

立法會
Legislative Council

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LC Paper No. CB(2)106/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the tenth meeting
held on Saturday, 27 April 2019, from 8:45 am to 12:45 pm
in Conference Room 1 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 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
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
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 Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
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 CHAN Kin-por, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan, BBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Hon IP Kin-yuen
Hon SHIU Ka-chun
Hon Tanya CHAN
Hon Kenneth LAU Ip-keung, BBS, MH, JP

**Public Officers :
attending** 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 continued discussion of clauses 6 and 8 of the Bill at this meeting.

Follow-up actions required of the Administration

3. The Administration was requested to provide the following supplementary information:

Action
Admin

- (a) the penalties for the offences under the Law of the People's Republic of China on National Anthem and the enforcement mechanism;
- (b) the existing mechanism for application for the use of the national flag under the National Flag and National Emblem Ordinance; and
- (c) the existing regulations related to holding state funerals in Hong Kong.

(At 9:56 am, Mr Gary FAN 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. The meeting resumed at 10:03 am when a quorum was present.)

(At 10:36 am, the Deputy Chairman took the chair in the absence of the Chairman. The Chairman resumed the chair at 11:45 am.)

(At 11:37 am, Mr CHAN Chi-chuen drew to the Deputy Chairman's attention that a quorum was not present. The Deputy Chairman ordered the ringing of the quorum bell to summon members to the meeting. The meeting resumed at 11:45 am when a quorum was present.)

(In response to the points of order raised by Ms Claudia MO and Mr CHAN Chi-chuen at 12:32 pm and 12:40 pm respectively in relation to the remarks made by Dr Junius HO, the Chairman ruled that he did not consider that Dr HO had used offensive language about Members in contravention of Rule 41(4) of the Rules of Procedure ("RoP") or imputed improper motives to another Member in contravention of RoP 41(5).)

(At 12:43 pm, the Chairman directed that the meeting be extended by five minutes beyond the appointed ending time.)

