

LegCo: Speech by SCMA for moving Second Reading of the National Anthem Bill

Following is the translated speech by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, at the Legislative Council (LegCo) today (January 23) for moving the Second Reading of the National Anthem Bill:

Mr President,

I move the Second Reading of the National Anthem Bill (the Bill).

The Standing Committee of the 12th National People's Congress (NPCSC) adopted the decision to add the National Anthem Law to Annex III to the Basic Law on November 4, 2017. According to Article 18 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 constitutional duty of the HKSAR Government to implement the National Anthem Law locally.

Having regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong, the HKSAR Government decides to implement the National Anthem Law in the HKSAR by local legislation, fully embodying the "one country, two systems" principle. We consulted the Panel on Constitutional Affairs of the Legislative Council (CA Panel) on the outline of the proposed content of the Bill in March last year, and attended two special meetings of the CA Panel in April and May respectively to listen to the views of the public and deputations. In the past year, we have also met with political parties, professional bodies and scholars, etc. with a view to listening to and incorporating their views. After vigilant deliberation and careful drafting, we formally submit the Bill to the Legislative Council today for First Reading and Second Reading, and for scrutiny by Members.

The legislative principle of the National Anthem Bill is very clear: to fully reflect the legislative 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 National Anthem Law consists of 16 clauses. Apart from Articles 9, 14 and 16, all of the remaining 13 clauses have been suitably adapted in the Bill.

The focus of the Bill is two-pronged: firstly, to state that the national anthem is the symbol and sign of the People's Republic of China, and to promote respect for the national anthem by means of directional

provisions; secondly, to impose penalties on people who publicly and intentionally insult the national anthem or misuse the national anthem. The directional provisions are in Part 2 of the Bill whereas the provisions on penalties are in Part 3.

Part 2 of the Bill is "Playing and Singing of National Anthem", which provides the standard, etiquette and occasions for the playing and singing of the national anthem. All of these provisions are "directional" and do not carry any penalty. This part 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 where the national anthem is played and sung. 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 questions. This part also specifies that on each occasion set out in Schedule 3 of the Bill, the national anthem must be played and sung. These occasions 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.

Part 3 of the Bill is "Protection of National Anthem", which prohibits misuse of the national anthem or its lyrics or score, as well as public and intentional insulting behaviours in relation to the national anthem. It also provides penalties for such behaviours. I understand that some may demand the Government to assess each and every scenario and comment if any of them will contravene the law. In reality, the enforcement agency would, according to the actual circumstances and evidence collected in each case, make an assessment in accordance with the law, and the court will hand down judgment in accordance with the usual standard of handling criminal cases in Hong Kong. Nevertheless, our legislative intent is very clear, i.e. to prohibit public and intentional behaviours with an intent to insult the national anthem. We will use the above principles, which are commonly used in the common law system, as the basis of assessing whether a case contravenes the law. Therefore, there is absolutely no need for members of the public to worry about "inadvertently contravening the law" if they have no intention to insult the national anthem. It is worth mentioning that the Bill contains a provision (clause 7(5) of the Bill) to protect the publishing of materials to insult the national anthem with reasonable grounds (e.g. fair reporting by media, educational purposes by teachers, etc.), making it clear for the public that such acts of publishing with no intent to insult the national anthem will not constitute a criminal offence.

Part 4 of the Bill is "Promotion of National Anthem", which requires the Secretary for Education to give directions for the inclusion of the national anthem in primary education and secondary education, which cover all primary and secondary schools. The Bill also requires domestic television programme service licensees and sound broadcasting service licensees to broadcast the national anthem as announcements in the public interest (APIs) or material in the public interest pursuant to the existing terms and conditions in their respective licences. These two requirements have reflected the legislative

intent of the National Anthem Law, and at the same time taken into account the actual circumstances of Hong Kong. They are actually similar to what is currently being done.

The above is the main content of the Bill. Overall speaking, the main spirit of the Bill is "respect", which I believe is easy to understand and not hard to follow by the general public. For those with an intent to insult the national anthem, and publicly and intentionally perform acts to insult the national anthem, there is a need to introduce punitive provisions in the Bill to deter such behaviours. We believe that the majority of the public would respect the national anthem. Hence, the Bill will not have any impact on the daily lives of the general public.

Mr President, with these remarks, I call on Members to support the early passage of the Bill to fulfill the responsibility of Hong Kong to implement the National Anthem Law.

Thank you, Mr President.