

**立法會**  
**Legislative Council**

Ref : CB2/BC/3/18

LC Paper No. CB(2)1211/18-19  
(These minutes have been seen  
by the Administration)

**Bills Committee on National Anthem Bill**

**Minutes of the second meeting  
held on Friday, 1 March 2019, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

**Members present** :

- Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
- Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
- Hon James TO Kun-sun
- Hon LEUNG Yiu-chung
- Hon WONG Ting-kwong, GBS, JP
- Hon Starry LEE Wai-king, SBS, JP
- Hon CHAN Hak-kan, BBS, JP
- Hon CHAN Kin-por, GBS, JP
- Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
- Hon WONG Kwok-kin, SBS, JP
- Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon Claudia MO
- Hon Steven HO Chun-yin, BBS
- Hon Frankie YICK Chi-ming, SBS, JP
- Hon WU Chi-wai, MH
- Hon YIU Si-wing, BBS
- Hon MA Fung-kwok, SBS, JP
- Hon Charles Peter MOK, JP
- Hon CHAN Chi-chuen
- Hon Kenneth LEUNG
- Hon Alice MAK Mei-kuen, BBS, JP
- Hon KWOK Wai-keung, JP
- Hon Dennis KWOK Wing-hang
- Hon Christopher CHEUNG Wah-fung, SBS, JP
- Dr Hon Fernando CHEUNG Chiu-hung
- Dr Hon Helena WONG Pik-wan
- Hon IP Kin-yuen
- Dr Hon Elizabeth QUAT, BBS, JP
- Dr Hon CHIANG Lai-wan, SBS, JP

Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Hon CHAN Chun-ying, JP  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon Jeremy TAM Man-ho  
Hon Gary FAN Kwok-wai  
Hon AU Nok-hin  
Hon Vincent CHENG Wing-shun, MH  
Hon Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Members absent** : Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon CHAN Han-pan, BBS, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Dr Hon KWOK Ka-ki  
Hon KWONG Chun-yu

**Public Officers attending** : Mr Roy TANG Yun-kwong, JP  
Permanent Secretary for Constitutional and Mainland Affairs  
  
Ms Cordelia LAM Wai-ki  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Ms Jocelyn NG Wai-chung  
Assistant Secretary for Constitutional and Mainland Affairs

Mr Lawrence PENG Si-yun  
Deputy Law Draftsman (Acting)  
Department of Justice

Mr Jonathan LUK King-hang  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Joanne MAK  
Chief Council Secretary (2) 3

**Staff in attendance** : Mr Kelvin LEE  
Senior Assistant Legal Adviser 3

Miss Rachel DAI  
Assistant Legal Adviser 2

Ms Jasmine TAM  
Senior Council Secretary (2) 3

Mr Dennis HO  
Council Secretary (2) 3

Mrs Fonny TSANG  
Legislative Assistant (2) 3

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**I. Meeting with the Administration**

[File Ref.: CMAB E4/1/1, LC Paper Nos. CB(3)307/18-19, LS42/18-19, CB(2)811/18-19(01), CB(2)893/18-19(01) and (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

2. The Administration was requested to provide a written response to address the following issues raised by members:

Admin

- (a) explain how to reconcile the penal provisions of the National Anthem Bill ("the Bill") and the powers and privileges of

Action

Legislative Council ("LegCo") Members as provided in sections 3 and 4 of the Legislative Council (Power and Privileges) Ordinance (Cap. 382), in particular, whether the protection of LegCo Members' freedom of speech and debate in the Council or proceedings before a committee would prevail in case of conflict between the relevant provisions of Cap. 382 and the Bill, if enacted;

