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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

11 April 2019

Dear Ms MAK,

### **Supplementary Information on the National Anthem Bill**

Regarding the questions raised by members at the meetings of the Bills Committee on 27 March, 30 March and 1 April this year, our reply is set out below.

#### Preamble

2. Some members pointed out that the meaning of “symbol” and “sign” are repetitive in paragraph 1 of the Preamble, which mentions that “the national anthem of the People’s Republic of China is a symbol and sign of the People’s Republic of China”, and thus the word “sign” should be deleted. We must stress that the legislative principle of the National Anthem Bill (the Bill) is to fully reflect the legislative purpose and intent of the Law of the People’s Republic of China on the National Anthem (the National Anthem Law) as national 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. Paragraph 1 of the Preamble thus adopts the content of Article 3 of the National Anthem Law (i.e. [t]he national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China), fully reflecting the intent of the provision.

3. The dictionary meaning of “symbol/象徵” includes “something that stands for, represents, or denotes something else...a material object representing or taken to represent something immaterial or abstract” ( “藉具體的事物，表現出某種特殊的意義” ), a meaning which places emphasis on the concept of “representation”. On the other hand, the “sign/標誌” carries a meaning of being “a mark, symbol, or device that has some special significance” ( “標識、表明特徵的記號” ), a meaning which places emphasis on the concept of being a “mark”. It appears that “symbol” and “sign” have similar, but not identical meanings. The full meaning of “symbol” and “sign” may not be satisfactorily expressed if only one of the two words is used. Moreover, we note that “symbol” and “sign” have been used in pairs in statutes in other common law jurisdictions. While admittedly the policy backgrounds and objectives of those statutes are different from those of the Bill, these examples illustrate that Hong Kong would not be alone in using “symbol” and “sign” in pairs in a statutory context. Furthermore, examples in which words of similar meanings are used in pairs can also be found in current Hong Kong statutes (e.g. “fit and proper”, “just and equitable”, “due and payable”, etc.).

4. Paragraph 2 of the Preamble provides that “all individuals and organizations should respect the national anthem, preserve the dignity of the national anthem”. Some members were concerned that the term “individuals” is used instead of “citizens”, while “citizens” is used in Article 3 of the National Anthem Law. The national anthem is a symbol and sign of the People's Republic of China (PRC); thus everyone, being PRC citizen or not, should respect the national anthem, as we should also respect the national anthems of other countries. In order to make it clear that everyone should respect the national anthem, the Government of the Hong Kong Special Administrative Region (HKSAR) uses the term “individuals” in the Preamble. According to our understanding, everyone in China, regardless of being PRC citizen or non-PRC citizen, has to abide by the National Anthem Law. Therefore, using the term “individuals” in paragraph 2 of the Preamble is in line with the legislative intent of the National Anthem Law. When it comes to enhancing awareness of the PRC and promoting patriotism as set out in paragraph 3

of the Preamble, the term “citizens” is used to make it clear that the content is only relevant to PRC citizen only.

### Applicability of the National Anthem Law to PRC citizens outside the PRC

5. According to our understanding, Article 7 of the Criminal Law of the People’s Republic of China (Criminal Law) stipulates that “[t]his Law shall be applicable to any citizen of the PRC who commits a crime prescribed in this Law outside the territory and territorial waters and space of the PRC. However, if the maximum punishment to be imposed is a fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from the investigation for his criminal responsibility.” Section 2 of Article 299 of the Criminal Law provides that whoever deliberately alters the lyrics or music of the national anthem, or plays or sings the national anthem in a deliberately distorted or disrespectful manner, or insults the national anthem in any other manner, in a public place, shall be sentenced to a fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.<sup>1</sup> Reading the two laws together, the National Anthem Law applies to PRC citizens outside the PRC. If a PRC citizen insults the national anthem outside the PRC, that citizen may commit the crime of insulting the national anthem as stipulated in Article 299 of the Criminal Law. However, since the maximum punishment to be imposed for the offence is a fixed-term imprisonment of not more than three years, the Mainland law enforcement agencies may exempt the citizen concerned from the investigation for his criminal responsibility.

6. However, we must stress that the legal system in the Mainland and that in Hong Kong are different. The HKSAR Government implements the National Anthem Law in Hong Kong by local legislation, and section 11(1) of the Bill already provides clearly that offences in relation to the national anthem in Hong Kong are investigated, and offenders are prosecuted, according to the laws of Hong Kong. As we mentioned in paragraph 9 of LC Paper No. CB(2)1127/18-19(02), according to common law principles, after its passage, the Bill will only apply to behaviour in Hong Kong.

### Clause 3 of the Bill

7. We cannot agree with the suggestion of deleting clause 3 of the Bill. This clause reflects Article 6 of the National Anthem Law and also

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<sup>1</sup> English translation of the provisions of the Criminal Law is for reference only.

provides guidance for the public by describing the standard relating to the playing and singing of the national anthem.

#### Directions given by the Secretary for Education

8. It is an inherent responsibility of school education to cultivate in students a sense of national identity. At primary and secondary levels, students are taught to sing the national anthem and the learning contents of the national anthem are covered by the subject curricula. Society has no objection to educating students to respect the national anthem. The Education Bureau has all along been issuing guidelines on various matters (e.g. the curriculum guides for various Key Learning Areas/subjects at the primary and secondary levels, school administrative guidelines) to schools. How to teach students is a matter of learning and teaching, and falls under the professional purview of teachers. After the Secretary for Education has given directions to primary and secondary schools in connection with Clause 9 of the Bill, schools and teachers will continue to deal with matters related to learning and teaching, including “how to teach”, in a professional manner. If a teacher requires support in teaching, as with the learning and teaching of other curricula, schools should study the issue and provide necessary support for improvement. Therefore, Clause 9 of the Bill has nothing to do with professional autonomy.

#### Follow up in respect of licensees breaching requirements of the Communications Authority

9. If there is a prima facie case of a sound broadcasting or domestic television licensee failing to broadcast announcements or material in the public interest as required, the Communications Authority (CA) will handle the case in accordance with the law and established procedures. In determining whether the licensee concerned has breached the relevant licence condition or direction made by the CA, the CA will take into account all relevant facts and circumstances as well as the representations submitted by the licensee.

10. If the licensee is found to have breached the relevant requirement, the CA may impose appropriate sanction having regard to the nature and severity of the breach, and the record of non-compliance of the licensee, etc. The CA does not need to prove the licensee’s intent when investigating an alleged breach, but will take into account the cause of the breach and other relevant circumstances when deciding the appropriate sanction.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Commerce and Economic Development  
(Attn: Mr Keith GIANG, Fax no.: 2511 1458)

Secretary for Education  
(Attn: Mrs HONG CHAN Tsui-wah, Fax no.: 3428 6034)

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