



## **II. REPORT**

The date of First Reading of the Bill is 23 January 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CMAB E4/1/1) issued by the Constitutional and Mainland Affairs Bureau on 9 January 2019 for further details.

### **Object of the Bill**

2. The Bill seeks 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.

### **Background**

3. On 1 September 2017, the Standing Committee of the Twelfth National People's Congress ("NPCSC") adopted the Law of the People's Republic of China on National Anthem ("the National Anthem Law") (at Annex B to the LegCo Brief). 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, the national laws listed in Annex III shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region ("HKSAR").

4. According to paragraph 3 of the LegCo Brief, having regard to the common law system practised in Hong Kong and the actual circumstances in Hong Kong, the Administration proposes to implement the National Anthem Law by local legislation instead of by promulgation. This approach is consistent with the implementation of the Law of the People's Republic of China on the National Flag 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.

### **Provisions of the Bill**

5. The Bill seeks to implement the National Anthem Law in Hong Kong. It contains a preamble and six parts. The lyrics and score of the national anthem are set out in Schedules 1 and 2 to the Bill in stave notation and numbered musical notation. Other major provisions of the Bill are set out in the ensuing paragraphs.

## Preamble

6. The preamble provides that the national anthem is the symbol and sign of the People's Republic of China ("PRC"), which should be respected and be played and sung on appropriate occasions. The Bill is made 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 PRC and to promote patriotism.

## Playing and singing of national anthem

7. Clause 3 of the Bill provides that the national anthem must be played and sung in a way that is in keeping with its dignity. Clause 4 provides that when the national anthem is played and sung on an occasion, the etiquette to be followed by the persons who take part in or attend the occasion is to stand solemnly and deport themselves with dignity and to not behave in a way disrespectful to the national anthem.

8. Under clause 5 of the Bill, the occasions on which the national anthem must be played and sung would be set out in the proposed Schedule 3. These occasions include various oath-taking ceremonies for taking the Oath of the Chief Executive ("CE"), the Oath of Principal Officials, the Judicial Oath, the Oath of Fidelity and the Executive Council Oath or the LegCo Oath, and various national flag raising ceremonies specified in Schedule 3. Under clause 5(2), CE in Council may, by notice published in the Gazette, amend Schedule 3. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

## Protection of national anthem

### *Offence of misuse of national anthem*

9. Clause 6 provides that 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 by CE in Council by notice published in the Gazette (which would be subject to LegCo's negative vetting procedure).

10. Clause 6 also provides that the national anthem must not be used as background music in a public place. "Public place" is defined as 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.

11. A person, who, without reasonable excuse, contravenes clause 6 commits an offence and is liable on conviction to a fine at level 5 (i.e.\$50,000) for using the national anthem, or the lyrics or scores of the national anthem, in a trade mark or commercial advertisement and for other cases, to a fine at level 2 (i.e. \$5,000).

*Offence of insulting behaviour*

12. Under clause 7, a person commits an offence and is liable on conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for three years if, with intent to insult the national anthem, the person :

- (a) publicly and intentionally alters the lyrics or score of the national anthem, or plays and sings the national anthem in a distorted or disrespectful way; or
- (b) intentionally publishes:
  - (i) altered lyrics or an altered score of the national anthem;
  - (ii) the national anthem played and sung in a distorted or disrespectful way; or
  - (iii) the insulting in any way of the national anthem.

13. It is also an offence under clause 7 if a person publicly and intentionally insults the national anthem in any way.

14. "Insult", as defined in clause 7(8), means to undermine the dignity of the national anthem as a symbol and sign of PRC.

*Limit of time in respect of offences proposed in the Bill*

15. In relation to proceedings for an offence under clause 6, by virtue of section 26 of the Magistrates Ordinance (Cap. 227), those proceedings must be commenced within six months from the date on which the offence is committed.

16. Under clause 7(7), proceedings for an offence under clause 7 may only be commenced before whichever is the earlier of the following :

- (a) the end of the period of one 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 two years after the date on which the offence is committed.

### Promotion of national anthem

17. Clause 9 of the Bill requires the Secretary for Education to give directions for the inclusion of the national anthem in primary 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.

18. Clause 10 of the Bill, among others, empowers 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 in the licensed service on each date that is or may be stipulated by CE. Under clause 10(5), CE's stipulation must be published in the Gazette as soon as practicable after it is made and the stipulation is not subsidiary legislation.

### **Commencement**

19. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

### **Public Consultation**

20. According to paragraph 31 of the LegCo Brief, the Administration attended two special meetings held by the Panel on Constitutional Affairs ("the Panel") to listen to public views. It is not mentioned in the LegCo Brief that the Administration has conducted public consultation.

### **Consultation with LegCo Panel**

21. According to the Clerk to the Panel, the Panel was consulted on an outline of the proposed content of the Bill on 23 March 2018 and received public views on 28 April and 5 May 2018. While Panel members in general considered that the HKSAR Government had a constitutional duty to enact local legislation in Hong Kong to implement the National Anthem Law, some members expressed concern that the Administration failed to provide a clear definition of what constituted an act of insulting the national anthem which would incur criminal liabilities under the Bill. There was a suggestion that the Administration should consider removing the penalty clauses for the offence of insulting the national anthem or reducing the level of penalties. Some members also expressed concern about the impact of the Bill on freedom of speech, of expression and of creation in Hong Kong. They were worried that

some people might contravene the legislation unintentionally in the course of film production or artistic creation. Some members were also concerned about the impact of the Bill on the education sector and they expressed dissatisfaction at the Administration's refusal to conduct public consultation on the Bill.

## **Conclusion**

22. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by members of the Panel, Members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

Kelvin Ka-yun LEE  
Senior Assistant Legal Adviser  
Legislative Council Secretariat  
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