- (b) provide information on the penalties provided in legislation relating to national anthem of overseas jurisdictions;
- (c) explain why the National Flag and National Emblem Ordinance did not provide for the respect for the national flag and the national emblem and did not specify the requirement of "standing solemnly", which were, however, provided for under the 1990 Law of the People's Republic of China on the National Flag and the 1991 Law of the People's Republic of China on the National Emblem;
- (d) provide more information on the enforcement actions taken by the Mainland authorities against breaches of the Law of the People's Republic of China on the National Anthem, including the offences involved in the two Mainland cases mentioned in paragraph 7 of the Administration's response to issues raised at the meeting of the Bills committee on 19 February 2019 [LC Paper No. CB(2)893/18-19(01)] and whether any written judgment had been handed down; and
- (e) explain, while there was no penal provision directly on non-compliance with the requirements under clauses 9 and 10 of the Bill, whether there was any legal consequence for non-compliance with such requirements, including whether sanctions could be imposed under the Education Ordinance (Cap. 279), the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562).

*(At 10:27 am, the Chairman directed that the meeting be extended by 15 minutes beyond the appointed ending time.)*

- Admin 3. Ms Tanya CHAN expressed concern as to whether there were examples of local legislation which specified "promotion" (推廣) as a purpose of the legislation in the long title. The Administration was requested to consider Ms CHAN's concerns.

Action

Date of next meeting

4. Members noted that the next meeting would be held on Saturday, 16 March 2019, from 9:00 am to 6:30 pm to receive public views on the Bill.

**II. Any other business**

5. There being no other business, the meeting ended at 10:45 am.

Council Business Division 2  
Legislative Council Secretariat  
11 April 2019

**Proceedings of the second meeting of the  
Bills Committee on National Anthem Bill  
on Friday, 1 March 2019, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
001336 - 001516	Chairman	Opening remarks	
001517 - 001839	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN Chun-ying asked why the Bill sought to, among others, "promote respect for the national anthem", which was not included in the purpose and intent of the Law of the People's Republic of China on the National Anthem ("National Anthem Law") as stated in its Article 1. The Administration explained that the Bill was to reflect the legislative purpose of the National Anthem Law as much as possible and the requirement to respect the national anthem could be seen in Articles 3, 6, 7 and 9 of the National Anthem Law. The Administration considered that promoting respect for the national anthem was also part of the purpose and intent of the National Anthem Law which should be duly reflected in the Bill.</p> <p>In reply to Mr CHAN's enquiry, the Administration said that if a person was unable to sing the national anthem in Putonghua, it would suffice as long as the person followed the etiquette as provided for under clause 4(2).</p>	
001840 - 002308	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE considered that all Chinese should respect the national anthem, which was the symbol of the country. In reply to Mr TSE's enquiry, the Administration confirmed that the Bill had no retrospective effect and proceedings would only be instituted against offences that were committed after the enactment of the Bill and were discovered by, or came to the notice of, the Commissioner of Police.</p>	
002309 - 002714	Chairman Mr Alvin YEUNG Administration	<p>Referring to paragraph 17 of the Administration's reply letter dated 28 February 2019 (LC Paper No. CB(2)893/18-19(02)), Mr Alvin YEUNG requested the Administration to explain the factors to be considered in assessing whether an act would amount to insulting the national anthem under the Bill and why the Administration did not make assessments in respect of the scenarios set out in the letter of the Legal Adviser to the Bills Committee.</p> <p>The Administration said that for any unlawful act under clause 7 of the Bill, the burden of proof for establishing criminal liability rested with the prosecution and the standard of proof for criminal prosecution was high (i.e. beyond reasonable doubt). Generally speaking, there were three elements for one's behaviour to constitute an offence of insulting the national anthem under the Bill, which were performing an "insulting act" and doing it "publicly" and "intentionally". The Bill could not give an exhaustive list of all possible insulting behaviour in relation to the national</p>	

