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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

9 May 2019

Dear Ms MAK,

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

Regarding the letter from Hon SHIU Ka-chun of 30 April, our reply is set out below.

Offences relating to the national anthem

2. In his letter, Hon SHIU raised questions on whether certain scenarios would contravene clause 7 of the National Anthem Bill (the Bill). We must emphasise that 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.

3. In his letter, Hon SHIU raised questions on whether forwarding videos or articles which include the altering of or insulting of the national anthem would constitute an offence. 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 and social 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. 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.

4. On whether publicly expressing negative opinions or feelings on the national anthem, quoting the lyrics of the national anthem in articles for analysing various issues, etc. would constitute an act of insulting the national anthem, clause 7 of the Bill only prohibits members of the public from expressing opinions by way of publicly and intentionally insulting the national anthem. The Bill does not restrict the content of the expression, and it is not the legislative intent of the Bill to require members of the public to accept that the national anthem is pleasing to the ear. Therefore, the mere expression of dislike of the national anthem will not constitute the offence of insulting the national anthem in the Bill. Whether or not a crime is committed depends on whether or not the manner of expression and intent constitute an act of publicly and intentionally insulting the national anthem as stipulated in the draft Bill.

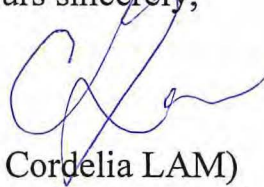
Clause 7(7) – Prosecution time limit

5. As we mentioned in paragraph 18 of LC Paper No. CB(2)893/18-19(02), 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 investigating and collecting 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.

6. There are many examples of existing laws with specified prosecution time bar, for example, section 47D of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)¹, section 64B of the Personal Data (Privacy) Ordinance (Cap. 486)² and section 120A of the Copyright Ordinance (Cap. 528)³.

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

Mr Derek LAU, Fax no: 2845 1609)

Secretary for Security

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¹ Mandatory Provident Fund Schemes Ordinance s. 47D Time limit for prosecution

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence (other than an indictable offence) under this Ordinance or any subsidiary legislation under this Ordinance may be brought within 3 years after the commission of the offence unless otherwise specified.

² Personal Data (Privacy) Ordinance s. 64B Time limit for laying of information etc.

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint or information in respect of an offence under this Ordinance may be made to or laid before a magistrate within 2 years from the date of commission of the offence.

³ Copyright Ordinance s. 120A Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence.