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[English Translation]

Ms Joanne MAK  
Clerk to Bills Committee on National Anthem Bill  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

15 March 2019

Dear Ms MAK,

**Re: Implementation of the National Anthem Law in the Mainland**

Regarding the letter from Hon CHAN Chi-chuen of 12 March, our reply is set out below.

Legislative principle

2. On 4 November 2017, the Standing Committee of the 12<sup>th</sup> National People's Congress 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 constitutional duty of the HKSAR Government to implement the National Anthem Law locally. The legislative principle of the National Anthem Bill (the Bill) is to fully reflect the purpose and intent of the National Anthem Law, which is to preserve the dignity of the national anthem and to promote respect to 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.

### Enforcement actions taken by the Mainland in relation to the National Anthem Law

3. According to information provided by the Liaison Office of the Central People's Government in the HKSAR, since the National Anthem Law came into force in the Mainland on 1 October 2017, the Mainland security authorities have imposed administrative detention on two Mainlanders who contravened Article 15 of the National Anthem Law. Details are as follows –

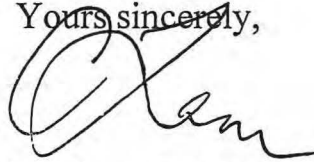
- In November 2017, the security authorities of Ningcheng County of Inner Mongolia imposed an administrative detention of 15 days on a person who contravened Article 15 of the National Anthem Law on online live-streaming platform.
- In October 2018, a mainlander contravened Article 15 of the National Anthem Law when conducting online live-streaming at home. The security authorities of Shanghai imposed an administrative detention of five days on the mainlander concerned.

It is understood that the decisions on administrative detention are made by security authorities of the county level or above but not by the court. Therefore, there is no written judgment for the cases.

### Contravening provisions on offences in relation to the national anthem in Hong Kong

4. Section 11(1) of the Bill already provides that offences in relation to the national anthem in Hong Kong are investigated, and offenders are prosecuted, according to the laws of Hong Kong. Our legislative intent is to prohibit public and intentional behaviour with an intent to insult the national anthem. We will use the above principles as the only basis for assessing whether a case contravenes the law. On whether a specific case will contravene provisions on the misuse or insulting the national anthem, the enforcement agencies would, according to the actual circumstances and the evidence collected in each case, make an assessment in accordance with the laws of Hong Kong. All cases will be tried in accordance to the usual standard for criminal cases in Hong Kong (i.e. beyond reasonable doubt). The facts of each case, but not public comments (whether made locally or from outside HKSAR), will be the only basis for determining whether a specific act constitutes an offence under the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Lam', written over the words 'Yours sincerely,'.

(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Justice

(Attn: Mr Lawrence PENG, Fax no.: 3918 4613

Mr Jonathan LUK, Fax no.: 3918 4613

Mr Derek LAU, Fax no: 2845 1609)