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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 the National Anthem Bill**

Regarding the letter from Hon MO Claudia of 22 March, our reply is set out below.

Clause 10 of the National Anthem Bill

2. Currently, sound broadcasting and domestic television licensees are required to broadcast announcements or material in the public interest (APIs), including the national anthem, as directed by the Communications Authority (CA). The mechanism for broadcasting APIs by the licensees has worked well. Records indicate that, since the establishment of the CA in 2012, there has been no case of contravention of the requirement to broadcast the national anthem by the licensees. Clause 10 of the National Anthem Bill (the Bill) will be implemented through the existing mechanism for APIs, and the CA and the Information Services Department will follow up in accordance with this mechanism. If a licensee fails to broadcast the national anthem by an API

as required, the CA will handle such case in accordance with established procedures. This includes providing reasonable opportunities for the licensee to make representations, followed by a determination on whether the licensee concerned is in contravention of a licence condition or a direction made by the CA. If the licensee is found to have contravened the relevant requirement, the CA may impose sanction as appropriate.

3. The practice for the broadcasting of national anthems vary among different countries. We should stress that the legislative principle of 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 relevant provisions on broadcasting of the national anthem in the Use and Protection of the National Flag, National Emblem and National Anthem of the Macao Special Administrative Region is extracted below for members' reference<sup>1</sup> –

- 9. Broadcasting of the national anthem at major celebrations and on major holidays
  - (1) At major celebrations and on major holidays, television and radio broadcasters providing audio-visual broadcasting services by contract or licence under No.8/89/M Law on Broadcasting Industry System (4 September) must broadcast the national anthem or audio-visual materials for promoting the national anthem provided by the Government.
  - (2) The major celebrations and major holidays mentioned in the above subsection, as well as the timing for broadcasting the national anthem or audio-visual materials for promoting the national anthem provided by the Government will be stipulated by supplementary administrative guidelines<sup>2</sup>.

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<sup>1</sup> The legislation is available in Chinese and Portuguese only. English translation is for reference only.

<sup>2</sup> Section 11 of No.5/2019 administrative guidelines of the Macao Special Administrative Region stipulates that on National Day (1 October), Macao Special Administrative Region Establishment Day (20 December), New Year's Day (1 January) and International Labour Day (1 May) every year, television and radio broadcasters providing audio-visual broadcasting services by contract or licence should broadcast the national anthem or audio-visual materials for promoting the national anthem provided by the Government in accordance with the timing specified by the Chief Executive's directive promulgated on "Official Bulletin" to popularise the etiquette for playing and singing the national anthem. The Chief Executive can stipulate other major celebrations and holidays when the national anthem or audio-visual materials for promoting the national anthem provided by the Government must be broadcast by a Chief Executive's directive promulgated on "Official Bulletin"

- 11. Promoting the national anthem by news media  
The Macao Special Administrative Region Government can require news media to complement the work of the Macao Special Administrative Region Government in promoting the national anthem and popularising the etiquette for playing and singing the national anthem.

#### Political commentary and current affairs programmes

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 a case contravenes the law. The Police would, based on the actual circumstances and the evidence collected in each case, make an assessment in accordance with the law. The relevant authorities will only initiate prosecution upon gathering sufficient evidence showing that the relevant act constitutes a public and intentional insult of the national anthem. The prosecution bears the burden of proof, and 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.

5. We have explained in detail in paragraph 5 in LC Paper No. CB(2)893/18-19(02) that the Bill only prohibits insulting the national anthem as a mode of expression. The Bill does not restrict the content of the expression. It is therefore fully in line with the legal principles established in the *HKSAR v. Ng Kung Siu and another* (1999) case, and thus does not contravene the guarantee of freedom of speech and expression in the Basic Law. In addition, 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.

#### Communications with the Central Authorities

6. As we mentioned in LC Paper No. CB(2)1014/18-19(02), the Standing Committee of the National People's Congress (NPCSC) has consulted the Government of the Hong Kong Special Administrative Region (HKSAR) in accordance with Article 18 of the Basic Law before adding the National Anthem Law to Annex III to the Basic Law. The HKSAR Government agreed with the proposal. We wish to reiterate that

the Government will not make public the communication and discussion between the Government and Mainland authorities. On 4 November 2017, the 12<sup>th</sup> 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 legislative 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.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

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