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Bills Committee on National Anthem Bill

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the National Anthem Bill ("the Bill"). It also summarizes the major views and concerns expressed by the Panel on Constitutional Affairs ("the Panel") during its previous discussion of the local legislation to implement the Law of the People's Republic of China on the National Anthem ("the National Anthem Law").

Background

2. The National Anthem Law was adopted at the 29th session of the Standing Committee of the 12th National People's Congress ("NPCSC") on 1 September 2017, and has come into force nationwide since 1 October 2017. On 4 November 2017, NPCSC adopted the decision to add the National Anthem Law to Annex III to the Basic Law. In accordance with Article 18 of the Basic Law ("BL 18"), the national laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region ("HKSAR").

3. As announced by the HKSAR Government on 4 November 2017, in pursuance to BL 18, the National Anthem Law will be applied in HKSAR by way of appropriate local legislation consistent with the constitutional and legal regime of HKSAR.

The National Anthem Bill

4. The Bill was published in the Gazette on 11 January 2019. It was introduced into the Legislative Council ("LegCo") on 23 January 2019. According to the LegCo Brief (File Ref. CMAB E4/1/1), the legal principle of the Bill is to fully reflect the purpose and intent of the National Anthem Law, which is to preserve the dignity of the national anthem and promote respect for the national anthem; and at the same time to give due regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong.

5. The main provisions of the Bill are set out in paragraphs 5 to 26 of the LegCo Brief under reference. The Administration has proposed that the Bill will take effect after enactment of the legislation.

Major views and concerns expressed by the Panel

6. On 23 March 2018, the Panel was consulted on an outline of the proposed content of the Bill summarizing the Administration's proposed drafting direction (in **Appendix I**). The Panel received public views on the subject at its special meetings on 28 April 2018 and 5 May 2018. The major views and concerns expressed by members are set out in the ensuing paragraphs.

Act of insulting the national anthem

7. While members in general considered that the HKSAR Government had a constitutional duty to enact local legislation to implement the National Anthem Law in Hong Kong, some members expressed grave concern that the Administration failed to provide a clear definition of what constituted an act of insulting the national anthem which would incur criminal liabilities under the Bill.¹ Members pointed out that many people were worried that they might breach the law unintentionally. Members enquired whether people passing by a stadium or a large outdoor television ("TV") with the national anthem being played would have to stand still, and whether diners at restaurants would have to stand up while the national anthem was being played on TV inside the restaurants.

8. The Administration explained that under the Bill, only persons who took part in, or were present at, the occasion where the national anthem was performed or sung, must stand and deport themselves respectfully.² Passers-by and diners at restaurants, who were not participating in such an event, were not required to observe the relevant requirements. The Administration stressed that the Bill would only impose sanctions on those who showed wilful intent to insult

¹ According to the outline of the proposed content of the Bill submitted to the Panel in March 2018, "A person commits an offence and is liable to a fine at level 5 [HK\$50,000] and an imprisonment for 3 years if the person publicly and wilfully alters the lyrics or the score of the national anthem, performs or sings the national anthem in a distorted or derogatory manner, or insults the national anthem in any other manner. (With reference to the National Flag and National Emblem Ordinance)"

² Based on Article 7 of the National Anthem Law, the outline of the proposed content of the Bill includes that " Every person who takes part in, or is present at, the occasion where the national anthem is performed or sung, must stand and deport themselves respectfully, and must not display any behaviour that is disrespectful to the nation anthem." No penalties are proposed for contravention.

the national anthem. The Bill, therefore, would contain a provision based on Article 15 of the National Anthem Law, specifying that it would be a criminal offence to publicly and wilfully alter the lyrics or score of the national anthem, perform or sing it in a distorted or derogatory manner, or insult it in any other way.³ The Administration explained that it would be impossible to define what constituted an insult to the national anthem by giving an exhaustive list in the Bill. The Administration advised that the courts would consider each case based on objective facts and decide whether a particular case violated the law based on evidence. The law enforcement agency would collect evidence for investigation, and prosecution would be made subject to circumstances and evidence.

9. Noting that Article 15 of the National Anthem Law contained the expression "or insults the national anthem in any other manner", some members expressed concern as to what the expression "in any other manner" specifically referred to. They asked whether a person would be considered as insulting the national anthem "in any other manner" if he or she remained seated or walked away during the performance and singing of the national anthem at large-scale events. The Administration reiterated that it was not possible to give an exhaustive list as to what constituted an insult to the national anthem. Whether an act would be considered an offence would depend on the intention and whether it was carried out in public. The law enforcement agency would gather the relevant evidence, and the decision to prosecute or not would depend on circumstances and evidence.

