們一些好的意見，因為很大部分的政策措施都是要落實執行，在落實執行過程中出現了很多具體事項是需要詳細再去研究，所以我希望議員都好好運用他們的權力，利用接着三



日的致謝動議辯論發表他們就着《施政報告》的看法。

記者：林太，想問《國歌法》會否有公眾諮詢及會否有追溯期？謝謝。

行政長官：按着香港一向的法律原則，《國歌法》在本地立法應該不會設有追溯期。同樣，如我剛才說有時候有些事情不必要將它複雜化，我不希望社會得到的信息就是說，當這條全國性法律在內地已經在十月一日實施之後，香港在未做到本地立法之前有個所謂的灰色地帶或真空期，而做出一些貶損國家奏唱或侮辱國家的行為。這種必須要對於國家的象徵及標誌表示尊重是我們每一個人、每一個公民應有的責任，所以不應該因為本地立法的工作尚未完成而利用這個空隙做一些不尊重國家的行為。多謝大家。

完

2017年11月7日（星期二）

香港時間12時21分

**Appendix VI****Press Releases**

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SED on National Anthem Law and Basic Competency Assessment  
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Following is the transcript of remarks by the Secretary for Education, Mr Kevin Yeung, at a media session after attending the launch ceremony for the Joint-Institution Network for Student Success cum Careers Fair today (March 9):

Reporter: Will there be a law requiring schools to teach the national anthem? Some argue that it is not necessary to put it into the law.

Secretary for Education: As I said, I think we still need some more time to study and consider what is the best approach to put that requirement (in place) or how to make sure schools will teach the national anthem. We will decide that later.

Reporter: Regarding the BCA (Basic Competency Assessment), is there a decision within this month?

Secretary for Education: That is still our plan - to have a decision within March.

(Please also refer to the Chinese portion of the transcript.)

Ends/Friday, March 9, 2018  
Issued at HKT 16:30

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**Appendix VII****Press Releases**

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Transcript of SCMA's remarks on National Anthem Law  
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Following is the transcript of remarks made by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, at a media session after attending an activity relating to the International Day for the Elimination of Racial Discrimination today (March 10):

Reporter: (About National Anthem Law)

Secretary for Constitutional and Mainland Affairs: Our task is to work on the local legislation to implement the National Anthem Law, and we are now in the process of doing that. We will be consulting the Constitutional Affairs Panel of the Legislative Council (LegCo) later this month. We would outline our proposals on that and discuss with members. Before we introduce the bill before end of the current legislative session, there will be ample time to discuss with LegCo members and also listen to the views of various sectors. We would also make use of various channels to listen to the views expressed and consider how best to draw up the local legislation, making sure that the legislative intent and objectives of the National Anthem Law will be implemented through our local legislation and also taking into account our legal system and also the circumstances of Hong Kong.

(Please also refer to the Chinese portion of the transcript.)

Ends/Saturday, March 10, 2018  
Issued at HKT 17:57

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**Appendix VIII****Press Releases**

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LCQ1: Enactment of a local national anthem law  
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Following is a question by the Dr Hon Helena Wong and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (November 1):

Question:

The National Anthem Law of the People's Republic of China (National Anthem Law) came into force on the Mainland on the 1st of October this year. It has been reported that that piece of national law will be listed in Annex III to the Basic Law and applied locally by way of legislation by the Hong Kong Special Administrative Region (SAR). In this connection, will the Government inform this Council:

(1) given that in response to a question on the retrospective effect of the local national anthem law recently, the Chief Executive indicated that "normally, not many enactments in Hong Kong come with retrospective periods, but it does not mean that there is none", but Article 12 in Part II (Hong Kong Bill of Rights) of the Hong Kong Bill of Rights Ordinance, which implements Article 15 of the International Covenant on Civil and Political Rights that applies to Hong Kong, stipulates that there are no retrospective criminal offences or penalties, whether the authorities will ensure that the local national anthem law complies with the requirements of Article 12;