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		<p>anthem. Therefore, the Government in general would not make any judgment beforehand in respect of hypothetical scenarios and circumstances. As to whether a criminal act was committed, it was a matter to be determined by the court based on facts and evidence.</p> <p>Mr YEUNG expressed grave concern about the standard to be applied in law enforcement and what guidelines would be provided to the Police for them to follow. The Administration stressed that the threshold of the offence of insulting the national anthem was high. The law enforcement agencies would conduct investigations and take enforcement actions subject to the actual circumstances and evidence collected in each case.</p>	
002715 - 003153	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai asked whether the Police would conduct investigation upon receipt of complaints and when the accused would be informed of the investigation outcome as the prosecution time bar could take as long as two years. He also asked whether enforcement guidelines would be provided to the Police.</p> <p>The Administration said that the Police would act upon receipt of complaints or after the offence was discovered by the Police. The Police would conduct investigations and take necessary enforcement actions subject to the actual circumstances and evidence collected in each case.</p> <p>Mr WU asked whether failing to stand solemnly for whatever reasons (e.g. having a telephone conversation) while the national anthem was being played and sung constituted disrespect to the national anthem under the Bill and whether the Police would take action in the circumstances. The Administration explained that the question was related to clause 4 of the Bill. The provision, however, did not provide for any penalty for non-compliance. As such, merely not standing solemnly during the playing and singing of the national anthem by itself was not a basis for lodging a complaint to the Police about an alleged offence of insulting the national anthem under clause 7 of the Bill.</p>	
003154 - 003628	Chairman Ms Tanya CHAN Administration	<p>In response to Ms Tanya CHAN's request for examples of local legislation which specified "promotion" (推廣) as a purpose of the legislation, the Administration cited the Preamble of the West Kowloon Cultural District (Public Open Spaces) Bylaw (Cap. 601A).</p> <p>Ms CHAN noted that in the National Anthem Law, only Article 12 stipulated that "News media shall actively publicize the national anthem and popularize the etiquette for playing and singing the national anthem". She was concerned that although clauses 9 and 10 of the Bill did not include penalties, the Education Ordinance (Cap. 279), the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562) all provided for sanctions to be imposed on schools and broadcasting licensees for failure to comply with</p>	

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		<p>the directions made by the Education Bureau and the Communications Authority respectively.</p> <p>The Administration drew members' attention to Article 5 of the National Anthem Law, which stipulated that "The State encourages citizens and organizations to play and sing the national anthem on appropriate occasions in a show of patriotism". In the Administration's view, this was similar to the meaning of "promotion of national anthem" in the local context. Ms CHAN held a strong view that the words "encourage" (倡導) and "promote" (推廣) were very different in meaning.</p>	
003629 - 004036	Chairman Ms Claudia MO Administration	<p>Noting that the Bill sought to provide for "the promotion of the national anthem" and it was stated in the Preamble that "all individuals and organizations should respect the national anthem", Ms Claudia MO questioned why the National Flag and National Emblem Ordinance ("NFNEO") did not include similar wording.</p> <p>The Administration responded that the legislative principle of the Bill was to fully reflect the purpose and intent of the National Anthem Law, which was to preserve the dignity of the national anthem and promote respect for the national anthem, while giving regard to the common law system practised in Hong Kong and the actual circumstances in Hong Kong.</p>	
004037 - 004522	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK enquired about the relationship between the penal provisions of the Bill and the powers and privileges of Legislative Council ("LegCo") Members as provided in sections 3 and 4 of the Legislative Council (Power and Privileges) Ordinance (Cap. 382) ("the P&amp;P Ordinance"). He also asked whether the Bill or the P&amp;P Ordinance would prevail if the speech made by a LegCo Member during a debate held at a meeting of the Council or its committees allegedly constituted an insult to the national anthem.</p> <p>The Administration held the view that while LegCo Members' freedom of speech and of debate was protected under Article 77 of the Basic Law ("BL 77") and sections 3 and 4 of the P&amp;P Ordinance, such protection attached only to statements (both verbal and written) made by a LegCo Member in the course of official debates on the floor of LegCo and its committees when exercising his powers and discharging his functions as a LegCo Member. The Administration further explained that the aforesaid protection provided by the P&amp;P Ordinance would apply only if a LegCo Member was exercising his powers and discharging his functions as a LegCo Member in accordance with the law. At the Chairman's request, the Administration agreed to provide written response to the issues raised by Mr KWOK.</p>	<p><b>Admin</b> (para. 2(a) of minutes)</p>
004523 - 005045	Chairman Mr Andrew WAN Administration	<p>Mr Andrew WAN expressed concern about the intent of the Bill as stated in its Preamble that "the Ordinance was enacted to", among others, "promote patriotism". He queried whether it was appropriate to state in the Bill that its intent</p>	



