

立法會
Legislative Council

Ref : CB4/BC/11/20

LC Paper No. CB(4)1784/20-21
(These minutes have been seen
by the Administration)

**Bills Committee on National Flag and National Emblem
(Amendment) Bill 2021**

**Minutes of the second meeting
held on Friday, 3 September 2021, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS, JP
Hon YIU Si-wing, SBS
Hon CHAN Han-pan, BBS, JP
Hon KWOK Wai-keung, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan, JP
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH, JP
- Members absent** : Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SHIU Ka-fai, JP
Hon Tony TSE Wai-chuen, BBS, JP
- Public Officers attending** : Mr Erick TSANG Kwok-wai, IDSM, JP
Secretary for Constitutional and Mainland Affairs
- Miss Katharine CHOI Man-ye
Deputy Secretary for Constitutional and Mainland Affairs (2)

Ms Cordelia LAM Wai-ki
Principal Assistant Secretary (Constitutional & Mainland
Affairs)7

Miss Jamie TSE Yik-yan
Assistant Secretary (Constitutional & Mainland Affairs)7A

Mr Lawrence PENG Si-yun
Deputy Law Draftsman III
Department of Justice

Mr Gary LI Ming-fung
Senior Government Counsel
Department of Justice

Ms Teresa CHAN Mo-ngan
Deputy Secretary for Education (Special Duties)

Mr Keith GIANG Tsz-sheung
Principal Assistant Secretary for Commerce & Economic
Development (Communications & Creative Industries)A

Mr Harry TSANG Chin-kwong
Director of Protocol
Protocol Division of the Administration Wing

**Clerk in
attendance** : Ms Joanne MAK
Chief Council Secretary (4) 7

**Staff in
attendance** : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Dennis HO
Senior Council Secretary (4)7

Miss Kitty LEUNG
Council Secretary (4)7

Ms Louisa YU
Legislative Assistant (4) 7

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I. Meeting with the Administration

[File Ref.: CMAB S/F (1) to E4/1, LC Paper Nos. CB(3)864/20-21, LS110/20-21, CB(4)1439/20-21(01) to (02) and CB(4)1456/20-21(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members noted that the following papers were tabled at the meeting:

- (a) the Administration's written response to issues raised by members at the previous meeting on 27 August 2021;
- (b) letter dated 2 September 2021 from Mr Tony TSE; and
- (c) submission from the Liberal Party.

(Post-meeting note: The above papers were issued on 3 September 2021 vide LC Paper Nos. CB(4)1491/20-21(01) to (03) respectively.)

3. The Administration briefed members on its written response to issues raised by members at the previous meeting on 27 August 2021, and made a verbal response to the issues raised in the letter dated 2 September 2021 from Mr Tony TSE. The Chairman requested the Administration to provide a written response to Mr TSE's letter after the meeting.

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(Post-meeting note: The Chinese and English versions of the Administration's written response to Mr TSE's letter [LC Paper No. CB(4)1559/20-21(01)] were issued on 20 September and 15 October 2021 respectively.)

Clause-by-clause examination of the Bill

4. The Bills Committee continued with the clause-by-clause examination of the Bill.

Clause 9: Prohibition of certain uses of national flag and national emblem

5. Members noted that clause 9 of the Bill sought to amend section 6 of the National Flag and National Emblem Ordinance ("NFNEO") to provide for additional circumstances in which the national flag, the national emblem and their designs must not be displayed or used. Members enquired whether using design of the national flag on souvenir items (e.g. face masks, stickers) would be prohibited under the proposed section 6(1)(a) of NFNEO. Mr LUK Chung-hung pointed out that some of the souvenir items bearing the design of the national flag had shown images of

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the five stars which were not positioned properly, with the four smaller stars not correctly angled in relation to the bigger star. He urged the Administration to step up its publicity efforts on the correct specifications for the national flag and strengthen monitoring in this regard.

6. Deputy Secretary for Constitutional and Mainland Affairs (2) ("DSCMA(2)") advised that the use of the design of the national flag on souvenir items or face masks was not unlawful under the proposed section 6(1) of NFNEO as long as the national flag or its design was not displayed or used in trademarks, registered designs or commercial advertisements, private funeral activities or other occasions on which or places at which the display or use of the national flag or its design was restricted or prohibited under the stipulations made by the Chief Executive ("CE"), and the national flag or its design shown on the souvenir items or face masks complied with the specifications stipulated in Schedule 1 to NFNEO.

7. Members noted that clauses 14 and 15 of the Bill respectively amended Schedules 1 and 2 to NFNEO to elaborate further on the specifications for the size of national flags and national emblems.

