

MAC Amends Choice of Law Provisions under the Civil Matters Chapter of the Cross-Strait Act to be in Line with Current Trends in Choice of Law for Cross-Border Civil Incidents and to Strengthen Gender Equality and Protect Children's Rights

News Reference Material

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The Mainland Affairs Council (MAC) stated that the point of its current amendments to the Civil Matters Chapter of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (hereinafter "the Cross-Strait Act") are bringing the Act into line with current corresponding trends in choice of law for cross-border civil incidents, strengthening gender equality and children's rights protections, and appending provisions of choice of law regarding legal relationships of new forms of business transactions emerging in society (such as the special tort liability of intellectual property rights and manufacturers). The amendments were also drafted in consideration of the particularities of cross-Strait relations and preserve the principles of regulations with priority applicability under the Cross-Strait Act, such as the application of Articles 66 to 68 of the Cross-Strait Act in mainland-Chinese-related matters of inheritance, to protect the rights of Taiwanese people and the overall interests of Taiwanese society.

The choice of law provisions in Articles 41 to 62 under the Civil Matters chapter of the Cross-Strait Act were enacted in 1992 in accordance with the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, and corresponding provisions of the acts were individually specified in the Cross-Strait Act. However, the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements was significantly amended in 2010, leading to a growing divergence between the choice of law of foreign-related and mainland-Chinese-related civil matters. This has disturbed the application of the law in judicial and

trial practice and increased the complexity of handling civil and private law relations for Taiwanese people. In January this year (2021), the Judicial Yuan drafted amendments to Articles 46 and 63 of the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements. Moreover, the choice of law provisions under the Civil Matters Chapter of the Cross-Strait Act have not been comprehensively reviewed and amended for nearly 30 years. The MAC therefore began the work on drafting amendments to the Cross-Strait Act and comprehensively reviewed the appropriateness of choice of law provisions under the Act.

The MAC expressed that civil legal relations and types of cross-Strait contact are growing in complexity. They differ vastly from the legislative environment 30 years ago in areas such as the special tort liability of intellectual property rights and manufacturers, and the adjustment of age of majority. The trend of globalization has made cross-Strait civil incidents involving third-countries more common. The choice of law provisions under the Civil Matters Chapter of the Cross-Strait Act are no longer sufficient for current environment and practical needs. The MAC has discussed related matters with domestic scholars, experts, judicial practitioners, and relevant agencies on several occasions. All sides have affirmed the MAC's direction of planning to draft the amendments.

Regarding the registration of cross-Strait same-sex marriages in Taiwan, in consideration of amendments to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements in response to the Judicial Interpretation No. 748 and its enforcement law, the application of the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements *mutatis mutandis* to the Cross-Strait Act will achieve convergence in the outcome of the application of law for the people of Taiwan and their same sex spouses from countries that do not recognize same-sex marriages (or from mainland China), which will prevent discriminatory treatment among overseas same-sex couples. The security management of cross-Strait personnel contacts, a matter of greatest concern to the people of Taiwan, has always been a core issue of utmost importance to the government. Based on national security considerations, the National Immigration Agency will conduct

interviews and strict verifications in accordance with the law to prevent fake cross-border marriages from affecting the safety and stability of Taiwanese society. Relevant government agencies have also held a host of meetings to deliberate reasons for entry by cross-Strait same-sex spouses, interview procedures, and other measures to strengthen management. Related follow-up laws and administrative complementary measures are also discussed. The people and society of Taiwan can have peace of mind on this matter.