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Report of the Bills Committee on National Anthem Bill

PURPOSE

This paper reports the deliberations of the Bills Committee on National Anthem Bill ("the Bills Committee").

BACKGROUND

2. The Law of the People's Republic of China on National Anthem ("National Anthem Law") was adopted at the 29th Meeting of the Standing Committee of the Twelfth National People's Congress ("NPCSC") on 1 September 2017, and came into force nationwide on 1 October 2017.

3. On 4 November 2017, NPCSC adopted the decision to add the National Anthem Law to Annex III to the Basic Law. According to Article 18(2) of the Basic Law ("BL 18(2)"), 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").

4. As announced by the HKSAR Government on 4 November 2017, pursuant to BL 18, the National Anthem Law will be implemented in HKSAR by way of local legislation consistent with the constitutional and legal framework of HKSAR. According to the Administration, this approach is consistent with the "one country, two systems" principle, and is also consistent with the implementation of the Law of the People's Republic of China on the National Flag ("National Flag Law") and the Law of the People's Republic of China on the National Emblem, both of which have been adapted and implemented in Hong Kong by the National Flag and National Emblem Ordinance ("NFNEO").

THE BILL

5. The Bill was published in the Gazette on 11 January 2019 and introduced into the Legislative Council ("LegCo") on 23 January 2019. According to the LegCo Brief (File Ref. CMAB E4/1/1) issued by the Constitutional and

Mainland Affairs Bureau on 9 January 2019, the legislative principle adopted by the Administration in drafting 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. A table comparing the provisions in the National Anthem Law with the proposed provisions in the Bill is in **Appendix I**.

6. The main provisions of the Bill are set out in paragraphs 5 to 26 of the LegCo Brief under reference. The Bill, if passed, will come into operation on the day on which it is published in the Gazette as an Ordinance.

THE BILLS COMMITTEE

7. At the House Committee meeting on 25 January 2019, members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix II**.

8. Under the chairmanship of Hon Martin LIAO, the Bills Committee has held 17 meetings with the Administration and received views from the public at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix III**.

DELIBERATIONS OF THE BILLS COMMITTEE

Preamble¹

Paragraph 1 of the Preamble

9. Some members consider that the meaning of "symbol" and "sign" in paragraph 1 of the Preamble is repetitive and suggest deleting the word "sign". The Administration has explained that paragraph 1 of the Preamble adopts the

¹ **"Preamble**

WHEREAS—

- (1) the national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China;
- (2) all individuals and organizations should respect the national anthem, preserve the dignity of the national anthem, and play and sing the national anthem on appropriate occasions; and
- (3) an Ordinance is to be enacted to preserve the dignity of the national anthem, to regulate the playing and singing, the broadcast and the use of the national anthem, to enhance citizen awareness of the People's Republic of China, and to promote patriotism:

NOW, THEREFORE, it is enacted by the Legislative Council as follows—"

content of Article 3 of the National Anthem Law (i.e. [t]he national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China) to fully reflect the intent of the provision.

10. The Administration has further explained that the dictionary meaning of "symbol/象徵" includes "something that stands for, represents, or denotes something else...a material object representing or taken to represent something immaterial or abstract" ("藉具體的事物，表現出某種特殊的意義"), a meaning which places emphasis on the concept of "representation". On the other hand, "sign/標誌" carries a meaning of being "a mark, symbol, or device that has some special significance" ("標識、表明特徵的記號"), a meaning which places emphasis on the concept of being a "mark". The Administration considers that the full meaning of "symbol" and "sign" may not be satisfactorily expressed if only one of the two words is used.

Paragraph (2) of the Preamble

11. Some members have enquired why the term "individuals" instead of "citizens" is used in paragraph 2 of the Preamble, while "citizens" is used in Article 3 of the National Anthem Law. They have queried that this means foreigners in Hong Kong will also have to "preserve the dignity of the national anthem" while they have no such obligation. The Administration has explained that the national anthem is a symbol and sign of the People's Republic of China ("PRC"); thus everyone in Hong Kong, being PRC citizen or not, should respect the national anthem, as Hong Kong citizens should also respect the national anthems of other countries. In order to make it clear that everyone should respect the national anthem, the term "individuals" is used. The Administration has advised that to their understanding, everyone in China, regardless of being PRC citizen or non-PRC citizen, has to abide by the National Anthem Law. Therefore, using the term "individuals" in paragraph 2 of the Preamble is in line with the legislative intent of the National Anthem Law.

12. Dr Hon Fernando CHEUNG has proposed to move an amendment to paragraph 2 of the Preamble to replace the expression "all individuals and organizations" with "Chinese citizens".

Paragraph (3) of the Preamble

13. Some members consider that expressions like "to enhance citizen awareness of the People's Republic of China" and "to promote patriotism" in paragraph 3 of the Preamble are vague and have given rise to concern about whether the Bill is to force people to be patriotic. They have queried whether the inclusion of such ideological provisions in a law is consistent with the law drafting practice in Hong Kong. These members have also pointed out that the

meaning of the term "patriotism", an umbrella concept covering both the mild as well as the extreme forms of patriotism, is vague. This may render it difficult for the court to interpret the intended meaning of "patriotism" in the said provision. These members also consider the corresponding term "愛國精神" in the Chinese text problematic and point out that in the Mainland, loving one's country ("愛國") means loving the Chinese Communist Party ("愛黨") as well. They are worried that the meaning of "愛國精神" in the Bill would be open to different interpretations. Besides, some members opine that "patriotism" and "愛國精神" do not tally in translation. They consider that "愛國精神" should be translated as "the spirit of patriotism" instead of "patriotism".

14. The Administration dismisses the allegation that the Bill is to force people to be patriotic, as penalties under the Bill are not related to whether one is patriotic or not. The penal provisions, contained in Part 3 of the Bill, are designed to deal with behaviour that amounts to an insult to the national anthem or misuse of the national anthem. The Administration has stressed that the core spirit of the Bill is to respect the national anthem.

15. The Administration considers that it is all very proper for the Bill to aim to "enhance citizen awareness of the People's Republic of China" and to "promote patriotism", and the meaning of these expressions should be interpreted by their ordinary meaning. The Administration has explained that "patriotism" is a general term and has no specific meaning in the context of the Bill. The dictionary meaning of "patriotism" is "devotion to one's country", which, in the opinion of the Administration, reflects accurately the meaning of "愛國精神". Besides, the Administration does not consider that the Preamble of the Bill as currently drafted contains any ideological expression.

16. Some members have enquired why a preamble is included in the Bill, whereas no such arrangement was made for NFNEO. The Administration has pointed out that the National Flag and National Emblem Bill was submitted to the Provisional Legislative Council for first reading on 3 May 1997, and passed by the Provisional Legislative Council on 14 June 1997. The Administration does not have records showing the consideration behind the adoption or otherwise of specific provisions of the national laws by the Government in 1997 during the drafting of the National Flag and National Emblem Bill.

17. The Administration has stressed that the Bill should fully reflect the purpose and intent of the National Anthem Law. 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 PRC and thus should be respected and its dignity be preserved. The Administration considers that by suitably adopting these articles into the Preamble, the public can be given a

better understanding of the legislative purpose of the Bill and the provisions in the National Anthem Law can be reflected more accurately.

18. The Administration has further explained that a preamble forms part of the legislation to reflect the legislative intent and to provide background information. A preamble only serves to provide a context to facilitate the interpretation of the legislation concerned. There are about 50 pieces of legislation with preambles in the Laws of Hong Kong. The Legal Adviser to the Bills Committee has advised that a preamble is not meant to have any legal effect but it provides background information to facilitate understanding of a provision when it is not clear. The Administration has confirmed that the Preamble of the Bill does not impose any legal liability.

19. Hon HUI Chi-fung has proposed to move an amendment to delete the Preamble, which, in his view, contains unclear concepts and imposes certain duties on members of the public. Dr Hon Fernando CHEUNG has proposed to move an amendment to paragraph (3) of the Preamble to delete the expression "and to promote patriotism" which, in his view, is unnecessary.

Part 1 of the Bill – Preliminary (clauses 1 and 2)

Reference to playing and singing the national anthem as defined by clause 2(3)

20. Members note that clause 2(1) provides that "national anthem" means "March of the Volunteers" (a translation of 《義勇軍進行曲》), the national anthem of the PRC under the Constitution of the People's Republic of China ("the Constitution"). Clause 2(2) provides that the lyrics and the score of the national anthem are set out in the stave notation of the national anthem in Schedule 1 to the Bill, and in the numbered musical notation of the national anthem in Schedule 2 to the Bill.

21. The interpretation provision in clause 2(3) provides that, "In this Ordinance, except in section 5, a reference to playing and singing the national anthem includes (a) singing the national anthem; (b) playing the national anthem on musical instruments; and (c) playing a recording of the national anthem."² The Administration has advised that a reference to playing and singing the national anthem under clause 2(3) also includes singing without instrumental or recorded accompaniment (i.e. singing without accompaniment). The Administration has explained that as the word "includes" is used in clause 2(3), the three situations referred to in (a) to (c) above are not exhaustive, and other hypothetical ways of playing and singing of the national anthem asked by members (e.g. acapella) can also be regarded as playing and singing of

² References to playing and singing the national anthem can be found in clauses 3, 4(1), 4(2), 5(1), 7(1)(b), 7(3)(b), 7(5)(b) and 9(1)(b)(ii) of the Bill.

the national anthem according to clause 2(3). The Administration has advised that merely singing and playing the national anthem in any of the above ways by itself would not constitute an act of insulting the national anthem under clause 7 of the Bill, unless the relevant acts contain the elements of offence specified in clause 7, i.e. publicly and intentionally insulting the national anthem, which is a question of fact and has to be assessed based on the actual circumstances of each case.

22. Members note that the lyrics, the score and the tempo of the national anthem are set out in Schedules 1 and 2 to the Bill. Some members have asked whether variations in the tempo of the national anthem in playing and singing of it would constitute an act of insulting the national anthem. The Administration has advised that when determining if there is any contravention of the National Anthem Ordinance (if enacted), the prosecution must prove that the person concerned has, with intent to insult the national anthem, performed such act publicly and intentionally. If a performer inadvertently plays the wrong notes during a performance of the national anthem with no intent to insult the national anthem, such an inadvertent mistake would not constitute the offence of insulting the national anthem under clause 7 of the Bill.

Part 2 of the Bill - Playing and Singing of National Anthem (clauses 3 to 5)

Standard for playing and singing

23. Clause 3 of the Bill provides for the standard for playing and singing the national anthem.³ Some members consider that the expression of "in keeping with its dignity" is abstract and vague. They have queried what it means by "dignity" of the national anthem, which is intangible. They consider that clause 3 is so vague that it serves no meaningful purpose and suggest deleting the provision. The Administration does not agree to the proposed deletion of clause 3 and pointed out that the provision reflects Article 6 of the National Anthem Law which provides guidance for the public by describing the standard relating to the playing and singing of the national anthem.

24. Hon Gary FAN considers clause 3 unclear (particularly the meaning of "dignity") and redundant, and has proposed to move an amendment to delete the provision.

