

立法會
Legislative Council

Ref : CB2/BC/3/18

LC Paper No. CB(2)107/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the eleventh meeting
held on Monday, 29 April 2019, from 11:00 am to 1:00 pm
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 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
Hon CHAN Kin-por, GBS, 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 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 LEUNG Che-cheung, SBS, MH, JP
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 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
Hon Kenneth LAU Ip-keung, BBS, MH, JP
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 James TO Kun-sun
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon CHAN Han-pan, BBS, JP
Dr Hon KWOK Ka-ki
Hon HO Kai-ming
Hon SHIU Ka-chun
Hon Tanya CHAN

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 completed discussion of clauses 6 and 8 and commenced discussion of clauses 7 and 8 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 clause 6 of the Bill sought to restrict the use of "the lyrics or score of the national anthem" on top of the restrictions on the use of the national anthem, whereas Article 8 of the Law of the People's Republic of China on National Anthem imposed restrictions on the use of the national anthem only; and
- (b) provide case law in relation to insulting the dignity of a piece of music in common law jurisdictions.

Date of next meeting

4. Members noted that the next meeting would be held on Thursday, 2 May 2019, from 2:30 pm to 6:30 pm.

II. Any other business

5. There being no other business, the meeting ended at 12:59 pm.

Council Business Division 2
Legislative Council Secretariat
30 October 2019

**Proceedings of the eleventh meeting of the
Bills Committee on National Anthem Bill
on Monday, 29 April 2019, from 11:00 am to 1:00 pm
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000720 - 001239	Chairman Mr HUI Chi-fung Administration	Opening remarks Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill") Part 3 – Protection of National Anthem <u>Examination of clauses 6 and 8</u> Discussion on the appropriateness of using the term "樂曲" ("a piece of music") in clause 8.	
001240 - 001529	Chairman Dr Helena WONG Administration Senior Assistant Legal Adviser ("SALA")	Discussion on the difference between the occasions that might be prescribed by the Chief Executive in Council under clause 6(5) and the occasions set out in Schedule 3 to the Bill.	
001530 - 001729	Chairman Dr Fernando CHEUNG Administration	Discussion on the definition of "public place" and the meaning of the term "a section of the public" in clause 6(6).	
001730 - 001833	Chairman Dr Helena WONG Administration	Follow-up enquiry about clause 6(5) and Schedule 3 to the Bill.	
001834 - 002011	Chairman Mr CHAN Chi-chuen Administration	Discussion on examples of sounds being used as trade marks and whether a ritual of scattering cremains performed after a funeral would be regarded as a "funeral event" under clause 6(1)(b).	
002012 - 002124	Chairman Hon CHU Hoi-dick Administration	Enquiry about the penalties for using the national anthem at private funeral events or as background music in public places in contravention of Article 8 of the Law of the People's Republic of China on National Anthem ("National Anthem Law") in the Mainland.	
002125 - 002532	Chairman Mr WU Chi-wai Administration	Enquiries about whether a non-profit making organization would contravene clause 6(1)(a) if it used the national anthem in its promotional events; and the applicability of clause 6(1)(b) to state funerals and funerals of civil servants who died for Hong Kong. The Administration's advice 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 used in promotional events. Clause 6(1)(b) prohibited the use of the national anthem at private funeral events, but not at official funeral events.	

