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[English Translation]

Mr Dennis Ho  
Senior Counsel Secretary (4)7  
Legislative Council Secretariat  
Council Business Division 4  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

17 September 2021

Dear Mr HO,

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

Regarding the letter from Hon Tony Tse on 2 September 2021 as well as the questions raised by Members on the second meeting of the Bills Committee on 3 September 2021, our reply is as follows.

2. The legislative principle of the National Flag and National Emblem (Amendment) Bill 2021 (“the Bill”) is to fully 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 the common law system and actual circumstances in Hong Kong.

Provisions on the etiquette for taking part in or attending national flag raising ceremony

3. To reflect the requirements under Article 14 of the amended National Flag Law, the Bill proposes to add section 4A in the National Flag and National Emblem Ordinance (“NFNEO”) to provide for the etiquette for taking part in or attending a national flag raising ceremony. Making reference to the amended National Flag Law which has not imposed penalty on relevant requirements, as well as section 4 of the National Anthem Ordinance (“NAO”) concerning the etiquette for playing and singing the national anthem, the proposed new section 4A is a directional provision carrying not penalty. Although such directional provisions do not carry any penalty, any person who violates 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, or intentionally publishes 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, would commit an offence. The level of penalty could be up to a fine at level 5 and to imprisonment for three years.

4. The fundamental principle and focus of the Bill is to promote, among citizens, respect for the national flag and national emblem which are the symbols and signs of our country. We believe that the society has a basic and common understanding of the term “respect”. Similar to other legislation, the definition of “to not behave in a way that undermines the dignity of the national flag” in section 4A could be construed by common sense and be given its ordinary meaning.

Manufacture of the national flag and national emblem

5. The amended National Flag Law removed the requirement that national flags may be manufactured only by enterprises designated by the Central People’s Government. In this connection, the Bill proposes to amend section 5(1) of the NFNEO to reflect the latest requirement.

6. According to sections 5(2) and 5(3) of the NFNEO, the national flag and national emblem must be manufactured in accordance with the specifications set out in Schedules 1 and 2 to the NFNEO. If a person manufactures a national flag or national emblem other than in accordance with the NFNEO, the Secretary of Justice may apply to the District Court pursuant to section 5(4) of the NFNEO for an injunction to prohibit the unauthorized manufacture or manufacture of the flag or emblem that does not meet the specifications; and for an order of forfeiture of the flag, emblem and other materials used in the manufacture of the flag or emblem. According to section 5(5) of the NFNEO, if the District Court is satisfied that the application is well founded, it may grant the injunction and order that the flag, emblem and other materials used in the manufacture of the flag or emblem be forfeited to the Government. On whether a particular behaviour would constitute a violation of the NFNEO, it would depend on the actual circumstances and the gathered evidence of each case, hence, cannot be generalised.

#### Prohibition on certain uses of national flag and national emblem

7. Article 20 of the amended National Flag Law and Article 13 of the amended National Emblem Law stipulate that the national flag, national emblem and their designs shall not be used in circumstances like commercial advertisements. As such, the Bill proposes to amend sections 6(1) and 6(2) of the NFNEO to reflect the latest requirements. As commercial advertisement is a specific form of commercial activities and aims to make profits, the use of the national flag and national emblem, which are symbols and signs of the country, would undermine the solemnity of the national flag and national emblem. As for advertisements that do not aim at making profits, for instance publicity campaigns, they are not subject to the prohibitions under sections 6(1) and 6(2) of the amended NFNEO. Besides, the Bill does not prohibit the use of the national flag and its design in products in everyday life and furnishings or ornaments in everyday life.

8. On section 6(1)(c) of the NFNEO, the Chief Executive stipulated pursuant to section 3(2) of the NFNEO that a person shall not use, without prior approval, the national flag, national emblem or their designs in connection with any trade, calling or profession, or the logo, seal or badge

of any non-governmental organization. In other words, a person is not required to make an application if the use of the national flag, national emblem or their designs does not involve the circumstances as set out in the stipulations made by the Chief Executive. In that case, application is not required for the flying of the national flag on private premises like fishing vessels or private buildings, if such is for display purpose and is not in connection with any trade, calling or profession. Applications for use of the national flag, national emblem and their designs must be submitted to the Administration Wing in writing via email, post or fax, and relevant details are available on the website of the Protocol Division Government Secretariat (“Protocol Division”). If any organization or person would like to know more about the use of the national flag, national emblem or their designs, they are welcome to contact the Protocol Division; whereas schools can contact the Education Bureau direct for enquiries.

#### Provisions on desecration of the national flag and national emblem

9. The Bill adds in section 7 of the NFNEO the definition of “desecrate” to stipulate that “desecrate” means to undermine the dignity of the national flag or national emblem as a symbol and sign of the People’s Republic of China in the section. This aims to provide the court with a clear basis for accurate interpretation of the term. This approach is consistent with section 7 of the NAO relating to insulting the national anthem.

#### Education matters

10. The Bill adds a new section 7A to the NFNEO to stipulate that the Secretary for Education (“SED”) must give directions to specified schools for matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony. Upon the passage of the Bill, the EDB will give directions to all primary and secondary schools (including international schools) and kindergartens for matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony, with a view to facilitating them to implement relevant requirements. The EDB has all along been providing related resources and support to schools, including installing flag poles for public schools. In addition, each of the kindergartens participating in the

Kindergarten Education Scheme was provided with a one-off grant of \$3,000 to purchase national flags and movable flagpoles. For post secondary education institutions, according to section 7A(2) as introduced by the Bill, they must make reference to the directions given by the EDB to schools for dealing with matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony. The EDB will, through existing communication mechanism, remind post secondary education institutions to make corresponding arrangements after issue of the directions.

11. Schools are obliged to educate students on the rules of displaying and using the national flag, as well as the etiquette for participating in national flag raising ceremony. If individual students conduct disrespectful behaviour relating to the national flag, schools should handle such having regard to their school circumstances and the established discipline and guidance approach.

Flying the national flag and regional flag at half staff

12. Schedule 3 to the NFNEO and Schedule 4 to the Regional Flag and Regional Emblem Ordinance (“RFREO”) stipulate respectively the conditions for flying the national flag and regional flag at half staff. According to Schedule 3 to the current NFNEO and Schedule 4 to the RFREO, the national flag or regional flag may be flown at half staff as a token of mourning when the Central People’s Government advises the Chief Executive that unfortunate events causing especially serious casualties occur or serious natural calamities have caused heavy casualties. Furthermore, pursuant to Schedule 4 to the RFREO, the regional flag may be flown at half staff as a token of mourning if the Chief Executive considers it is appropriate when unfortunate events causing especially serious casualties occur or serious natural calamities have caused heavy casualties.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Education  
(Attn: Ms Teresa CHAN)

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

Director of Administration  
(Attn: Mr Harry TSANG)