Date of next meeting

4. Members noted that the next meeting would be held on Monday, 29 April 2019, from 11:00 am to 1:00 pm.

II. Any other business

5. There being no other business, the meeting ended at 12:46 pm.

**Proceedings of the tenth meeting of the
Bills Committee on National Anthem Bill
on Saturday, 27 April 2019, from 8:45 am to 12:45 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000840 - 001024	Chairman	Opening remarks	
001025 - 001558	Chairman Mr CHAN Chi-chuen Administration	<p>Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill")</p> <p>Part 3 – Protection of National Anthem</p> <p><u>Examination of clauses 6 and 8</u></p> <p>Enquiries about (a) the definition of the terms "trade mark" and "commercial advertisement"; (b) how the national anthem, which was a piece of music, could be used in a trade mark; and (c) whether the use of wording such as "國歌", "義勇軍進行曲", or "起來不願做奴隸的人們" in a trade mark would contravene clause 6(1)(a).</p> <p>The Administration's advice that according to section 3(2) of the Trade Marks Ordinance (Cap. 559), a trade mark might consist of, among others, sounds. It would also contravene clause 6(1)(a) if a trade mark consisted of the lyrics or score of the national anthem. That said, the use of wording such as "國歌" or "義勇軍進行曲" in a trade mark did not contravene clause 6(1)(a).</p>	
001559 - 002216	Chairman Dr Fernando CHEUNG Administration	<p>Enquiry about whether it would constitute misuse of the national anthem in commercial advertisements and thus contravene clause 6(1)(a) if the national anthem was played and sung in an event or activity (e.g. a charity event) with commercial sponsorship in which the sponsors' brand names or logos were displayed.</p> <p>The Administration's advice that it depended on whether the event or activity itself constituted a commercial advertisement. There was no legal definition for the term "commercial advertisement", which should be understood in accordance with its ordinary meaning.</p>	
002217 - 002619	Chairman Mr AU Nok-hin Administration	Expression of the view that there was some ambiguity in the Bill and the Administration should consider introducing amendments to Part 2 of the Bill in the light of the views expressed by members at previous meetings and by the Hong Kong Bar Association in its submission to the Bills Committee [LC Paper No. CB(2)1158/18-19(01)].	
002620 - 003041	Chairman Mr Charles Peter MOK Administration	Discussion on whether the use of the national anthem at non-private funeral events was allowed, and the criteria for determining whether a funeral event was private or non-private in nature.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
003042 - 003504	Chairman Dr CHENG Chung-tai Administration	Enquiry about whether using some of the words of the lyrics of the national anthem in a trade mark would contravene the law. The Administration's advice that, in accordance with clause 8 of the Bill, it would depend on whether those words resembled the lyrics of the national anthem so closely as to lead to the reasonable belief that those words were the lyrics of the national anthem, or part of the lyrics of the national anthem.	
003505 - 003913	Chairman Dr KWOK Ka-ki Administration	Discussion on the definition of the term "public place" in clause 6(2).	
003914 - 004331	Chairman Mr James TO Administration	Discussion on the rationale for prohibiting the use of the national anthem at private funeral events.	
004332 - 004743	Chairman Mr LEUNG Yiu-chung Administration	Enquiries about whether it would constitute misuse of the national anthem as background music in a public place and thus contravene clause 6(2) if the national anthem was played and sung in a carnival, and whether participants of the carnival would have to observe the etiquette provided in clause 4 when the national anthem was played and sung. The Administration's advice that so long as the national anthem was not used as background music, it would not contravene clause 6(2) for the national anthem to be played and sung at a public place. While clause 4 applied to all occasions on which the national anthem was played and sung, it was a directional provision which did not provide for penalties.	
004744 - 005214	Chairman Mr Kenneth LEUNG Administration	Discussion on whether the use of the national anthem on occasions, at places or for purposes other than those specified in clause 6(1) and (2) (e.g. wedding banquets) was allowed; and whether a funeral would still be regarded as a "private funeral event" that would be subject to clause 6(1)(b) if a session of it was open to the public.	
005215 - 005632	Chairman Mr LAM Cheuk-ting Administration	Discussion on Mr LAM Cheuk-ting's suggestion of providing for an exemption from liability in respect of the use of national anthem at private funeral events for which prior permission from the relevant authority had been sought.	
