



Email (rkt dai@legco.gov.hk)

[English Translation]

Miss Rachel DAI  
Asst Legal Adviser 2  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

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Dear Miss DAI,

**Supplementary Information on the National Flag and National  
Emblem (Amendment) Bill 2021**

Regarding the questions raised in your letter of 25 August 2021 on the National Flag and National Emblem (Amendment) Bill 2021 (“the Bill”), our reply is as follows.

Legislative principle of the Bill

2. 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”) have been listed in 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”). In light of the amendments to the National Flag Law and the National Emblem Law endorsed at the 22nd session of the Standing Committee of the 13th National People’s Congress,

the HKSAR has the constitutional responsibility to implement the two amended national laws locally. Since the National Flag Law and the National Emblem Law were applied locally by legislation through the enactment of the National Flag and National Emblem Ordinance (“NFNEO”) in July 1997, the Government proposes to implement the two amended national laws in Hong Kong by amending the NFNEO instead of by promulgation. This approach is consistent with the “one country, two systems” principle and the provisions of the Basic Law.

3. The principle of the Bill is to reflect the provisions, principles and spirit of the amended National Flag Law and the National Emblem Law, safeguard the proper use and preserve the dignity of the national flag and national emblem which are the symbols and signs of our country, so as to promote respect for the national flag and national emblem, enhance the sense of national identity among citizens and promote patriotism, whilst taking into account our common law system and the actual circumstances in Hong Kong.

#### Directional provisions and the provisions relating to offences of desecration of the national flag and national emblem

4. One focus of the Bill is to make clear the requirements in respect of the use of the national flag and national emblem, including the use of the design of the national emblem on the home page of some specific websites (proposed section 3(2A)), recovery and disposal of national flags and national emblems (proposed section 3(3A)), inappropriate use of the national flag and national emblem (proposed section 4), etiquette for taking part in or attending a national flag raising ceremony (proposed section 4A), and using the national flag at mourning ceremonies (proposed Schedule 3, “use of national flag at mourning ceremonies”), etc. These provisions are all directional provisions that do not carry any penalty. Such arrangement follows that of the amended National Flag Law and the National Emblem Law, and is consistent with the National Anthem Ordinance (“NAO”). Although the directional provisions do not carry any penalty, any person who violates the proposed section 7 of the amended NFNEO regarding the protection of the national flag and national emblem, i.e. publicly and intentionally desecrates the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any

other way, would commit an offence, whereas the level of penalty could be up to a fine at level 5 and to imprisonment for three years.

5. In addition, the Bill proposes to empower the Chief Executive to make stipulations in relation to the recovery and disposal of national flags and national emblems, as well as the use of the design of the national emblem on the home page of specific websites. The Government recommends to follow the established mechanism that the stipulations are to be made in the form of a gazette notice, and such stipulations do not carry any penalty.

6. On desecrating behaviour in relation to the national flag or national emblem, our legislative principle is very clear, that is to prohibit all public and intentional desecrating behaviour in relation to the national flag and national emblem, regardless of whether the behaviour is committed in the real life or the virtual world. According to the Court of Final Appeal in *Barnes v HKSAR* (2000) 3 HKCFAR 298, the word “wilfully”, which is adopted in section 7 of the existing NFNEO for the Chinese word “故意”, covers both “deliberate and purposeful intention” and “recklessness”. We also notice that the word “intentionally” was adopted in the NAO for “故意” in the provision relating to insulting the national anthem. Since the spirit and objective of the provisions in relation to desecration of the national flag and national emblem in the NFNEO are consistent with those relating to insulting the national anthem in the NAO, the Bill proposes to adopt the word “intentionally” as the English word for “故意” in section 7, so as to reflect our policy intent and be consistent with the approach adopted in the NAO.

7. On whether a particular case (including violation of the directional provisions mentioned above, or the requirements set out in the stipulations made by the Chief Executive) would constitute a violation of the law, as before, the law enforcement agencies would need to consider holistically the actual circumstances and the gathered evidence according to the relevant stipulations in the legislation. If there is sufficient evidence to prove that the said behavior was done under the circumstances of publicly and intentionally desecrating the national flag or national emblem, the law enforcement agencies would take action, and the case

would be handled by the court to determine whether the prosecution has proved all the necessary elements of the crime with no reasonable doubt.

#### Manufacture of the national flag and national emblem

8. The preservation of the provision relating to the national emblem for hanging in section 5(1) of the NFNEO, namely “the national emblem for hanging may be manufactured in the Hong Kong Special Administrative Region only by enterprises designated by the Central People’s Government”, is to reflect Article 16 of the amended National Emblem Law, which reads “the national emblem to be hung shall be uniformly made by enterprises designated by the State”.

#### Education matters

9. Clause 11 of the Bill proposes to add a new section 7A to the NFNEO to stipulate that the Secretary for Education (“SED”) must give directions to schools for the inclusion of the national flag and national emblem in primary education and in secondary education, and for matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony. With reference to section 9 of the NAO, such kind of directions is not subsidiary legislation, and needs not be specifically prescribed in the Bill.

10. The spirit of the part on education in the Bill is to educate students to pay respect to the national flag and national emblem, which are the symbols and signs of the country. The Bill does not make a contravention against the directions given by the SED under section 7A(1) a criminal offence, thus there is no penalty in the Bill. However, the Education Bureau (“EDB”) has all along been stringently following up on any irregularities in school operation (including failing to comply with the directions given by the SED), and has been demanding schools to make rectifications through the existing mechanism, for example, giving verbal/written warnings or advisory letters. If individual schools do not comply with the requirements of the EDB, power is conferred by relevant provisions of the Education Ordinance to handle the matter as well. Schools have along been in compliance with the Education Ordinance,

relevant legislation and the guidelines issued by the EDB. We therefore believe that they will do the same in the implementation of the Bill.

Use of national flag at mourning ceremonies

11. Clause 16(4) of the Bill adds a provision regarding “use of national flag at mourning ceremonies” to Schedule 3 of the NFNEO, stipulating that after a mourning ceremony concerned ends, the national flag must be recovered for safekeeping. This reflects Article 16 of the amended National Flag Law, namely “the national flag shall be taken back for safekeeping after the [mourning] ceremonies”. Generally speaking, the responsibility to recover the national flag for safekeeping is on the side of the event organisers.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Education  
(Attn: Ms Teresa CHAN, Fax no.: 2537 2446)

Secretary for Security  
(Attn: Ms Joceline CHUI, Fax no.: 2810 7702)

Secretary for Justice  
(Attn: Mr Lawrence PENG, Fax no.: 3918 4613  
Mr Gary LI, Fax no.: 3918 4613)

Director of Administration  
(Attn: Mr Harry TSANG, Fax no.: 2521 7621)