

**立法會**  
**Legislative Council**

Ref : CB2/BC/3/18

LC Paper No. CB(2)421/19-20  
(These minutes have been seen  
by the Administration)

**Bills Committee on National Anthem Bill**

**Minutes of the sixteenth meeting**  
**held on Saturday, 18 May 2019, at 9:00 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 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-ye, GBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon Claudia MO
- 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
- 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
- Ir Dr Hon LO Wai-kwok, SBS, MH, JP
- Hon Alvin YEUNG

Hon Andrew WAN Siu-kin  
Hon Jimmy NG Wing-ka, 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  
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 Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Members  
absent**

: Hon James TO Kun-sun  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon CHAN Han-pan, BBS, JP  
Hon Dennis KWOK Wing-hang  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, BBS, JP  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon SHIU Ka-chun  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Hon AU Nok-hin

**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 Fanny TSANG  
Legislative Assistant (2) 3

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Action

**I. Matters arising**

Voting on request for preparation of verbatim transcript for the meeting on 17 May 2019

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The Chairman said that at the last meeting on 17 May 2019, Dr KWOK Ka-ki made a request for preparation of a verbatim transcript for that meeting. As there were divided views among members, the Chairman ordered that a vote be taken on Dr KWOK's request by using the Electronic Voting System. The result was that six members voted for and 22 members voted against the request, and no member abstained from voting (details of division attached at **Annex I**). The Chairman declared that the request was not supported.

**II. 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) and (02)]

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

Action

3. The Bills Committee completed clause-by-clause examination of the Bill at this meeting.

*(At 10:00 am, the Deputy Chairman took the chair in the absence of the Chairman. The Chairman resumed the chair at 10:16 am.)*

*(At 10:10 am, Ms Claudia MO 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 10:16 am when a quorum was present.)*

*(At 10:42 am, Dr KWOK Ka-ki 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 10:49 am when a quorum was present.)*

Follow-up action required of the Administration

Admin

4. The Administration was requested to provide a written response on whether clause 13 of the Bill was in line with the Paris Convention.

Arrangements for the next meeting

5. The Chairman said that the draft amendments to the Bill proposed by some members and the relevant written response provided by the Administration had been issued to members [LC Paper Nos. CB(2)1425/18-19(01) to (05) and CB(2)1455/18-19(01) and (02)]. To facilitate discussion at the next meeting, the Chairman requested members who intended to propose amendments but had not yet submitted them to the Clerk to forward the proposed amendments to the Clerk by 12:00 noon on 20 May 2019 for onward transmission to the Administration for written response. The Chairman further said that members would be informed of the date and time of the next meeting by circulation of paper.

*(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled to be held on Friday, 24 May 2019, from 8:45 am to 10:45 am.)*

**III. Any other business**

6. There being no other business, the meeting ended at 11:06 am.

附件 I  
Annex I

點名表決 DIVISION: 1  
日期 DATE: 18/05/2019  
時間 TIME: 09:09:40 上午 AM

動議 MOTION: 要求為 2019 年 5 月 17 日的《國歌條例草案》委員會會議製備逐字紀錄本  
Request for preparation of verbatim transcript for the meeting of the Bills Committee on National Anthem Bill on 17 May 2019

動議人 MOVED BY:

