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LC Paper No. CB(2)1455/18-19(01)

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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

16 May 2019

Dear Ms MAK,

Bills Committee on National Anthem Bill

Committee Stage amendments proposed by Members

We refer to your letter dated 8 May 2019, enclosing the Committee Stage amendments to the National Anthem Bill proposed by various Members of the Legislative Council. The response from the Government is enclosed at the **Annex**.

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)

**Government response to the Committee Stage amendments
to the National Anthem Bill proposed by Members**

On 4 November 2017, the Standing Committee of the 12th National People’s Congress (“NPCSC”) adopted the decision to add the Law of the People’s Republic of China on National Anthem (“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 responsibility of the HKSAR Government to implement the National Anthem Law locally.

2. Having regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong, the HKSAR Government will implement the National Anthem Law in HKSAR by local legislation instead of by promulgation. This approach is consistent with the “one country, two systems” principle, and is also consistent with the implementation of the Law of the People’s Republic of China on the National Flag (“National Flag Law”) and the Law of the People’s Republic of China on the National Emblem (“National Emblem Law”), both of which have been adapted and implemented in Hong Kong by the National Flag and National Emblem Ordinance (“NFNEO”).

3. The legislative principle of the National Anthem Bill (the Bill) is to fully reflect the legislative purpose and intent of 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. The Bill has struck a balance between these two principles, by applying national law in a manner that is consistent with the legal system in Hong Kong.

4. Having reviewed the Committee Stage amendments (“CSAs”) proposed by various Members in detail, the HKSAR Government do not support the CSAs. Detailed justifications are provided below.

1. CSA proposed by Hon WU Chi-wai (LC Paper No. CB(2)1425/18-19(01))

5. This CSA proposes to delete clause 7(7), which provides for a specified prosecution time bar. As we mentioned in LC Paper No. CB(2)893/18-19(02) and CB(2)1127/18-19(15), the enforcement agencies consider that contraventions of clause 7 is likely to involve large numbers of persons or activities over the Internet, which requires more time in investigation and collection of evidence. To strike a balance between effective law enforcement and a reasonable time bar for initiating prosecution, clause 7(7) of the Bill sets the prosecution time bar as the period of one year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police, or the period of two years after the date on which the offence is committed, whichever is the earlier. Since the CSA will have impact on the effective enforcement of the Bill, we do not support this CSA.

2. CSAs proposed by Hon HUI Chi-fung (LC Paper No. CB(2)1425/18-19(04))

(a) Deleting the Preamble

6. As we mentioned in LC Paper No. CB(2)893/18-19(02) and CB(2)1127/18-19(21), preambles mainly serve to provide a context in which to understand the provisions of the legislation concerned. Articles 1, 3 and 5 of the National Anthem Law set out the purpose and spirit of the law, stating clearly that the national anthem is the symbol and sign of the People's Republic of China and thus should be respected and its dignity be preserved. By suitably adopting such articles into the Preamble, the public can be given a clear understanding of the legislative purpose of the Bill and the provisions in the National Anthem Law can be reflected more accurately. Therefore, we do not support this CSA.

(b) Deleting clause 7 (offence of insulting behaviour)

7. The focus of the Bill is two-pronged. Firstly, to provide that the national anthem is a 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 prescribe the penalties for publicly and intentionally insulting the national anthem or misusing the national anthem to deter such behaviour. Clause 7 of the Bill is drafted based on Article 15 of the National Anthem Law. As the CSA is not in line with the legislative principle of the Bill, we do not support this CSA.

(c) Deleting clause 9 (inclusion in primary and secondary education)

8. To embody the spirit of Article 11 of the National Anthem Law, Clause 9 requires the Secretary for Education to give directions for the inclusion of the national anthem in primary and secondary education. It is the inherent responsibility of schools to foster a sense of national identity among students. At primary and secondary levels, students are taught to sing the national anthem and the learning of the national anthem are covered in the subject curricula. Society has no objection to educating students to respect the national anthem. The Education Bureau will issue relevant circulars and guidelines to all primary and secondary schools in due course. Clause 9 of the Bill reflects the legislative purpose of the National Anthem Law and at the same time gives due regard to the actual circumstances in Hong Kong. Thus, we do not support deleting clause 9.