005633 - 010043	Chairman Dr Priscilla LEUNG Administration	Enquiry about whether the playing and singing of the national anthem at events or activities sponsored by commercial organizations was allowed. The Administration's clarification that so long as the national anthem was not used in a commercial advertisement, it would not contravene clause 6(1)(a) for the national anthem to be played and sung in an event or activity with commercial sponsorship in which the sponsors' brand names or logos were displayed.	
010044 - 010512	Chairman Mr HUI Chi-fung	Enquiry about whether the use of the national anthem in commercial products was allowed.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
	Administration	The Administration's advice that this would not be in contravention of clause 6(1)(a) which only prohibited the use of the national anthem in a trade mark or commercial advertisement.	
010513 - 011022	Chairman Hon CHU Hoi-dick Administration	Discussion on the penalties for contravening Article 8 of the Law of the People's Republic of China on National Anthem ("National Anthem Law") in the Mainland. The Chairman's request for the Administration to set out in writing the penalties for the offences under the National Anthem Law and the enforcement mechanism in the Mainland.	Admin (para. 3(a) of minutes)
011023- 011444	Chairman Mr Jeremy TAM Administration	Discussion on whether a mechanism would be put in place for enabling the use of the national anthem at the private funerals of persons who lost their lives for Hong Kong.	
011445 - 012948	Chairman Mr Gary FAN Mr AU Nok-kin Administration	Enquiries about the definition of the terms "used" and "background music" and whether the broadcasting of the national anthem on a large outdoor television in a public place would contravene clause 6(2). The Administration's advice that there was no legal definition of the term "background music" and it should be understood in accordance with its ordinary meaning. Generally speaking, only music that was played continuously in a public place and not related to a theme would be regarded as background music.	
012949 - 013300	Chairman Mr Holden CHOW Administration	Discussion on Mr Holden CHOW's suggestion that heavier penalties should be imposed on offenders who repeatedly contravened clause 6(1)(a).	
013301 - 013735	Chairman Mr KWONG Chun-yu Administration	Discussion on the criteria for determining whether certain words or a score would be regarded as so closely resembled the lyrics or the score of national anthem as to lead to the "reasonable belief" that the words or the score were the lyrics or the score of the national anthem under clause 8.	
013736 - 014051	Chairman Dr Fernando CHEUNG Administration	Discussion on the criteria for determining whether an event or activity constituted a commercial advertisement.	
014052- 014445	Chairman Mr CHAN Chi-chuen Administration	Discussion on which department would be responsible for taking enforcement actions against misuse of the national anthem in trademarks and whether the use of the national anthem in commercial products was allowed.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
014446 - 014813	Chairman Dr CHENG Chung-tai Administration	Enquiries about whether it would constitute misuse of the national anthem as background music in a public place and thus contravene clause 6(2) if the national anthem was played and sung during public demonstrations and protests, and whether the venue management of a public place would be liable for failure to stop the playing of the national anthem as background music in the public place concerned. The Administration's advice that "reasonable excuse" in clause 6(3) was a defence in criminal proceedings. If the prosecution had proven all the elements of the offence, the court would then consider whether the defendant had any "reasonable excuse" as defence.	
014814 - 015111	Chairman Mr Charles Peter MOK Administration	Discussion on whether the national anthem was subject to copyright protection and whether a person who created a calligraphy work involving alterations to the lyrics of the national anthem would be caught by the Bill.	
015112 - 015423	Chairman Mr Jeremy TAM Administration	Further discussion on whether a mechanism should be put in place to enable the use of the national anthem at private funeral events.	
015424 - 015756	Chairman Mr Kenneth LEUNG Administration	Discussion on whether the use of some of the words of the lyrics of the national anthem in a trade mark would contravene clause 6(1)(a) and whether the Department of Justice had any plan to issue a set of prosecution guidelines with respect to the implementation of the National Anthem Ordinance.	
015757 - 020014	Deputy Chairman Mr AU Nok-hin Administration	<i>(The Deputy Chairman took the chair in the absence of the Chairman)</i> Discussion on whether it would contravene the law if a will made before or after the enactment of the National Anthem Ordinance contained a provision that the national anthem should be played at one's funeral, and if so, the liability of the parties involved.	
