

## LEGISLATIVE COUNCIL BRIEF

### NATIONAL ANTHEM BILL

#### INTRODUCTION

At the meeting of the Executive Council on 8 January 2019, the Council ADVISED and the Chief Executive ORDERED that the National Anthem Bill (“the Bill”) at **Annex A** should be introduced into the Legislative Council to implement the Law of the People’s Republic of China on National Anthem (“National Anthem Law”) (**Annex B**) in Hong Kong by local legislation.

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Annex A

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Annex B

#### JUSTIFICATIONS

##### *Requirement of Article 18 of the Basic Law*

2. On 4 November 2017, the Standing Committee of the 12<sup>th</sup> National People’s Congress (“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, 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”). It is thus the responsibility of the HKSAR Government to implement the National Anthem Law locally.

##### *Implementation of “one country, two systems” principle*

3. Having regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong, we propose to implement the National Anthem Law in HKSAR by local legislation instead of by promulgation. 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 (“National Emblem Law”), both of which have been adapted and implemented in Hong Kong by the National Flag and National Emblem Ordinance (“NFNEO”).

## THE BILL

4. Our legislative principle 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. The main provisions of the Bill are set out below.

### *Preamble*

5. The **Preamble** sets out certain information by adapting Articles 1, 3 and 5 of the National Anthem Law to provide a context in which to understand the Bill.

### *Part 1 of the Bill – Preliminary (Clauses 1 and 2)*

6. **Part 1 of the Bill** (Clauses 1 and 2) provides for preliminary matters and sets out definitions to assist in interpreting the provisions in the Bill.

7. **Clause 1** is the short title of the Bill.

8. **Clause 2** contains the definition of “national anthem”, which is similar to Article 2 of the National Anthem Law. It also contains a definition of “national flag” and explains the meaning of a reference to the lyrics, and the score, of the national anthem, and a reference to playing and singing the national anthem, in the context of the Bill.

### *Part 2 of the Bill – Playing and Singing of National Anthem (Clauses 3 to 5)*

9. **Part 2 of the Bill** (Clauses 3 to 5) contains provisions relating to the standard and etiquette for playing and singing the national anthem, as well as the occasions on which the national anthem must be played and sung.

#### **Standard for playing and singing (Clause 3)**

10. **Clause 3** provides for the standard for playing and singing the national anthem, i.e. the national anthem must be played and sung in a way that is in keeping with its dignity. This clause reflects Article 6 of the National Anthem Law.

#### **Etiquette for playing and singing (Clause 4)**

11. **Clause 4** is drafted on the basis of Article 7 of the National Anthem Law and provides for the etiquette to be followed by persons who take part in or attend an occasion when the national anthem is played and sung.

### **Occasions on which national anthem must be played and sung (Clause 5)**

12. **Clause 5** provides for the playing and singing of the national anthem on each occasion set out in Schedule 3, which can be amended by the Chief Executive in Council by Gazette notice. The clause adapts Article 4 of the National Anthem Law to suit the actual circumstances in Hong Kong.

13. **Clause 5(3)** provides that, in Clause 5, 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. **Clause 5(4)** defines “official recording” as a recording of the national anthem provided for the purposes of Clause 5 on a website of the Government. **Clause 5(4)** also defines “standard score” as a score of the national anthem provided for the purposes of Clause 5 on a website of the Government. These requirements mirror Article 10 of the National Anthem Law.

### ***Part 3 of the Bill – Protection of National Anthem (Clauses 6 to 8)***

14. **Part 3 of the Bill** (Clauses 6 to 8) contains provisions relating to offences of misuse of the national anthem and of insulting behaviour in relation to the national anthem.

#### **Offence of misuse of national anthem (Clause 6)**

15. **Clause 6** prohibits misuse of the national anthem or its lyrics or score. A contravention of the prohibition is an offence. The prohibition is similar to that stipulated in Article 8 of the National Anthem Law, and the level of penalty provided in **Clause 6(4)** is the same as that in respect of the contravention of the prohibition on certain uses of national flag and national emblem in the NFNEO.