出席 Present : 29  
投票 Vote : 28  
贊成 Yes : 6  
反對 No : 22  
棄權 Abstain : 0  
結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE	議員	MEMBER	投票	VOTE
廖長江	Martin LIAO	出席	PRESENT	黃碧雲	Dr Helena WONG		
涂謹申	James TO			葉建源	IP Kin-yuen		
梁耀忠	LEUNG Yiu-chung	贊成	YES	葛珮帆	Dr Elizabeth QUAT		
張宇人	Tommy CHEUNG			蔣麗芸	Dr CHIANG Lai-wan		
李國麟	Prof Joseph LEE			盧偉國	Ir Dr LO Wai-kwok		
林健鋒	Jeffrey LAM			楊岳橋	Alvin YEUNG	贊成	YES
黃定光	WONG Ting-kwong	反對	NO	尹兆堅	Andrew WAN		
李慧琼	Starry LEE			朱凱迪	CHU Hoi-dick		
陳克勤	CHAN Hak-kan	反對	NO	吳永嘉	Jimmy NG		
陳健波	CHAN Kin-por	反對	NO	何君堯	Dr Junius HO		
梁美芬	Dr Priscilla LEUNG	反對	NO	何啟明	HO Kai-ming	反對	NO
黃國健	WONG Kwok-kin			林卓廷	LAM Cheuk-ting		
葉劉淑儀	Mrs Regina IP	反對	NO	周浩鼎	Holden CHOW	反對	NO
謝偉俊	Paul TSE			邵家輝	SHIU Ka-fai	反對	NO
毛孟靜	Claudia MO	贊成	YES	邵家臻	SHIU Ka-chun		
田北辰	Michael TIEN			柯創盛	Wilson OR	反對	NO
何俊賢	Steven HO	反對	NO	容海恩	YUNG Hoi-yan	反對	NO
易志明	Frankie YICK	反對	NO	陳振英	CHAN Chun-ying	反對	NO
胡志偉	WU Chi-wai			陳淑莊	Tanya CHAN		
姚思榮	YIU Si-wing	反對	NO	張國鈞	CHEUNG Kwok-kwan		
馬逢國	MA Fung-kwok			許智峯	HUI Chi-fung		
莫乃光	Charles Peter MOK			陸頌雄	LUK Chung-hung	反對	NO
陳志全	CHAN Chi-chuen	贊成	YES	劉國勳	LAU Kwok-fan	反對	NO
陳恒鎮	CHAN Han-pan			劉業強	Kenneth LAU		
梁志祥	LEUNG Che-cheung	反對	NO	鄭松泰	Dr CHENG Chung-tai		
梁繼昌	Kenneth LEUNG			鄭俊宇	KWONG Chun-yu		
麥美娟	Alice MAK	反對	NO	譚文豪	Jeremy TAM	贊成	YES
郭家麒	Dr KWOK Ka-ki			范國威	Gary FAN		
郭偉強	KWOK Wai-keung	反對	NO	區諾軒	AU Nok-hin		
郭榮鏗	Dennis KWOK			鄭泳舜	Vincent CHENG	反對	NO
張華峰	Christopher CHEUNG			謝偉銓	Tony TSE	反對	NO
張超雄	Dr Fernando CHEUNG	贊成	YES	陳凱欣	CHAN Hoi-yan	反對	NO

