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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

29 March 2019

Dear Ms MAK,

**Re: Follow-up Questions on Offence of
Behaviour of Insulting the National Anthem**

Regarding the letter from Hon Gary FAN Kwok-wai of 22 March, our reply is set out below.

2. 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.

3. 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. Part 2 of the Bill stipulates the standard, etiquette and occasions for playing and singing the national anthem, which are all directional provisions that do not carry any penalty. Secondly, to prescribe the penalties for publicly and intentionally insulting the national anthem or misusing the national anthem. These provisions are contained in Part 3 of the Bill.

Offences relating to the national anthem

4. The legislative purpose of clause 7 of the Bill is to prohibit acts of publicly and intentionally insulting the national anthem. These principles form the basis for determining whether the law has been breached. If a performer inadvertently plays the wrong notes during a performance of the national anthem with no intent to insult the national anthem, such inadvertent mistake would not constitute the offence of insulting the national anthem under clause 7 of the Bill.

5. Clause 6 of the Bill stipulates that the national anthem must not be used on certain occasions, at certain places and for certain purposes, which do not include street performance. As long as the performers do not perform acts prohibited by clause 7 of the Bill, they will not commit offences under the Bill.

6. Clause 7(1)(a) of the Bill stipulates that a person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally alters the lyrics or score of the national anthem. Clause 7(8) of the Bill stipulates that “insult”, in relation to the national anthem, means to undermine the dignity of the national anthem as a symbol and sign of the People’s Republic of China. The Court of Final Appeal stated in the judgment of *HKSAR v. Ng Kung Siu and another* (1999) that scrawling words of praise on the flags (as opposed to words of protest which is usually the message sought to be conveyed) would constitute offences within section 7 of the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance, namely, that of desecrating the flag by scrawling on the same.¹ The national anthem, being the sign and symbol of the country, has its uniqueness and specificities. Therefore, any public and intentional altering of the lyrics of the national anthem may constitute an offence under clause 7(1)(a). When determining whether or not there is a contravention of the Bill, the Police would, based on the actual circumstances and the evidence collected in each case, make an

¹ See paragraph 44 of the CFA judgment.

assessment in accordance with the law. If the relevant agencies could establish the act and the intent and decide to prosecute, the courts will apply the usual standard of proof for criminal cases in Hong Kong (i.e. beyond reasonable doubt) in making a fair decision on the case.

Education matters

7. The spirit of Clause 9 of the Bill is to educate students to respect the national anthem. Students' improper behaviour within the school premises should be left to the professional judgement of the school and teachers and be dealt with in such a way that the purpose of education is served. For behaviour that shows disrespect for the national anthem, schools should, in light of their own context and usual counselling and guidance arrangements, handle the case in a reasonable, fair and lawful manner.

8. It is not difficult to learn about the playing and singing of the national anthem, the etiquette for playing and singing it as well as its history and spirit, all of which are currently taught at school. We have confidence in the competence of teachers to teach these contents and the positive learning attitude of students.

9. As we stated in paragraph 15 of LC Paper No. CB(2)995/18-19(01), Clause 9 or other provisions of the Bill do not make a contravention against the directions given by the Secretary for Education regarding Clause 9 a criminal offence and thus there are no sanctions. The Education Bureau (EDB) has all along had administrative measures in place, for example, giving verbal/written advice and warnings, to follow up on irregularities identified in school operation (including not complying with the directions given by the Secretary for Education). If individual schools still do not comply with the requirements and make rectifications, power is conferred by relevant provisions of the Education Ordinance to follow up. It is the 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 in the subject curricula. Society has no objection to educating students to respect the national anthem. We do not envisage that school would violate the directions given by the Secretary for Education in pursuance to Clause 9 of the Bill. Schools have all along been complying with the Education Ordinance, relevant legislation and the guidelines from the EDB. We trust that they will do the same in the implementation of the National Anthem Ordinance.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Education

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