

立法會
Legislative Council

Ref : CB2/BC/3/18

LC Paper No. CB(2)231/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

**Minutes of the fourteenth meeting
held on Friday, 10 May 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
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 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-ken, BBS, JP
Dr Hon KWOK Ka-ki
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 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 Vincent CHENG Wing-shun, MH
Hon CHAN Hoi-yan

**Members
absent** : Hon James TO Kun-sun
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Kenneth LEUNG
Hon SHIU Ka-chun
Hon Tanya CHAN
Hon AU Nok-hin
Hon Tony TSE Wai-chuen, BBS

**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

Mr Keith GIANG Tsz-sheung
Principal Assistant Secretary for Commerce and Economic
Development (Communications & Creative Industries)

Miss Gloria LO Kit-wai
Assistant Director (Broadcasting)
Office of the Communications Authority

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

Action

I. Meeting with the Administration

[File Ref.: CMAB E4/1/1, LC Paper Nos. CB(2)1409/18-19(01), 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 10 of the Bill at this meeting.

Action

Follow-up action required of the Administration

Admin

3. The Administration was requested to advise in writing the current arrangements for the broadcasting of the national anthem on radio and television in the Mainland.

(At 12:49 pm, Ms Claudia MO 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 12:54 pm when a quorum was present.)