(2) which of the articles in the National Anthem Law will be applied in SAR through the local national anthem law; if Articles 5 and 11 of the National Anthem Law will be applied in SAR, how the following contents of these Articles will be applied under the local national anthem law: "[t]he State calls upon citizens and organizations to perform and sing the national anthem on appropriate occasions to express patriotic sentiments", and "[s]econdary and primary schools shall make the national anthem an important part of patriotism education, organize the students to learn to sing the national anthem, and educate the students on the history and spiritual connotation of the national anthem and to obey the etiquette for performing and singing the national anthem"; and

(3) whether the publication of works of secondary creation of the national anthem on the Internet will be made a criminal offence under the local national anthem law; if so, of the details (including the considerations for determining the level of penalty); if not, the reasons for that?

Reply:

Mr President,

Our consolidated reply to Dr Hon Wong's question is as follows:

According to Paragraphs 1 to 3 of Article 18 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), the laws in force in the Hong Kong Special Administrative Region (HKSAR) shall be the

Basic Law, the laws previously in force in Hong Kong as provided for in Article 8 of the Basic Law, and the laws enacted by the legislature of the Region. National laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the HKSAR and the government of the Region. Laws listed in Annex III to the Basic Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by the Basic Law.

The National Anthem Law of the People's Republic of China (the National Anthem Law) was adopted at the 29th session of the Standing Committee of the 12th National People's Congress on September 1, 2017, and has come into force nationwide since October 1, 2017.

Similar to the national flag and the national emblem, the national anthem is the symbol and hallmark of the nation. The National Anthem Law is a national law outside the limits of the autonomy of the HKSAR, and as such may be listed in Annex III to the Basic Law pursuant to Article 18 of the Basic Law. After the adoption by the Standing Committee of the National People's Congress of the decision to add the National Anthem Law to Annex III of the Basic Law, the HKSAR Government will commence the preparation of local legislation for the National Anthem Law, and apply the Law in the HKSAR by way of appropriate local legislation in compliance with the constitutional and legal regime of the HKSAR. It would include taking into account the relevant provision of Article 12 of the Hong Kong Bill of Rights Ordinance.

Since the National Anthem Law has yet to be included in Annex III of the Basic Law and the local legislative process has yet to commence, it is premature to comment on individual provisions and details at the present stage. In the course of enacting the relevant local legislation, the HKSAR Government will consult the Legislative Council (LegCo) and the public and discuss the legislative proposals.

With respect to primary and secondary education, the Education Bureau has earlier indicated that the learning contents of the national anthem have already been incorporated into the subject curricula (such as General Studies and Music) at primary and secondary levels and in Moral, Civic and National Education. Starting from the junior primary level, students have ample opportunities in and outside lessons to sing the national anthem. Schools generally play the national anthem during the flag-raising ceremony on important days and special occasions, such as speech day and sports day. The Education Bureau will give due attention to the local legislation for the National Anthem Law, take prompt action to review the curriculum and administrative arrangements, and update the learning and teaching resources so as to support schools in the effective implementation of the Constitution and Basic Law Education, as well as to develop in students a respect for the national anthem.

The HKSAR Government will further discuss the relevant offences and levels of penalty during the local legislative stage. In general, the laws in the physical world are applicable to the cyber world based on actual circumstances. The Police

often appeal to the public to use the Internet properly and lawfully, and to refrain from sending any messages that, for example, are irresponsible or incite others to engage in illegal activities. In case of any illegal activities online, the Police shall collect evidence for follow-up investigations.

Mr President, as I have mentioned just now, LegCo will have ample opportunities to discuss and scrutinise the local legislation for the National Anthem Law during the legislative process. I look forward to working with LegCo jointly and effectively on the local legislation for the National Anthem Law.

Ends/Wednesday, November 1, 2017  
Issued at HKT 12:35

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