10. Hon Claudia MO suggested removing the penalty clauses or making them as lenient as possible. The Administration, however, considered it necessary to provide for penalties in the Bill so as to achieve deterrent effect. The Administration advised that it would make reference to the relevant provisions of the existing National Flag and National Emblem Ordinance ("NFNEO") in proposing the level of penalties under the Bill.

Playing the national anthem on inappropriate occasions

11. Hon Michael TIEN expressed concern that some persons with ulterior motive might play the national anthem on occasions (e.g. during a filibuster at the Legislature, a rally or a march) which were neither those prescribed by the

³ "Article 15 of the National Anthem Law - Any person who, in a public venue, deliberately alters the lyrics or the score of the national anthem, or performs or sings the national anthem in a distorted or derogatory manner, or insults the national anthem in any other manner, shall be issued with a warning or be detained for up to 15 days by public security departments. Where the act constitutes a criminal offence, the offender is subject to criminal prosecution in accordance with law."

Chief Executive ⁴nor those prohibited under the Bill in future.⁵ He asked whether people present would have to stand still on those occasions. He further suggested that those who played the national anthem with ulterior motive on inappropriate occasions should be subject to a fine at level 5 (\$50,000) to prevent the aforementioned misuse of the national anthem. The Administration stressed that under the Bill, a person would commit an offence if he or she publicly and wilfully insulted the national anthem.

Impact on the freedoms of speech, expression and creation

12. Some members expressed concern that some people might contravene the law unintentionally in the course of film production or artistic creation. They enquired whether songs involving malicious alterations of the national anthem and created before the passage of the Bill would be caught by the proposed legislation. They suggested that the relevant sectors should be consulted in the legislative process.

13. The Administration advised that while each case would have to be considered on a case-by-case basis taking into account all the objective facts and evidence, it was clear that publicly and wilfully altering the lyrics or the score of the national anthem or performing or singing the national anthem in a distorted or derogatory manner would not be allowed. As for the publication of derivative work of the national anthem, including broadcasting such work online, the provision in Article 15 would also be applicable. In general, laws in the physical world were applicable to the cyber world based on actual circumstances.

14. Some members indicated that they would object to the Bill if Hong Kong people's freedom of speech and of thought was compromised under the Bill. The Administration advised that the Bill would be in conformity with the Basic

⁴ According to the outline of the proposed content of the Bill, "On any occasion where the national anthem must be performed or sung as stipulated by the Chief Executive, the official standard score or the official recorded version of the national anthem must be used."

⁵ According to the outline of the proposed content of the Bill:
"(1) The national anthem must not be used –
(a) in trademarks or commercial advertisements;
(b) at private funerals;
(c) as background music in public venues; or
(d) on occasions prescribed by the Chief Executive.
(2) A person commits an offence if the person contravenes the aforementioned provision, and is liable on conviction –
(a) for an offence under (1)(a) – to a fine at level 5 (\$50,000); or
(b) for an offence under (1)(b), (c) or (d) – to a fine at level 2 (\$5,000).
(With reference to NFNEO)"

Law, including the provisions concerning human rights. The legislative principle of the Bill was to maintain the purpose and intent of the National Anthem Law as explained in paragraph 4 above, whilst taking into account the common law system and local circumstances. The Administration further advised that the Court of Final Appeal had ruled that the freedom of speech and expression was not without boundaries. As ruled by the court, restrictions on freedom of speech and expression that were proportionate to the legitimate interests in protecting the national flag as the unique symbol of the nation could be imposed. The Administration considered that the restrictions imposed under the Bill were reasonable, as they only limited certain ways of expression but not the content expressed.

Impact on education sector

15. Some members expressed concern that according to the outline of its proposed content, the Bill would include a provision stipulating that primary and secondary schools had to teach students to sing the national anthem, and to understand the history and spirit of the national anthem, as well as to observe the etiquette during the performance and singing of the national anthem. They expressed worry that the provision might put teachers under undue pressure and would set a precedent to mandate by law on what should be covered in school curriculum. These members also considered that the relevant provision under the Bill was in contravention of BL 137 which stipulates that "[e]ducational institutions of all kinds may retain their autonomy and enjoy academic freedom".

16. The Administration explained that the relevant provision aimed to mirror Article 11 of the National Anthem Law which stipulates that the national anthem would be included in education.⁶ The Government did not plan to stipulate any penalty for this provision in the Bill. The Administration advised that most local schools were already teaching students about the national anthem, and the learning contents of the national anthem had already been incorporated into the subject curricula at primary and secondary levels and in Moral, Civic and National Education. The Bill would not impose any new requirement on the education sector.

