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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: Policy on prosecution and collecting evidence  
related to the National Anthem Bill**

Regarding the letter from Hon MOK Charles Peter and Hon YEUNG Alvin of 18 March, our reply is set out below.

Clause 7 of the National Anthem Bill

2. Clause 7(3) of the National Anthem Bill (the Bill) provides that a person commits an offence if, with intent to insult the national anthem, the person intentionally publishes (a) altered lyrics or an altered score of the national anthem; or (b) the national anthem played and sung in a distorted or disrespectful way. Clause 7(4) of the Bill provides that a person commits an offence if, with intent to insult the national anthem, the person intentionally publishes the insulting in any way of the national anthem. Clause 7(8) of the Bill provides that in section 7, “publish” includes (a) to communicate to the public in any form, including speaking,

writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and (b) to distribute, disseminate or make available to the public.

3. According to clause 7(8) of the Bill, distributing, disseminating or making available to the public materials which insult the national anthem on online platforms can constitute the act of “publish” in clause 7(3) and 7(4), which is in line with the legislative intent of the National Anthem Law. According to the report on proposed amendments to the “Law of the People’s Republic of China on the National Anthem (Second Draft)” by the Legislative Affairs Commission of the National People’s Congress<sup>1</sup>, “irrespective of whether it takes place at a public place in the real world or on the Internet, it is an act of publicly insulting the national anthem through ways of public dissemination, and will cause harm to the dignity of the country and to public order. Legal liability should be pursued in accordance with the National Anthem Law.” Whether the materials distributed, disseminated or made available to the public constitute materials which insult the national anthem is a question of fact and has to be assessed based on the actual circumstances of each case. Words, sounds and images are all covered by the definition of “to communicate...in any form” under clause 7(8) of the Bill.

4. On top of proving that the behaviours concerned constitute a “publishing” act provided in clause 7(3) or 7(4) of the Bill, prosecutors would also need to prove that the person concerned had, with intent to insult the national anthem, intentionally published the relevant materials, in order to initiate prosecution under clause 7(3) or 7(4) of the Bill. To protect reasonable publication of materials that insult the national anthem (e.g. fair reporting by the media or for teaching purposes by teachers, etc.), and to make it clear to the public that such acts of publication with no intent to insult the national anthem will not constitute a criminal offence, clause 7(5) of the Bill clearly provides that a person does not commit an offence if the person who publishes materials insulting the national anthem has no intent to insult the national anthem.

5. To determine whether a specific “publishing” act would contravene clause 7 of the Bill, the Police would, based on the actual circumstances and the evidence collected in each case, make an assessment in accordance with the law and the aforementioned principles. 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

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<sup>1</sup> Full report (Chinese only): [http://www.npc.gov.cn/npc/xinwen/2017-09/01/content\\_2028099.htm](http://www.npc.gov.cn/npc/xinwen/2017-09/01/content_2028099.htm)

cases in Hong Kong (i.e. beyond reasonable doubt) in making a fair decision on the case.

Enforcement and removal of materials

6. Clause 11(1) of the Bill already stipulates that offences in relation to the national anthem in Hong Kong would be investigated, and persons would be prosecuted, according to the laws of Hong Kong. As with the investigation of other offences, to obtain information relevant to the case, the Police would gather evidence from various channels, and apply for warrants from the courts when necessary, or seek the assistance of overseas enforcement agencies through the established mutual legal assistance procedures. On completion of the investigation, the Police would examine all the evidence collected, and seek the advice of the Department of Justice when needed, to determine whether prosecution should be instituted.

7. If it is found that someone has allegedly published materials that insult the national anthem on the Internet, the Police will contact the relevant ISP to remove such materials. This approach is consistent with the handling of other illegal materials published on the Internet.

Location of the act of publishing

8. According to common law principles, after its passage, the Bill will only apply to behaviours in Hong Kong. For online behaviours, the Internet Protocol (IP) address of the person who publishes the materials or the IP address of the platform on which the materials are published is not the only factor to be considered when determining whether those behaviours take place in Hong Kong territory. If there are cross-border elements in a case, for example, using an overseas IP address to publish illegal information, enforcement agencies will seek assistance from overseas enforcement agencies when needed during the investigation process, and will seek legal advice before taking prosecution action.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Justice

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