Etiquette for playing and singing

25. According to the Administration, clause 4 clarifies that the etiquette to be followed regarding the playing and singing of the national anthem only applies to persons who "take part in or attend" an occasion on which the national

³ Clause 3 of the Bill ("Standard for playing and singing") provides that "The national anthem must be played and sung in a way that is in keeping with its dignity."

anthem is played and sung.⁴ The Administration considers that this should be able to dispel public concerns about "whether one should stand solemnly when the national anthem is broadcast on television" and other similar scenarios.

26. On the scope of applicability of clause 4, the Administration has advised that clause 4 applies to both the occasions set out in Schedule 3 to the Bill and those on which the national anthem is played and sung. As defined in clause 2(3), a reference to playing and singing the national anthem includes the scenarios set out in clause 2(3)(a) to (c) (see paragraph 21). Some members consider the scope of applicability of clause 4 large and may amount to "white terror" as it would render everyone who plays and sings the national anthem in almost all situations subject to clause 4. Furthermore, some members opine that the meaning of the expression "take part in or attend" is unclear. They have queried whether bystanders in certain situations would be deemed as persons who "take part in or attend the occasion", as the boundary of certain occasions (e.g. a firework display) is hard to define.

27. Some members have also questioned what the expression "deport themselves with dignity" in clause 4(2)(a) means. Dr Hon Fernando CHEUNG has suggested that the words "stand solemnly" should be deleted given that some persons are physically unable to stand up and the use of those words may cause embarrassment to these persons. He has proposed to move an amendment to delete the words "stand solemnly" in clause 4(2)(a).

28. Some members including Hon AU Nok-hin have suggested deleting clause 4 which, in their view, is redundant as the elements forming the basis for determining whether the offence of insulting the national anthem has been committed are provided in clause 7 of the Bill. They consider that clause 4 should be deleted to avoid any uncertainty in respect of the legal consequence of failure to observe the etiquette provided in clause 4. They have urged the Administration to consider the view expressed by the Hong Kong Bar Association [LC Paper No. CB(2)1158/18-19(01)] that "Part 2 should be excluded from the National Anthem legislation and in any event should not be in the form as it now stands...if it is the intention that the Preamble and failure to observe the etiquette in Part 2 should not have any legal consequence, this intention should be made clear in the Bill itself". Moreover, these members have pointed out that NFNEO, which implements the National Flag Law, does not have similar directional provisions.

29. The Administration has explained that the focus of the Bill is two-pronged. Firstly, it seeks to provide that the national anthem is a symbol and

⁴ Clause 4 of the Bill stipulates that while the national anthem is being played and sung, the etiquette to be followed by persons who take part in or attend the occasion is (a) to stand solemnly and deport themselves with dignity; and (b) to not behave in a way disrespectful to the national anthem.

sign of the PRC, and to promote respect for the national anthem by means of directional provisions. Part 2 (clauses 3 to 5) 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, the Bill seeks to prescribe the penalties for publicly and intentionally insulting the national anthem or misusing the national anthem. These provisions are contained in Part 3 (clauses 6 to 8) of the Bill.

30. The Administration disagrees with the suggestion of deleting clause 4 of the Bill as it reflects Article 7 of the National Anthem Law and 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. The Administration considers that clause 4 is in line with the legislative principle set out in paragraph 5 above. Some other members including Hon Holden CHOW concur with the Administration that as clause 4 is only a directional provision and carries no penalty, the claim that it would give rise to "white terror" is groundless. These members support retaining clause 4 not only to reflect the relevant provision of the National Anthem Law, but also to serve an educational purpose of guiding members of the public on how to behave when taking part in or attending an occasion on which the national anthem is played and sung.

31. As to why NFNEO does not contain provisions similar to those in Part 2 of the Bill, the Administration has reiterated that it does not have records showing the consideration behind the adoption or otherwise of specific provisions of the national laws by the Government in 1997 during the drafting of the National Flag and National Emblem Bill.

32. The Administration has advised that there is no legal definition for the expression "deport themselves with dignity" in clause 4(2)(a) and it should be understood in its ordinary meaning. The Administration disagrees with the suggestion of deleting the words "stand solemnly" and considers that clause 4(2)(a) reflects the etiquette to be followed under Article 7 of the National Anthem Law.

33. Some members have, however, pointed out that the expression "behave in a way disrespectful to the national anthem" in clause 4(2)(b) is very broad in scope, which may cover the insulting behaviour referred to in clause 7. They have queried how the line between insulting behaviour and behaviour which is disrespectful but not insulting could be drawn, and the standard to be applied by the Police in determining whether enforcement action should be taken. The Administration has advised that for the offence of insulting the national anthem, the law enforcement agencies will only enforce the law in accordance with clause 7 of the Bill.

34. In response to some members' concern, the Administration has confirmed that clause 4 of the Bill itself does not give rise to any civil liability. The Legal Adviser to the Bills Committee has advised that clause 4 per se does not provide for any civil liability. Hon HUI Chi-fung has suggested adding a sub-clause to provide that failure to observe the etiquette for playing and singing the national anthem under clause 4 will not incur any civil liability. The Administration has explained that, if the suggested provision is added, other clauses of the Bill that do not have such a sub-clause may be interpreted as providing for civil liabilities according to the interpretation principles under the common law.

Occasions on which national anthem must be played and sung

Requirements under clause 5 and power to amend Schedule 3

35. Clause 5 of the Bill provides that on each occasion set out in Schedule 3, the national anthem must be played in accordance with the standard score, or an official recording of the national anthem for the singing of the national anthem.⁵ The occasions set out in Schedule 3 include official occasions of the HKSAR Government, the oath-taking ceremonies of principal members of the executive authorities, legislature and judiciary when they assume office, national flag raising ceremonies, major sporting events held by the Government, and the Ceremonial Opening of the Legal Year. The Administration has advised that clause 5 of the Bill implements Article 4 of the National Anthem Law with amendments to suit the actual circumstances of Hong Kong.

36. Members note that according to clause 5(2) of the Bill, if there is a need to amend Schedule 3 in future, the Chief Executive ("CE") in Council may, by notice published in the Gazette, amend Schedule 3. The amendment will be subject to the negative vetting procedures. Hon CHAN Chi-chuen has proposed to move an amendment to delete clause 5(2) as he considers that Schedule 3 should be amended by a bill. He has pointed out that the negative vetting procedures only allow limited time for scrutiny. He considers that certain additions to Schedule 3 can be controversial, which should be enacted only after wide public consultation and detailed scrutiny by LegCo.

Oath-taking ceremony for taking the Judicial Oath - item 1(c) of Schedule 3

37. Members note that item 1(c) of Schedule 3 to the Bill includes the oath-taking ceremony for taking the Judicial Oath under section 17 of the Oaths and

⁵ At the Bills Committee meeting on 25 April 2019, the Administration informed members that the State Council was currently preparing the standard score and the musical instrument requirements. The official recording of the national anthem to be published by the State Council in the near future would be available in symphonic, winds and piano versions.

Declarations Ordinance (Cap. 11). Hon Andrew WAN, Dr Hon KWOK Ka-ki and Hon Claudia MO have proposed to move amendments respectively to delete item 1(c) from Schedule 3 to the Bill as they consider that the executive authorities should not interfere with the judiciary.

Oath-taking ceremony for taking the Legislative Council Oath - item 1(e) of Schedule 3

38. Members note that item 1(e) of Schedule 3 to the Bill covers the oath-taking ceremony for taking the LegCo Oath under section 19 of Cap. 11. Some members have enquired about the implications in the scenario that the national anthem is not played and sung at the oath-taking ceremony for taking the LegCo Oath. They have expressed concern whether a LegCo Member-elect would be disqualified if he/she does not sing the national anthem on that occasion or is absent during the playing and singing of the national anthem at the oath-taking ceremony for taking the LegCo Oath.

39. The Administration has explained that under clause 5, playing and singing of the national anthem will form part of the oath-taking ceremonies set out in item 1(a)-(e) of Schedule 3 to the Bill after the enactment of the National Anthem Ordinance. If the national anthem is not played and sung at any of these ceremonies, the relevant oath-taking ceremony may be regarded as incomplete.

40. The Administration has further explained that when the national anthem is played and sung, those who take part in or attend the occasion should follow the etiquette set out in clause 4, i.e. to stand solemnly and deport themselves with dignity, and to not behave in a way disrespectful to the national anthem. Not singing the national anthem on the occasions listed in Schedule 3 does not by itself necessarily amount to insulting the national anthem. The Administration has advised that a person who can only sing in Cantonese would not contravene the law if he/she sings in Cantonese and stands solemnly with no intent to insult the national anthem.

41. The Administration has pointed out that LegCo Members are required to declare to uphold the Basic Law and pledge allegiance to HKSAR of the PRC 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 BL 104 and section 16(d) of Cap. 11 and as set out in Schedule 2 to that ordinance. The Administration has explained that under the premise of upholding "one country, two systems" and in conformity with the relevant articles of 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.

42. The Administration has advised that all Members-elect should take the LegCo Oath when assuming office in accordance with the Basic Law, the Interpretation of BL 104 by NPCSC and the relevant local legislation. The oath administrator will determine if the oath taken by a Member-elect is valid in accordance with law. However, according to relevant court judgments, the court has the ultimate authority to determine if an oath is valid based on the relevant factors including the conduct of individual Member-elect during the oath-taking ceremony, and decide if the oath of the Member-elect complies with the legal requirements for assuming the office. The Administration has further advised that according to the Interpretation of BL 104 by NPCSC, "oath taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law".

43. Dr Hon Helena WONG has questioned whether it is necessary to amend the relevant legislation to make it clear that a Member-elect has to attend the playing and singing of the national anthem at the oath-taking ceremony for taking the LegCo Oath and failing that, his/her oath will be invalid. The Administration has explained that the Bill only seeks to provide the standard, etiquette and occasions for the playing and singing of the national anthem, and to impose penalties on people who publicly and intentionally insult the national anthem or misuse the national anthem. The relevant legal provisions governing the validity of an oath taken by a Member-elect have already been clearly set out in BL 104 and Cap. 11. Furthermore, court judgments have already clearly explained the legal requirements in respect of oath taking under the Basic Law, the Interpretation of BL104 by NPCSC and relevant local legislation.

44. Hon Andrew WAN, Dr Hon KWOK Ka-ki and Hon Claudia MO do not support the proposed new arrangements and have proposed to move amendments respectively to delete item 1(e) from Schedule 3 to the Bill.

"Major sporting events held by the Government"- item 8 of Schedule 3

45. "A major sporting event held by the Government" is one of the occasions listed in Schedule 3. The Administration has advised that currently, the only major sporting event held by the Government for the purpose of Schedule 3 is the biennial Hong Kong Games, which is a territory-wide major multi-sports event with the 18 District Councils as participating units. Hon KWONG Chun-yu and Hon Gary FAN have proposed to move amendments respectively to delete this item from Schedule 3 to avoid creating unnecessary concerns amongst soccer fans after the enactment of the National Anthem Ordinance.

