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**LC Paper No. CB(2)949/18-19(01)**

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[English Translation]

Ms Joanne MAK  
Clerk to Panel on Constitutional Affairs  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

8 March 2019

Dear Ms MAK,

**Panel on Constitutional Affairs**

**Local Legislation to Implement the National Anthem Law  
Supplementary Information**

The Panel on the Constitutional Affairs held meetings on 28 April and 5 May 2018 respectively to listen to public views on the local legislation to implement the National Anthem Law. At the meetings, members requested the Government to provide written responses to—

- (a) address members' concern about the fundamental issues to be clarified in the context of the Basic Law ("BL") including that:
  - (i) Article 1 of the National Anthem Law stipulated "practise the core values of socialism", which was inconsistent with Article 5 of the Basic Law ("BL 5") which stipulated that "[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region"; and that (ii) the relevant provision of the proposed content of the National Anthem Bill ("the Bill") was in contravention of BL 137 which stipulated

that "[e]ducational institutions of all kinds may retain their autonomy and enjoy academic freedom";

- (b) address members' concerns on how relevant provisions of the Bill would be enforced, including the law enforcement agencies responsible for taking enforcement actions, and how enforcement actions would be taken online; and
  - (c) provide information on the enforcement actions taken by the Mainland authorities against breaches of the Law of the People's Republic of China on the National Anthem which came into force nationwide since 1 October 2017, including relevant statistics on arrests and prosecution, as well as convictions and penalties levied on those cases.
2. The National Anthem Law has been added 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"). The HKSAR will implement the National Anthem Law by local legislation.
3. 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 for the public to respect 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. This Bureau submitted the National Anthem Bill (the Bill) and the relevant brief to the Legislative Council on 9 January 2019. Our reply to the questions raised by members is as follows –

- (a) The Preamble of the Bill adapts Article 1 of the National Anthem Law. Since the socialist system is not practised in the HKSAR under the "one country, two systems", "cultivate and live by the core socialist values" is not included in the Bill.

In respect of education, Article 11 of the National Anthem Law stipulates that "[t]he 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.” To reflect the spirit of Article 11 of the National Anthem Law, clause 9 of the Bill requires the Secretary for Education to give directions for the inclusion of the national anthem in primary education and secondary education. Article 136 of the Basic Law stipulates that the Government of the HKSAR shall, on its own, formulate policies on education. There is no conflict between the relevant arrangement and Article 137 of the Basic Law.

- (b) 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. Clause 7(3) and 7(4) prescribe that a person commits an offence if, with intent to insult the national anthem, the person intentionally publishes altered lyrics or score of the national anthem; the national anthem played and sung in a distorted or disrespectful way; or the insulting in any way of the national anthem. The reference to “publish” includes online behaviours. Thus, anyone who publicly and intentionally insults the national anthem, regardless of in the real world or in the cyber world, will contravene the Bill and will have to bear criminal liability on conviction. Police will gather evidence and investigate each case in accordance with law and instigate prosecution when there is sufficient evidence.
- (c) We understand that since the National Anthem Law came into force in the Mainland on 1 October 2017, the relevant Mainland security authorities have detained two Mainlanders who contravened the National Anthem Law on online platforms for five days and 15 days respectively.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Education

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