#### **Offence of insulting behaviour (Clause 7)**

16. **Clause 7** is based on Article 15 of the National Anthem Law. **Clause 7(1)** prohibits a person from publicly and intentionally (a) altering the lyrics or score of the national anthem, or (b) playing and singing the national anthem in a distorted or disrespectful way, with intent to insult the national anthem. **Clause 7(2)** prohibits a person from publicly and intentionally insulting the national anthem in any way. **Clause 7(3)** prohibits a person from intentionally publishing (a) the altered lyrics or score of the national anthem, or (b) the national anthem played and sung in a distorted or disrespectful way, with intent to insult the national anthem. **Clause 7(4)** prohibits a person from intentionally publishing the insulting in any way of the national anthem, with intent to insult the national anthem. A contravention of any of the prohibitions is

an offence. The level of penalty provided in **Clause 7(6)** i.e. up to a fine at level 5 and imprisonment for 3 years, is the same as that in respect of desecrating the national flag or national emblem in the NFNEO. **Clause 7(8)** contains definitions of “insult” and “publish” for the purposes of the prohibitions.

17. According to section 26 of the Magistrates Ordinance (Cap. 227), in any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information shall be laid within 6 months from the time when the matter of such complaint or information respectively arose. For the Bill, since contraventions of the prohibitions under Clause 7 may involve a large crowd of unidentified culprits (e.g. booing the National Anthem at a football match), or involve the use of the Internet and social media (e.g. publishing an altered national anthem on YouTube), in some cases it may not be possible for the Police to complete the investigation before the expiry of the 6-month time limit. For the purpose of law enforcement, **Clause 7(7)** provides for an extension of the prosecution time bar to (a) 1 year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police; or (b) 2 years after the date on which the offence is committed, whichever is the earlier.

**Music, words or score to be regarded as national anthem, or its lyrics or score (Clause 8)**

18. **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 it so closely resembles the national anthem or its lyrics or score as to lead to the reasonable belief that it is the national anthem or its lyrics or score, or part of the national anthem or its lyrics or score.

***Part 4 of the Bill – Promotion of National Anthem (Clauses 9 and 10)***

19. **Part 4 of the Bill** (Clauses 9 and 10) contains provisions relating to inclusion of the national anthem in primary and secondary education, as well as in sound broadcasting and domestic television programme services.

**Inclusion in primary and secondary education (Clause 9)**

20. To embody the spirit of Article 11 of the National Anthem Law, **Clause 9** requires the Secretary for Education to give directions for the inclusion of the national anthem in primary education and secondary education. “Primary education” and “secondary education” as defined under the Education Ordinance (Cap. 279) cover primary schools, secondary schools, international schools and special schools,

regardless of funding modes and curriculum.

**Inclusion in sound broadcasting and domestic television programme services (Clause 10)**

21. To suitably adapt Article 12 of the National Anthem Law, **Clause 10** provides the statutory basis for the inclusion of the national anthem in announcements or material in the public interest (“APIs”), which domestic free and pay television programme service licensees and sound broadcasting service licensees are required to broadcast pursuant to the terms and conditions in their respective licences granted by the Chief Executive in Council under the Broadcasting Ordinance (Cap. 562) or the Telecommunications Ordinance (Cap. 106).

22. Moreover, to suitably adapt Article 13 of the National Anthem Law, the Communications Authority is required to make determinations or directions to the licensees, requiring them to broadcast the national anthem as API on each date as is or may be stipulated by the Chief Executive under clause 10(4).

***Part 5 of the Bill – Supplementary Provisions (Clause 11)***

23. **Part 5 of the Bill** (Clause 11) 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. It also provides that if there are inconsistencies between the National Anthem Ordinance and the National Anthem Law, the Ordinance is to be interpreted and applied as a special application or adaption of the National Anthem Law. There is a similar provision in the NFNEO.

***Part 6 of the Bill – Consequential Amendments (Clause 12 to 14)***

24. **Part 6 of the Bill** (Clauses 12 to 14) contains provisions relating to consequential amendments to the Trade Marks Ordinance (Cap. 559) (“TMO”) and the Legislation Publication Ordinance (Cap. 614) (“LPO”).

25. Currently, under section 11(6) of the TMO, a trade mark shall not be registered if, or to the extent that, it consists of or contains the national flag or emblem, or the regional flag or emblem or the designs of such flags and emblems. **Clause 13** is a consequential amendment to section 11 of the TMO to extend its application to the national anthem.

26. The LPO, inter alia, defines the contents of the electronic database of the legislation that are applied in Hong Kong. **Clause 14** is a consequential amendment to section 4 of the LPO to include the National Anthem Ordinance (without being

given a chapter number as in the case of the NFNEO) in the contents of the database.