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002533 - 003027	Chairman Mr Gary FAN Administration	Discussion on whether the Cantonese pop song "Adventure of a football fan" ("球迷奇遇記") would be regarded as the national anthem, or the lyrics or score of the national anthem, pursuant to clause 8.	
003028 - 003246	Chairman Dr Fernando CHEUNG Mr Gary FAN Administration	<p>Queries about whether there was any conflict between clause 6(2), which prohibited the use of the national anthem as background music in a public place, and Part 4 of the Bill, which provided for the promotion of the national anthem; and whether it would contravene clause 6(2) if a school used the national anthem in its activities held at or outside school (e.g. playing the recording of the national anthem at the morning assembly or on the sports day).</p> <p>The Administration's response that given the importance and solemnity of the national anthem as a symbol and sign of the country, it should be promoted by ways other than using it as background music in public places. According to the Administration, music that was played continuously not intended for any specific purpose would be regarded as background music. So long as the national anthem was not used as background music, it would not contravene clause 6(2) for playing and singing the national anthem in activities held by schools.</p>	
003247 - 003424	Chairman Ms Claudia MO Administration	Discussion on whether one would contravene the law if he/she played a past version of the national anthem on an occasion where the national anthem should be played and sung.	
003425 - 004129	Chairman Dr Fernando CHEUNG Mr WU Chi-wai Mr KWONG Chun-yu Administration	Discussion on whether allowing the broadcasting of the national anthem on television or playing repeatedly a video clip of a performance of the national anthem in a restaurant would amount to misusing the national anthem as background music in a public place in contravention of clause 6(2).	
004130 - 004441	Chairman Mr IP Kin-yuen Administration	<p>Enquiry about what would be regarded as "reasonable excuse" under clause 6(3) that could justify the use of the national anthem which was otherwise prohibited by clause 6(1) and (2).</p> <p>The Administration's advice that the defence of "reasonable excuse" was included in more than 1000 provisions under the existing laws of Hong Kong but none of them provided concrete examples of "reasonable excuse". If the prosecution had proven all the elements of the offence of misuse of the national anthem under clause 6 of the Bill, the court would then consider whether the defendant had any "reasonable excuse" as defence in the light of the particular circumstances in each case.</p>	
004442 - 004626	Chairman Mr LEUNG Yiu-chung Administration	Discussion on whether the current daily broadcast of the national anthem before the evening news report on television channels would constitute misuse of the national anthem in contravention of clause 6(1)(a).	

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004627 - 004946	Chairman Mr LAM Cheuk-ting Administration	Discussion on whether a mobile app developer which, for the purpose of attracting corporate sponsorship, made available the national anthem on its app for downloading by users as the ringtone of mobile phones would contravene clause 6(1)(a); and whether allowing, or failing to stop, the ringing of phones with the national anthem as the ringtone at a private funeral event and in a public place would amount to contraventions of clause 6(1)(b) and clause 6(2).	
004947 - 005207	Chairman Mr Alvin YEUNG Administration	<p>Enquiry about whether the same act that contravened the National Anthem Ordinance after its enactment in Hong Kong (e.g. affixing the score of the national anthem on a coffin) would equally contravene the National Anthem Law if it was carried out in the Mainland.</p> <p>The Administration's advice that pursuant to clause 11 of the Bill, any alleged offence in relation to the national anthem in Hong Kong would be investigated, and persons would be prosecuted, according to the laws of Hong Kong. To the Administration's understanding, the act cited by Mr YEUNG, if carried out in the Mainland, would equally contravene the National Anthem Law.</p>	
005208 - 005430	Chairman Mr KWONG Chun-yu Administration	Discussion on whether singing the national anthem in the park with the aim of getting tips from members of the public, or performing the national anthem in a fee-charging concert, would be in contravention of clause 6.	