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		<p>was to promote an ideology, which in his view was inconsistent with the law drafting practice in Hong Kong.</p> <p>The Administration said that Article 1 of the National Anthem Law stipulated that "This Law is enacted in accordance with the Constitution to", among others, "promote patriotism". Having regard to the common law system and actual circumstances in Hong Kong, the Administration considered it appropriate to incorporate Articles 1, 3 and 5 of the National Anthem Law into the Preamble with suitable adaptation.</p> <p>The Administration further said that the Preamble of the Bill served to fully reflect the purpose and intent of the National Anthem Law and did not provide for penalties. It was a common practice to state the intent and spirit of a piece of local legislation in its preamble, and there were examples (quoting The Chinese University of Hong Kong Ordinance (Cap. 1109) as an example) where abstract ideas were included in the preambles of the existing laws. The Administration did not consider that the Preamble of the Bill as currently drafted contained any ideological expression.</p>	
005046 - 005556	Chairman Mr Jeremy TAM Administration	<p>Mr Jeremy TAM sought clarification on whether a person who sang the national anthem in Cantonese would be caught by the Bill. The Administration explained that Part 2 of the Bill only provided for the standard, etiquette and occasions for the playing and singing of the national anthem. Neither the National Anthem Law nor the Bill stipulated that the national anthem must be sung in Putonghua. As such, merely singing the national anthem in Cantonese by itself did not constitute an offence of insulting the national anthem under clause 7 of the Bill. The Administration stressed that in any case, Part 2 of the Bill did not provide for any penalty.</p> <p>Mr TAM said he noted that NFNEO did not provide for the promotion of the national flag and the national emblem even though such a requirement was provided for under the 1990 Law of the People's Republic of China on the National Flag ("National Flag Law") and the 1991 Law of the People's Republic of China on the National Emblem ("National Emblem Law"). He questioned why there were different arrangements for the Bill and NFNEO. The Administration reiterated that the Bill had to fully reflect the purpose and intent of the National Anthem Law, which clearly included promotion of and respect for the national anthem.</p>	
005557 - 010053	Chairman Mr James TO Administration	<p>Mr James TO questioned what would constitute an insult to the national anthem which would incur criminal liabilities under the Bill and whether certain behaviour in different scenarios would contravene the Bill. He said that he would set out his questions in writing for the Administration's written response.</p>	
010054 - 010527	Chairman Mr Charles Peter MOK	<p>Mr Charles Peter MOK questioned how enforcement actions would be taken for online behaviour allegedly constituting</p>	