***Provisions not included in the Bill***

27. The following articles in the National Anthem Law are **not** included in the Bill –

- (a) Article 9 of the National Anthem Law states that the occasions and etiquette for performing and singing the national anthem during diplomatic events and for the military to play and sing the national anthem shall be determined by the Ministry of Foreign Affairs and Central Military Commission respectively. 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 reflected in the Bill.
- (b) Article 14 of the National Anthem Law states that the people's governments above the county level and their 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. As the HKSAR Government will implement the National Anthem Law by local legislation and enforce the Bill locally, this Article is not applicable.
- (c) Article 16 of the National Anthem Law states that the Law shall enter into force on 1 October 2017. As the Bill will take effect after passage of the legislation, this Article is not applicable.

28. A table comparing the provisions in the National Anthem Law with the proposed provisions in the Bill is at **Annex C**.

Annex C

**LEGISLATIVE TIMETABLE**

29. The legislative timetable is as follows –

Publication in the Gazette	11 January 2019
First Reading and commencement of Second Reading debate	23 January 2019
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

**IMPLICATIONS OF THE PROPOSAL**

30. The legislative proposal is in conformity with the Basic Law, including the

provisions concerning human rights. It has no civil service, productivity, economic, financial, environmental, sustainability, family or gender implications. Any additional work arising from implementation of the Bill will be absorbed by relevant bureaux and departments with existing resources. The Bill does not contain any express binding effect provision.

## **PUBLIC CONSULTATION**

31. On 23 March 2018, we briefed the Panel on Constitutional Affairs of LegCo (“CA Panel”) on the outline of the proposed content of the Bill. On 28 April and 5 May 2018, we attended two special meetings held by the CA Panel to listen to public views. A majority of the deputations supported the enactment of local legislation to implement the National Anthem Law. Arguments deployed by opponents to the Government’s legislative proposal were mainly based on the concern that the proposed legislation would compromise freedom of speech, of expression and of creation.

## **PUBLICITY**

32. We will host a press conference and issue a press release to explain to the media the content of the Bill, and arrange a spokesperson to answer media enquiries. We will also issue APIs to promote the background of the national anthem and the etiquette to be observed when the national anthem is performed or played in due course.

## **BACKGROUND**

33. The National Anthem Law was adopted at the 29<sup>th</sup> Meeting of the NPCSC on 1 September 2017, and has come into force nationwide since 1 October 2017. On 4 November 2017, the NPCSC adopted the decision to add the National Anthem Law to Annex III to the Basic Law.

## **ENQUIRIES**

34. For enquiries on this brief, please contact Ms Cordelia LAM, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2333.

**Constitutional and Mainland Affairs Bureau**  
**9 January 2019**

## National Anthem Bill

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# A BILL

## To

Provide for the playing and singing of the national anthem, for the protection of the national anthem, and for the promotion of the national anthem, in Hong Kong; and for incidental matters.

### 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—

## Part 1

### Preliminary

#### 1. Short title

This Ordinance may be cited as the National Anthem Ordinance.

#### 2. Interpretation

- (1) In this Ordinance—

***national anthem*** (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;

***national flag*** (國旗) has the same meaning as in the National Flag and National Emblem Ordinance (116 of 1997).

- (2) In this Ordinance, a reference to the lyrics, and the score, of the national anthem is a reference to—
- (a) the lyrics, and the score, set out in the stave notation of the national anthem in Schedule 1; or
  - (b) the lyrics, and the score, set out in the numbered musical notation of the national anthem in Schedule 2.
- (3) 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.

## Part 2

### Playing and Singing of National Anthem

#### 3. Standard for playing and singing

The national anthem must be played and sung in a way that is in keeping with its dignity.

#### 4. Etiquette for playing and singing

- (1) This section applies in relation to an occasion on which the national anthem is played and sung.
- (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—
  - (a) to stand solemnly and deport themselves with dignity; and
  - (b) to not behave in a way disrespectful to the national anthem.

#### 5. Occasions on which national anthem must be played and sung

- (1) On each occasion set out in Schedule 3, the national anthem must be played and sung.
- (2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3.
- (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.
- (4) In this section—

*official recording* (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;

*standard score* (標準曲譜), in relation to the national anthem, means a score of the national anthem provided for the purposes of this section on a website of the Government.

