

政制及內地事務局
政府總部

香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT

EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

本署檔號 Our Ref : CMAB E4/1/1
電話 Tel No : 2810 2333
傳真 Faxline : 2524 7437

(By email and fax)
(Fax no.: 2509 9055)

[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: Legal principles of the National Anthem Law
and the Basic Law**

Regarding the letter from Hon AU Nok-hin of 22 March 2019, our reply is set out below.

National Anthem Law and Article 18 of the Basic Law

2. **The Constitution of the People's Republic of China (the Constitution) and the Basic Law form the constitutional basis of the Hong Kong Special Administrative Region.** As we mentioned in LC Paper No. CB(2)1014/18-19(02), Chapter IV of the Constitution stipulates the national flag, national anthem, national emblem and capital of the People's Republic of China. **The national flag, national anthem and national emblem are the symbol and sign of the country established by the Constitution, and naturally are not matters within the limits of the autonomy of the Hong Kong Special Administrative Region (the HKSAR).** Annex III to the Basic Law promulgated on 4 April 1990 already included the "Resolution on the Capital, Calendar,

National Anthem and National Flag of the People's Republic of China", which was implemented in Hong Kong by way of promulgation on 1 July 1997 by the HKSAR. The Standing Committee of the National People's Congress (NPCSC) adopted the decision on 1 July 1997 to add the Law of the People's Republic of China on the National Flag and the Law of the People's Republic of China on the National Emblem to Annex III to the Basic Law. The HKSAR enacted the National Flag and National Emblem Ordinance to implement the two national laws in Hong Kong through local legislation.

3. As for the national anthem, Article 141 of the Constitution stipulates that the national anthem of the People's Republic of China is the March of the Volunteers. On 4 November 2017, the 12th NPCSC adopted the decision to add the National Anthem Law to Annex III to the Basic Law. The HKSAR Government decides to implement the National Anthem Law in Hong Kong by local legislation instead of by promulgation. This approach reflects the purpose and intent of the National Anthem Law, which is to preserve the dignity of the national anthem and promote respect to the national anthem; and at the same time gives due regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong. It also allows the Government to take into account views from the public during the local legislative process.

4. Article 2 of the Basic Law stipulates that the National People's Congress authorizes the HKSAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Therefore, any matters which the HKSAR are not authorized to manage on its own in the Basic Law falls within "matters outside the limits of the autonomy of the Region as specified by the Basic Law" in Article 18 of the Basic Law. Apart from the national laws relating to defence and foreign affairs, other national laws added to Annex III to the Basic Law are all relating to matters outside the limits of the autonomy of the Region as specified by the Basic Law, **some of which are matters without specific provisions in the Basic Law clearly stipulating that they are outside the limits of the autonomy of the Region, such as the national laws relating to territorial sea, exclusive economic zone and continental shelf.**

National Anthem Law and Article 136 of the Basic Law

5. As we have emphasised repeatedly, 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. The Bill is in line with the legislative purpose and intent of the National Anthem Law by stipulating the teaching of knowledge relating to the national anthem. The actual implementation will be handled by the Education Bureau in the form of curriculum and administrative guidelines in accordance with prevailing mechanism, which is in full compliance with Article 136 of the Basic Law that the HKSAR Government will formulate on its own matters of the administration of education.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Justice

(Attn: Mr Llewellyn MUI, Fax no: 3918 4799

Mr Lawrence PENG, Fax no.: 3918 4613

Mr Jonathan LUK, Fax no.: 3918 4613)