

**MAC to Assist Competent Authorities in Investigation of Taiwanese Holding Party or Political Positions in the Mainland, and Make Prompt Determination According to the Rule of Law**

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The 10th plenary session of the Legislative Yuan's Internal Administration Committee, held on March 26<sup>th</sup> 2012, approved a provisional draft resolution requesting the Mainland Affairs Council (MAC) and relevant authorities to present investigation progress on punishment delivered to offenders in the case brought by the National Security Bureau involving 169 Taiwanese people for holding official posts in the Mainland Area. The MAC stated that, in order to look into the issue comprehensively while ensuring the rights of interested parties remain unharmed and the law properly enforced, five meetings have been held on this issue with participation from relevant authorities, scholars, and experts, and an official letter has been sent to all relevant authorities in June 2012 requesting investigation and determination of the case based on gathered facts. The MAC has also continued to coordinate the relevant authorities and the Straits Exchange Foundation (SEF) in gathering evidence, while at the same time, pro-actively provided necessary assistance to doubts raised by competent authorities. The MAC has not been remiss in the matter.

The MAC stated that, in a modern democratic state under the rule of law, the competent authority bears the burden of proof when punishment is sought for persons breaching duty under administrative law. The fact of the present case with Taiwanese holding official posts is

happening in the Mainland Area, therefore gathering of evidence is made difficult as related investigation is beyond the ROC jurisdiction. According to the rule of law, the competent authorities have contacted the involved parties and granted them the opportunity to state their case, thereby completing legal processes stipulated in Article 42 of the Administrative Penalty Act and Article 102 of the Administrative Procedure Act.

Some media sources and opposition legislators have expressed doubts saying that, the view that honorary service positions held by Taiwanese persons in political party or governmental positions, or Taiwanese holding consultant posts in the Mainland do not violate Article 33 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (the "Cross-Strait Act"), is an expanded interpretation by the MAC. The MAC stated that it had already issued an interpretation letter in June 1995 determining that provisions under Article 33 of the Cross-Strait Act were not applicable to cases involving honorary service positions held by Taiwanese persons in political party or government positions, or consultant posts in the Mainland. Also, according to an April 1999 interpretation by the Ministry of Justice, services that were not legally bound to the Mainland would not violate Article 33 of the Cross-Strait Act either. This is not an expanded interpretation by the MAC, but has been the consistent position of the government since 1995.

The MAC explained that it had consulted with relevant authorities in April of 2012 and determined that punishment will not be delivered upon Taiwanese persons holding positions as “specially invited” or

“specially appointed” members of the Mainland's Chinese People's Political Consultative Conference (CPPCC). The reasoning is that the CPPCC organization is composed of more than 30 sectors such as the Communist Party of China, China Democratic League, and All-China Federation of Taiwan Compatriots, and all CPPCC members must be chosen through a negotiation process among these parties and sectors. Taiwanese businesspeople, however, do not belong to any of these parties or sectors, they only serve and participate in activities of the CPPCC as “specially invited” or “specially appointed” members; they are considered as "invited individuals to CPPCC meetings"; they are not official certified members, and are not chosen from specific sectors. Although they may attend CPPCC meetings, they are only entitled to the right to speak, but are not entitled to other core rights such as voting rights, electoral rights, or the right to stand for elections, nor are they allowed full privileges. These positions are not official posts and are not considered as "holding position" as defined in Article 33 of the Cross-Strait Act. The above-mentioned view has been clearly elaborated in a written explanation submitted to the Internal Administration Committee of the Legislative Yuan and its members on April 26, 2012.

The MAC stressed that, aside from the six cases which the competent authority has determined to be of non-violation and which will not be delivered punishments, the MAC will actively assist competent authorities, according to the rule of law, to promptly make determination on the 26 remaining cases. Should there be new developments in the investigation and handling of these cases, the government will also readily explain to the public.