17. Members also enquired whether international schools in Hong Kong would be covered by the Bill. Some members considered that students of other

⁶ "Article 11 of the National Anthem Law - The national anthem shall be included in secondary and primary education.

Secondary and primary schools shall regard the national anthem as an important component in education to promote patriotism, organize students to learn to sing the national anthem, and teach students on the history and spirit of the national anthem and to observe the etiquette for performing and singing the national anthem."

nationalities studying in Hong Kong would also need to develop their respect for the national anthem. The Administration advised that the Education Bureau would discuss with the international schools to map out the appropriate way forward.

The Preamble of the Bill

18. Some members expressed concern that Articles 1 and 3 of the National Anthem Law were proposed to be suitably incorporated into the Preamble of the Bill, whereas no such arrangement was made for NFNEO. They also queried whether such arrangement for the Bill was consistent with the law drafting practice in Common Law. Besides, these members highlighted that Article 1 of the National Anthem Law stipulated "to promote patriotism" and "practise the core values of socialism". They queried whether such wording, if incorporated into the Preamble of the Bill, would be inconsistent with the Basic Law.

19. The Administration advised that it would ensure that the Bill was in conformity with the Basic Law. The Administration would suitably incorporate Article 1 into the Preamble of the Bill with suitable modifications of the wording. The Administration further advised that the Preamble would follow the Long Title in the Bill and would serve to provide background information to enhance understanding of the purpose of the Bill.

Relevant papers

20. A list of the relevant papers available on the LegCo website is in **Appendix II**.

**Outline of the Proposed Content of
the National Anthem Bill of the Hong Kong Special Administrative Region**

Law of the People's Republic of China on the National Anthem¹	Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region
Article 1 This Law is enacted according to the Constitution, so as to preserve the dignity of the national anthem; to regulate the performance, singing, playing, and the use of the national anthem; to enhance the sense of nation among citizens; to promote patriotism; and to cultivate and practise the core values of socialism.	To suitably incorporate this article into the Preamble of the Bill.
Article 2 The national anthem of the People's Republic of China is the "March of the Volunteers".	The national anthem of the People's Republic of China is the "March of the Volunteers".
Article 3 The national anthem of the People's Republic of China is the national symbol of the People's Republic of China. All citizens and organisations shall respect the national anthem and preserve the dignity of the national anthem.	To suitably incorporate this article into the Preamble of the Bill.
Article 4 The national anthem shall be performed and sung on the following occasions: (1) The opening and closing of the National People's Congress and all tiers of local people's congresses; and the opening and closing of the National Committee, and all tiers of local committees, of the Chinese People's Political Consultative Conference;	The Chief Executive shall prescribe the occasions where the national anthem must be performed and sung. (With reference to the National Flag and National Emblem Ordinance)

¹ There is as yet no official English translation of the National Anthem Law. This English translation is prepared by the Constitutional and Mainland Affairs Bureau.

Law of the People's Republic of China on the National Anthem ¹	Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region
<p>(2) All tiers of congresses of all political parties and people's organisations;</p> <p>(3) Oath-taking ceremonies to pledge allegiance to the Constitution;</p> <p>(4) Flag-raising ceremonies;</p> <p>(5) Major celebrations, award ceremonies, commemorative ceremonies, etc.;</p> <p>(6) National memorial activities;</p> <p>(7) Major diplomatic activities;</p> <p>(8) Major sporting events;</p> <p>(9) Other occasions where the national anthem shall be performed and sung.</p>	
Article 5 The State encourages citizens and organisations to perform and sing the national anthem on appropriate occasions to express patriotism.	The Government encourages citizens and organisations to perform and sing the national anthem on appropriate occasions.
Article 6 The performance and singing of the national anthem shall follow the lyrics and score in the Attachment to this Law, and it must not be performed or sung in a manner harmful to the dignity of the national anthem.	The performance and signing of the national anthem shall follow the lyrics and score in the Attachment to this Ordinance, and it must not be performed or sung in a manner harmful to the dignity of the national anthem.
Article 7 When the national anthem is performed and sung, those present shall stand and deport themselves respectfully, and must not display any behaviour that is disrespectful to the nation anthem.	Every person who takes part in, or is present at, the occasion where the national anthem is performed or sung, must stand and deport themselves respectfully, and must not display any behaviour that is disrespectful to the nation anthem.