020015 - 020440	Deputy Chairman Mr Andrew WAN Administration	Discussion on whether it would contravene the law if the national anthem was played at public events or activities held in remembrance of the 4 June Incident.	
020441 - 021015		Break	
021016 - 021506	Deputy Chairman Ms Claudia MO Administration	Discussion on whether the use of the national anthem and the national flag in commercial products was allowed. The Administration's agreement to provide after the meeting supplementary information on the existing mechanism for application for the use of the national flag.	Admin (para. 3(b) of minutes
021507 - 021836	Deputy Chairman Mr HUI Chi-fung Administration	Discussion on the rationale for prohibiting the use of the national anthem in trade marks and commercial advertisements only, but not in all commercial activities.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
021837 - 022147	Deputy Chairman Mr Alvin YEUNG Administration	Discussion on whether incorporating parts of the melody of the national anthem into the score of a comedy would contravene clause 6 of the Bill, and whether the playing of the national anthem in a movie shown in cinemas would constitute misuse of the national anthem as background music in a public place in contravention of clause 6(2). The Administration's clarification that if the national anthem was played in a movie or stage performance (e.g. drama), the national anthem would be regarded as part of the artistic work and thus, it would not contravene clause 6(2).	
022148 - 022420	Deputy Chairman Dr Fernando CHEUNG Administration	Further discussion on whether it would constitute misuse of the national anthem in a commercial advertisement if the national anthem was played and sung in an event or activity with commercial sponsorship in which the sponsors' brand names or logos were displayed.	
022421 - 022825	Deputy Chairman Mr CHAN Chi-chuen Administration	Discussion on whether the use of the national anthem in non-commercial advertisements was allowed and which department would be responsible for taking enforcement actions against misuse of the national anthem in trademarks or commercial advertisements.	
022826- 023204	Deputy Chairman Mr HUI Chi-fung Administration	Discussion on the appropriateness of using the term "樂曲" ("a piece of music") in clause 8(a).	
023205 - 023516	Deputy Chairman Ms Claudia MO Administration	Discussion on whether playing the national anthem in the sports ground on the sports day of a school or in a "private kitchen" on the National Day of the People's Republic of China would constitute misuse of the national anthem as background music in a public place and thus contravene clause 6(2).	
023517 - 023832	Deputy Chairman Hon CHU Hoi-dick Administration	Discussion on whether the proposed penalty for misusing the national anthem in commercial advertisements (i.e. a fine at level 5) would have sufficient deterrent effect.	
023833 - 024143	Deputy Chairman Mr Andrew WAN Administration	Discussion on the rationale for prohibiting the use of the national anthem as background music in a public place.	
024144 - 024344	Deputy Chairman Mr Jeremy TAM Administration	Discussion on how the score of the national anthem could be used in a trademark or in a private funeral event.	
024245 - 024744	Deputy Chairman Ms Claudia MO Administration	Discussion on the definition of "public place" provided in clause 6(6).	
024745 - 025029	Deputy Chairman Hon CHU Hoi-dick Administration	Discussion on whether the Administration had contemplated any reasons that would be accepted as "reasonable excuse" under clause 6(3), and the reasons for the difference between the drafting approach of clause 6(3) of the Bill and that of section 6(3) of the National Flag and National Emblem Ordinance.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
025030 - 025156	Deputy Chairman Dr Fernando CHEUNG Administration	Discussion on whether the use of the national anthem in commercial products was allowed.	
025157 - 025332	Deputy Chairman Mr HUI Chi-fung Administration	Discussion on whether and how the score of the national anthem could be misused in a trade mark or at private funeral events.	
025533 - 030357	Deputy Chairman Ms Claudia MO Administration	Discussion on the difference between a misuse of the national anthem and an insult to the national anthem.	
030358 - 030520	Chairman Hon CHU Hoi-dick Administration	<i>(The Chairman resumed the chair at this juncture.)</i> Discussion on the meaning of the term "變相用於" ("covertly used") in Article 8 of the National Anthem Law and why it was not used in clause 6 of the Bill.	
030521 - 030740	Chairman Hon Tony TSE Administration	Discussion on whether the use of the national anthem at non-private funeral events was allowed and arrangements relating to state funerals. The Administration's agreement to provide after the meeting supplementary information on the existing regulations related to state funerals.	Admin (para. 3(c) of minutes)