II. Any other business

4. There being no other business, the meeting ended at 12:58 pm.

Council Business Division 2
Legislative Council Secretariat
15 November 2019

**Proceedings of the fourteenth meeting of the
Bills Committee on National Anthem Bill
on Friday, 10 May 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
000741 - 000841	Chairman	Opening remarks	
000845 - 001309	Chairman Mr HUI Chi-fung Administration	Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill") Part 4 - Promotion of National Anthem <u>Examination of clause 10</u> Discussion on how Article 12 of the Law of the People's Republic on National Anthem ("National Anthem Law"), which stipulated that "News media shall actively publicize the national anthem and popularize the etiquette for playing and singing the national anthem", was implemented in the Mainland.	
001310 - 001653	Chairman Mr WU Chi-wai Administration	Mr WU Chi-wai's enquiries about whether the Communications Authority ("CA") could include specific requirements (e.g. frequency or duration of broadcast) in its determination or direction made under clause 10 regarding the broadcasting of the national anthem by domestic television and sound broadcasting licensees; and whether it would amount to a contravention of the law if the playing of the national anthem in a sound broadcasting or a television programme complied with the requirements under the Bill but the content of the programme contained criticism against the country. The Administration's advice that clause 10 of the Bill would be implemented through the existing mechanism for broadcasting announcements in the public interest or material in the public interest (collectively referred to as "APIs"). According to the relevant licensing conditions and the determinations or directions made by CA, domestic free television and radio broadcasters were required to broadcast on each channel not more than one minute of APIs in every clock hour without charge. Domestic pay television broadcasters were required to broadcast on specific channels not more than one minute of APIs in every two clock hours without charge. The Administration also clarified that the Bill prohibited insult to the national anthem, not criticism.	
001654 - 001935	Chairman Dr Elizabeth QUAT	Dr Elizabeth QUAT's expression of dissatisfaction with the views expressed by some members at the last meeting on a promotional video on the national anthem posted on the Internet.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		The Chairman's remark that members should only speak on issues in relation to clause 10 of the Bill.	
001936 - 002404	Chairman Mr Alvin YEUNG Administration	<p>Mr Alvin YEUNG's query about why it was necessary to incorporate into the Bill the statutory requirement to broadcast the national anthem, considering that the API on the national anthem had been broadcast once daily on television channels as required under the existing mechanism for broadcasting APIs; and enquiry about whether there would be any sanctions for non-compliance with the determination or direction made by CA under clause 10.</p> <p>The Administration's explanation that clause 10 sought to reflect Articles 12 and 13 of the National Anthem Law while giving due regard to the actual circumstances in Hong Kong. Upon passage of the Bill, clause 10 would be implemented through the existing mechanism for broadcasting APIs. If a licensee failed to broadcast the national anthem by an API as required, CA would handle such case in accordance with established procedures. This included providing reasonable opportunities for the licensee to make representations, followed by a determination on whether the licensee concerned was in contravention of a licence condition or a direction made by CA. If the licensee was found to have contravened the relevant requirement, CA might impose sanction as appropriate.</p>	
002405 - 002821	Chairman Mr Jeremy TAM Administration	Discussion on whether there would be any difference in the handling of non-compliance with a determination or direction made by CA regarding the broadcasting of APIs before or after passage of the Bill, and how the public would know the date(s) stipulated by the Chief Executive ("CE") under clause 10(4) for the licensees to broadcast the national anthem by APIs.	
002822 - 003143	Chairman Mr HUI Chi-fung Administration	Discussion on whether clause 10 of the Bill was in line with the legislative purpose of Articles 12 and 13 of the National Anthem Law; and whether all domestic television and sound broadcasting licensees would be required to broadcast the national anthem by way of APIs after passage of the Bill.	
003144 - 003610	Chairman Mr LEUNG Yiu-chung Administration	<p>Mr LEUNG Yiu-chung's query about why it was necessary to confer the power to CE to stipulate a date on which the national anthem must be broadcast by APIs under clause 10(4), considering that the national anthem had been broadcast once daily on television channels.</p> <p>The Administration's explanation that Article 13 of the National Anthem Law also required the Mainland broadcasters to broadcast the national anthem on important national statutory holidays and anniversaries. The Administration considered it appropriate to provide for a similar arrangement in the Bill by giving CE power to stipulate a date for the licensees to broadcast the national anthem by APIs. The Government would refer to the holidays and anniversaries mentioned in Article 13 of the National Anthem Law and make adjustments in the light of</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		the actual circumstances of Hong Kong when stipulating the dates for broadcasting the national anthem.	
003612 - 004036	Chairman Dr CHENG Chung-tai Administration	Discussion on what it meant by "a determination" or "direction" of CA under clause 10.	
004037 - 004507	Deputy Chairman Mr Gary FAN Administration Senior Assistant Legal Adviser ("SALA")	<p><i>(The Deputy Chairman took the chair in the absence of the Chairman)</i></p> <p>Mr Gary FAN's query about why the power to stipulate a date for the licensees to broadcast the national anthem by APIs under clause 10(4) was not to be exercised by CE in Council so as to align with clauses 5(2) and 6(5) of the Bill, which provided that CE in Council might add or delete occasions set out in Schedule 3 to the Bill and prescribe occasions, places or purposes for the purposes of clause 6(1)(c) respectively.</p> <p>The Administration's response that the matter dealt with by clause 10(4) and those by clauses 5(2) and 6(5) were very different in nature. The Administration was of the view that the arrangement provided in clause 10(4) was appropriate.</p> <p>SALA's advice that Article 56 of the Basic Law provided that CE had to consult the Executive Council ("ExCo") before making subordinate legislation. Under clause 10(5) of the Bill, a stipulation under clause 10(4) of the Bill was not subsidiary legislation. Therefore, CE was not required under the Basic Law to consult ExCo before making such stipulation.</p>	
004508 - 004824	Deputy Chairman Mr Jeremy TAM Administration	<p>Mr Jeremy TAM's query about whether clause 10(4) was unnecessary as it only empowered CE to stipulate a date but not the time for the licensees to broadcast the national anthem by APIs, and the mechanism for broadcasting APIs on the national anthem by the licensees was already in place.</p> <p>The Administration's reiteration of its previous explanation that clause 10(4) sought to reflect the relevant requirement in Article 13 of the National Anthem Law while giving due regard to the actual circumstances of Hong Kong.</p>	
004825- 005257	Chairman Dr KWOK Ka-ki Administration	<p><i>(The Chairman resumed the chair at this juncture)</i></p> <p>Dr KWOK Ka-ki's expression of concern that the power conferred to CE under clause 10(4) was too great and query about whether the arrangement provided therein was in line with Article 13 of the National Anthem Law, which only required the Mainland broadcasters to broadcast the national anthem on National Day, International Labour Day, and other important national statutory holidays and anniversaries.</p> <p>The Administration's response that the National Flag and National Emblem Ordinance ("NFNEO") also provided that CE might stipulate the organizations which must display or use the national flag and the national emblem, and the other places at which, the occasions on which, the manner in which</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		and the conditions under which, the national flag and the national emblem must be displayed or used. Such stipulation must be published in the Gazette and was not subsidiary legislation. The Administration had made reference to this arrangement when drafting clause 10 of the Bill.	
005258 - 005719	Chairman Mr KWONG Chun-yu Administration	Discussion on whether CE might stipulate the frequency of broadcasting the API on the national anthem by the licensees on a specified date under clause 10(4).	
005720 - 010046	Deputy Chairman Mr LEUNG Yiu-chung Administration	<i>(The Deputy Chairman took the chair in the absence of the Chairman)</i> Further discussion on why it was necessary to include such empowerment provision in clause 10(4) of the Bill.	
010047 - 010359	Chairman Dr CHENG Chung-tai Administration	<i>(The Chairman resumed the chair at this juncture)</i> Discussion on the applicability of clause 10 to domestic pay television broadcasters.	
010400 - 010738	Chairman Dr KWOK Ka-ki Administration	Discussion on whether there would be any consequences for non-compliance with clause 10 and the appropriateness of conferring to CE the power to stipulate a date for the licensees to broadcast the national anthem by APIs.	
010739 - 011146	Chairman Ms Claudia MO Administration	Discussion on Ms Claudia MO's view that "Government/official announcement" and "Government/official material" should be used as the English equivalent of "政府宣傳聲帶" and "政府宣傳短片" respectively in clause 10(2).	
011147 - 011427	Chairman Dr Fernando CHEUNG Administration	Dr Fernando CHEUNG's response to the remarks made earlier by Dr Elizabeth QUAT. Further discussion on why it was necessary to include such empowerment provision in clause 10(4) of the Bill.	
011428 - 011635	Chairman Mr Gary FAN Administration	Discussion on whether the licensees might be required to broadcast the national anthem by APIs in every clock hour.	
011636 - 011925	Chairman Mr CHAN Chi-chuen Administration	Further discussion on why it was necessary to include such empowerment provision in clause 10(4) of the Bill.	
011926 - 012141	Chairman Dr CHENG Chung-tai Administration	Further discussion on the applicability of clause 10 to domestic pay television broadcasters.	
012142 - 012351	Chairman Mr HUI Chi-fung Administration	Discussion on whether the Administration would consider providing specifically in clause 10(2) and (3) that the licensees might be required to broadcast the national anthem by APIs on reasonable dates, at reasonable times, and with a reasonable frequency, so as to address public concern about	

