

立法會
Legislative Council

Ref : CB2/BC/3/18

LC Paper No. CB(2)300/19-20
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the fifteenth meeting
held on Friday, 17 May 2019, from 8:45 am to 10:30 am
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 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 CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP

Dr Hon CHIANG Lai-wan, SBS, 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 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 James TO Kun-sun
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon SHIU Ka-chun
Hon Tanya CHAN
Hon HUI Chi-fung
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

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(3)307/18-19, CB(2)903/18-19(01), CB(2)1425/18-19(01) to (05) and CB(2)1455/18-19(01) & (02)]

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

2. The Bills Committee examined clause 11 of the Bill at this meeting.

3. Dr KWOK Ka-ki requested that a verbatim transcript be prepared for this meeting. As there were divided views among members, the Chairman directed that a vote be taken on Dr KWOK's request at the next meeting.

(At 9:07 am, the Deputy Chairman took the chair in the absence of the Chairman. The Chairman resumed the chair at 10:36 am.)

(Some members drew to the attention of the Chairman/Deputy Chairman at 8:52 am, 8:58 am, 9:08 am, 9:20 am, 10:01 am and 10:29 am respectively that a quorum was not present. The Chairman/Deputy Chairman ordered that members be summoned to the meeting. The meeting resumed when a quorum was present.)

Action

(At 10:28 am, the Deputy Chairman directed that the meeting be extended to end at 10:40 am.)

