

立法會

Legislative Council

Ref : CB2/BC/3/18

LC Paper No. CB(2)105/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the seventh meeting held on Monday, 1 April 2019, at 10:45 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 Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
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
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
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 CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
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 LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Hon KWONG Chun-yu
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 LEUNG Yiu-chung
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon HUI Chi-fung
Dr Hon CHENG Chung-tai

Public Officers : Mr Patrick NIP Tak-kuen, JP
Secretary for Constitutional and Mainland Affairs

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

I. Meeting with the Administration

[File Ref. CMAB E4/1/1, LC Paper Nos. CB(3)307/18-19, CB(2)903/18-19(01), CB(2)811/18-19(01) and CB(2)893/18-19(02)]

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

2. The Bills Committee completed discussion of clause 2 and commenced discussion of clause 3 of the Bill at this meeting.

Follow-up actions required of the Administration

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

Action

- Admin
- (a) explain why it was necessary to include clause 3 in the Bill and advise on which Article of the Law of the People's Republic of China on National Anthem clause 3 was based; and
 - (b) explain the implications of deleting clause 3, including whether it would render the Bill not enforceable or ineffective in achieving its intended purpose.

(At 12:44 pm, the Chairman directed that the meeting be extended by 15 minutes beyond the appointed ending time to end at 1:00 pm.)

(At 12:45 pm, Mr CHAN Chi-chuen drew to the Chairman's attention that a quorum was not present. The Chairman ordered the ringing of the quorum bell to summon members to the meeting.)

4. At 1:00 pm, the Chairman declared the meeting closed.

Council Business Division 2
Legislative Council Secretariat
30 October 2019

**Proceedings of the seventh meeting of the
Bills Committee on National Anthem Bill
on Monday, 1 April 2019, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000920 - 000956	Chairman	Opening remarks	
000957 - 001211	Chairman Ms Claudia MO Administration Senior Assistant Legal Adviser	Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill") Part 1 – Preliminary <u>Examination of clauses 1 and 2</u> Discussion on whether rapping the national anthem would amount to an insult to the national anthem in breach of clause 7 of the Bill.	
001212 - 001731	Chairman Administration Dr KWOK Ka-ki	Part 2 – Playing and Singing of National Anthem <u>Examination of clause 3</u> Expression of concern that the expression "in keeping with its dignity" in clause 3 was too abstract and vague; and enquiry about whether stating the fact that Mr TIAN Han, the lyricist of the national anthem, was persecuted till death during the Cultural Revolution before or after a performance of the national anthem was in line with the standard for playing and singing the national anthem provided in clause 3. The Administration's advice that clause 3 served to provide guidance for the public by describing the standard relating to the playing and singing of the national anthem. The expression "in keeping with its dignity" should be understood in accordance with its ordinary meaning. Whether a specific act would constitute the offence of insulting the national anthem depended on whether it manifested the elements of offence specified in clause 7, i.e. publicly and intentionally insulting the national anthem, which was a question of fact and had to be assessed based on the actual circumstances of each case.	
001732- 002206	Chairman Ms Claudia MO Administration	Discussion on Ms Claudia MO's suggestion of deleting the word "its" and "in a way" in clause 3.	
002207 - 003221	Chairman Mr Alvin YEUNG Mr CHAN Chi-chuen Administration	Queries about the meaning of the "dignity" of the national anthem, bearing in mind that the national anthem was intangible; and whether clauses 3 and 4 could be merged into one single clause. The Administration's advice that: (a) clause 3 was drafted with reference to Article 6 of the	