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	Administration	insults to the national anthem under the Bill. He said that he would set out his questions in writing for the Administration's written response.	
010528 - 011102	Chairman Mr CHAN Chi-chuen Administration	Mr CHAN Chi-chuen considered that the Administration should provide more details of the enforcement actions taken by the Mainland authorities against breaches of the National Anthem Law such as the offences involved. He urged the Administration to watch the relevant video clips about the two Mainland cases. Mr CHAN said that he would set out his questions in writing for the Administration's written response.	
011103 - 011608	Chairman Dr CHENG Chung-tai Administration	<p>In response to Dr CHENG Chung-tai's enquiry, the Administration advised that in the context of the Bill, the national anthem consisted of the lyrics and the score of the national anthem.</p> <p>Dr CHENG expressed concern as to whether a person who shared the hyperlink of an online platform on which altered lyrics or score of the national anthem was published and whether an Internet service provider who did not remove content involving alternations to the national anthem posted on a website would be caught by the Bill. The Administration reiterated that the threshold of the offence of insulting the national anthem under clause 7 of the Bill was high as explained before.</p> <p>Dr CHENG enquired whether the playing and singing of the national anthem during public demonstrations and protests would constitute an offence under clause 7. The Administration responded that the elements constituting the offence of insulting the national anthem included "intentionally insulting the national anthem", doing it "publicly" and "intentionally".</p>	
011609 - 012019	Chairman Dr Junius HO Administration	Dr Junius HO considered that the Police should be provided with appropriate guidelines to facilitate their enforcement work in future. He took the view that the protection and immunity provided to LegCo Members by sections 3 and 4 of the P&P Ordinance would not apply when the national anthem was being played and sung at the oath-taking ceremony of LegCo Members.	
012020 - 012518	Chairman Mr HUI Chi-fung Administration	<p>Mr HUI Chi-fung said that the proposed outline of content of the Bill presented to the relevant Panel earlier did not contain the requirement that the national anthem must be played and sung at the oath-taking ceremony of LegCo Members. He questioned why the requirement was subsequently included in the Bill, and whether it was the decision of the Hong Kong Special Administrative Region ("HKSAR") Government to include it or this was done at the request of Mainland authorities.</p> <p>The Administration responded that Schedule 3 to the Bill was drafted with reference to Article 4 of the National Anthem Law, which stipulated that the national anthem should be</p>	

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		<p>played and sung on, among others, "Constitutional oath ceremonies". In the drafting process, the Administration considered it appropriate and decided to include the oath-taking ceremony of LegCo Members in Schedule 3. In response to Mr HUI's further enquiry, the Administration explained that reference had also been made to BL 104 and the Oaths and Declarations Ordinance (Cap. 11) in proposing to include the oath-taking ceremonies of the principal members of the executive authorities, the legislature and the judiciary in Schedule 3 to the Bill.</p>	
012519 - 012951	<p>Chairman Mr Paul TSE Administration</p>	<p>Mr Paul TSE also considered it necessary to clarify whether and how the protection of LegCo Members' freedom of speech and debate in the Council or proceedings before a committee as provided under the P&amp;P Ordinance would be affected as a result of the enactment of the Bill and whether amendments to the P&amp;P Ordinance would be necessary.</p> <p>The Chairman requested the Administration to address also the issues raised by Mr TSE in its written response.</p>	<p><b>Admin</b> (para. 2(a) of minutes)</p>
012952 - 013400	<p>Chairman Mr AU Nok-hin Administration</p>	<p>Mr AU Nok-hin enquired whether, as far as the inclusion of the National Anthem Law into Annex III to the Basic Law was concerned, the Administration had breached the undertaking made by the then Secretary for Constitutional Affairs in 1999 that if any national law proposed to be added to Annex III to the Basic Law had any practical effect in HKSAR, it would refer the issue to the relevant LegCo Panel for discussion.</p> <p>The Administration explained that according to BL 18, the national laws listed in Annex III to the Basic Law should be applied locally by way of promulgation or legislation by HKSAR. If a national law was proposed to be implemented by promulgation and had actual impact on Hong Kong, the HKSAR Government would bring up the issues for discussion at the relevant LegCo Panel(s) before the national law was added to Annex III to the Basic Law. If a national law was proposed to be implemented by way of local legislation, the HKSAR Government would bring up the issues for discussion at the relevant LegCo Panel(s) during the legislative process and any such draft legislation would only come into force after passage by LegCo.</p>	
013401 - 013809	<p>Chairman Dr Priscilla LEUNG Administration</p>	<p>Dr Priscilla LEUNG expressed support for implementing the National Anthem Law in Hong Kong by local legislation so that due regard could be given to the common law system and the actual circumstances in Hong Kong in the legislative process. In her view, this approach was also consistent with that for the implementation of the National Flag Law and the National Emblem Law, both of which had been adapted and implemented in Hong Kong by enacting NFNEO. She urged for early passage of the Bill.</p>	