030741 - 030924	Chairman Mr Jeremy TAM Administration	Discussion on why clause 6(1) of the Bill sought to restrict the use of "the lyrics or score of the national anthem" on top of the restriction on the use of the national anthem, whereas Article 8 of the National Anthem Law imposed restrictions on the use of the national anthem only.	
030925 - 031049	Chairman Mr CHAN Chi-chuen Administration	Discussion on the circumstances under which the national anthem would be regarded to be misused in a commercial advertisement.	
031058 - 031349	Chairman Mr Jeremy TAM Mr HUI Chi-fung Administration	Discussion on whether the restrictions on the use of the score of the national anthem imposed by clause 6(1) of the Bill deviated from the requirements of the National Anthem Law.	
031350 - 031507	Chairman Mr CHAN Chi-chuen Administration	Discussion on the scope of "funeral event" in clause 6(1)(b).	
031508 - 031712	Chairman Hon CHU Hoi-dick Administration	Discussion on the penalties for contravening Article 8 of the National Anthem Law in the Mainland.	Admin (para. 3(a) of minutes)
031713 - 031909	Chairman Ms Claudia MO Administration	Discussion on how the line between misusing the national anthem and insulting the national anthem could be drawn.	
031910 - 032100	Chairman Mr Jeremy TAM Administration	Discussion on whether the current drafting of clause 6(1) was in line with the legislative purpose of Article 8 of the National Anthem Law.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
032101 – 032240	Chairman Mr CHAN Chi-chuen Administration	Discussion on whether the inclusion of the national anthem in a news programme would constitute misuse of the national anthem as background music in a public place in contravention of clause 6(2).	
032241 - 032429	Chairman Mr HUI Chi-fung Administration Senior Assistant Legal Adviser	Discussion on Mr HUI Chi-fung's suggestion of adding the words "的樂曲" after "國歌" in clause 6(1).	
032430 - 032702	Chairman Dr CHENG Chung-tai Administration	Discussion on whether the playing of the national anthem in a movie shown in a cinema or in a drama staged in a theatre would constitute misuse of the national anthem as background music in a public place in contravention of clause 6(2).	
032703 - 032823	Chairman Hon CHU Hoi-dick Administration	Discussion on whether there were any restrictions on the occasions, places or purposes that might be prescribed by the Chief Executive in Council under clause 6(5).	
032824 - 032948	Chairman Ms Claudia MO Administration	Discussion on whether the use of some of the words of the lyrics of the national anthem in a commercial advertisement would contravene clause 6(1)(a).	
032949 - 033114	Chairman Mr Jeremy TAM Administration	Further discussion on whether the current drafting of clause 6(1) was in line with the legislative purpose of Article 8 of the National Anthem Law.	
033115 - 033618	Chairman Dr Helena WONG Administration	Enquiries about whether an online platform (e.g. a website) with restricted access would be regarded as a "public place" under clause 6(2), and what would constitute a "reasonable excuse" under clause 6(3). The Administration's advice that in the context of clause 6, "public place" did not cover the cyber world. For any alleged contravention of clause 6(1) or (2), "reasonable excuse" in clause 6(3) was a defence. Whether a defendant in a particular case was regarded to have a "reasonable excuse" as a defence had to be assessed in light of the particular circumstances in each case and every piece of critical information.	
033619 – 034051	Chairman Mr James TO Administration	Discussion on whether it would contravene clause 6(1)(b) or clause 6(2) if the national anthem was played in an event held in a public place in remembrance of the 4 June Incident, and the application of clause 6(3).	
034052 - 034432	Chairman Dr Helena WONG Administration	Further discussion on whether the playing of the national anthem in a staged performance (e.g. drama) would contravene clause 6(2).	
034433 - 034834	Chairman Mr James TO Administration	Discussion on whether it would constitute misuse of the national anthem in a commercial advertisement and thus contravene clause 6(1)(a) if the national anthem was played and sung in an event or activity with commercial sponsorship (e.g. a soccer match) in which the sponsors' brand names or logos were displayed.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
034835 - 040315	Chairman Dr Junius HO Ms Claudia MO Mr HUI Chi-fung Mr Andrew WAN Dr Helena WONG Mr CHAN Chi-chuen Mr Jeremy TAM Mr CHU Hoi-dick Dr CHENG Chung-tai	Dr Junius HO's view that many questions raised over clause 6 of the Bill were unfounded and unwarranted. The Chairman's rulings on the points of order raised by Ms Claudia MO and Mr CHAN Chi-chuen in relation to the remarks made by Dr Junius HO.	
040316 - 040443	Chairman	Closing remarks Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
30 October 2019