8. Members also noted that according to the relevant stipulations made by CE currently in force, a person was prohibited from using the national flag, national emblem, or their designs in connection with any trade, calling or profession, or the logo, seal or badge of any non-governmental organization except with prior approval from the Government. Mr Steven HO said that members of the fishing trade might wish to fly national flags on their fishing vessels to mark the anniversaries of the establishment of the Hong Kong Special Administrative Region and the National Day. Mr HO suggested that the Administration should consider making special arrangements on the aforementioned occasions by setting up a designated channel for handling large volumes of relevant applications for prior approval; or making an exemption in the relevant stipulations to allow the display of the national flag by trades, callings and professions without prior approval.

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9. At Mr Steven HO's request, Secretary for Constitutional and Mainland Affairs ("SCMA") undertook to follow up on Mr HO's suggestion and provide a written response after the meeting. SCMA advised that the Administration would step up publicity work and provide guidelines to facilitate compliance with NFNEO and the relevant stipulations made by CE.

(Post-meeting note: The Chinese and English versions of the Administration's written response [LC Paper No. CB(4)1559/20-21(01)] were issued on 20 September and 15 October 2021 respectively.)

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10. Mr Martin LIAO pointed out that the law of passing off under the common law system in Hong Kong protected the rights of unregistered trademarks, whereas the common law system was not practised in the Mainland. He asked whether "trademarks" in the proposed sections 6(1)(a) and 6(2)(a) of NFNEO carried the same definition as in the corresponding articles in the two amended national laws. DSCMA(2) explained that the proposed sections 6(1)(a) and 6(2)(a) reflected the principles and spirit of Article 20 of the amended National Flag Law and Article 13 of the amended National Emblem Law, as well as the common law system practised in Hong Kong. She confirmed that the definition of "trademarks" in the proposed sections 6(1)(a) and 6(2)(a) covered both registered and unregistered trademarks.

11. In response to Mr Steven HO's enquiries, SCMA said that he did not have information at hand about any existing registered designs which contained the national flag, the national emblem, or their designs. SCMA advised that if such cases were found after the passage of the Bill, the Administration would, on a case-by-case basis, follow up by requesting the parties concerned to make necessary rectifications. The Administration would take law enforcement actions if the parties concerned failed to make such rectifications. Principal Assistant Secretary (Constitutional & Mainland Affairs)⁷ added that section 6(3) provided that only a person without lawful authority and reasonable excuse would commit the relevant offences.

12. The Bills Committee completed the clause-by-clause examination of the Bill at this meeting. As members raised no more issues on the Bill, the Chairman declared that the Bills Committee had completed its scrutiny work. Members noted that the Chairman would make a verbal report on the deliberations of the Bills Committee to the House Committee ("HC") on 10 September 2021. The Administration indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 29 September 2021. Members raised no objection. Members noted that the deadline for giving notice of amendment(s) to the Bill was 5:00 pm on 18 September 2021.

(Post-meeting note: The written report of the Bills Committee to HC was issued on 17 September 2021 vide LC Paper No. CB(4)1550/20-21.)

II. Any other business

13. There being no other business, the meeting ended at 11:50 am.

**Proceedings of the second meeting of the
Bills Committee on National Flag and National Emblem
(Amendment) Bill 2021
on Friday, 3 September 2021, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action Required
000426 - 001749	Chairman Administration	Opening remarks The Administration's briefing on its written response to the issues raised by members at the meeting on 27 August 2021 The Administration's verbal response to the letter dated 2 September 2021 from Mr Tony TSE	Admin. to provide written response to Mr TSE's letter (para. 3 of minutes)
001750 - 004943	Chairman Mr LUK Chung-hung Mr Steven HO Mr Martin LIAO Ir Dr LO Wai-kwok Administration	Continuation of clause-by-clause examination of the National Flag and National Emblem (Amendment) Bill 2021 ("the Bill") Part 2 – Amendments to National Flag and National Emblem Ordinance (116 of 1997) <u>Examination of clauses 7 to 9 of the Bill</u> <i>Clause 9</i> - Discussion on matters relating to (i) the use of the design of the national flag or national emblem in souvenir items (e.g. face masks) or registered designs; (ii) the penalty provision in section 6(3) of the National Flag and National Emblem Ordinance ("NFNEO"); and (iii) the stipulations made by the Chief Executive on the display and use of the national flag and national emblem which were currently in force	Admin. to provide written response (para. 9 of minutes)
004944 - 010433	Chairman Mr Steven HO Administration	<u>Examination of clauses 10 to 16 of the Bill</u> <i>Clause 10</i> - Enquiry on the enforcement of the proposed new section 7 of NFNEO	

Time Marker	Speaker(s)	Subject(s)	Action Required
010434 - 010619	Chairman Administration	Part 3 – Amendment to Registered Designs Ordinance (Cap. 522) <u>Examination of clause 17 of the Bill</u> Part 4 – Amendment to Registered Designs Rules (Cap. 522 sub. leg. A) <u>Examination of clause 18 of the Bill</u>	
010620 - 010904	Chairman Assistant Legal Adviser Members Administration	Completion of scrutiny of the Bill Legislative timetable and closing remarks	

Council Business Division 4
Legislative Council Secretariat
3 December 2021