II. Any other business

4. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
29 November 2019

**Proceedings of the fifteenth meeting of the
Bills Committee on National Anthem Bill
on Friday, 17 May 2019, from 8:45 am to 10:30 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000940 - 001038	Chairman	Opening remarks	
001039 - 001549	Chairman Dr KWOK Ka-ki	Quorum call	
001550 - 001657	Chairman Administration	Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill") Part 5 - Supplementary Provisions <u>Examination of clause 11</u>	
001658 - 001706	Chairman Mr Gary FAN Dr Junius HO	Quorum call Dr Junius HO's expression of concern about possible abuse of quorum calls requested by some members. The Chairman's advice that according to Rule 24(h) of the House Rules, if the attention of the Chairman was drawn by a member of the committee to the fact that a quorum was not present during a meeting, he had to direct the members to be summoned.	
001931 - 002308	Chairman Mr Gary FAN Administration	Enquiry about the situation where an offence in relation to the national anthem was committed in the Mainland by a Hong Konger but was only discovered after that person had returned to Hong Kong, including whether that person would be prosecuted according to the Law of the People's Republic of China on National Anthem ("National Anthem Law") or the National Anthem Ordinance (if enacted). The Administration's advice that acts performed outside Hong Kong would not be subject to the regulation of the Bill.	
002309 - 002624	Chairman Mr Alvin YEUNG Administration	Enquiry about whether and how amendment(s) would be made to the National Anthem Ordinance (if enacted) should there be any amendment to the National Anthem Law in future. The Administration's advice that should there be any amendment to the National Anthem Law that the Hong Kong Special Administrative Government ("HKSAR") considered relevant and applicable to Hong Kong in future, the HKSAR Government would propose necessary amendments to the National Anthem Ordinance (if enacted) and consult the Legislative Council ("LegCo") as appropriate in accordance with the established procedures.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
002625 - 003142	Deputy Chairman Mr CHAN Chi-chuen Dr KWOK Ka-ki	<i>(The Deputy Chairman took the chair in the absence of the Chairman)</i> Quorum call	
003143 - 003556	Deputy Chairman Mr Charles MOK Administration	Query about why it was necessary to include clause 11(1) in the Bill and whether there were other examples of similar provisions under the existing legislation in Hong Kong; and enquiry about how the inconsistencies between the National Anthem Ordinance (if enacted) and the National Anthem Law would be dealt with in future. The Administration's advice that clause 11(1) of the Bill, which was drafted with reference to section 9(1) of the National Flag and National Emblem Ordinance ("NFNEO"), sought to make it clear that while the National Anthem Ordinance was to be enacted to implement the National Anthem Law locally, any offences in relation to the national anthem in Hong Kong would be investigated and prosecuted according to the laws of Hong Kong. As certain provisions of the National Anthem Law were not incorporated into the Bill, clause 11(2) provided that in case of inconsistencies between the National Anthem Ordinance and the National Anthem Law, the Ordinance was to be interpreted and applied as a special application or adaptation of the National Anthem Law.	
003557 - 004203	Deputy Chairman Dr KWOK Ka-ki	Expression of the view that the heavy penalties and extended prosecution time bar for the offence of insulting the national anthem provided in the Bill would create "white terror" and give rise to concern that the Bill would be a new tool to restrict the right to the freedom of expression and to institute political prosecutions. Quorum call	
004204 - 004623	Deputy Chairman Ms Claudia MO Administration	Enquiries about why "application" instead of "implementation" was used as the English equivalent of "實施" in clause 11, and the difference in meaning between "special application" and "adaptation" in clause 11(2). The Administration's advice that it had made reference to section 9(2) of NFNEO in drafting clause 11(2) of the Bill.	
004624 - 005040	Deputy Chairman Mr CHAN Chi-chuen Administration	Further enquiry about why it was necessary to include clause 11(1) in the Bill. The Administration's explanation that since both NFNEO and the National Anthem Ordinance were enacted to implement the relevant national laws locally and NFNEO had been effective since implementation, it was of the view that a provision similar to section 9(1) of NFNEO should be included in the Bill to avoid any legal uncertainty.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
005041 - 005459	Deputy Chairman Mr LEUNG Yiu-chung Administration	Discussion on the legislative purpose and the legal effect of clause 11(2).	
005500 - 005914	Deputy Chairman Dr CHENG Chung-tai Administration Senior Assistant Legal Adviser ("SALA")	<p>Enquiry about the meaning of the expression "special application or adaptation" in clause 11(2) and whether it was used in other pieces of existing legislation in Hong Kong.</p> <p>The Administration's response that it had made reference to clause 9(2) of NFNEO for the expressions in clause 11(2) of the Bill.</p> <p>SALA's advice that clause 11(2) clarified that the National Anthem Ordinance (if enacted) should be interpreted from the local perspective.</p>	
005915 - 010342	Deputy Chairman Mr AU Nok-hin Administration	<p>Enquiry about whether the Basic Law, which guaranteed the fundamental rights and freedoms of Hong Kong people, would prevail over the National Anthem Ordinance (if enacted), which imposed certain restrictions on such rights and freedoms, in the adjudication of cases of alleged offences in relation to the national anthem in Hong Kong.</p> <p>The Administration's advice that as provided in clause 11(1) of the Bill, offences in relation to the national anthem in Hong Kong would be investigated and prosecuted in accordance with the laws of Hong Kong, which included the Basic Law and the Hong Kong Bill of Rights Ordinance.</p>	
010343 - 010713	Deputy Chairman Mr CHAN Chi-chuen Administration	Discussion on the reason for using the expression "觸犯有關國歌的規定的罪行" rather than "觸犯本條例規定的罪行" in the Chinese text of clause 11(1); and whether clause 11(1) implied that there were other offences in relation to the national anthem in Hong Kong apart from those provided in the Bill.	
010714 - 011025	Deputy Chairman Ms Claudia MO Administration	Discussion on Ms Claudia MO's view that the words "予以" in the Chinese text of clause 11(1) were unnecessary and should be deleted.	
011026 - 011512	Deputy Chairman Dr KWOK Ka-ki Administration	Discussion on whether the HKSAR Government had informed and consulted LegCo and the public on the draft of the National Anthem Law and submitted HKSAR's views to the Standing Committee of the National People's Congress before the National Anthem Law was formally adopted at the 29th Meeting of the Standing Committee of the Twelfth National People's Congress on 1 September 2017.	
011513 - 011940	Deputy Chairman Mr Jeremy TAM Administration	Discussion on why the phrase "according to the laws of Hong Kong" was used in clause 11(1) of the Bill, whereas "according to the laws in force in the Hong Kong Special Administrative Region" was used in section 9(1) of NFNEO; and the meaning of clause 11(2) of the Bill.	
011941 - 012441	Deputy Chairman Ms Claudia MO	Quorum call	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
012442 - 012748	Deputy Chairman Mr Gary FAN Administration	Discussion on why clause 11(1) was included as "Supplementary Provisions" under Part 5 but not as a sub-clause under clause 7 of the Bill.	
012749 - 013057	Deputy Chairman Mr AU Nok-hin Administration	Discussion on whether judgments of cases in the Mainland could be referred to and whether the human rights safeguards provided under the laws of Hong Kong would be taken into consideration by the courts in the adjudication of cases of alleged offences in relation to the national anthem according to clause 11(1) of the Bill.	
013058 - 013316	Deputy Chairman Dr KWOK Ka-ki Administration	Discussion on whether the Department of Justice would refer to judgments of cases in the Mainland in respect of the National Anthem Law when bringing prosecution against alleged offences in relation to the national anthem in Hong Kong.	
013317 - 013638	Deputy Chairman Mr Charles MOK Administration	Discussion on whether it would be better to state in clause 11(1) that offences in relation to the national anthem in Hong Kong would not be investigated and prosecuted according to the laws of jurisdictions outside Hong Kong.	
013639 - 014058	Deputy Chairman Dr Fernando CHEUNG Administration	Further discussion on the drafting of clause 11(2) and query about whether it meant that the National Anthem Ordinance (if enacted) would be subordinate to the National Anthem Law in a hierarchical rank structure.	
014056 - 014415	Deputy Chairman Mr CHU Hoi-dick Administration	Discussion on the reasons for the difference in drafting between clause 11(2) of the Bill and section 9(2) of NFNEO.	
014416 - 014732	Deputy Chairman Mr Jeremy TAM Administration	Discussion on why it was necessary to include the interpretation clause in clause 11(3) but not in clause 2 of the Bill.	
014721 - 015213	Deputy Chairman Dr KWOK Ka-ki	Quorum call	
015214 - 015512	Deputy Chairman Dr Fernando CHEUNG Administration	Further query about the necessity of including the provision that the National Anthem Ordinance (if enacted) was to be interpreted and applied as a special application or adaptation of the National Anthem Law in clause 11(2) of the Bill. The Administration's reiteration of its earlier response that clause 11(2) of the Bill was drafted with reference to section 9(2) of NFNEO. Since both NFNEO and the National Anthem Ordinance were enacted to implement the relevant national laws locally and NFNEO had been effective since implementation, the Administration was of the view that a provision similar to section 9(2) of NFNEO should be included in the Bill to avoid any legal uncertainty.	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
015513 - 015819	Chairman Mr CHAN Chi-chuen Administration	<i>(The Chairman resumed the chair at this juncture)</i> Further discussion on the reasons for the difference in drafting between clause 11 of the Bill and section 9 of NFNEO; and whether amendments to NFNEO would be necessary.	
015820 - 015855	Chairman Dr KWOK Ka-ki	Request for preparation of verbatim transcript for this meeting	

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