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013810 - 014241	Chairman Mr Kenneth LEUNG Administration	<p>In reply to Mr Kenneth LEUNG's enquiry, the Administration confirmed that the Bill had no extraterritorial effect. Mr Kenneth LEUNG further asked whether a soccer fan who booed the national anthem at a soccer match held in the United Kingdom but broadcast it live in Hong Kong and persons who shared altered lyrics of the national anthem on the Internet would be caught by the Bill.</p> <p>The Administration explained that generally speaking, acts performed outside Hong Kong would not be subject to regulation of the Bill. However, if the aforementioned soccer fan produced and published a video of his act of booing the national anthem at the soccer match after returning to Hong Kong, clause 7 of the Bill might apply. As regards the sharing of altered lyrics of the national anthem on the Internet, the Administration advised that a person might commit an offence if he/she intentionally published the altered lyrics with an intent to insult the national anthem, irrespective of where the act of publishing took place.</p>	
014242 - 014732	Chairman Dr Fernando CHEUNG Administration	<p>Dr Fernando CHEUNG was concerned that the Bill would restrict people's freedom of expression. He asked whether the Administration would consider removing the penal provisions from the Bill. The Administration explained that a major focus of the Bill was to promote respect for the national anthem by means of directional provisions which did not provide for penalty. Penal provisions of the Bill were designed to deal with those who had an intent to insult the national anthem and performed acts publicly and intentionally to insult the national anthem, as well as misuse of the national anthem.</p> <p>Dr CHEUNG expressed concern about whether persons outside Hong Kong who were accused of breaching the National Anthem Law would be surrendered to the Mainland for trial in future. The Permanent Secretary for Constitutional and Mainland Affairs responded that the matter fell outside the purview of the Constitutional and Mainland Affairs Bureau.</p>	
014733 - 015137	Chairman Dr CHIANG Lai-wan Administration	<p>In response to Dr CHIANG Lai-wan's question, the Administration confirmed that other than the occasions specified in the Bill on which the national anthem must not be used, the national anthem could be played and sung at appropriate occasions.</p> <p>Dr CHIANG considered that the term "stand solemnly" under clause 4(2) might be amended as "stand solemnly with hands put down straight" and requested the Administration to consider it.</p>	
015138 - 015620	Chairman Dr Helena WONG Administration	<p>Dr Helena WONG asked whether consideration would be given to reducing the maximum penalties for offences under the Bill (i.e. a fine at level 5 and imprisonment for three years) which, in her view, were too heavy. The Administration responded that the level of penalties was the</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		<p>same as that provided under NFNEO for similar offence. Furthermore, under the Criminal Law of the People's Republic of China, the maximum penalty for the offence of desecrating the national flag, national emblem or national anthem was also three years' imprisonment. At Dr WONG's request, the Administration agreed to provide information on the penalties stipulated in relevant legislation of other jurisdictions for members' reference.</p> <p>Dr WONG further asked whether a person who commented on or shared a derivative work of the national anthem created by a third party on social media would commit an offence under the Bill. The Administration explained that while a person would not commit an offence simply by publishing a derivative work of the national anthem, the person might commit an offence under clause 7(3) of the Bill if he/she intentionally published the derivative work with intent to insult the national anthem.</p>	<p><b>Admin</b> (para. 2(b) of minutes)</p>
015621 - 020009	Chairman Mr LEUNG Yiu-chung Administration	<p>Mr LEUNG Yiu-chung considered that the Administration should seek to promote respect for the national anthem by administrative measures and not by criminalization. He asked whether it was possible that, instead of imposing criminal sanctions on an offender under the Bill, an option be allowed such that a Police Superintendent could exercise discretion to issue a caution to the offender.</p> <p>The Administration reiterated that a major focus of the Bill was to promote respect for the national anthem, and the relevant directional provisions did not provide for penalty. As regards the penal provisions in Part 3 of the Bill, they were designed to deal with behaviour that amounted to an insult to the national anthem or a misuse of the national anthem. It was ultimately up to the court to decide whether a particular case violated the law, and if so, whether penalties should be imposed. The Administration also made reference to the judgment of HKSAR v. Ng Kung Siu and another (1999) which stated that "[A] law seeking to protect the dignity of the flag in question as a symbol, in order to be effective, must protect it against desecration generally."</p>	
020010 - 020602	Chairman Mr CHU Hoi-dick Administration	<p>Mr CHU Hoi-dick expressed concern that while the etiquette for the playing and singing of the national anthem under Article 7 of the National Anthem Law was provided for in clause 4 of the Bill, references to the etiquette for the national flag and the national emblem provided for in the National Flag Law and the National Emblem Law were not found in NFNEO. He questioned whether it was the HKSAR Government to decide how a national law should be adapted and what accounted for the above difference between the Bill and NFNEO. The Chairman requested the Administration to provide supplementary information.</p> <p>The Administration explained that generally speaking, where a national law was to be implemented in Hong Kong by local legislation, the legislative principle was to reflect the purpose</p>	<p><b>Admin</b> (para. 2(c) of minutes)</p>