005431 - 005609	Chairman Dr CHENG Chung-tai Administration	Discussion on whether a person would commit an offence of misusing the national anthem in a commercial advertisement if he/she received corporate sponsorship for sharing a video clip of a performance of the national anthem on YouTube.	
005610 - 005825	Chairman Mr WU Chi-wai Administration	Discussion on whether the customers in a restaurant would have to observe the etiquette provided in clause 4 when the national anthem was being broadcast on the television or played on a smartphone.	
005826 - 010037	Chairman Mr Gary FAN Administration	Discussion on the definition of the term "commercial advertisement" and the circumstances under which the national anthem would be considered as being used as background music in a public place in contravention of clause 6(2).	
010038 - 010157	Chairman Mr CHAN Chi-chuen Administration	Discussion on whether a scenario similar to the case of 楊凱莉 (the mainlander who contravened the National Anthem Law in October 2018 when conducting online live-streaming at home), if occurred in Hong Kong after the enactment of the National Anthem Ordinance, would be regarded as a contravention of clause 6(2) if the internet was not considered as a public place.	
010158 - 010325	Chairman Dr Fernando CHEUNG Administration	Discussion on whether an exemption from liability under clause 6(2) should be provided for the case of using the national anthem as background music at a public place for educational purpose.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
010326 - 010519	Chairman Ms Claudia MO Administration	Enquiry about whether the use of the national anthem, or the lyrics or score of the national anthem, in commercial products was allowed. 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 or its lyrics or score in a trade mark and commercial advertisement.	
010520 - 010629	Chairman Mr AU Nok-hin Administration	Discussion on who would be prosecuted for an offence under clause 6(1)(b) in the following scenario: a funeral service provider who, under the instruction of a family member of the deceased, played the national anthem at the funeral concerned.	
010630 - 010751	Chairman Mr Jeremy TAM Administration	The Chairman's request for the Administration to provide a written response to the concern raised by Mr Jeremy TAM about the inconsistency between the relevant provisions of the National Anthem Law and clause 6 of the Bill.	Admin (para. 3(a) of minutes)
010752 - 010947	Chairman Mr HUI Chi-fung Administration	Discussion on SALA's observations in relation to clause 6(2) and (3), which were set out in paragraphs 10 and 11 of his letter dated 13 February 2019 to the Administration [LC Paper No. CB(2)811/18-19(01)].	
010948 - 011646	Chairman Administration Mr HUI Chi-fung SALA	<p><u>Examination of clauses 7 and 8</u></p> <p>SALA's suggestion of adding "Notwithstanding the provisions of subsection (1)," before "[A] person commits an offence..." and substituting "in any way" with "in any other way" in clause 7(2) to enhance clarity.</p> <p>The Administration's response that the purpose of putting the two scenarios of insulting the national anthem under clause 7(1) and putting insult in any way under clause 7(2) was to avoid a narrow interpretation of insulting the national anthem "in any way" in clause 7(2) having regard to the relevant provisions in the National Anthem Law.</p> <p>The Chairman's request for the Administration to consider SALA's suggestion.</p>	
011647 - 012205	Chairman Mr Gary FAN Administration	<p>Query about the necessity of providing heavy penalties for the offence of insulting the national anthem under clause 7(6), and expression of concern about the possibility of the Administration being selective in law enforcement and prosecution as in the recent cases of contravention of the National Flag and National Emblem Ordinance ("NFNEO") by different persons.</p> <p>The Administration's response that the level of penalty for the offence of insulting the national anthem provided in clause 7(6) was the same as that for the offence of desecrating the national flag or national emblem under NFNEO.</p>	
012206 - 012629	Chairman Ms Claudia MO Administration	Discussion on the meaning of the expression "with intent" and whether the use of the score of the national anthem in commercial products would be in contravention of clause 7.	