"Ceremonial Opening of the Legal Year" – item 9 of Schedule 3

46. The Ceremonial Opening of the Legal Year is set out in Schedule 3 to the Bill. Hon HUI Chi-fung, Dr Hon KWOK Ka-ki and Hon Claudia MO have proposed to move amendments respectively to delete this item as they consider that the executive authorities should not interfere with the judiciary. Moreover, they note that the Ceremonial Opening of the Legal Year already includes the playing and singing of the national anthem currently. They consider it unnecessary to further specify the Ceremonial Opening of the Legal Year being one of the occasions on which the national anthem must be played and sung.

Part 3 of the Bill - Protection of National Anthem (clauses 6 to 8)

Clauses 6 to 8 of the Bill

47. Part 3 of the Bill prohibits the misuse of the national anthem or its lyrics or score as well as the act of publicly and intentionally insulting the national anthem. It also provides for penalties for such behaviours.

48. According to the Administration, clause 6 of the Bill is drafted with reference to Article 8 of the National Anthem Law. Under clause 6(1) and (2), a person commits an offence if he/she uses the national anthem, or the lyrics or score of the national anthem, in a trade mark or commercial advertisement, at a private funeral event, as background music in a public place, or on an occasion, at a place, or for a purpose, prescribed by CE in Council. A contravention of this provision is an offence and subject to a fine of up to level 5 (i.e. \$50,000).⁶

49. Making reference to the approach of NFNEO, clause 6(5) of the Bill empowers CE in Council to prescribe the occasions, places or purposes prohibited for the use of the national anthem in future when necessary. The Administration has advised that the HKSAR Government has not considered any occasions, places or purposes other than those specified in clause 6(1) and (2) at the moment.

50. Clause 7 of the Bill prohibits a person from publicly and intentionally altering the lyrics or score of the national anthem, and from so playing and singing the national anthem in a distorted or disrespectful way, with intent to insult the national anthem. This clause also prohibits a person from publicly

⁶ As provided in clause 6(4), a person who commits the offence of misuse of the national anthem, or the lyrics or score of the national anthem,

- (i) in a trade mark or commercial advertisement is liable on conviction to a fine at level 5; or
- (ii) at a private funeral event; or on an occasion, at a place, or for a purpose, prescribed under clause 6(5); or as background music in a public place, is liable on conviction to a fine at level 2.

and intentionally insulting the national anthem in any way. It further prohibits a person from intentionally publishing the altered lyrics or score, intentionally publishing the national anthem played and sung in a distorted or disrespectful way, or intentionally publishing the insulting in any way of the national anthem, with intent to insult the national anthem. Clause 7(8) contains the definitions of "insult" and "publish" for the purposes of the prohibitions. A contravention of any of the prohibitions is an offence. The maximum penalty is a fine at level 5 (i.e. \$50,000) and imprisonment for 3 years.

51. Clause 8 provides that a piece of music, words or a score is to be regarded as the national anthem or its lyrics or score for the purposes of Part 3 if the piece of music, words or score so closely resembles the national anthem or its lyrics or score as to lead to the reasonable belief that the piece of music, words or score is the national anthem or its lyrics or score, or part of the national anthem or its lyrics or score.

Offence of misuse of national anthem

52. With regard to the prohibited use of the national anthem, or the lyrics or score of the national anthem in a trade mark under clause 6(1)(a), some members have questioned how the national anthem, which is a piece of music, can be used in a trade mark. The Administration has explained that according to section 3(2) of the Trade Marks Ordinance (Cap. 559), a trade mark may consist of, among others, sounds.⁷ The Administration has advised that it would also contravene clause 6(1)(a) if a trade mark consists of the lyrics or score of the national anthem. That said, the use of wording such as "國歌" or "義勇軍進行曲" in a trade mark does not contravene clause 6(1)(a).

53. While members in general have no objection to the prohibited use of the national anthem in commercial advertisements under clause 6(1)(a), some members have enquired whether it would constitute misuse of the national anthem in commercial advertisements and thus contravene clause 6(1)(a) if an event or activity (e.g. a charity event and soccer match), during which the national anthem is played and sung, and the brand names or logos of their commercial sponsors are displayed. The Administration has clarified that so long as the national anthem is not used in a commercial advertisement, it would not contravene clause 6(1)(a) for the national anthem to be played and sung in an event or activity with commercial sponsorship in which the sponsors' brand names or logos are displayed.

⁷ According to section 3(2) of Cap. 559, a trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging and any combination of such signs.

54. Some members have sought clarification on whether the use of national anthem in commercial products is allowed. The Administration has advised that this would not be in contravention of clause 6(1)(a) which only prohibits the use of the national anthem in a trade mark or commercial advertisement.

55. Some members have enquired whether the use of some of the words of the lyrics of the national anthem in a trade mark or commercial advertisement would contravene the law. The Administration has advised that as provided in clause 8, it will depend on whether those words resemble the lyrics of the national anthem so closely as to lead to the reasonable belief that the words are the lyrics of the national anthem, or part of the lyrics of the national anthem.

56. The Administration has further advised that "reasonable excuse" in clause 6(3) is a defence. If the prosecution has proven all the elements of the offence, the court will then consider whether the defendant has any "reasonable excuse" as defence. Whether the defence is available to a defendant in a particular case has to be assessed in light of the particular circumstances in each case and every piece of critical information, including alleged defence.

57. With regard to clause 6(2) which provides that the national anthem must not be used as background music in a public place, the Administration has explained that for example, music that is played continuously in a public place not intended for any specific purpose can be regarded as background music. In response to concerns raised by some members, the Administration has clarified that if the national anthem is played in a movie or stage performance (e.g. dance and drama), the national anthem would be regarded as part of the artistic work and thus, it would not contravene clause 6(2).

58. Dr Hon Fernando CHEUNG has proposed to move amendments to clause 6 to the effect that contraventions of clause 6 would neither constitute an offence nor subject to any penalties. Hon CHAN Chi-chuen has proposed to move amendments to delete clause 6(1)(c) and (5) which provides that CE in Council is empowered to prescribe an occasion, place or purpose for the purpose of clause 6(1)(c).

Offence of insulting the national anthem

Definition of "insult"

59. Some members consider the definition of "insult" in clause 7 of the Bill vague. Some members have expressed concern about the criteria for deciding whether a creative work, which is satirical in content and involves the playing and singing of the national anthem, constitutes an insult to the national anthem in breach of clause 7 of the Bill.

60. The Administration has advised that the offence of insult is provided in over 30 pieces of local legislation but none of them provides a definition of "insult", which should be understood in its ordinary meaning. The Administration has further advised that having considered the important constitutional status of the national anthem, the need to preserve the dignity of the national anthem as a unique symbol and sign of the country, and the judgment of the Court of Final Appeal ("CFA") in *HKSAR v. Ng Kung Siu and another* (1999), clause 7(8) of the Bill defines "insult" as "in relation to the national anthem, means to undermine the dignity of the national anthem as a symbol and sign of the People's Republic of China". The effect is that the word "insult" in the relevant provisions means to undermine the dignity of the national anthem as a symbol and sign of the PRC. The Administration considers that this already provides certainty to the meaning of the term and a clear basis for the court when adjudicating cases.

61. The Administration has further explained that in proving that certain act amounts to an offence under clause 7 of the Bill, apart from proving that the conduct constitutes an insulting act stipulated in clause 7 of the Bill (i.e. the actus reus), the prosecution must also prove that the person concerned, with intent to insult the national anthem (i.e. the mens rea), performs such act publicly and intentionally, before prosecution can be instituted under clause 7. The Administration has stressed that whether a certain act constitutes an "insulting act" is a question of fact and has to be assessed based on the actual circumstances of each case. The Police would, based on the actual circumstances and the evidence collected in each case, make an assessment in accordance with clause 7. The relevant authorities would only initiate prosecution upon gathering sufficient evidence showing that the relevant act constitutes a public and intentional insult of the national anthem. 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 reaching a verdict on the case. The Administration has stressed that since the *mens rea* of the offence needs to be proved for a contravention of clause 7 of the Bill to be established, there is no need for members of the public to worry about "inadvertently contravening the law" if they do not intend to insult the national anthem.

62. Some members, however, consider that the judgment of whether an act has the effect of undermining the dignity of the national anthem is very subjective and abstract. As a safeguard, Dr Hon Fernando CHEUNG has suggested adding a provision to provide that it would be a "reasonable defence" if what the accused has expressed through the alleged unlawful act is objective facts. The Administration, however, has not adopted the suggestion.

63. Some members have asked whether an alleged act of insulting the national anthem performed in a private club would be regarded as being done

"publicly". They have further asked whether it is the number of persons present that matters. The Administration has explained that the meaning of "publicly" is "capable of public view, open to public view". There are also precedents in which acts performed in private premises have been ruled by court as acts performed in public because it can be seen by the public. The Administration has reiterated that each case has to be assessed based on the actual circumstances and the evidence collected.

64. Some members have requested the Administration to provide case law in relation to insulting the dignity of a piece of music in common law jurisdictions. The Administration has reverted to the Bills Committee that it has not come across any relevant cases when gathering information on cases relating to insulting the dignity of national anthems. The Administration has elaborated that regarding the dignity of the national anthem as a symbol and sign of the PRC, as mentioned in a paper provided by the Administration [LC Paper No. CB(2)893/18-19(02)] to the Bills Committee, CFA stated in the judgment of *HKSAR v. Ng Kung Siu and another* (1999) that "[t]he national flag is the symbol of the People's Republic of China. It is the symbol of the State and the sovereignty of the State. It represents the People's Republic of China, with her dignity, unity and territorial integrity...The society in the People's Republic of China, the country as a whole, including the Hong Kong Special Administrative Region, has a legitimate interest in protecting their national flag, the unique symbol of the Nation." Same as the national flag and the national emblem, the national anthem is a symbol and sign of the country as stipulated in the Constitution, and therefore represents the dignity of the country.

Clause 7(1) of the Bill

65. With regard to clause 7(1)(a) which provides that a person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally "alters the lyrics or score of the national anthem", some members have questioned whether a person who quotes a part of the lyrics (e.g. "起來！不願做奴隸的人們！") in his/her article, or writes such words in a slogan/banner with some alterations (e.g. "起來！不願做維穩社工的人們！"), would be caught by the said provision.

66. The Administration has explained that as provided in clause 8, it will depend on whether or not the words in question resemble the lyrics of the national anthem so closely as to lead to the reasonable belief that the words are the lyrics of the national anthem or a part of the lyrics. If that is the case, the relevant authorities will then look at whether the act is done with intent to insult the national anthem and whether it is done "publicly" and "intentionally". That said, the Administration has advised that if the use of the lyrics is merely to express one's political opinions without the intention to insult the national

anthem, it would not constitute an offence under the Bill. The Administration has stressed that each case would have to be considered based on its own facts.