(d) Deleting item 9 in Schedule 3 (Ceremonial Opening of the Legal Year)

9. As we mentioned in LC Paper No. CB(2)893/18-19(01), clause 5 of the Bill stipulates that on each occasion set out in Schedule 3 of the Bill, the national anthem must be played and sung. With reference to the content of Article 4 of the National Anthem Law and adjustments in the light of the actual circumstances in Hong Kong, the occasions in Schedule 3 include official occasions of the 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.

10. Currently, the Ceremonial Opening of the Legal Year already includes the playing and singing of the national anthem. The Judiciary also has no objection to the inclusion of the Ceremonial Opening of the

Legal Year in Schedule 3. We are of the view that Schedule 3 to the Bill can fully reflect the legislative purpose and intent of the National Anthem Law and at the same time can give due regard to the actual circumstances in Hong Kong. Thus, we do not support this CSA.

3. CSAs proposed by Hon Andrew WAN Siu-kin (LC Paper No. CB(2)1425/18-19(03))

(a) Deleting item 1(c) in Schedule 3 (oath-taking ceremony for taking the Judicial Oath)

(b) Deleing item 1(e) in Schedule 3 (oath-taking ceremony for taking the Legislative Council Oath)

11. As we mentioned in LC Paper No. CB(2)893/18-19(01), clause 5 of the Bill stipulates that on each occasion set out in Schedule 3 of the Bill, the national anthem must be played and sung. With reference to the content of Article 4 of the National Anthem Law and adjustments in the light of the actual circumstances in Hong Kong, the occasions in Schedule 3 include official occasions of the 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. We are of the view that Schedule 3 to the Bill can fully reflect the legislative purpose and intent of the National Anthem Law and at the same time can give due regard to the actual circumstances in Hong Kong. Thus, we do not support this CSA.

4. CSA proposed by Dr Hon Helena WONG Pik-wan (LC Paper No. CB(2)1425/18-19(02))

12. This CSA proposes to reduce the level of penalty for contravening clause 7 of the Bill from a fine at level 5 (i.e. \$50,000) and imprisonment for 3 years to a fine at level 3 (i.e. \$10,000) and imprisonment for 6 months. As we mentioned in LC Paper No. CB(2)1127/18-19(21), the level of penalty provided in clause 7(6) of the Bill is the same as the level of penalty for the offence of desecrating the national flag or national emblem under the NFNEO. Similar to the national flag and the national emblem, the national anthem is the sign and symbol of the country. We are of the view

that setting the level of penalty for the offence of insulting the national anthem at the same level as the penalty for the offence of desecrating the national flag or national emblem is appropriate, and thus we do not support this CSA. We must emphasise that a fine at level 5 and imprisonment for 3 years is the maximum level of penalty of the offence of insulting the national anthem. The court has the power to impose sentences in accordance with the actual circumstance of each case.

5. CSA proposed by Hon KWONG Chun-yu (LC Paper No. CB(2)1425/18-19(05))

13. This CSA proposes to delete item 8 in Schedule 3 (“a major sporting event held by the Government”). Clause 5 of the Bill stipulates that on each occasion set out in Schedule 3 of the Bill, the national anthem must be played and sung. Article 4 of the National Anthem Law stipulates the occasions on which the national anthem shall be played and sung, which includes “major sport events”. With reference to the content of Article 4 of the National Anthem Law and adjustments in the light of the actual circumstances in Hong Kong, we adopt “a major sporting event held by the Government” in Schedule 3. We are of the view that Schedule 3 to the Bill can fully reflect the legislative purpose and intent of the National Anthem Law and at the same time can give due regard to the actual circumstances in Hong Kong. Thus, we do not support this CSA.