

政制及內地事務局  
政府總部

香港添馬添美道2號  
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU  
GOVERNMENT SECRETARIAT

EAST WING  
CENTRAL GOVERNMENT OFFICES  
2 TIM MEI AVENUE, TAMAR  
HONG KONG

本署檔號 Our Ref : CMAB E4/1/1  
電話 Tel No : 2810 2333  
傳真 Faxline : 2524 7437

(By email and fax)  
(Fax no.: 2509 9055)

[English Translation]

Ms Joanne MAK  
Clerk to Bills Committee on National Anthem Bill  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

29 March 2019

Dear Ms MAK,

**Re: Follow-up Questions on Offence of  
Behaviour of Insulting the National Anthem**

Regarding the letter from Democratic Party Legislative Councillors of 22 March, our reply is set out below.

Legislative principle of the National Anthem Bill

2. The legislative principle of the National Anthem Bill (the Bill) is to fully reflect the legislative purpose and intent of the National Anthem Law as national law, which is to preserve the dignity of the national anthem and for the public to respect 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. The Bill has struck a balance between these two principles, by applying the national law in a manner that is consistent with the legal system in Hong Kong.

3. The focus of the Bill is two-pronged. Firstly, to provide that the national anthem is a symbol and sign of the People's Republic of China, and to promote respect for the national anthem by means of directional provisions. Part 2 of the Bill stipulates the standard, etiquette and occasions for playing and singing the national anthem, which are all directional provisions that do not carry any penalty. Secondly, to prescribe the penalties for publicly and intentionally insulting the national anthem or misusing the national anthem. These provisions are contained in Part 3 of the Bill. When determining whether or not there is a contravention of the Bill, the Police would, based on the actual circumstances and the evidence collected in each case, make an assessment in accordance with the law. The prosecution bears the burden of proof, and the courts will apply the usual standard of proof for criminal cases in Hong Kong (i.e. beyond reasonable doubt) in making a fair decision on the case.

4. We cannot agree with the suggestion of deleting clause 4 of the Bill on "Etiquette for playing and singing". This clause reflects Article 7 of the National Anthem Law and also provides guidance for members of the public by describing the etiquette to be followed when taking part in or attending an occasion on which the national anthem is played and sung. We consider that clause 4 of the Bill is in line with the legislative principle of the Bill.

#### Preamble

5. A preamble serves to provide a context in which to understand the provisions of the legislation concerned. There are about 50 pieces of legislation with preambles in the Laws of Hong Kong. Articles 1, 3 and 5 of the National Anthem Law set out the purpose and spirit of the law, stating clearly that the national anthem is the symbol and sign of the People's Republic of China and thus should be respected and its dignity be preserved. By suitably adopting such articles into the Preamble, the public can have a better understanding of the legislative purpose of the Bill and the provisions in the National Anthem Law can be more accurately reflected. The preamble of the Bill does not give rise to legal responsibility, let alone imposing legal responsibility on any individual or organisation.

#### Oath-taking ceremony of Legislative Council members

6. Clause 5(1) of the Bill stipulates that on each occasion set out in Schedule 3, the national anthem must be played and sung. Schedule 3 includes the oath-taking ceremony for taking the Legislative Council

Oath under section 19 of the Oaths and Declarations Ordinance (Cap. 11). As we mentioned in LC Paper No. CB(2)893/18-19(01), Legislative Council (LegCo) members are required to declare to uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region of the People's Republic of China when they stand for election in accordance with section 40 of the Legislative Council Ordinance (Cap. 542), and take the oath when assuming office in accordance with section 16(d) and as set out in Schedule 2 of the Oaths and Declarations Ordinance. Under the premise of upholding "one country, two systems" and in conformity with the relevant articles in the Basic Law and the requirements set out in the aforementioned local legislation, LegCo members should respect the national anthem, a symbol and sign of the country, and take part in the playing and singing of the national anthem at the oath-taking ceremony.

7. All members-elect should take the oath when assuming office in accordance with the Basic Law, the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress and relevant local legislation. The oath administrator will determine if the oath taken by a member-elect is valid in accordance with law. According to relevant court judgments, the court has the authority to determine if an oath is valid based on the behaviour of individual member-elect during the oath-taking ceremony, and decides if the member-elect is qualified for assuming the office. Members attending the oath-taking ceremony and taking the oath in accordance with the relevant legal requirements need not worry about being disqualified if they had no intention to contravene the oath-taking requirements or desecrate the oath-taking procedure and ceremony.

#### Level of penalty

8. Clause 7(6) of the Bill stipulates that a person who commits an offence under section 7 is liable on conviction to a fine at level 5 and to imprisonment for 3 years. Such level of penalty is the same as the level of penalty for the offence of desecrating the national flag or national emblem under the National Flag and National Emblem Ordinance. We must emphasise that a fine at level 5 and imprisonment for 3 years is the maximum level of penalty of the offence of insulting the national anthem. The court will impose sentences in accordance with the actual circumstance of each case.

### Enforcement matters

9. Part 3 of the Bill will be enforced by the Police. After passage of the Bill, the regular operation of the Police will encompass the enforcement of the National Anthem Ordinance. The Police will pay attention to potential illegal activities both at large-scale events and on the Internet, and take appropriate actions in accordance with actual circumstances. The Police will gather evidence and conduct investigation in accordance with the law and institute prosecution where there is sufficient evidence. The Police will enforce the National Anthem Ordinance with the existing establishment.

### Education matters

10. Clause 9 of the Bill requires the Secretary for Education to provide all primary and secondary schools with directions for the inclusion of the national anthem in primary and secondary education. The party giving the directions (i.e. the Secretary for Education), instead of the party following them, bears the legal responsibility for Clause 9. The actual implementation will continue to be administered under the prevailing mechanism by the Education Bureau (EDB).

11. As we stated in paragraph 15 of LC Paper No. CB(2)995/18-19(01), Clause 9 or other provisions of the Bill do not make a contravention against the directions given by the Secretary for Education regarding Clause 9 a criminal offence and thus there are no sanctions. The EDB has all along had administrative measures in place, for example, giving verbal/written advice and warnings, to follow up on irregularities identified in school operation (including not complying with the directions given by the Secretary for Education). If individual schools still do not comply with the requirements and make rectifications, power is conferred by relevant provisions of the Education Ordinance to follow up. It is the inherent responsibility of school education to cultivate in students a sense of national identity. At primary and secondary levels, students are taught to sing the national anthem and the learning contents of the national anthem are covered in the subject curricula. Society has no objection to educating students to respect the national anthem. We do not envisage that schools would violate the directions given by the Secretary for Education in pursuance to Clause 9 of the Bill. Schools have all along been complying with the Education Ordinance, relevant legislation and the guidelines from the EDB. We trust that they will do the same in the implementation of the National Anthem Ordinance.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Education

(Attn: Mrs HONG CHAN Tsui-wah, Fax no.: 3428 6034)

Secretary for Justice

(Attn: Mr Lawrence PENG, Fax no.: 3918 4613

Mr Jonathan LUK, Fax no.: 3918 4613

Mr Derek LAU, Fax no: 2845 1609)

Secretary for Security

(Attn: Mr Andrew TSANG, Fax no.: 2810 7702)