67. The Administration has also pointed out that the judgment of CFA in *HKSAR v. Ng Kung Siu and another* (1999) has established that "The prohibition of desecration of the national and regional flags by the statutory provisions in question is not a wide restriction of the freedom of expression. It is a limited one. It bans one mode of expressing whatever the message the person concerned may wish to express, that is the mode of desecrating the flags. It does not interfere with the person's freedom to express the same message by other modes." Similarly, the Bill protects the dignity of the national anthem as a symbol and sign of the PRC by restricting only one mode of expression, i.e. by prohibiting members of the public from expressing opinions by way of publicly and intentionally insulting the national anthem. It does not restrict the content of the message which the public wishes to express. The Administration considers that the restriction on freedom of speech and of expression imposed by the Bill is a limited and reasonable one and is not inconsistent with the guarantee of freedom of speech and of expression in the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383).

68. With regard to clause 7(1)(a), some members have asked whether derivative work of the national anthem involving altered lyrics of the national anthem for the purpose of praising the national anthem would constitute an offence under the clause. The Administration has advised that CFA stated in the judgment of *HKSAR v. Ng Kung Siu and another* (1999) that scrawling words of praise on the flags (as opposed to words of protest which is usually the message sought to be conveyed) would constitute offences within section 7 of NFNEO and the Regional Flag and Regional Emblem Ordinance, namely, that of desecrating the flag by scrawling on the same.⁸ The Administration has further advised that the national anthem, being the sign and symbol of the country, has its uniqueness and specificities. Therefore, any public and intentional altering of the lyrics of the national anthem, even for the purpose of praising the national anthem, may constitute an offence under clause 7(1)(a), if the lyrics is altered with intent to insult the national anthem.

69. With regard to clause 7(1)(b) which provides that a person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally "plays and sings the national anthem in a distorted ("歪曲") or disrespectful way", some members have enquired about the meaning of "歪曲". The Administration has advised that there is no legal definition for the term "歪曲" and it should be understood in its ordinary meaning. The Administration has explained that in the context of clause 7(1)(b), it should be understood as

⁸ See paragraph 44 of the CFA judgment.

playing and singing the national anthem in a way deviated from the ordinary way of playing and singing the song. Some members have asked whether a person who takes a knee, as what some American Super Bowl players did, during the performance and singing of the national anthem would be regarded as playing and singing the national anthem in a distorted ("歪曲") way. The Administration has advised that the relevant authorities would have to look at whether it is done with intent to insult the national anthem and whether it is done "publicly" and "intentionally" as provided in clause 7 of the Bill.

70. Some members have enquired how the Administration can prove whether a person has "intent to insult the national anthem" and what evidence can prove that a person has such intent. The Administration has advised that if a person has stated his intent to insult the national anthem before performing such act, this would be considered as valid evidence. As regards the expression "intentionally insults the national anthem", the Administration has explained that the element of "intentionally" is commonly found in other criminal offences, and the burden is on the prosecution to prove that the accused has performed an act intentionally.

Clause 7(2) of the Bill

71. Some members have expressed grave concern about clause 7(2) which provides that "a person commits an offence if the person publicly and intentionally insults the national anthem in any way". They consider that the expression "in any way" is too wide in scope and have requested the Administration to explain the rationale behind the drafting of this provision. They have also expressed concern about whether the drafting of clause 7(2) has rendered it even wider in scope of coverage than that of Article 15 of the National Anthem Law on which clause 7(2) is based.

72. The Administration has explained that clause 7 of the Bill is drafted with reference to Article 15 of the National Anthem Law. In order to reflect the legislative intent of the National Anthem Law as much as possible in the Bill, the use of words in clause 7(1) is similar to "deliberately alters the lyrics or music of the national anthem, or plays or sings the national anthem in a deliberately distorted or disrespectful manner" in Article 15 of the National Anthem Law; and the use of words in clause 7(2) is similar to "insults the national anthem in any other manner" in Article 15 of the National Anthem Law. Clause 7(2) of the Bill does not adopt the use of "in any other manner" in Article 15 of the National Anthem Law because according to the general principles of statutory interpretation in Hong Kong and in the context of clause 7, "in any other manner" may be interpreted as behaviour which are of the same kind as those provided in clause 7(1). This cannot fully reflect the legislative intent of Article 15 of the National Anthem Law.

73. The Administration has further advised that an example of the kind of acts that can only be covered by clause 7(2) but not clause 7(1) would be booing of the national anthem by a person with intent to insult the national anthem during an occasion on which the national anthem is played and sung. The Administration has explained that while the Bill cannot give an exhaustive list of all possible insulting behaviour in relation to the national anthem, the elements of the offence are clearly set out in clause 7. The Administration has pointed out that the judgment of CFA in *HKSAR v. Ng Kung Siu and another* (1999) has also established that "[A] law seeking to protect the dignity of the flag in question as a symbol, in order to be effective, must protect it against desecration *generally*."

74. Some members have urged the Administration to ensure clarity when drafting provisions of a bill, particularly the acts that the bill seeks to prohibit so that people would not commit the relevant offence inadvertently or have to speculate the meaning of the relevant provisions of the law. Hon CHAN Chi-chuen has suggested that the Administration should make reference to NFNEO which stipulates concrete prohibited acts (e.g. mutilating, scrawling on, defiling or trampling on the national flag or national emblem) and should try its best to set out as many as possible the kinds of insulting behaviour in relation to the national anthem, rather than using the expression "in any way", in clause 7(2). He has proposed to move an amendment to delete clause 7(2) as he considers that the expression "in any way" is too vague. By the same token, he has also proposed to move an amendment to delete clause 7(4), which also contains the expression "in any way".⁹

75. The Administration has pointed out that the expression "in any way" is found in the penal provisions of some 280 pieces of existing local legislation. The Administration has explained that unlike the national flag and national emblem, which are physical objects, the national anthem is a piece of music. It is impossible to specify all the prohibited ways of insulting the national anthem exhaustively in the Bill. Moreover, clause 7(8) of the Bill has already provided a definition of "insult" in relation to national anthem which means "to undermine the dignity of the national anthem as a symbol and sign of the People's Republic of China". The Administration considers that this provides a clear basis for the courts to determine whether an accused person has committed an offence under clause 7 of the Bill. Moreover, the elements of the offence have all been clearly set out in clause 7.

76. Hon CHAN Chi-chuen has asked whether the case of 楊凱莉 (the mainlander who contravened Article 15 of the National Anthem Law in October

⁹ Clause 7(4) of the Bill provides that "A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes the insulting in any way of the national anthem."

2018 when conducting online live-streaming at home), if occurred in Hong Kong after the enactment of the National Anthem Ordinance, would also be regarded to have contravened clause 7. The Administration has explained that without details of the case and merely by watching the relevant video clip, it cannot tell or judge whether the required element of offence, i.e. intent to insult the national anthem, is present for establishing an offence under clause 7 of the Bill.

77. Some members have maintained the view that the expression of "in any way" is too vague. Hon HUI Chi-fung has suggested replacing "以任何方式侮辱國歌" in clause 7(2) with "以令人客觀地認為是侮辱國歌的方式侮辱國歌". He considers that the element of objectivity is important in considering whether a certain act would constitute an offence under clause 7 of the Bill. The Administration has explained that the prosecution will bear 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 adjudicating the relevant cases. The Administration considers that the present way of drafting will therefore serve the same purpose of ensuring objectivity.

78. Also referring to the case of some American Super Bowl players who took one knee during the playing and singing of the American national anthem, Dr Hon Fernando CHEUNG has asked whether such act would be regarded as intentionally insulting the national anthem "in any way" under clause 7(2), which is liable on conviction to a fine at level 5 and to imprisonment for 3 years, or just behaving "in a way disrespectful to the national anthem" under clause 4(2)(b), which would incur no penalties. The Administration has explained that the above act apparently does not comply with clause 4(2)(b) of the Bill. However, it should be noted that it is not the behaviour (*actus reus*) alone that determines whether there is a contravention of clause 7, but the element of "with intent to insult the national anthem" (*mens rea*) is also required in order to establish that an offence of insulting the national anthem has been committed.

On-line publishing (clause 7(3) and (4) of the Bill)

79. Members note that clause 7(3) and (4) prohibits the act of publishing in relation to insulting the national anthem. A definition of "publish" is provided in clause 7(8).¹⁰ Some members have raised questions on whether merely forwarding a video clip or a hyperlink with materials that insult the national anthem, or showing a "Like" and sharing the clip with one's group on social media on the Internet, would contravene clause 7(3) and (4). The

¹⁰ Clause 7(8) of the Bill provides that "publish" in clause 7 includes (a) to communicate to the public in any form, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and (b) to distribute, disseminate or make available to the public.

Administration has advised that according to clause 7(8) of the Bill, distributing, disseminating or making available to the public materials which insult the national anthem on online platforms and social platforms can constitute the act of "publish" in clause 7(3) and (4), which is in line with the legislative intent of the National Anthem Law. Apart from proving that the behaviour concerned constitute a "publishing" act provided in clause 7(3) or (4) of the Bill, prosecutors would also need to prove that the person concerned has, with intent to insult the national anthem, intentionally published the relevant materials, before it can initiate prosecution under clause 7(3) or (4) of the Bill.

80. The Administration has further advised that to protect reasonable publication of materials that insult the national anthem (e.g. fair reporting by the media or for teaching purposes by teachers), and to make it clear to the public that publication with no intent to insult the national anthem would not constitute a criminal offence, clause 7(5) of the Bill clearly provides that a person does not commit an offence if the person who publishes materials insulting the national anthem has no intent to insult the national anthem.

81. With regard to the definition of "publish" in clause 7(8), members have enquired about the definition of "public" in clause 7(8)(b). Members have asked whether it would contravene the law if a person only shares the allegedly unlawful materials amongst members of the person's Whatsapp group. The Administration has explained that it would depend on the circumstances of the case. The Administration does not give a definite number of members of a group that may qualify it to mean "public".

82. The Administration has advised that based on the legal principle generally applied in Hong Kong, the Bill does not have retrospective effect. If, after the Bill has come into effect, a person, with intent to insult the national anthem, intentionally publishes materials which insult the national anthem as provided in clause 7(3) or 7(4), the person concerned may still contravene clause 7 of the Bill even though those materials are produced before the Bill has come into effect. Similarly, if a person continues to publish such materials in order to insult the national anthem after the Bill has come into effect, it may amount to contravention of clause 7 of the Bill.

83. While a person who has produced materials which insult the national anthem before the Bill comes into effect would not be held responsible, members have asked whether the Police would request the removal of such materials if they have been uploaded onto the Internet. The Administration has advised that if such materials come to the notice of the Police, they will contact the Internet Service Providers to remove the materials. This will be done without court proceedings. This approach is consistent with the handling of other illegal materials published on the Internet; e.g. material which infringes copyright.

84. Members have asked whether a soccer fan who boos the national anthem at a soccer match held overseas but broadcast live in Hong Kong would be caught by the Bill. The Administration has explained that generally speaking, acts performed outside Hong Kong would not be subject to the Bill. However, if the soccer fan concerned produces and publishes a video of his act of booing the national anthem at the soccer match in Hong Kong, clause 7 of the Bill may apply.

85. Some members have asked whether website administrators would be criminally liable to the publishing by users of materials which insult the national anthem. The Administration has advised that it depends on whether the administrators have the intent to insult the national anthem and the evidence gathered by the enforcement agencies. Generally speaking, it would be difficult to establish that the website administrators have intent to insult the national anthem if they are not aware of the publishing by users of materials which insult the national anthem on the Internet.