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### Part 3

#### Protection of National Anthem

##### 6. Offence of misuse of national anthem

- (1) The national anthem, or the lyrics or score of the national anthem, must not be used—
  - (a) in a trade mark or commercial advertisement;
  - (b) at a private funeral event; or
  - (c) on an occasion, at a place, or for a purpose, prescribed under subsection (5).
- (2) The national anthem must not be used as background music in a public place.
- (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).
- (4) A person who commits an offence under subsection (3) is liable on conviction—
  - (a) for a contravention of subsection (1)(a)—to a fine at level 5; or
  - (b) otherwise—to a fine at level 2.
- (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).
- (6) In this section—

**public place** (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 payment or otherwise.

##### 7. Offence of insulting behaviour

- (1) A person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally—
  - (a) alters the lyrics or score of the national anthem; or
  - (b) plays and sings the national anthem in a distorted or disrespectful way.
- (2) A person commits an offence if the person publicly and intentionally insults the national anthem in any way.
- (3) A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes—
  - (a) altered lyrics or an altered score of the national anthem; or
  - (b) the national anthem played and sung in a distorted or disrespectful way.
- (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.
- (5) Except as provided under subsection (3) or (4), a person does not commit an offence under this section by publishing—
  - (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.
- (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.
- (7) Proceedings may only be commenced for an offence under this section before whichever is the earlier of the following—

- (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;
- (b) the end of the period of 2 years after the date on which the offence is committed.

(8) In this section—

**insult** (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;

**publish** (發布) 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.

#### 8. **Music, words or score to be regarded as national anthem, or its lyrics or its score**

For the purposes of this Part—

- (a) a piece of music (whether or not including words intended to be sung or spoken with the music) is to be regarded as the national anthem if the piece of music so closely resembles the national anthem as to lead to the reasonable belief that the piece of music is the national anthem or a part of the national anthem;
- (b) words (whether or not in writing) are to be regarded as the lyrics of the national anthem if the words so closely resemble the lyrics of the national anthem as to lead to the reasonable belief that the words are the lyrics of the national anthem or a part of the lyrics; and

- (c) a score is to be regarded as the score of the national anthem if the score so closely resembles the score of the national anthem as to lead to the reasonable belief that the score is the score of the national anthem or a part of the score of the national anthem.



## Part 4

### Promotion of National Anthem

#### 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.
- (2) In this section—  
*primary education* (小學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);  
*secondary education* (中學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279).

#### 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).
- (4) The Chief Executive may stipulate a date for the purposes of subsection (3).
- (5) A stipulation under subsection (4)—
  - (a) must be published in the Gazette as soon as practicable after it is made; and
  - (b) is not subsidiary legislation.
- (6) In this section—

***broadcasting licence*** (廣播牌照) means—

- (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
- (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;

***Communications Authority*** (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616).

## Part 5

### Supplementary Provisions

#### 11. Application of laws of Hong Kong

- (1) Offences in relation to the national anthem in Hong Kong are investigated, and persons are prosecuted, according to the laws of Hong Kong.
- (2) If there are inconsistencies between this Ordinance and the National Anthem Law, this Ordinance is to be interpreted and applied as a special application or adaptation of the National Anthem Law.
- (3) In this section—

*National Anthem Law* (《國歌法》) means the Law of the People's Republic of China on National Anthem, adopted at the 29th Meeting of the Standing Committee of the Twelfth National People's Congress on 1 September 2017.

## Part 6

### Consequential Amendments

#### Division 1—Enactments Amended

#### 12. Enactments amended

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

#### Division 2—Amendments to Trade Marks Ordinance (Cap. 559)

#### 13. Section 11 amended (absolute grounds for refusal of registration)

- (1) After section 11(6)(a)—

##### Add

“(ab) the national anthem;”.

- (2) Section 11(9), Chinese text, definition of 國旗 and 國徽—

##### Repeal the full stop

##### Substitute a semicolon.

- (3) Section 11(9)—

##### Add in alphabetical order

“*national anthem* (國歌) means the national anthem and its lyrics and score within the meaning of the National Anthem Ordinance ( of 2019) as extended by section 8 of that Ordinance;”.

**Division 3—Amendment to Legislation Publication  
Ordinance (Cap. 614)**

**14. Section 4 amended (contents of database)**

After section 4(1)(a)(v)—

**Add**

“(vi) the National Anthem Ordinance ( of 2019);”.

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**Schedule 1**

[s. 2]

**Stave Notation of National Anthem**



### National Anthem of the People's Republic of China

(March of the Volunteers (a translation of 《義勇軍進行曲》))

March Tempo

Lyrics by Tian Han  
Composed by Nie Er

起

來! 不願做奴隸的人們! 把我們的血肉,

築成我們新的長城! 中華民族

到了最危險的時候, 每個人被迫着發出

最後的吼聲。起來! 起來! 起來!

