

Clarification: The MAC Never Stated that “Mainland Chinese People are Nationals of the Republic of China” in a Written Response to the Kaohsiung District Court

MAC Press Release No. 008

The Mainland Affairs Council (MAC) issued the following press release to clarify the misunderstanding in media reports about a specific judge ruling. It was reported that in this ruling, the judge decided to apply the State Compensation Law to a mainland Chinese individual given that the MAC stated in a written response that “persons from mainland China are also nationals of the Republic of China.” The MAC hereby clarifies that it has never stated in any written responses that “persons from mainland China are also nationals of the Republic of China.” The relevant regulations are as follows: first, Article 3 of the Constitution stipulates that “persons possessing the nationality of the Republic of China shall be citizens of the Republic of China.” Second, the Nationality Act and the Immigration Act define nationals of the Republic of China as 1) those who have the nationality of the Republic of China, reside in the Taiwan Area, and with registered permanent residence at a household registry, or 2) those who have the nationality of the Republic of China but without registered permanent residence in the Taiwan Area.

The MAC's written response to the Kaohsiung District Court never stated that in this specific case, the State Compensation Law shall be applied to the mainland Chinese individual because he was a person of mainland China and therefore a national of the Republic of China. The MAC hereby reiterated the content of the aforementioned response: The State Compensation Law contains no explicit provisions regarding requests for state compensation by residents of mainland China. Regarding the amendments to the State Compensation Law drafted by the Ministry of Justice, the MAC has only said that it approved of the content and spirit of the draft revisions to the State Compensation Law that the Ministry of Justice is currently working on. However, the draft has not yet

completed the legislative process and therefore the currently effective law shall still apply.

The MAC emphasized that, under Article 15 of the State Compensation Law, "The provisions of this Law shall be applicable to a foreign claimant only to the extent that the people of the Republic of China, according to a treaty, law, or custom of that foreigner's country, enjoy the same rights in that country." The current State Compensation Law contains no special provisions for residents of mainland China. As to the applicability of the spirit of "the principles of equality and reciprocity" under this article to persons from mainland China, since the legal provisions and constituent elements of the two sides of the Taiwan Strait differ and the relevant actual circumstances in mainland China are unclear, specific cases shall be reviewed and approved by the agency handling compensation and the competent authority (Ministry of Justice) in accordance with their authority.