86. In response to members' enquiries, the Administration has confirmed that there are statutory provisions under the Police Force Ordinance (Cap. 232) for the Police to seize properties without warrant. Regarding the seizure of properties including computer devices subsequent to the investigation of offences under the Bill that are committed on the Internet, the Administration has advised that it would be the general practice of the Police that they would apply for a warrant before seizure of such properties.

Level of penalty (Clause 7(6) of the Bill)

87. 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. The Administration has advised that such level of penalty is the same as that for the offence of desecrating the national flag or national emblem under NFNEO.

88. Some members consider that the Administration should guide members of the public to respect the national anthem through education and not by introducing heavy penalties. They consider that the proposed penalties are completely disproportionate to the gravity of the offence concerned. Moreover, they consider it unnecessary to align it with that for the offence of desecrating the national flag or national emblem under NFNEO. These members have also pointed out that based on the information provided by the Administration on legislation related to national anthem in other countries [Annex to LC Paper No. CB(2)995/18-19(01)], only Germany among the countries covered in the paper imposes the same high level of penalty for insulting the country's national anthem as that proposed in the Bill, and many countries do not enact a national anthem law.

89. The Administration has advised 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 decide whether and what penalties should be imposed on a person who contravenes the relevant provision(s) of the Bill in accordance with the actual circumstance of each case. The Administration has explained that each country or place has her own history, constitutional system and actual situations, and therefore different approaches are adopted. The Administration has pointed out that Chapter IV of the Constitution stipulates the national flag, national emblem, national anthem and capital of the PRC. The national flag, national emblem and national anthem are the symbol and sign of the country. The Administration considers it appropriate to align the level of penalties provided under the Bill with that provided under NFNEO for similar offences.

90. Dr Hon Helena WONG and Hon CHAN Chi-chuen have proposed to move amendments to clause 7(6) to reduce the proposed level of penalties to a fine at level 3 (i.e. \$10,000) and imprisonment for 6 months and a fine at level 1 (i.e. \$2,000) and imprisonment for 1 month respectively.

Prosecution time bar (clause 7(7) of the Bill)

91. The Administration has explained that the enforcement agencies consider that contraventions of clause 7 are likely to involve large crowds or the use of the Internet, which requires more time in investigating and collecting evidence. To strike a balance between effective law enforcement and a reasonable prosecution time bar, clause 7(7) of the Bill sets the prosecution time bar as one year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police, or two years after the date on which the offence is committed, whichever is the earlier.¹¹

92. The Administration has advised that there are many examples of existing laws with extended prosecution time bar, which include section 47D of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)¹², section 64B of the

¹¹ Regarding the meaning of the date on which the offence is "discovered by", or "comes to the notice of", the Commissioner of Police in clause 7(7)(a), the Administration has advised that according to case authorities, an offence is "discovered by" or "comes to the notice of" the Commissioner of Police when the Commissioner of Police has knowledge, based on credible information, of the relevant and material facts that found the essential elements of the offence (including the identity of the offender).

¹² Mandatory Provident Fund Schemes Ordinance s. 47D Time limit for prosecution

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence (other than an indictable offence) under this Ordinance or any subsidiary legislation under this Ordinance may be brought within 3 years after the commission of the offence unless otherwise specified.

Personal Data (Privacy) Ordinance (Cap. 486)¹³ and section 120A of the Copyright Ordinance (Cap. 528)¹⁴.

93. Some members are not convinced that there is a justified need for an extended prosecution time bar and have pointed out that law enforcement work is now facilitated with the aid of information technology. Moreover, they note that proceedings in respect of an offence under NFNEO have to be brought within six months only. Hon WU Chi-wai has proposed to move an amendment to delete clause 7(7), while Hon CHAN Chi-chuen has proposed to move amendments to clause 7(7)(a) and (b) to shorten the proposed prosecution time bar.

94. Hon HUI Chi-fung, Hon Alvin YEUNG and Hon Gary FAN have proposed to move amendments respectively to delete clause 7 altogether. Dr Hon Fernando CHEUNG has proposed amendments to clause 7 to the effect that contravention of clause 7 would neither constitute an offence nor subject to any penalties.

Part 4 of the Bill - "Promotion of National Anthem"

Clauses 9 to 10

95. Clause 9 of the Bill requires the Secretary for Education ("SED") to give directions for the inclusion of the national anthem in primary education and secondary education to enable the students to learn to sing the national anthem; and to educate the students on the history and spirit of the national anthem and on the etiquette for playing and singing the national anthem. Clause 10 of the Bill, among others, requires the Communications Authority to make a determination or direction in relation to a broadcasting licence, requiring the licensee to broadcast the national anthem by an announcement in the public interest or material in the public interest (collectively referred to as "APIs") in the licensed service on each date that is or may be stipulated by CE.

Inclusion in primary and secondary education

Impact on the autonomy of the education sector

96. Some members have expressed grave concern about whether the directions to be given by SED are mandatory and their impact on the autonomy

¹³ Personal Data (Privacy) Ordinance s. 64B Time limit for laying of information, etc.

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint or information in respect of an offence under this Ordinance may be made to or laid before a magistrate within 2 years from the date of commission of the offence.

¹⁴ Copyright Ordinance s. 120A Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence.

of primary and secondary schools in teaching. They are concerned whether undue pressure would be exerted on teachers in the implementation of the directions and whether the Administration would take the opportunity to introduce brainwashing education. The Administration has explained that clause 9 of the Bill seeks to reflect the requirement in Article 11 of the National Anthem Law that the teaching of the national anthem should be included in primary and secondary education, while taking into account the actual circumstances in Hong Kong. The Administration has pointed out that clause 9 only imposes a legal responsibility on SED to give directions for the inclusion of the national anthem in primary and secondary education. The directions are to require schools concerned to implement clause 9(1)(a) and (b).¹⁵ Upon passage of the Bill, SED would issue, through the existing mechanism, circulars and related guidelines to schools. The relevant circulars and guidelines will be uploaded onto the website of the Education Bureau ("EDB") in due course. The Administration has further pointed out that at present, the learning contents of the national anthem are already covered in the primary and secondary subject curricula, such as General Studies for primary schools, Music for primary and secondary schools, and Moral, Civic and National Education. The Administration does not envisage that schools would fail to comply with the directions to be given by SED in the implementation of clause 9.

97. The Administration has advised that the spirit of clause 9 is to educate students to respect the national anthem. How this is to be done is a matter of learning and teaching, which falls entirely under the professional purview of teachers. Teachers will exercise their professional judgment in their teaching, including selecting the teaching and learning materials that best suit the learning needs and abilities of their students. EDB does not prescribe the teaching and learning materials to be used for teaching the national anthem.

98. Some members have enquired about the meaning of "spirit of the national anthem" in clause 9(1)(b)(i) and whether it includes "to promote patriotism" stated in the Preamble to the Bill. They have further asked whether SED would make it clear in his directions to be given under clause 9 that the teaching of the national anthem should not involve educating students to love the regime. Some members have also enquired whether the teaching of the tragic death of Mr TIAN Han, the lyricist of the national anthem who was persecuted in the Cultural Revolution, as part of the learning contents of the national anthem in

¹⁵ **"9. Inclusion in primary and secondary education**

- (1) The Secretary for Education must give directions for the inclusion of the national anthem in primary education and in secondary education—
 - (a) to enable the students to learn to sing the national anthem; and
 - (b) to educate the students—
 - (i) on the history and spirit of the national anthem; and
 - (ii) on the etiquette for playing and singing the national anthem."

local schools would constitute an offence of insulting the national anthem after the passage of the Bill.

99. The Administration has advised that the "spirit of the national anthem" is to consolidate the solidarity of the nation. The learning contents of the national anthem are already covered in the existing curricula of primary and secondary education, which are designed and updated as and when necessary by the Curriculum Development Council. Apart from educating students to respect the national anthem and understand its background, the inclusion of the national anthem in primary and secondary education seeks to enable students to develop a sense of belonging to their own country and society.

100. Some members have enquired whether EDB in future would assess whether individual schools have complied with the directions to be given by SED under clause 9 through, e.g. testing whether their students are able to sing the national anthem. They are also concerned whether EDB would impose sanctions on schools if their students show disrespect for the national anthem. The Administration has pointed out that students' behaviour is affected by many factors. Clause 9 does not prescribe any learning outcome to be demonstrated by students after learning the national anthem. The Administration has advised that as with the teaching of other subject curricula, the school will have to consider how to handle a case of a teacher encountering difficulties in teaching or his/her teaching falling short of expectations and should provide necessary support to the teacher for making improvement .

101. Some members have further asked whether there is any legal consequence if schools refuse to comply with the directions given by SED. The Administration has explained that clause 9 or other provisions of the Bill do not make a contravention against the directions given by SED under clause 9 a criminal offence and thus there are no sanctions. EDB all along has administrative measures in place, e.g. giving verbal/written advice and warnings, to follow up on irregularities identified in school operation (including non-compliance with the directions given by SED). If individual schools still do not comply with the requirements and make rectifications, SED is empowered by relevant provisions of the Education Ordinance (Cap. 279) to follow up. The Administration has advised that at primary and secondary levels, students are taught to sing the national anthem. There is no objection to educating students to respect the national anthem in the society. The Administration does not envisage that schools will fail to comply with the directions given by SED in the implementation of clause 9 of the Bill.

102. Some members are concerned whether international schools and schools admitting non-Chinese speaking students would also be required to teach the national anthem. The Administration has stressed that as respect is a fundamental value, all primary and secondary students, irrespective of

nationality, should be provided with the opportunities to learn and develop respect for the national anthem. Upon passage of the Bill, EDB will issue the same set of directional guidelines to all primary and secondary schools, including international schools, to take forward the relevant work. The Administration has pointed out that Article 11 of the National Anthem Law also applies to all primary and secondary schools, including international schools, in the Mainland.

Handling of insulting behaviour within school premises

103. Members have asked whether it would be up to schools to decide what should be done if students intentionally perform acts that show disrespect for the national anthem within the school premises. The Administration has advised that handling of students' improper behaviour within the school premises should be left to the professional judgement of schools and teachers and be dealt with in such a way that the purpose of education is served. For behaviour that shows disrespect for the national anthem, schools should, in the light of their own context and usual counselling and guidance arrangements, handle the case in a reasonable, fair and lawful manner.

104. Some members have asked whether students who perform acts to insult the national anthem within the school premises would be subject to prosecution if the relevant acts are reported to the Police. The Administration has advised that while students' improper behaviour within the school premises should be handled by schools and teachers, the Police are obliged to follow up reports of suspected committing of an offence filed by any members of the public.

105. Hon HUI Chi-fung, Hon Jeremy TAM, Hon Gary FAN and Hon Claudia MO have proposed to move amendments respectively to delete clause 9. They consider that the provision is unnecessary as the learning contents of the national anthem are already covered in the primary and secondary subject curricula and the provision may only exert unnecessary pressure on schools and teachers. Hon IP Kin-yuen has proposed to move an amendment to clause 9(1) to substitute "directions" with "circulars". Dr Hon Fernando CHEUNG has proposed to move an amendment to add a new clause 9(1)(b)(iii) to stipulate that "Patriotism is love of one's country, not of a government".