Law of the People's Republic of China on the National Anthem ¹	Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region
<p>Article 8 The national anthem must not be used, or be used indirectly, in trademarks or commercial advertisements, or at inappropriate occasions including private funerals, or as background music in public venues, etc.</p>	<p>(1) The national anthem must not be used –</p> <ul style="list-style-type: none"> (a) in trademarks or commercial advertisements; (b) at private funerals; (c) as background music in public venues; or (d) on occasions prescribed by the Chief Executive. <p>(2) A person commits an offence if the person contravenes the aforementioned provision, and is liable on conviction –</p> <ul style="list-style-type: none"> (a) for an offence under (1)(a) – to a fine at level 5²; or (b) for an offence under (1)(b), (c) or (d) – to a fine at level 2³. <p>(With reference to the National Flag and National Emblem Ordinance)</p>
<p>Article 9 The occasions and etiquette for performing and singing the national anthem in diplomatic activities shall be prescribed by the Ministry of Foreign Affairs. The occasions and etiquette for military performances and singing of the national anthem shall be prescribed by the Central Military Commission.</p>	<p>This article will not be included in the National Anthem Bill. According to Article 13 and 14 of the Basic Law, foreign affairs and defence are not within the autonomy of the HKSAR.</p>
<p>Article 10 When performing or singing the national anthem on occasions stated in Article 4 of this Law, the official standard score or the official recorded version of the national anthem shall be used.</p> <p>The Ministry of Foreign Affairs and diplomatic institutions stationed abroad shall provide the foreign affairs departments of relevant countries and relevant international organisations with the official standard score and the official recorded version of the national anthem for use in diplomatic</p>	<p>On any occasion where the national anthem must be performed or sung as stipulated by the Chief Executive, the official standard score or the official recorded version of the national anthem must be used.</p> <p>The official standard score and the official recorded version of the national anthem shall be published on the website of the HKSAR Government.</p>

² Level 5 fine is HK\$ 50,000.

³ Level 2 fine is HK\$ 5,000.

Law of the People's Republic of China on the National Anthem ¹	Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region
<p>activities.</p> <p>The sports administration departments of the State Council shall provide relevant international sports organisations and organisers of tournaments with the official standard score and the official recorded version of the national anthem for use in international sporting events.</p> <p>The official standard score and the official recorded version of the national anthem shall be determined and produced by the department/organisation designated by the State Council, and shall be published on the websites of the National People's Congress and the Chinese Government.</p>	
<p>Article 11 The national anthem shall be included in secondary and primary education.</p> <p>Secondary and primary schools shall regard the national anthem as an important component in education to promote patriotism, organise students to learn to sing the national anthem, and teach students on the history and spirit of the national anthem and to observe the etiquette for performing and singing the national anthem.</p>	<p>Secondary and primary schools shall teach students to sing the national anthem, and to understand the history and spirit of the national anthem, as well as to observe the etiquette during the performance and singing of the national anthem.</p>
<p>Article 12 The news media shall actively publicise the national anthem and promote public understanding of the etiquette for performing and singing the national anthem.</p>	<p>Domestic free and pay television programme service licensees and sound broadcasting service licensees regulated by local ordinances must, pursuant to their respective licence conditions, broadcast materials in the public interest provided by the Government (including the television and radio announcements in the public interest to promote the national anthem) free-of-charge. If necessary, the Chief Executive may prescribe important national statutory holidays and commemorative days etc on which the national anthem shall be broadcast.</p>
<p>Article 13 On National Days, International Labour Days, and other important national statutory holidays or commemorative days, the radio and television stations of the Central Government and those of the provinces,</p>	

Law of the People's Republic of China on the National Anthem ¹	Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region
municipalities and autonomous regions shall broadcast the national anthem at times prescribed by the broadcasting and television department of the State Council.	
Article 14 All tiers of people's governments at or above the county level and their relevant departments shall oversee and manage the performance, singing, playing, and use of the national anthem under their respective duties and powers.	This article will not be included in the National Anthem Bill.
Article 15 Any person who, in a public venue, deliberately alters the lyrics or the score of the national anthem, or performs or sings the national anthem in a distorted or derogatory manner, or insults the national anthem in any other manner, shall be issued with a warning or be detained for up to 15 days by public security departments. Where the act constitutes a criminal offence, the offender is subject to criminal prosecution in accordance with law.	A person commits an offence and is liable to a fine at level 5 ⁴ and an imprisonment for 3 years if the person publicly and wilfully alters the lyrics or the score of the national anthem, performs or sings the national anthem in a distorted or derogatory manner, or insults the national anthem in any other manner. (With reference to the National Flag and National Emblem Ordinance)
Article 16 This Law takes effect on 1 October 2017.	This article will not be included in the National Anthem Bill. The National Anthem Bill will take effect after passage of the legislation.

⁴ Level 5 fine is HK\$ 50,000.

**Relevant documents on
Bills Committee on National Anthem Bill**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	23.3.2018 (Item III)	Agenda Minutes
	28.4.2018 (Item I)	Agenda Minutes
	5.5.2018 (Item I)	Agenda Minutes

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