

Legislative Yuan Passes the “Draft Amendments to Part of the Provisions of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area” to Prevent Illicit Transfer of Core Technology and Illegal Talent Poaching

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The Mainland Affairs Council (MAC) stated that today (May 20, 2022) the Legislative Yuan passed the third reading of the “Draft Amendments to Part of the Provisions of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (hereinafter the "Cross-Strait Act").” The two key points of the amendments are: 1. To establish a review mechanism for travel to mainland China by personnel who are engaged in national core technology business that are commissioned by, receive grant from, or are funded by government agencies (institutions) of a certain level; and 2. To clearly stipulate proxy agents as the object of punishment and increase corresponding penalties in cases where mainland Chinese capital illegally invests in Taiwan through proxies and mainland Chinese enterprises illegally conduct business in Taiwan.

The MAC indicated that the recent years have seen mainland China’s relentless attempts at stealing technologies from Taiwan’s industries. To maintain Taiwan's overall economic and industrial advantages and prevent national security and interests from being jeopardized by the illicit offshoring or transfer of Taiwan’s industries and technology, it is necessary to shore up protection in consideration of overall national security. Draft amendments to the National Security Act established a hierarchical system to protect the "trade secret involving national core technology," and the MAC coordinated with such legal changes by drafting amendments to Articles 9 and 91 of the Cross-Strait Act. The amendments stipulate that travel to mainland China must be reviewed and approved for: 1. individuals or personnel affiliated with legal persons, organizations, or other

institutions who are involved in national core technology business that are commissioned by, receive grant from, or are funded by government agencies (institutions) of a certain level; 2. those who are involved in the said business or had resigned from their jobs in the said business whose commission, grant, or funding had completed or ended less than 3 years ago. Violators are subject to a fine between NT\$2 million and NT\$10 million.

In addition, there is an increasing trend for profit-seeking enterprises in mainland China to conduct business activities in Taiwan through enterprises they have invested in a third place. In practice, mainland Chinese capital has also frequently invested in Taiwan in another's name to deliberately disguise or hide its identity or funding sources in order to circumvent Taiwan's laws and commit infringements such as illegal talent poaching. These actions have seriously affected Taiwan's economy and the order of the capital market, making stronger management necessary for effective deterrence. As a result, the amendments to Articles 40-1, 93-1, and 93-2 of the Cross-Strait Act specify that the third-place-based profit-seeking enterprises invested by mainland Chinese profit-seeking enterprises cannot conduct business in Taiwan unless approved by the competent authorities and having established branches or offices in Taiwan. Violators could be sentenced to imprisonment for up to 3 years. The competent authorities may impose a fine of between NT\$120,000 and NT\$25 million on individuals who provide or allow their names to be used in order to circumvent provisions requiring mainland Chinese investment in Taiwan to be approved by the competent authorities.

The MAC emphasized that the current set of legal amendments were passed thanks to the bipartisan support at the Legislative Yuan, valuable opinions from various sectors of the society and joint efforts by related government agencies. The present amendments will further consolidate our legal line of defense for national security, enabling us to facilitate effective management and deter potential violation of the law. Moreover, the passage of these law amendments will allow us to maintain Taiwan's national security, economic development and a competitive

edge in various industries. In the future, the National Science and Technology Council (NSTC) will formulate subsidiary legislation in consultation with relevant authorities; the MAC will also actively coordinate with various competent authorities to promptly complete supporting work, and strengthen advocacy to facilitate public compliance.