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		<p>Law of the People's Republic of China on National Anthem ("National Anthem Law"). The term "dignity" was also used in some other pieces of existing local legislation, such as the Solicitors (Group Practice) Rules (Cap. 159X) and the Private Columbaria Ordinance (Cap. 630). There was no legal definition for the term "dignity" and it should be interpreted in accordance with its ordinary meaning and in context; and</p> <p>(b) clauses 3 and 4 could not be merged as they were meant to serve different purposes, i.e. clause 3 set out the standard relating to the playing and singing of the national anthem while clause 4 provided for the etiquette to be followed by persons who took part in or attended the occasion on which the national anthem was played and sung.</p>	
003222 - 003652	Chairman Mr CHU Hoi-dick Administration	<p>Queries about the meaning of the "standard" for playing and singing the national anthem and whether clause 3 was redundant.</p> <p>The Administration's response that clause 3 reflected Article 6 of the National Anthem Law and also provided guidance for the public by describing the way in which the national anthem must be played and sung.</p>	
003653 - 004142	Chairman Dr Fernando CHEUNG Administration	Discussion on whether singing the national anthem in the course of making oral representations at a meeting held in the Legislative Council would be regarded as singing the national anthem "in a way that was in keeping with its dignity".	
004143 - 004552	Chairman Mr Gary FAN Administration	<p>Expression of the view that the drafting of clause 3, particularly the meaning of the term "dignity", was unclear and would give rise to concern that people might breach the law inadvertently.</p> <p>The Administration's response that clause 3 was a directional provision which did not provide for penalties. It served to provide guidance for the public by making it clear that the national anthem must be played and sung in a way that was in keeping with the dignity of the national anthem as a symbol and sign of the country. Since specified mens rea was required for establishing an offence of insulting behaviour under clause 7, there was no need for members of the public to worry about "inadvertently contravening the law" so long as they did not intend to insult the national anthem.</p>	
004553 - 004943	Chairman Mr Paul TSE Administration	Reference to the common law principle in the interpretation of terms without a statutory definition (e.g. "dignity") and a suggestion that the Administration should provide more examples of the ways of playing and singing the national anthem which would be regarded as meeting/failing to meet the standard provided in clause 3 for public reference.	
004944 - 005400	Chairman Ms Tanya CHAN	Expression of the view that clause 3, particularly the term "dignity", was too abstract and vague; and query about	