Inclusion in sound broadcasting and domestic television programme services

106. According to the Administration, clause 10 of the Bill will be implemented through the existing mechanism for broadcasting APIs, and the Communications Authority ("CA") and the Information Services Department will follow up in accordance with this mechanism. According to the relevant licence conditions and the determinations or directions made by CA, domestic free television and radio broadcasters are currently required to broadcast on

each channel not more than one minute of APIs in every clock hour without charge. Domestic pay television broadcasters are required to broadcast on specific channels not more than one minute of APIs in every two clock hours without charge.

107. Some members have enquired whether there would be sanctions for non-compliance with clause 10. The Administration has advised if a licensee fails to broadcast the national anthem by an API as required, CA will handle such case in accordance with established procedures. This includes providing reasonable opportunities for the licensee to make representations, followed by a determination on whether the licensee concerned is in contravention of a licence condition or a direction made by CA. If the licensee is found to have contravened the relevant requirement, CA may impose sanction as appropriate. As at present, the mechanism for broadcasting APIs by domestic television and sound broadcasting licensees has worked well and there has been no deliberate contravention of the relevant requirements in recent years.

108. Clause 10(4) of the Bill empowers CE to stipulate a date for the licensees to broadcast the national anthem by APIs. The Administration has explained that Article 13 of the National Anthem Law also requires the Mainland broadcasters to broadcast the national anthem on important national statutory holidays and anniversaries. The HKSAR Government will make reference to the holidays and anniversaries mentioned in Article 13 of the National Anthem Law and make adjustments in the light of the actual circumstances of Hong Kong when stipulating the dates for broadcasting the national anthem.

109. Some members have questioned why the above power to stipulate a date for the licensees to broadcast the national anthem by APIs is not to be exercised by CE in Council so as to align with clauses 5(2) and 6(5) of the Bill, which provide that CE in Council may 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. They have also queried whether it is necessary to confer the power to stipulate a date for the licensees to broadcast the national anthem by APIs to CE, as the API on the national anthem is already broadcast once daily on television channels. Hon Gary FAN has proposed to move an amendment to substitute the "Chief Executive" with "Chief Executive in Council" in clause 10(4).

110. The Administration has advised that NFNEO also provides that CE may 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 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 is not subsidiary legislation. The Administration has made reference to this arrangement when drafting clause 10 of the Bill, i.e. CE may

stipulate a date on which the national anthem must be broadcast by an API, and such stipulation must be published in the Gazette as soon as practicable after it is made. The Administration is of the view that the arrangement provided in clause 10(4) is appropriate.

111. Hon Jeremy TAM has proposed to move an amendment to delete clause 10. He considers that even without the provision, the mechanism for broadcasting APIs on the national anthem by domestic television and sound broadcasting licensees is already in place. He considers that clause 10 of the Bill is unnecessary.

Part 5 of the Bill – Supplementary Provisions (clause 11)

112. Clause 11 of the Bill provides that offences in relation to the national anthem in Hong Kong are investigated, and persons are prosecuted, according to the laws of Hong Kong. This clause also provides that if there are inconsistencies between the National Anthem Ordinance and the National Anthem Law, the National Anthem Ordinance is to be interpreted and applied as a special application or adaption of the National Anthem Law.

113. The Administration has advised that clause 11(1) and (2) of the Bill is drafted with reference to the relevant provision of NFNEO. Dr Hon Priscilla LEUNG considers that it is not clear from clause 11(1) whether cases in relation to the national anthem in Hong Kong are to be adjudicated by the courts according to the laws of Hong Kong. She opines that a better way of drafting clause 11(1) is that stipulations in relation to the national anthem in Hong Kong are to be implemented according to the laws of Hong Kong, which would cover the investigation, prosecution and adjudication of relevant cases. She also takes the view that the use of "改編本" as the Chinese equivalent of "adaptation" in clause 11(2) is inappropriate. In her view, the National Anthem Law is only to be implemented in Hong Kong in a special way and with adaptations having regard to the common law system and the actual circumstances in Hong Kong.

114. While Dr Hon Fernando CHEUNG has proposed to move an amendment to delete clause 11(1) which, in his view, is unnecessary, Hon Claudia MO has proposed to move an amendment to this clause by deleting "予以" in the Chinese text. She has also proposed to move an amendment to clause 11(2) to substitute "改編本" with "適應本" which, in her view, is more appropriate in the present context.

115. The Administration has advised that it has made reference to clause 9(2) of NFNEO for the expressions in clause 11(2) of the Bill.¹⁶ Since the purpose of clause 11(2) of the Bill is the same as that of clause 9(2) of NFNEO, and NFNEO has been effective since implementation, the Administration is of the view that the same expressions should be used in the Bill as far as possible to avoid creating unnecessary public concerns. Moreover, the term "改編本" is also used as the Chinese equivalent of "adaptation" in section 29 and related provisions of the Copyright Ordinance (Cap. 39), whereas the term "適應本" is not used in existing legislation.

116. Hon Alvin YEUNG has expressed concern about the impact of any judgment delivered in cases in respect of the National Anthem Law in the Mainland on the interpretation of the National Anthem Ordinance. The Administration has explained that the legal system in the Mainland and that in Hong Kong are different. In any event, the HKSAR Government will adhere to the principle that BL18 has to be complied with for the incorporation of any national laws, including any amendments to such laws, in Annex III to the Basic Law. Hon Alvin YEUNG has proposed to move an amendment to clause 11 by adding a sub-clause (1A) to make it clear that any judgment concerning the National Anthem Law made by any other part of the PRC must not be enforced in Hong Kong.

Powers and privileges of Legislative Council Members

117. Some members have enquired about the relationship between the penal provisions of the Bill and the powers and privileges of LegCo Members as provided in sections 3 and 4 of the Legislative Council (Power and Privileges) Ordinance (Cap. 382). These members have also asked whether the Bill or Cap. 382 would prevail if the speech made by a LegCo Member during a debate held at a meeting of the Council or its committees allegedly constitutes an insult to the national anthem.

118. The Administration has provided a written response to the above enquiry [LC Paper No. CB(2)995/18-19(01)]. In gist, the Administration has advised that section 3 of Cap. 382 provides that there shall be freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Council. Section 4 of Cap. 382 also provides that no civil or criminal proceedings shall be instituted against any member for words spoken

¹⁶ Clause 9(2) of NFNEO provides that "[i]f there are inconsistencies between this Ordinance and a national law promulgated under Annex III of the Basic Law, this Ordinance is to be interpreted and applied as a special application or adaptation of the national law."

before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise. According to past court judgment, the protection provided by sections 3 and 4 of Cap. 382 attaches only to statements made by a LegCo Member in the course of official debates on the floor of LegCo when exercising his/her powers and discharging his/her functions as a LegCo Member. The court also points out that a proper balance needs to be struck between the protection of freedom of speech and debate in the legislature on the one hand and the equality before the law on the other. The Administration considers that whether a particular act by a LegCo Member would be protected by immunity depends on the actual circumstances of each individual case.

119. Hon Dennis KWOK has proposed to move amendments to add two sub-clauses to clauses 6 and 7 to stipulate respectively that LegCo Members will not be held liable to the offences set out in clause 6 or clause 7 for speeches and behaviour made under Cap. 382.

PROPOSED AMENDMENTS TO THE BILL

120. The draft amendments proposed by members are mentioned in paragraphs 12, 19, 24, 27, 36, 37, 44, 45, 46, 58, 74, 90, 93, 94, 105, 109, 111, 114, 116 and 119 above. The Administration's written response to the proposed amendments is set out in its papers [LC Paper No. CB(2)1455/18-19(01), 1484/18-19(02) and 1517/18-19(01)].

121. The Bills Committee and the Administration have not proposed any amendments to the Bill.

RESUMPTION OF SECOND READING DEBATE ON THE BILL

122. At the Bills Committee meeting on 24 May 2019, after the completion of the scrutiny process, the Chairman enquired whether any members were opposed to the resumption of the Second Reading debate on the Bill. As some members expressed opposition, the Chairman put the matter to vote. The voting result was that 27 members voted in support of the resumption of the Second Reading debate on the Bill, and 12 members voted against it. The Chairman declared that the Bills Committee supported the resumption of the Second Reading debate on the Bill.

123. At the said meeting, the Chairman concluded that as the Bills Committee had completed scrutiny of the Bill, a report would be submitted to the House Committee ("HC") on 14 June 2019. The Administration advised that it had not

yet decided on the date of the resumption of the Second Reading debate on the Bill.¹⁷

CONSULTATION WITH THE HOUSE COMMITTEE

124. The written report of the Bills Committee was submitted to HC on 14 June 2019.¹⁸ The Chairman of the Bills Committee reported the deliberations of the Bills Committee to HC on 28 June 2019. At the HC meeting on 28 June 2019, Members noted a letter dated 19 June 2019 from the Secretary for Constitutional and Mainland Affairs to the HC Chairman advising that the resumption of the Second Reading debate on the Bill would take place in the 2019-2020 legislative session. Members raised no objection to the Administration's plan to resume the Second Reading debate on the Bill in the 2019-2020 legislative session.¹⁹

ADVICE SOUGHT

125. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
19 May 2020

¹⁷ The Secretary for Constitutional and Mainland Affairs ("SCMA") subsequently issued a letter on 11 June 2019 to consult the HC Chairman on his intention to give notice for the Bill to resume its Second Reading debate on 26 June 2019.

¹⁸ The HC meeting on 14 June 2019 was closed before the Bills Committee report was considered by HC.

¹⁹ SCMA subsequently issued a letter on 12 May 2020 to consult the HC Chairman on his intention to give notice for the Bill to resume its Second Reading debate on 27 May 2020.