秘書 CLERK

**Proceedings of the sixteenth meeting of the  
Bills Committee on National Anthem Bill  
on Saturday, 18 May 2019, at 9:00 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
001115 - 001340	Chairman	Opening remarks  Voting on request for preparation of verbatim transcript for the meeting on 17 May 2019	
001341 - 001633	Chairman Ms Claudia MO Mr Charles MOK	Discussion on meeting arrangements	
001634 - 001857	Chairman Ms Claudia MO Administration	Continuation of clause-by-clause examination of the National Anthem Bill ("the Bill")  <b>Part 5 - Supplementary Provisions</b>  <u>Examination of clause 11</u>  Discussion on Ms Claudia MO's view that the English text and the Chinese text of clause 11(2) did not tally.	
001858 - 002112	Chairman Mr Jeremy TAM Administration	Discussion on whether amendments to clause 11(3) of the National Anthem Ordinance (if enacted) would be necessary in the event that any amendments to the Law of the People's Republic of China on National Anthem ("National Anthem Law") were made in future, and if so, the impact on the implementation of the National Anthem Ordinance in the period before such amendments to the Ordinance were made.	
002113 - 002545	Chairman Mr Alvin YEUNG Administration	Expression of concern about the impact of any interpretation of the National Anthem Law in the Mainland on the interpretation of the National Anthem Ordinance (if enacted) in Hong Kong; and enquiry as to whether the Administration would report the judicial interpretation concerned to the Legislative Council ("LegCo") for record. The Administration's explanation that the legal system in the Mainland and that in Hong Kong were different. In any event, the Hong Kong Special Administrative Region ("HKSAR") Government would adhere to the principle that Article 18 of the Basic Law had to be complied with for the incorporation of any national laws, including any amendments to such laws, in Annex III to the Basic Law. Should any interpretation of the National Anthem Law be made in the Mainland and the relevant information be made available to the HKSAR Government in future, such information could be provided to the relevant LegCo Panel upon members' request.	
002546 - 002907	Chairman Mr LEUNG Yiu-chung Administration	Discussion on Mr LEUNG Yiu-chung's suggestion in relation to the drafting of clause 11(2).	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
002908 - 003254	Chairman Dr CHENG Chung-tai Administration	Discussion on the reasons for the difference in drafting between clause 11 of the Bill and section 9 of the National Flag and National Emblem Ordinance ("NFNEO").	
003255 - 003503	Chairman Mr LEUNG Yiu-chung Administration	Further discussion on Mr LEUNG Yiu-chung's suggestion in relation to the drafting of clause 11(2).	
003504 - 003645	Chairman Mr CHAN Chi-chuen Administration	Further discussion on whether and how amendments would be made to the National Anthem Ordinance in the event that any amendments to the National Anthem Law were made in future.	
003646-004115	Chairman Dr Priscilla LEUNG Administration	<p>Query about the necessity of including clause 11(2) in the Bill and expression of the view that the use of "改編本" as the Chinese equivalent of "adaptation" in clause 11(2) was inappropriate, since the National Anthem Ordinance (if enacted) must be consistent with the National Anthem Law and the National Anthem Law was to be implemented in Hong Kong with adaptations having regard to the common law system and the actual circumstances in Hong Kong.</p> <p>The Administration's response that it had made reference to clause 9(2) of NFNEO in drafting clause 11(2) of the Bill. 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. Furthermore, as the purpose of clause 11(2) of the Bill was the same as that of clause 9(2) of NFNEO, the Administration considered that the same expressions should be used in the Bill as far as possible to avoid creating unnecessary public concerns.</p>	
004116 - 004400	Chairman Dr CHENG Chung-tai Administration	Further discussion on whether it was necessary to include clause 11(2) in the Bill.	
004401 - 004600	Chairman Dr Priscilla LEUNG	Reiteration of the view that the use of "改編本" as the Chinese equivalent of "adaptation" in clause 11(2) was inappropriate.	
004601 - 004914	Chairman Mr Gary FAN Administration	<p>Enquiry about the possible risks, if any, arising from the deletion of clause 11(1) from the Bill.</p> <p>The Administration's explanation that under the common law system practised in Hong Kong, offences in relation to the national anthem in Hong Kong would be investigated and prosecuted only in accordance with the laws of Hong Kong. This notwithstanding, since both NFNEO and the National Anthem Ordinance were enacted to implement the relevant national laws locally, the Administration was of the view that a provision similar to 9(1) of NFNEO should be included in the Bill to avoid creating unnecessary public concerns.</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
004915 - 005050	Chairman Mr Jeremy TAM Administration	Enquiry about the implementation of the National Anthem Ordinance (if enacted) in the event that the National Anthem Law was amended but the National Anthem Ordinance had yet to be amended accordingly.  The Administration's response that the National Anthem Ordinance (if enacted) would remain in force unless and until amendments to it, if any, had been made.	
005051 - 005201	Chairman Mr LEUNG Yiu-chung	Further discussion on Mr LEUNG Yiu-chung's suggestion in relation to the drafting of clause 11(2).	
005205 - 005338	Chairman Dr Priscilla LEUNG	Expression of the view that it was preferable if clause 11(1) also specified that cases in relation to the national anthem in Hong Kong were to be adjudicated according to the laws of Hong Kong.	
005339 - 005452	Chairman Ms Claudia MO Administration	Discussion on Ms Claudia MO's suggestion of substituting "改編本" with "適應本" in the Chinese text of clause 11(2) of the Bill.	
005453 - 005638	Chairman Dr CHENG Chung-tai Administration	Discussion on whether the words "or adaptation" should be deleted from clause 11(2).	
005639 - 005741	Chairman Mr Gary FAN Administration	Further discussion on the possible risks, if any, arising from the deletion of clause 11(1) from the Bill.	
005742 - 005914	Chairman Ms Claudia MO Administration	Discussion on whether the English text of clause 11(1) tallied with the corresponding Chinese text.	
005915 - 010011	Chairman Dr Priscilla LEUNG	Expression of the view that the Administration should review whether it was appropriate to use "改編本" as the Chinese equivalent of "adaptation" in clause 11(2).	
010012 - 010113	Chairman Administration	<b>Part 6 - Consequential Amendments</b>  <u>Examination of clause 12 to 14</u>	
010114 - 010401	Chairman Mr CHAN Chi-chuen Administration	Discussion on the meaning of "trade mark" under the Trade Marks Ordinance ("TMO") (Cap. 559) and whether it would contravene the law if a QR code containing the national anthem was used in a trade mark.	
010402 - 010902	Deputy Chairman Ms Claudia MO Administration	<i>(The Deputy Chairman took the chair in the absence of the Chairman)</i>  Discussion on whether the use of the national flag, the national emblem or the national anthem in commercial products was allowed.	
010903 - 011319	Deputy Chairman Dr KWOK Ka-ki Administration	Further discussion on whether the use of the national anthem in a commercial product or a trade mark was allowed.	



Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
011320 - 011944	Deputy Chairman Ms Claudia MO	Quorum call	
011945 - 012250	Chairman Mr WU Chi-wai Administration	<p><i>(The Chairman resumed the chair at this juncture)</i></p> <p>Enquiry about whether the use of the national anthem in a commercial product might constitute an insult to the national anthem in contravention of clause 7 of the Bill would depend on the nature of the commercial product in which it was used.</p> <p>The Administration's advice that irrespective of the nature of the product concerned, in determining whether there was a contravention of clause 7, the relevant authorities would have to look at whether the producer of the product had the intent to insult the national anthem.</p>	
012251 - 012432	Chairman Mr Gary FAN Administration	Discussion on the meaning of the term "absolute grounds" under TMO mentioned in clause 13.	
012433 - 012850	Chairman Dr CHENG Chung-tai Administration	Discussion on how the national anthem, which was a piece of music, could be used in a trade mark according to the meaning of "trade mark" in section 3(1) and (2) of TMO.	
012851 - 013145	Chairman Mr CHAN Chi-chuen Administration	Discussion on the criteria for determining whether a piece of music used in a trade mark was the national anthem and whether the registration of the trade mark concerned should be refused, and the consequence for contravening section 11 of TMO mentioned in clause 13.	
013146 - 013458	Chairman Ms Claudia MO Administration	Discussion on whether it would contravene the law if the wording "義勇軍進行曲" ("March of the Volunteers"), or the lyrics or score of the national anthem, was used in a trade mark not registered in Hong Kong.	
013459 - 013903	Chairman Dr KWOK Ka-ki Administration	Further discussion on the use of the national anthem in a commercial product or a trade mark and the enforcement of the law.	
013904 - 014342	Chairman Mr KWONG Chun-yu Administration	Discussion on the handling of cases involving the use of the national anthem in trade marks registered in Hong Kong before the passage of the Bill, and the handling of trade marks that contained the national anthem and registered in contravention of section 11 of TMO after passage of the Bill.	
014343 - 015344	Chairman Dr KWOK Ka-ki Administration	<p>Discussion on the implications of using the national anthem in a trade mark registered outside Hong Kong.</p> <p>Quorum call</p> <p>The Chairman's request for the Administration to provide a written response to Dr KWOK Ka-ki's enquiry about whether clause 13 was in line with the Paris Convention.</p>	<p><b>Admin (para. 4 of minutes)</b></p>

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
015345 - 015454	Chairman Mr CHAN Chi-chuen Administration	Discussion on drafting issues in relation to clause 13(3) and clause 14.	
015455 - 015636	Chairman Dr KWOK Ka-ki Administration	Discussion on why it was necessary to include amendments to TMO in clause 13 of the Bill.	
015637 - 015815	Chairman Mr Gary FAN Administration	Further discussion on the meaning of the term "absolute grounds" under section 11 of TMO mentioned in clause 13.	
015816 - 020023	Chairman Ms Claudia MO Administration	Discussion on drafting issues in relation to clause 13(2).	
020024 - 020201	Chairman Dr KWOK Ka-ki Administration	Discussion on whether there was any difference between the handling of the use of national anthem in trade marks in Hong Kong and that in the Mainland.	
020202 - 021015	Chairman Members Administration	Discussion on the arrangement for discussion of the draft amendments proposed by members to the Bill	
021016 - 021039	Chairman	Closing remarks	