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[English Translation]

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3 September 2021

Dear Mr HO,

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

Regarding the questions raised by Members on the first meeting of the Bills Committee on 27 August 2021, our reply is as follows.

National Flag, National Emblem, Regional Flag, Regional Emblem

2. The legislative principle of the National Flag and National Emblem (Amendment) Bill 2021 (“the Bill”) is to reflect the provisions, principles and spirit of the amended 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”),

whilst taking into account our common law system and the actual circumstances in Hong Kong. This approach is completely in line with the requirements under Article 18 of the Basic Law.

3. The national flag, national emblem and national anthem of the People's Republic of China are symbols and signs of the People's Republic of China. Our country has introduced the National Flag Law, the National Emblem Law and the Law of the People's Republic of China on the National Anthem to safeguard the proper use of these national symbols and signs, as well as preserve their dignity. The three national laws have been listed in Annex III to the Basic Law and were applied locally by legislation through the enactment of the National Flag and National Emblem Ordinance ("NFNEO") and the National Anthem Ordinance ("NAO"). In this light, the HKSAR Government has suitably made reference to the NAO in drafting the Bill.

4. As with the existing NFNEO, the fundamental principle and spirit of the Bill is "respect" – respect our country, respect the national flag and national emblem which are the symbols and signs of our country. To uphold this basic spirit of "respect", the Bill has maintained appropriate offences and penalties, as deterrent, targeting persons who conduct public and intentional acts with intent to desecrate the national flag and national emblem. Our legislative intent has always been 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. As such, the proposed amendment to section 7 of the NFNEO introduced by the Bill aims to clarify the provisions relating to offences of desecrating behaviour in relation to the national flag and national emblem, stipulating that a person commits an offence from publicly and intentionally desecrating the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image, or in any other way; or from intentionally publishing a desecration of the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image, or in any other way, with intent to desecrate the national flag or national emblem.

5. The regional flag and regional emblem are symbols and signs of the Hong Kong Special Administrative Region. Similarly, any public and

intentional desecrating behavior in relation to the regional flag and regional emblem committed with intent to desecrate the regional flag and regional emblem (regardless of whether the behaviour is committed in the real life or the virtual world) must be prohibited. To this end, section 7 of the Regional Flag and Regional Emblem Ordinance (“RFREO”) expressly prohibits any person from publicly and wilfully desecrating the regional flag or regional emblem by burning, mutilating, scrawling on, defiling or trampling on it. Its legislative intent is consistent with that of section 7 of the NFNEO concerning the prohibition of desecration of the national flag and national emblem, that is to preserve the dignity of these symbols and signs.

6. In fact, in addition to the legislative intent, the existing NFNEO and RFREO are largely similar in terms of structure, content, scope of prohibition and penalties, etc. The two ordinances have played a significant role in safeguarding the national flag, national emblem, regional flag and regional emblem which are important symbols and signs, and the mechanisms as established are proved effective.

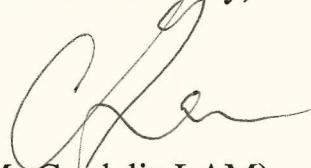
7. On some Members’ suggestion to amend the RFREO, as pointed out by the Secretary for Constitutional and Mainland Affairs at the first meeting of the Bills Committee, the HKSAR Government has the constitutional responsibility to complete, as soon as possible, the amendment of the NFNEO, so as to implement the applicable requirements of the amended National Flag Law and National Emblem Law in Hong Kong. Hence, the primary goal of the HKSAR Government is to complete the scrutiny of the Bill within this legislative session. Having carefully considered the suggestion of some Members, the HKSAR Government agreed to suitably amend the RFREO for better alignment with the proposed amendments to the NFNEO, and plans to submit to the Legislative Council the corresponding amendment bill for scrutiny in the next legislative session. We however wish to reiterate that the existing RFREO has provided sufficient protection against public and intentional desecrating behaviour in relation to the regional flag and regional emblem. In this regard, there is no need for Members and the public to worry.

Enforcement in relation to online desecrating behaviour

8. As mentioned in paragraph 4 above, our legislative intent 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. The Police will conduct investigation and gather evidence in relation to each suspected case of illegal act, and will, in light of the development in information and technology, use appropriate and effective means of investigation and evidence collection. Further, the Police will continue to review their manpower, equipment, technology and legal support with a view to enhancing their technology in digital forensic, strengthening intelligence gathering and analysis, and seeking collaboration with the concerned stakeholders, so as to ensure that the Police are equipped with the relevant enforcement capabilities to meet the challenges in enforcement upon implementation of the Bill. The Bill also proposes to extend the prosecution time bar to allow sufficient time for the Police to conduct investigation and gather evidence, thereby ensuring that criminals who intentionally and publicly desecrate the national flag and national emblem will be brought to justice.

9. In respect of resources, the Police will from time to time review the situation upon implementation of the Bill. If necessary, the Police will seek additional resources and manpower under the established mechanism.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Security
(Attn: Ms Joceline CHUI)

Secretary for Justice
(Attn: Mr Lawrence PENG
Mr Gary LI)

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