Table comparing the National Anthem Law with the National Anthem Bill

National Anthem Law		National Anthem Bill	
Article 1	This Law is enacted in accordance with the Constitution to preserve the dignity of the national anthem, regulate the way the national anthem is played, sung, broadcast, or otherwise used, enhance citizen awareness of the People's Republic of China, promote patriotism, and cultivate and live by the core socialist values.	Preamble (3)	[A]n Ordinance is to be enacted to preserve the dignity of the national anthem, to regulate the playing and singing, the broadcast and the use of the national anthem, to enhance citizen awareness of the People's Republic of China, and to promote patriotism...
Article 2	The "March of the Volunteers" is the national anthem of the People's Republic of China.	s.2(1)	2. Interpretation (1) In this Ordinance— <i>national anthem</i> (國歌) means "March of the Volunteers" (a translation of 《義勇軍進行曲》), the national anthem of the People's Republic of China under the Constitution of the People's Republic of China.
Article 3	The national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China. All citizens and organizations shall respect the national anthem and preserve its dignity.	Preamble (1), (2)	(1) [T]he national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China; (2) all individuals and organizations should respect the national anthem, preserve the dignity of the national anthem ...
Article 4	The national anthem shall be played and sung on the following	s.5(1),(2), Schedule	5. Occasions on which national anthem must be

	<p>occasions:</p> <p>(1) The opening and closing of the sessions of National People’s Congress and local people’s congresses at all levels; and the opening and closing of sessions of the National Committee of the Chinese People’s Political Consultative Conference and its local committees at all levels;</p> <p>(2) Congresses at all levels of all political parties and people’s organizations;</p> <p>(3) Constitutional oath ceremonies;</p> <p>(4) Flag raising ceremonies;</p> <p>(5) Major celebrations, award ceremonies, commemorations, and the like that are organized by state organs at any level;</p> <p>(6) National memorial ceremonies;</p> <p>(7) Important diplomatic events;</p> <p>(8) Major sport events; and</p> <p>(9) Other suitable occasions.</p>	3	<p>played and sung</p> <p>(1) On each occasion set out in Schedule 3, the national anthem must be played and sung.</p> <p>(2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3.</p> <p>Schedule 3 Occasions on which National Anthem must be Played and Sung</p> <p>1. Oath-taking Ceremony—</p> <p>(a) for taking the Oath of the Chief Executive under section 16A of the Oaths and Declarations Ordinance (Cap. 11);</p> <p>(b) for taking the Oath of the Principal Officials under section 16B of that Ordinance;</p> <p>(c) for taking the Judicial Oath under section 17 of that Ordinance;</p> <p>(d) for taking the Oath of Fidelity and the Executive Council Oath under section 18 of that Ordinance; or</p> <p>(e) for taking the Legislative Council Oath</p>
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		<p>under section 19 of that Ordinance.</p> <p>2. A national flag raising ceremony, including—</p> <p>(a) Flag Raising Ceremony held by the Government at Golden Bauhinia Square;</p> <p>(b) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Founding of the People’s Republic of China; and</p> <p>(c) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People’s Republic of China</p> <p>3. National Day Reception held by the Government to celebrate the Anniversary of the Founding of the People’s Republic of China</p> <p>4. Reception held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People’s Republic of China</p>
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			<p>5. Ceremony held by the Government to commemorate the victory day of Chinese people's war of resistance against Japanese aggression</p> <p>6. Ceremony held by the Government to commemorate those who died in the defence of Hong Kong</p> <p>7. Ceremony held by the Government on Nanjing Massacre National Memorial Day</p> <p>8. A major sporting event held by the Government</p> <p>9. Ceremonial Opening of the Legal Year</p>
Article 5	The State encourages citizens and organizations to play and sing the national anthem on appropriate occasions in a show of patriotism.	Preamble (2)	[A]ll individuals and organizations should respect the national anthem, preserve the dignity of the national anthem, and play and sing the national anthem on appropriate occasions.
Article 6	The national anthem shall be played and sung by the lyrics and music provided in the annex to this Law, but not to the detriment of its dignity.	s.2(2), Schedule 1 and 2, s.3	<p>2. Interpretation</p> <p>(2) In this Ordinance, a reference to the lyrics, and the score, of the national anthem is a reference to—</p> <p>(a) the lyrics, and the score, set out in the stave notation of the national anthem in Schedule 1; or</p> <p>(b) the lyrics, and the</p>

			<p>score, set out in the numbered musical notation of the national anthem in Schedule 2.</p> <p>3. Standard for playing and singing The national anthem must be played and sung in a way that is in keeping with its dignity.</p>
Article 7	When the national anthem is played and sung, those present shall stand and deport themselves with dignity, and must not carry out actions disrespectful to the national anthem.	s.4	<p>4. Etiquette for playing and singing (1) This section applies in relation to an occasion on which the national anthem is played and sung.</p> <p>(2) While the national anthem is being played and sung, the etiquette to be followed by the persons who take part in or attend the occasion is—</p> <p>(a) to stand solemnly and deport themselves with dignity; and</p> <p>(b) to not behave in a way disrespectful to the national anthem.</p>
Article 8	The national anthem shall not be used, or covertly used, in trademarks and commercial advertisements, shall not be used during private funeral events and other unsuitable occasions, and shall not be used as background music in public places.	s.6	<p>6. Offence of misuse of national anthem (1) The national anthem, or the lyrics or score of the national anthem, must not be used—</p> <p>(a) in a trade mark or commercial advertisement;</p> <p>(b) at a private funeral</p>

		<p>event; or</p> <p>(c) on an occasion, at a place, or for a purpose, prescribed under subsection (5).</p> <p>(2) The national anthem must not be used as background music in a public place.</p> <p>(3) A person commits an offence if the person, without reasonable excuse, uses the national anthem, or the lyrics or score of the national anthem, in contravention of subsection (1) or (2).</p> <p>(4) A person who commits an offence under subsection (3) is liable on conviction—</p> <p>(a) for a contravention of subsection (1)(a)—to a fine at level 5; or</p> <p>(b) otherwise—to a fine at level 2.</p> <p>(5) The Chief Executive in Council may, by notice published in the Gazette, prescribe an occasion, place or purpose, for the purposes of subsection (1)(c).</p> <p>(6) In this section— <i>public place</i> (公眾場所) means a place to which the public or a section of the public may or are permitted to have access from time to time, whether by</p>
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			payment or otherwise.
Article 9	<p>The occasions and etiquette for playing and singing the national anthem during diplomatic events shall be determined by the Ministry of Foreign Affairs.</p> <p>The occasions and etiquette for the military to play and sing the national anthem shall be determined by the Central Military Commission.</p>	N/A.	Since foreign affairs and defence are not within the autonomy of the HKSAR according to Articles 13 and 14 of the Basic Law, this Article will not be included in the Bill.
Article 10	<p>The standard music and official recorded version of the national anthem shall be used when it is played and sung on occasions provided for in Article 4 of this Law.</p> <p>The Ministry of Foreign Affairs and diplomatic missions shall provide the departments of foreign affairs of relevant countries and international organizations with the standard music and official recorded version of the national anthem for use in diplomatic events.</p> <p>The State Council administration of sport shall provide relevant international sports organizations and sports events organizers with the standard music and official recorded version of the national anthem for use in international sports events.</p>	s.5(3),(4)	<p>5. Occasions on which national anthem must be played and sung</p> <p>(3) In this section, a reference to the national anthem being played and sung is a reference to the national anthem being played on musical instruments in accordance with the standard score, or an official recording of the national anthem being played, for the singing of the national anthem.</p> <p>(4) In this section— <i>official recording</i> (官方錄音), in relation to the national anthem, means a recording of the national anthem provided for the purposes of this section on a website of the Government; <i>standard score</i> (標準曲譜), in relation to the national anthem, means a score of the national anthem provided for the</p>

	<p>The standard music and official recorded version of the national anthem shall be reviewed and produced under the auspices of the department designated by the State Council, and shall be posted on the official websites of the National People’s Congress (http://www.npc.gov.cn/) and the Chinese government (http://www.gov.cn/).</p>		<p>purposes of this section on a website of the Government.</p>
Article 11	<p>The national anthem shall be included in the curricula for primary and secondary schools.</p> <p>Primary and secondary schools shall make the national anthem an important part of education in patriotism and see that their students learn to sing the national anthem, gain a better understanding of its history and connotation and obey the etiquette for playing and singing the national anthem.</p>	s.9	<p>9. Inclusion in primary and secondary education</p> <p>(1) The Secretary for Education must give directions for the inclusion of the national anthem in primary education and in secondary education—</p> <p>(a) to enable the students to learn to sing the national anthem; and</p> <p>(b) to educate the students—</p> <p>(i) on the history and spirit of the national anthem; and</p> <p>(ii) on the etiquette for playing and singing the national anthem.</p> <p>(2) In this section—</p> <p><i>primary education</i> (小學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);</p> <p><i>secondary education</i> (中學教育) has the meaning given by section 3(1) of the Education</p>

			Ordinance (Cap. 279).
Article 12	News media shall actively publicize the national anthem and popularize the etiquette for playing and singing the national anthem.	s.10	10. Inclusion in sound broadcasting and domestic television programme services (1) This section applies if, under the terms and conditions of a broadcasting licence, the licensee may be required by a determination or direction of the Communications Authority to broadcast announcements in the public interest, or to include material in the public interest, in the licensed service. (2) By a determination or direction that has been made in relation to the broadcasting licence, the licensee may be required to broadcast the national anthem by an announcement in the public interest, or material in the public interest, in the licensed service. (3) The Communications Authority must make a determination or direction in relation to the broadcasting licence, requiring the licensee to broadcast the national anthem by an announcement in the public interest, or material in the public interest, in the licensed service on each date that is or may be stipulated under subsection (4).
Article 13	On National Day, International Labor Day, and other important national statutory holidays and anniversaries, national and provincial-level radio and television stations shall broadcast the national anthem at the timing determined by the department in charge of radio and television under the State Council.		

			<p>(4) The Chief Executive may stipulate a date for the purposes of subsection (3).</p> <p>(5) A stipulation under subsection (4)—</p> <p>(a) must be published in the Gazette as soon as practicable after it is made; and</p> <p>(b) is not subsidiary legislation.</p> <p>(6) In this section— <i>broadcasting licence</i> (廣播牌照) means—</p> <p>(a) a licence granted under section 13C(2) of the Telecommunications Ordinance (Cap. 106), or such a licence renewed under section 13E(2) of that Ordinance; or</p> <p>(b) a licence granted under sections 8(1) and 10(1) of the Broadcasting Ordinance (Cap. 562), or such a licence extended or renewed under section 11(1) of that Ordinance.</p> <p><i>Communications Authority</i> (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616).</p>
Article 14	The people's governments at or above the county level and their	N/A	As the HKSAR Government will implement the National

	relevant departments shall oversee and supervise, within the scope of their respective official duties, the way the national anthem is played, sung, broadcast, or otherwise used.		Anthem Law by local legislation and enforce the Bill locally, this Article is not applicable.
Article 15	Whoever deliberately alters the lyrics or music of the national anthem, or plays or sings the national anthem in a deliberately distorted or disrespectful manner, or insults the national anthem in any other manner, in a public place, shall be warned or detained for not more than 15 days by the public security organ. Where a crime is constituted, criminal liability shall be investigated for in accordance with the law.	s.7	<p>7. Offence of insulting behaviour</p> <p>(1) A person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally—</p> <p>(a) alters the lyrics or score of the national anthem; or</p> <p>(b) plays and sings the national anthem in a distorted or disrespectful way.</p> <p>(2) A person commits an offence if the person publicly and intentionally insults the national anthem in any way.</p> <p>(3) A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes—</p> <p>(a) altered lyrics or an altered score of the national anthem; or</p> <p>(b) the national anthem played and sung in a distorted or disrespectful way.</p>

		<p>(4) A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes the insulting in any way of the national anthem.</p> <p>(5) Except as provided under subsection (3) or (4), a person does not commit an offence under this section by publishing—</p> <ul style="list-style-type: none">(a) altered lyrics or an altered score of the national anthem;(b) the national anthem played and sung in a distorted or disrespectful way; or(c) the insulting in any way of the national anthem. <p>(6) A person who commits an offence under this section is liable on conviction to a fine at level 5 and to imprisonment for 3 years.</p> <p>(7) Proceedings may only be commenced for an offence under this section before whichever is the earlier of the following—</p> <ul style="list-style-type: none">(a) the end of the period of 1 year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police;
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			<p>(b) the end of the period of 2 years after the date on which the offence is committed.</p> <p>(8) In this section— <i>insult</i> (侮辱), in relation to the national anthem, means to undermine the dignity of the national anthem as a symbol and sign of the People’s Republic of China;</p> <p><i>publish</i> (發布) includes—</p> <p>(a) to communicate to the public in any form, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and</p> <p>(b) to distribute, disseminate or make available to the public.</p>
Article 16	This Law shall enter into force on October 1, 2017.	N/A	As the Bill will take effect after passage of the legislation, this Article is not applicable.

