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LC Paper No. CB(2)1484/18-19(02)

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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

17 May 2019

Dear Ms MAK,

Bills Committee on National Anthem Bill

Committee Stage amendments proposed by Members

We refer to your letter dated 16 May 2019, enclosing the Committee Stage amendments to the National Anthem Bill proposed by various Members of the Legislative Council. The response from the Government is enclosed at the **Annex**.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Cordelia Lam', written over a faint circular stamp.

(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)

**Government response to the Committee Stage amendments
to the National Anthem Bill proposed by Members**

On 4 November 2017, the Standing Committee of the 12th National People’s Congress (“NPCSC”) adopted the decision to add the Law of the People’s Republic of China on National Anthem (“National Anthem Law”) to Annex III to the Basic Law. According to Article 18(2) of the Basic Law, the national laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region (“HKSAR”). It is thus the responsibility of the HKSAR Government to implement the National Anthem Law locally.

2. Having regard to the common law system practised in Hong Kong, as well as the actual circumstances in Hong Kong, the HKSAR Government will implement the National Anthem Law in HKSAR by local legislation instead of by promulgation. This approach is consistent with the “one country, two systems” principle, and is also consistent with the implementation of the Law of the People’s Republic of China on the National Flag (“National Flag Law”) and the Law of the People’s Republic of China on the National Emblem (“National Emblem Law”), both of which have been adapted and implemented in Hong Kong by the National Flag and National Emblem Ordinance (“NFNEO”).

3. 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.

4. Having reviewed the Committee Stage amendments (“CSAs”) proposed by various Members in detail, the HKSAR Government do not support the CSAs. Detailed justifications are provided below.

1. CSAs proposed by Dr Hon KWOK Ka-ki

- (a) Deleting item 1(c) in Schedule 3 (oath-taking ceremony for taking the Judicial Oath)**
- (b) Deleing item 1(e) in Schedule 3 (oath-taking ceremony for taking the Legislative Council Oath)**
- (c) Deleting item 9 in Schedule 3 (Ceremonial Opening of the Legal Year)**

5. As we mentioned in LC Paper No. CB(2)893/18-19(01), clause 5 of the Bill stipulates that on each occasion set out in Schedule 3 of the Bill, the national anthem must be played and sung. With reference to the content of Article 4 of the National Anthem Law and adjustments in the light of the actual circumstances in Hong Kong, the occasions in Schedule 3 include official occasions of the Government, the oath-taking ceremonies of principal members of the executive authorities, legislature and judiciary when they assume office, national flag raising ceremonies, major sporting events held by the Government, and the Ceremonial Opening of the Legal Year. Currently, the Ceremonial Opening of the Legal Year already includes the playing and singing of the national anthem. The Judiciary also has no objection to the inclusion of the Ceremonial Opening of the Legal Year in Schedule 3. We are of the view that Schedule 3 to the Bill can fully reflect the legislative purpose and intent of the National Anthem Law and at the same time can give due regard to the actual circumstances in Hong Kong. Thus, we do not support this CSA.

2. CSAs proposed by Hon Dennis KWOK Wing-hang

- (a) Adding clause 6(7) to stipulate that Members of the Legislative Council will not be held liable to offences set out in clause 6 for speeches and behaviour made under the Legislative Council (Powers and Privileges) Ordinance**
- (b) Adding clause 7(7) to stipulate that Members of the Legislative Council will not be held liable to offences set out in clause 7 for speeches and behaviour made under the Legislative Council (Powers and Privileges) Ordinance**

6. As we mentioned in LC Paper No. CB(2)995/18-19(01), section 3

of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (LCPPO) provides that there shall be freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Council. Section 4 of that ordinance also provides that no civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise. With reference to past court judgment, the court ruled that the protection provided by sections 3 and 4 of the LCPPO (Cap. 382) attaches only to statements made by a LegCo member in the course of official debates on the floor of the LegCo when exercising his powers and discharging his functions as a LegCo member. The court also points out that a proper balance needs to be struck between the protection of freedom of speech and debate in the legislature on the one hand and the equality before the law on the other. Whether a particular act by a member of the Legislative Council will be protected by immunity depends on the actual circumstances of each individual case.

7. We are of the view that currently the LCPPO has already provided clear and sufficient protection of the freedom of speech and debate of Members of the Legislative Council, and it is not necessary to add the clauses into the Bill as proposed by the CSAs. Thus, we do not support the CSAs.

3. CSAs proposed by Hon Alvin YEUNG

(a) Deleting clause 7 (offence of insulting behaviour)

8. 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. Secondly, to prescribe the penalties for publicly and intentionally insulting the national anthem or misusing the national anthem to deter such behaviour. Clause 7 of the Bill is drafted based on Article 15 of the National Anthem Law. As the CSA is not in line with the legislative principle of the Bill, we do not support this CSA.

(b) Adding clause 11(1A) to stipulate that any judgement concerning the National Anthem Law made by any other part of the People's Republic of China must not be enforced in Hong Kong

9. The legal system in the Mainland and that in Hong Kong are different, and thus the HKSAR Government implements the National Anthem Law in Hong Kong by local legislation. Clause 11 already stipulates that offences in relation to the national anthem in Hong Kong are investigated, and persons are prosecuted, according to the laws of Hong Kong. Therefore, upon passage of the Bill, the enforcement agencies would, according to the actual circumstances and the evidence collected in each case, make an assessment in accordance with the laws of Hong Kong. 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. We are of the view that clause 11 of the Bill can clearly reflect the legislative principles, and thus we do not support this CSA.

4. CSAs proposed by Hon Jeremy TAM Man-ho

(a) Deleting clause 9 (inclusion in primary and secondary education)

10. To embody the spirit of Article 11 of the National Anthem Law, clause 9 requires the Secretary for Education to give directions for the inclusion of the national anthem in primary and secondary education. It is the inherent responsibility of schools to foster a sense of national identity among students. At primary and secondary levels, students are taught to sing the national anthem and the learning of the national anthem are covered in the subject curricula. Society has no objection to educating students to respect the national anthem. The Education Bureau will issue relevant circulars and guidelines to all primary and secondary schools in due course. Clause 9 of the Bill reflects the legislative purpose of the National Anthem Law and at the same time gives due regard to the actual circumstances in Hong Kong. Thus, we do not support deleting clause 9.

(b) Deleting clause 10 (inclusion in sound broadcasting and domestic television programme services)

11. To suitably adapt Article 12 of the National Anthem Law, clause

10 of the Bill provides the statutory basis for the inclusion of the national anthem in announcements or material in the public interest (“APIs”), which domestic free and pay television programme service licensees and sound broadcasting service licensees are required to broadcast pursuant to the terms and conditions in their respective licences granted by the Chief Executive in Council under the Broadcasting Ordinance (Cap. 562) or the Telecommunications Ordinance (Cap. 106). Moreover, to suitably adapt Article 13 of the National Anthem Law, the Communications Authority is required to make determinations or directions to the licensees, requiring them to broadcast the national anthem as API on each date as is or may be stipulated by the Chief Executive under clause 10(4).

12. Clause 10 of the Bill is implemented through the existing API mechanism. It reflects the legislative purpose of the National Anthem Law and at the same time gives due regard to the actual circumstances in Hong Kong. Thus, we do not support deleting clause 10.