我們萬眾一心, 冒着敵人的炮火前進!

冒着敵人的炮火前進! 前進! 前進! 前進!

### Schedule 2

[s. 2]

### Numbered Musical Notation of National Anthem



## National Anthem of the People's Republic of China

(March of the Volunteers (a translation of 《義勇軍進行曲》))

1 = G  $\frac{2}{4}$ 

March Tempo

Lyrics by Tian Han  
Composed by Nie Er

( 1. 3 5 5 | 6 5 | 3. 1 5 5 5 | 3 1 | 5 5 5 5 5 5 | 1 ) 0 5 |  
起

1. 1 | 1. 1 5 6 7 | 1 1 | 0 3 1 2 3 | 5 5 |  
來! 不 願 做 奴 隸 的 人 們! 把 我 們 的 血 肉,

3. 3 1. 3 | 5. 3 2 | 2 - | 6 5 | 2 3 |  
築 成 我 們 新 的 長 城! 中 華 民 族

5 3 0 5 | 3 2 3 1 | 3 0 | 5. 6 1 1 | 3. 3 5 5 |  
到 了 最 危 險 的 時 候, 每 個 人 被 迫 着 發 出

2 2 2 6 | 2. 5 | 1. 1 | 3. 3 | 5 - |  
最 後 的 吼 聲。 起 來! 起 來! 起 來!

1. 3 5 5 | 6 5 | 3. 1 5 5 5 | 3 0 1 0 | 5 1 |  
我 們 萬 眾 一 心, 冒 着 敵 人 的 炮 火 前 進!

3. 1 5 5 5 | 3 0 1 0 | 5 1 | 5 1 | 5 1 | 1 0 ||  
冒 着 敵 人 的 炮 火 前 進! 前 進! 前 進! 進!

## Schedule 3

[s. 5]

## Occasions on which National Anthem must be Played and Sung

1. Oath-taking Ceremony—
  - (a) for taking the Oath of the Chief Executive under section 16A of the Oaths and Declarations Ordinance (Cap. 11);
  - (b) for taking the Oath of the Principal Officials under section 16B of that Ordinance;
  - (c) for taking the Judicial Oath under section 17 of that Ordinance;
  - (d) for taking the Oath of Fidelity and the Executive Council Oath under section 18 of that Ordinance; or
  - (e) for taking the Legislative Council Oath under section 19 of that Ordinance
2. A national flag raising ceremony, including—
  - (a) Flag Raising Ceremony held by the Government at Golden Bauhinia Square;
  - (b) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Founding of the People's Republic of China; and
  - (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

3. National Day Reception held by the Government to celebrate the Anniversary of the Founding of the People's Republic of China
  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
  5. Ceremony held by the Government to commemorate the victory day of Chinese people's war of resistance against Japanese aggression
  6. Ceremony held by the Government to commemorate those who died in the defence of Hong Kong
  7. Ceremony held by the Government on Nanjing Massacre National Memorial Day
  8. A major sporting event held by the Government
  9. Ceremonial Opening of the Legal Year
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### Explanatory Memorandum

The objects of this Bill are to provide—

- (a) for the playing and singing of the national anthem;
  - (b) for the protection of the national anthem;
  - (c) for the promotion of the national anthem; and
  - (d) for incidental matters.
2. The preamble sets out certain information to provide a context in which to understand the Bill. The Law of the People's Republic of China on National Anthem is listed in Annex III to the Basic Law. The Bill is to implement the Law of the People's Republic of China on National Anthem in Hong Kong.

#### Part 1—Preliminary (Clauses 1 and 2)

3. Clause 1 sets out the short title.
4. Clause 2 contains the definitions of *national anthem* and *national flag*. It also explains the meaning of a reference to the lyrics, and the score, of the national anthem, and a reference to playing and singing the national anthem.

#### Part 2—Playing and Singing of National Anthem (Clauses 3 to 5)

5. Clause 3 provides for the standard for playing and singing the national anthem.
6. Clause 4 provides for the etiquette to be followed by the persons who take part in or attend an occasion while the national anthem is being played and sung.
7. Clause 5 provides for the playing and singing of the national anthem on each occasion set out in Schedule 3.



**Part 3—Protection of National Anthem (Clauses 6 to 8)**

8. Clause 6 prohibits misuse of the national anthem or its lyrics or score. A contravention of the prohibition is an offence.
9. Clause 7 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 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.
10. 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.

**Part 4—Promotion of National Anthem (Clauses 9 and 10)**

11. Clause 9 requires the Secretary for Education to give directions for the inclusion of the national anthem in primary education and in secondary education.
12. Clause 10 applies if, under the terms and conditions of a sound broadcasting licence or domestic television 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. By a determination or direction that has been made in relation to the licence, the licensee may be required to broadcast the national anthem by an announcement or material in the public interest in the licensed service. Moreover, the Communications Authority must make a determination or direction in relation to the licence, requiring the licensee to broadcast the national anthem by an announcement or material in the public interest in the licensed service on each date that is or may be stipulated by the Chief Executive.

**Part 5—Supplementary Provisions (Clause 11)**

13. Clause 11 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 Ordinance and the Law of the People's Republic of China on National Anthem, the Ordinance is to be interpreted and applied as a special application or adaption of that Law.

**Part 6—Consequential Amendments**

14. Clauses 13 and 14 contain consequential amendments.

**Schedules**

15. Schedule 1 sets out the lyrics and score of the national anthem in a stave notation.
16. Schedule 2 sets out the lyrics and score of the national anthem in a numbered musical notation.
17. Schedule 3 sets out the occasions on which the national anthem must be played and sung under clause 5.

**Law of the People's Republic of China on National Anthem**

*(Adopted at the 29th Meeting of the Standing Committee of  
the Twelfth National People's Congress on September 1, 2017)*

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.

Article 2        The "March of the Volunteers" is the national anthem 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.

Article 4        The national anthem shall be played and sung on the following occasions:

- (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;
- (2) Congresses at all levels of all political parties and people's organizations;
- (3) Constitutional oath ceremonies;
- (4) Flag raising ceremonies;
- (5) Major celebrations, award ceremonies, commemorations, and the like that are organized by state organs at any level;

- (6) National memorial ceremonies;
- (7) Important diplomatic events;
- (8) Major sport events; and
- (9) Other suitable occasions.

Article 5        The State encourages citizens and organizations to play and sing the national anthem on appropriate occasions in a show of patriotism.

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.

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.

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.

Article 9        The occasions and etiquette for playing and singing the national anthem during diplomatic events shall be determined by the Ministry of Foreign Affairs.

The occasions and etiquette for the military to play and sing the national anthem shall be determined by the Central Military Commission.

Article 10       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.

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.

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.

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/>).

Article 11      The national anthem shall be included in the curricula for primary and secondary schools.

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.

Article 12      News media shall actively publicize the national anthem and popularize the etiquette for playing and singing the national anthem.

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.

Article 14      The people's governments at or above the county level and their 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.

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.

Article 16      This Law shall enter into force on October 1, 2017.

*Source: Legislative Affairs Commission of the Standing Committee of the National People's Congress*

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)	<b>[A]ll individuals and organizations should</b> respect the national anthem, preserve the dignity of the national anthem, and <b>play and sing the national anthem on appropriate occasions.</b>
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</p> <p>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</p> <p>(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> <ul style="list-style-type: none"> <li>(a) to stand solemnly and deport themselves with dignity; and</li> <li>(b) to not behave in a way disrespectful to the national anthem.</li> </ul>
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</p> <p>(1) The national anthem, or the lyrics or score of the national anthem, must not be used—</p> <ul style="list-style-type: none"> <li>(a) in a trade mark or commercial advertisement;</li> <li>(b) at a private funeral</li> </ul>

			<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;</p> <p><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 (<a href="http://www.npc.gov.cn/">http://www.npc.gov.cn/</a>) and the Chinese government (<a href="http://www.gov.cn/">http://www.gov.cn/</a>).</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> <ul style="list-style-type: none"> <li>(a) to enable the students to learn to sing the national anthem; and</li> <li>(b) to educate the students— <ul style="list-style-type: none"> <li>(i) on the history and spirit of the national anthem; and</li> <li>(ii) on the etiquette for playing and singing the national anthem.</li> </ul> </li> </ul> <p>(2) In this section—  <i>primary education</i> (小學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);  <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.
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.		(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).



			<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"> <li>(a) altered lyrics or an altered score of the national anthem;</li> <li>(b) the national anthem played and sung in a distorted or disrespectful way; or</li> <li>(c) the insulting in any way of the national anthem.</li> </ul> <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"> <li>(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;</li> </ul>
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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.