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		possible abuse of the mechanism for broadcasting the national anthem provided under the Bill.	
012352 - 012805	Chairman Mr CHU Hoi-dick Administration	The Chairman's request for the Administration to provide a written response to Mr CHU Hoi-dick's enquiry about the current arrangements for the broadcasting of the national anthem on radio and television in the Mainland. Discussion on the purpose of clause 10(4) of the Bill and whether the arrangement for the broadcasting of the national anthem on radio and television in Hong Kong should be in line with the arrangement under Article 13 of the National Anthem Law which only specified that the national anthem must be broadcast on National Day, International Labour Day, and other important national statutory holidays and anniversaries.	Admin (para. 3 of minutes)
012806 - 012842	Chairman Mr HUI Chi-fung	Mr HUI Chi-fung's expression of disagreement with the Chairman's decision to "draw a line" on the discussion time of clause 10.	
012843 - 013055	Chairman Dr Fernando CHEUNG Administration	Dr Fernando CHEUNG's reiteration of his view that the empowerment provision in clause 10(4) was unnecessary as the mechanism for broadcasting APIs on the national anthem by the licensees was already in place.	
013056 - 014513	Chairman Mr Charles MOK Mr Alvin YEUNG Mr KWONG Chun-yu Administration	Discussion on (a) whether sound broadcasting licensees were currently required to broadcast the national anthem by APIs and if not, whether and when they would be required to do so after passage of the Bill; (b) which department would be responsible for determining the frequency of broadcasting the APIs on the national anthem by domestic television and sound broadcasting licensees; and (c) whether Radio Television Hong Kong ("RTHK") was subject to clause 10.	
014514 - 014821	Chairman Ms Claudia MO Administration	Discussion on whether online television/radio stations and online news portals were subject to clause 10.	
014822 - 015124	Chairman Mr CHU Hoi-dick Administration	Discussion on whether it was more appropriate to stipulate in clause 10(4) that CE might stipulate the timing, rather than a date, for the licensees to broadcast the national anthem by APIs, so as to reflect more accurately the relevant provision under Article 13 of the National Anthem Law.	
015125 - 015244	Chairman Mr HUI Chi-fung Administration	Discussion on whether RTHK had been consulted on clause 10 of the Bill.	
015749 - 015747	Chairman Mr Gary FAN Administration	Discussion on whether CE could stipulate the frequency of broadcasting the APIs on the national anthem by the licensees under clause 10(4).	
015858 - 020024	Chairman Dr Fernando CHEUNG Administration	Discussion on the circumstances under which CE might need to stipulate a date for the licensees to broadcast the national anthem by APIs.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
020025 - 020140	Chairman Mr HUI Chi-fung	Mr HUI Chi-fung's expression of dissatisfaction with the Chairman's decision to "draw a line" on the discussion time of clause 10.	
020141 - 020226	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
15 November 2019