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	Administration	whether clause 3 served any real purpose. The Administration's reiteration of its earlier response that clause 3 was a directional provision which did not provide for penalties.	
005401 - 005728	Chairman Dr KWOK Ka-ki Administration	Discussion on whether stating the facts about the death of Mr TIAN Han before or after a performance of the national anthem was consistent with the standard for playing and singing the national anthem provided in clause 3.	
005729 - 010113	Chairman Dr Fernando CHEUNG Administration	Discussion on the meaning of the expression "in a way that is in keeping with its dignity".	
010114- 010539	Chairman Mr AU Nok-hin Administration	Query about why clause 3 of the Bill did not adopt fully the content of Article 6 of the National Anthem Law. The Administration's response that the legislative principle of the Bill was to fully reflect the purpose and intent of the National Anthem Law, while giving due regard to the common law system and the actual circumstances in Hong Kong. The content of Article 6 of the National Anthem Law was reflected in clause 2(2), Schedules 1 and 2, and clause 3 of the Bill.	
010540 - 010850	Deputy Chairman Ms Claudia MO Administration	<i>(The Deputy Chairman took the chair in the absence of the Chairman)</i> Discussion on why the word "must" instead of "shall" or "is to be" was used in the English text of clause 3.	
010851 - 011240	Deputy Chairman Mr AU Nok-hin Administration	Discussion on the difference between the drafting approach of clause 3 of the Bill and that of Article 6 of the National Anthem Law.	
011241 - 011603	Chairman Mr CHU Hoi-dick Administration	<i>(The Chairman resumed the chair at this juncture.)</i> Expression of concern that clause 3 was unclear and redundant, particularly in view of the fact that the National Flag and National Emblem Ordinance ("NFNEO"), which implemented the Law of the People's Republic of China on National Flag and the Law of the People's Republic of China on National Emblem, did not have similar directional provisions. The Administration's response that it was necessary to include clause 3 in the Bill to reflect Article 6 of the National Anthem Law and to provide guidance for the public by describing the standard relating to the playing and singing of the national anthem. Section 4 of NFNEO was also a directional provision which did not provide for penalties.	
011604 - 011808	Chairman Mr IP Kin-yuen	Enquiry about the etiquette for playing and singing the national anthem provided in clause 4.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
011809 - 012222	Chairman Mr Andrew WAN Administration	<p>Expression of the view that the standard for playing and singing the national anthem provided in clause 3 was so abstract and vague that it would only cause concerns rather than serving any meaningful purpose.</p> <p>The Administration's reiteration of its earlier explanation as to why it was necessary to include clause 3 in the Bill.</p>	
012223- 012650	Chairman Mr KWONG Chun-yu Administration	<p>Expression of concern that the meaning of the expression "in keeping with its dignity" was unclear and the judgment of whether a certain way of playing and singing the national anthem was "in keeping with its dignity" could be very subjective.</p> <p>The Administration's reiteration of its earlier response that the expression "in keeping with its dignity" should be understood in accordance with its ordinary meaning.</p>	
012651 - 013118	Chairman Mr Jeremy TAM Administration	<p>Enquiry about how the national anthem should be played in order to be regarded as being played in a way that was "in keeping with its dignity".</p> <p>The Administration's advice that playing and singing the national anthem in accordance with the national anthem stipulated in Schedule 1 and 2 of the Bill could manifest the solemnity of the national anthem and was in keeping with its dignity.</p> <p>The Chairman's request for the Administration to provide a written response to address Mr Jeremy TAM's concerns about why it was necessary to include clause 3 in the Bill and on which Article of the National Anthem Law clause 3 was based.</p>	Admin (para. 3(a) of minutes)
013119 - 013630	Chairman Mr James TO Administration	Discussion on the meaning of the term "dignity" in clauses 3 and 4, and whether a person who was speech impaired presented the lyrics of the national anthem by sign language during the playing and singing of it would be regarded as behaving in a way disrespectful to the national anthem.	
013631 - 014010	Chairman Mr CHAN Chi-chuen Administration	Discussion on whether playing and singing the national anthem in a way that would not undermine its dignity would be regarded as playing and singing it in a way that was in keeping with its dignity as required by clause 3.	
014011 - 014330	Chairman Dr Helena WONG Administration	The Chairman's request for the Administration to provide a written response to explain the implications of deleting clause 3 as suggested by Dr Helena WONG.	Admin (para. 3(b) of minutes)
014331 - 014734	Chairman Mr IP Kin-yuen Administration	Discussion on Mr IP Kin-yuen's suggestion of replacing the word "Standard" with "Requirement" in the heading of clause 3, and whether it would be more appropriate to provide guidance to the public in respect of the playing and singing of the national anthem by administrative guidelines instead of by including relevant directional provisions in the Bill.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
014735 - 015025	Chairman Mr Alvin YEUNG Administration	Discussion on whether the Administration would issue guidelines in respect of the standard for playing and singing the national anthem for public reference after the passage of the Bill.	
015026 - 015408	Chairman Mr KWONG Chun-yu Administration	<p>Expression of concern that the standard for playing and singing the national anthem as provided in clause 3 would be open to different interpretations given the lack of a legal definition for the term "dignity".</p> <p>The Administration's reiteration of its earlier response that according to common law principle, a term without a legal definition should be interpreted in accordance with its ordinary meaning.</p>	
015409 - 020020	Chairman Dr Fernando CHEUNG Mr Jeremy TAM Administration	Expression of concern about whether inadvertently playing the wrong notes during a performance of the national anthem would be regarded as contravening clause 3 of the Bill; and discussion on Dr Fernando CHEUNG's suggestion of deleting the heading of clause 3 (i.e. "Standard for playing and singing").	
020021 - 021844	Chairman Ms Claudia MO Administration	Discussion on whether "符合" and "in keeping with" tallied in translation.	