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		and intent of the national law as fully as possible while giving due regard to the common law system and actual circumstances in Hong Kong.	
020603 - 020825	Chairman Mr Christopher CHEUNG Administration	Mr Christopher CHEUNG expressed support for the Bill, adding that one would not breach the law if he/she did not publicly and intentionally perform any acts to insult the national anthem. He hoped that the Bill could be passed as soon as possible so as to deter insulting behaviour against the national anthem.	
020826 - 021240	Chairman Administration	<p>In reply to the Chairman's enquiry, the Administration confirmed that after a national law was added to Annex III to the Basic Law, the HKSAR Government had a constitutional duty to implement the national law in Hong Kong either by promulgation or by local legislation. If a national law was to be implemented in Hong Kong by promulgation, it would have to be implemented in Hong Kong in its entirety without adaptation.</p> <p>The Chairman asked whether the HKSAR Government still had an option to implement the National Anthem Law in Hong Kong by promulgation if the Bill was not passed by LegCo. The Administration affirmed that such an option was provided under BL 18. The Chairman further asked whether the National Anthem Law was the basis of the legislative framework in this legislative exercise. The Administration responded in the affirmative, adding that under BL 18, the HKSAR Government had to have full regard to the spirit and provisions of the national law in the local legislation process.</p>	
021241 - 021508	Chairman Mr Alvin YEUNG Administration	<p>In reply to Mr Alvin YEUNG's enquiry, the Administration said that the information set out in paragraph 7 of its written response to the issues raised at the last meeting (LC Paper No. CB(2)893/18-19(01)) was obtained from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region.</p> <p>At Mr YEUNG's request, the Administration agreed to provide, as far as possible, more information on the enforcement actions taken by the Mainland authorities against breaches of the National Anthem Law, including the offences involved in the two Mainland cases and whether any written judgment had been handed down.</p>	<b>Admin</b> (para. 2(d) of minutes)
021509 - 021844	Chairman Ms Tanya CHAN Administration	The Administration agreed to consider the following issues raised by Ms Tanya CHAN: (a) examples of local legislation which specified "promotion" (推廣) as a purpose of the legislation in the long title; and (b) while there was no penal provisions directly on non-compliance with the requirements under clauses 9 and 10 of the Bill, whether there was any legal consequence for non-compliance with such requirements, including whether sanctions could be imposed under the Education Ordinance (Cap. 279), the Telecommunications Ordinance (Cap. 106) or the	<b>Admin</b> (para. 2(e) and 3 of minutes)

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
		Broadcasting Ordinance (Cap. 562). Written response would be provided where appropriate.	
021845 - 021921	Chairman	Date of next meeting  Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
11 April 2019