Source : Annex C to the Legislative Council Brief on the National Anthem Bill
 (File ref : CMAB E4/1/1)

Bills Committee on National Anthem Bill

Membership list*

Chairman	Hon Martin LIAO Cheung-kong, GBS, JP
Deputy Chairman	Hon CHEUNG Kwok-kwan, JP
Members	Hon James TO Kun-sun 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 Mrs Regina IP LAU Suk-ye, 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 Kenneth LEUNG Hon Alice MAK Mei-kuen, 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
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, SBS, 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, JP
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan, JP
Hon CHAN Chun-ying, JP
Hon Tanya CHAN
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 Vincent CHENG Wing-shun, MH, JP
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

Total : 62 Members

Clerk Ms Joanne MAK

Legal Advisers Mr Kelvin LEE (up to 30 November 2019)
Mr Bonny LOO (since 2 December 2019)
Miss Rachel DAI

* Changes in membership are shown in Annex to Appendix II

Bills Committee on National Anthem Bill

Changes in membership

Member	Relevant date
Hon Gary FAN Kwok-wai*	Up to 16 December 2019
Hon AU Nok-hin*	Up to 16 December 2019

- * Pursuant to the judgment and determination made by the Court of First Instance of the High Court and the Appeal Committee of the Court of Final Appeal on 2 September and 17 December 2019 respectively, Mr Gary FAN and Mr AU Nok-hin have ceased to be a Member of LegCo since 17 December 2019.

《國歌條例草案》委員會
Bills Committee on National Anthem Bill

曾向法案委員會表達意見的團體/個別人土名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

<u>名稱</u>	<u>Name</u>
* 1. FgFg	FgFg
* 2. SC CHAN 先生	Mr SC CHAN
3. 人民力量	People Power
4. 大埔青年協會	Tai Po Youths Association
5. 工黨	Labour Party
6. 中山大學法律系香港同學會	Zhongshan University Law Faculty Hong Kong Students Association
* 7. 公民社會發展資源中心	Civil Society Development Resources Centre
8. 公民黨	Civic Party
9. 孔教學院	The Confucian Academy
10. 方嘉偉先生	Mr Gary FONG Ka-wai
* 11. 王澄烽先生	王澄烽先生
12. 民主黨	Democratic Party
13. 民建聯	Democratic Alliance for the Betterment and Progress of Hong Kong
* 14. 民建聯專業事務委員會	Democratic Alliance for the Betterment and Progress of Hong Kong - Professional Affairs Committee
15. 甘文鋒先生	Mr KAM Man-fung
16. 伍俊瑜先生	Mr NG Chun-yu
17. 朱佩鴻先生	Mr CHU Pui-hung
18. 朱學海先生	Mr Erwin CHU Hock-hoi
19. 自由黨	Liberal Party
20. 自由黨青年團	Liberal Party Youth Committee
21. 西環飛躍動力	Island West Dynamic Movement
22. 何秀儀小姐	Miss HO Sau-yee

23.	余德寶先生	Mr Andy YU
* 24.	吳本強先生	Mr WU Pun-keung
25.	吳家竣先生	Mr Andrew NG Ka-chun
26.	吳嘉兒小姐	Miss NG Ka-yi
27.	呂文光先生	Mr LUI Man-kwong
28.	李予信先生	Mr LEE Yue-shun
29.	李文龍先生	Mr Joey LEE
30.	李忠澤先生	Mr LI Chung-chak
* 31.	李浩嵐先生	Mr Cyrus LI Haw-nan
32.	李國邦先生	Mr LEE Kwok-pong
* 33.	李欽聖先生	李欽聖先生
34.	阮健銘先生	Mr RUAN Jianming
35.	周國華先生	Mr CHAU Kwok-wa
36.	周潔瑩小姐	周潔瑩小姐
37.	服務業總工會	Service Industry General Union
38.	林永晟先生	Mr LAM Wing-shing
39.	林至穎教授	Prof LAM Chi-wing
40.	林宏杰先生	Mr LAM Wang-kit
41.	林和偉先生	Mr LAM War-wai
42.	林恆光先生	Mr LAM Hang-kwong
43.	林智洋先生	Mr LAM Chi-yeung
44.	林顯輝先生	Mr LAM Hin-fai
45.	法政匯思	Progressive Lawyers Group
46.	物流從業員工會	Logistics Practitioners Union
47.	社會民主連線	League of Social Democrats
48.	姚益宏先生	Mr YAO Yiong
* 49.	政府人員協會	Government Employees Association
50.	施文藝先生	Mr SHIH Man-ngai
51.	洪凱琪小姐	Miss HUNG Hoi-ki
52.	香港人權監察	Hong Kong Human Rights Monitor
* 53.	香港中國回教協會有限公司	Hong Kong Chinese Islamic Federation Ltd.
54.	香港中藥業協會	Hong Kong Chinese Medicine Industry

55.	香港文職及專業人員總會	Hong Kong Clerical and Professional Employees General Union
56.	香港民用航空事業職工總會	The Staffs & Workers Union Of Hong Kong Civil Airlines
57.	香港建造業總工會	Hong Kong Construction Industry Employees General Union
* 58.	香港政策研究所	Hong Kong Policy Research Institute
59.	香港洋務工會	Hong Kong Union of Chinese Workers in Western Style Employment
* 60.	香港音樂導師工會	Hong Kong Music Teacher Union
61.	香港造船機電鋼鐵業總工會	Hong Kong Shipbuilding, Machinery Manufacturing Electrical and Steel Industries Employees General Union
62.	香港註冊中醫學會	Hong Kong Registered Chinese Medicine Practitioners Association
* 63.	香港新馬泰歸僑華人聯合會	香港新馬泰歸僑華人聯合會
64.	香港經濟民生聯盟	Business and Professionals Alliance for Hong Kong
65.	香港經濟民生聯盟青年事務委員會	Youth Committee - Business and Professionals Alliance for Hong Kong
66.	香港道教聯合會	The Hong Kong Taoist Association
67.	香港漁民青年會	Hong Kong Fishermen's Youth Association
68.	香港漁民團體聯會	Hong Kong Fishermen Consortium
69.	香港製造業總工會	Hong Kong Manufacturing Industry Employee General Union
70.	香港機電業工程專業人員協會	Hong Kong Electrical & Mechanical Engineering Professional Employees Association
71.	香港優才及專才協會	Hong Kong Quality And Talent Migrants Association
72.	香港鐵路工會聯合會	Hong Kong Federation of Railway Trade Unions
* 73.	凌友詩	凌友詩
74.	徐可儀小姐	Miss TSUI Ho-yee
75.	徐景勝先生	Mr TSUI King-sing
76.	海港運輸業總工會	Harbour Transportation Workers General Union
77.	翁狄燊先生	翁狄燊先生

78.	馬活言先生	馬活言先生
79.	高松傑先生	Mr Jacky KO Chung-kit
* 80.	屠曉華女士	Ms TO Hiu-wa
* 81.	梁金成	梁金成
82.	梁國雄先生	Mr LEUNG Kwok-hung
83.	梁皓媛小姐	Miss LEUNG Ho-wun
84.	梁銘言先生	Mr LEUNG Ming-yin
* 85.	梁鏜輝先生	Mr LEUNG Tong-fai
86.	莫嘉傑先生	Mr MOK Ka-kit
87.	許佩欣女士	Ms Betty HUI Pui-yan
* 88.	許葆真女士	Ms HUI Po-chun
89.	郭晁霖先生	Mr KWOK Chiu-lam
* 90.	郭端祥先生	Mr Jacky KWOK Tuen-cheung
91.	陳海容小姐	陳海容小姐
92.	陳偉基先生	Mr Joe CHAN Wai-ki
93.	陳皓桓先生	Mr CHAN Ho-wun
94.	陳嘉朗先生	Mr CHAN Ka-long
* 95.	陳錫民先生	Mr CHAN Sik-man
96.	陳寶瑩小姐	Miss CHAN Po-ying
97.	傅宏欣先生	Mr FU Wang-yan
98.	曾昭浴先生	Mr TSANG Chiu-yuk
99.	曾健成先生	Mr TSANG Kin-shing
100.	曾榮輝先生	Mr TSANG Wing-fai
101.	港區婦聯代表聯誼會有限公司	All China Women's Federation Hong Kong Delegates Association Limited
102.	飲食業職工總會	Eating Establishment Employees General Union
103.	馮海盈小姐	Miss FUNG Hoi-ying
104.	馮漢光先生	Mr William FUNG Hon-kwong
105.	黃之鋒先生	Mr Joshua WONG
106.	黃展恒先生	Mr WONG Chin-hang
107.	黃浩銘先生	Mr WONG Ho-ming
108.	黃偉傑先生	黃偉傑先生

109.	黃健朗先生	Mr WONG Kin-long
* 110.	黃曉丹女士	黃曉丹女士
111.	葉文斌先生	Mr YIP Man-pan
112.	熊璐珊女士	Ms Lusan HUNG Lo-shan
113.	甄灼寧先生	Mr Sherman YAN Chuek-ning
114.	趙施欣小姐	Miss CHIU Sze-yan
115.	劉文杰先生	Mr Manley LAU
* 116.	劉碧堯小姐	Miss LAU Pik-yiu
117.	劉毅先生	Mr Victor LAU Ngai
118.	潘君宇先生	Mr Vincent POON
119.	潘朗聰先生	Mr Roy PUN Long-chung
120.	鄭家朗先生	Mr CHENG Ka-long
121.	鄭達鴻先生	Mr CHENG Tat-hung
122.	鄭寶威先生	Mr CHENG Po-wai
123.	黎智成先生	Mr Thomas LAI
124.	黎煒棠先生	Mr LAI Wai-tong
125.	蕭煒忠先生	Mr Danny SIU Wai-chung
* 126.	賴玥均女士	Ms Fennie LAI Yuet-kwan
127.	錢祉熒小姐	錢祉熒小姐
128.	錢寶芬女士	錢寶芬女士
129.	韓兵先生	Mr HAN Ping
130.	簡智聰先生	Mr Julian KAN Chi-chung
131.	羅冠聰先生	Mr LAW Kwun-chung
132.	羅素君小姐	Miss LO So-kwan
* 133.	譚澤峰先生	譚澤峰先生
134.	嚴萬成先生	Mr YIM Man-sing

* 只提交意見書
provided submissions only