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012630 - 013130	Chairman Mr Charles Peter MOK Administration	<p>Expression of the view that the law enforcement agencies ("LEAs") should apply for court orders before requesting information and communication technology companies (e.g. Internet service providers) to remove from the Internet materials that allegedly insulted the national anthem, and enquiry about whether the act of uploading materials that insulted the national anthem outside Hong Kong but on an online platform in Hong Kong would amount to an offence of insulting behaviour under the Bill.</p> <p>The Administration's response that publishing of materials that insulted the national anthem on online platforms in Hong Kong was subject to clause 7 of the Bill. LEAs would carry out investigation and take necessary enforcement actions in accordance with the laws of Hong Kong, irrespective of the location of the suspect and of the act of publishing. In doing so, LEAs would apply for warrants from the courts when necessary or seek the assistance of overseas enforcement agencies through the established mutual legal assistance procedures.</p>	
013131 - 013610	Chairman Dr CHENG Chung-tai Administration	<p>Enquiry about the meaning of "歪曲" ("distorted") in clause 7(1)(b) and the circumstances under which the national anthem would be regarded as being played and sung "in a distorted way".</p> <p>The Administration's advice that there was no legal definition of the term "歪曲" and it should be understood in accordance with its ordinary meaning. In the context of clause 7(1)(b), it should be understood as playing and singing the national anthem in a way deviated from the ordinary way of playing and singing it.</p>	
013611 - 014109	Chairman Mr WU Chi-wai Administration	<p>Enquiries about the liabilities of the parties involved in a scenario of playing a video clip containing materials that insulted the national anthem on one's smartphone in a restaurant under clause 7; and whether the penalty to be imposed in accordance with clause 7(6) must include both a fine and an imprisonment term.</p> <p>The Administration's advice that while the act of playing the video clip would constitute the act of "publish" under clause 7(3) and (4), whether it would amount to an offence under clause 7 would depend on whether it was done publicly and intentionally and with intent to insult the national anthem. Pursuant to section 101H of the Criminal Procedure Ordinance (Cap. 221), where in any Ordinance more than one penalty was prescribed for an offence, the use of the word "and" should mean that the penalties might be inflicted alternatively or cumulatively.</p>	
014110 - 014529	Chairman Dr Helena WONG Administration	<p>Enquiries about whether clause 7 was applicable to online behaviours, and whether the following conduct would amount to contraventions of clause 7: (i) performing acts that insulted the national anthem in a private event; (ii) uploading a video clip of the aforementioned acts on the Internet; (iii) forwarding</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		<p>a video clip or a hyperlink with materials that insulted the national anthem, or showing a "Like" and sharing the clip with one's group on social media on the Internet.</p> <p>The Administration's advice that online behaviours were also subject to clause 7. Whether a specific act would constitute an offence under clause 7 would depend on whether it was done publicly and intentionally and with the intent to insult the national anthem.</p>	
014530 - 014954	Chairman Mr Alvin YEUNG Administration	Discussion on whether a horse-racing fan who swore during the performance of the national anthem at the racecourse would contravene clause 7, and whether surveillance cameras were planned to be installed at racecourses and soccer pitches to facilitate law enforcement.	
014955 - 015420	Chairman Dr Fernando CHEUNG Administration	<p>Enquiry about the difference between "insulting the national anthem" under clause 7 and "disrespectful to the national anthem" under clause 4, taking the case of some American Super Bowl players taking a knee during the performance and singing of the national anthem as an example.</p> <p>The Administration's response that "insult" was defined under clause 7(8) and "respect" in the context of the Bill meant respect towards the national anthem. The elements of "insulting the national anthem" and "disrespectful to the national anthem" were set out clearly in the Bill, and whether an act would be considered as "insulting the national anthem" and "disrespectful to the national anthem" in a particular case would be decided by the court.</p>	
015421 - 015852	Chairman Mr CHAN Chi-chuen Administration	<p>Expression of the view that the Administration should ensure clarity when drafting provisions of a bill, particularly the acts that the bill sought to prohibit, so that people would not commit the relevant offence inadvertently or have to speculate the meaning of the relevant provisions of the law; and criticism that the expression "in any way" in clause 7(2) of the Bill was too vague.</p> <p>The Administration's explanation that the expression "in any way" was also found in the penal provisions of some 280 pieces of existing local legislation. While clause 7(1)(a) and (b) already prescribed certain prohibited ways of insulting the national anthem, it was impossible to specify all the prohibited ways of insulting the national anthem exhaustively in the Bill. That said, the elements of the offence were clearly out in clause 7. As observed by the Court of Final Appeal in <i>Shum Kwok Sher v HKSAR</i> [2002] 2 HKLRD 793, some conduct which the law prescribed as criminal might best be described by reference to the nature of the activity rather than to particular methods of committing it.</p> <p>The Chairman's request for the Administration to provide case law in relation to insulting the dignity of a piece of music in common law jurisdictions for members' reference.</p>	Admin (para. 3(b) of minute

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015853 - 020301	Chairman Dr Helena WONG Administration	<p>Expression of concern that the penalties provided in clause 7(6) were too heavy and disproportionate to the gravity of the offence concerned, particularly in view of the fact that only Germany among the countries covered in the relevant paper provided by the Administration [Annex to LC Paper No. CB(2)995/18-19(01)] imposed the same high level of penalty for insulting the country's national anthem as that proposed in the Bill, and that many countries did not enact a national anthem law; and enquiry about whether the Administration would introduce any amendment to clause 7(6).</p> <p>The Administration's explanation that each country or place had her own history, constitutional system and actual situations, and therefore different approaches were adopted. A fine at level 5 and imprisonment for 3 years was the maximum level of penalty of the offence of insulting the national anthem provided in the Bill. The court would impose sentences in accordance with the actual circumstance of each case. As the national flag, national emblem and national anthem were the symbol and sign of the country stipulated in the Constitution of the People's Republic of China, the Administration considered it appropriate to align the level of penalty provided under the Bill with that provided under NFNEO for similar offences.</p>	
020302 - 020325	Chairman	<p>Closing remarks</p> <p>Date of next meeting</p>	