

# **Frank Response to Public Demand, Special Law for Supervision of Cross-Strait Agreements Proposed**

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In response to the public's demand for supervision of cross-strait agreements and national security concerns in the negotiation process, the government deems necessary a more open and transparent process to strengthen communication with congress and the public. The Mainland Affairs Council (MAC) has therefore established a "four-stage external communication and consultation mechanism" and a "national security review mechanism" under the existing regulatory framework of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area. Moreover, in reference to the intent of Judicial Yuan interpretations, stipulations under the Exercise of Legislative Powers Law, and the precedent of international and cross-strait agreement procedures, the MAC has formulated a special draft law for the supervision of cross-strait agreements.

The MAC-formulated draft Statute for the Processing and Monitoring of Agreements between the Taiwan Area and the Mainland Area has been approved by the Executive Yuan and submitted to the Legislative Yuan for review on April 3, 2014. The focal points of the bill include the following:

## **1. Existing congressional oversight procedures under the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (the "Cross-Strait Act")**

The 2003 amendment to the Cross-Strait Act added seven new provisions (Article 4, Article 4-2, Article 4-3, Article 4-4, Article 5, Article 5-1, and Article 5-2) incorporating a congressional monitoring mechanism where two different procedures were stipulated for the monitoring of cross-strait agreements. Depending on whether or not legal amendments were required, cross-strait agreements would be submitted to the legislature for review or for record, respectively. All cross-strait agreements must be submitted to the Legislative Yuan either for review or record, whereby congress may comprehensively monitor all cross-strait agreements; at the same time, the executive branch shows full respect for congressional oversight.

## **2. Four-stage communication and consultation with the legislature and the public**

The legislation specifies that executive organs shall, when conducting institutionalized cross-strait negotiations, communicate and consult with the legislature and the public at the four stages of "formation of negotiation issues," "operational communication on negotiation issues," "before the agreement signing" and "after the agreement signing" to realize congressional and public supervision over the cross-strait negotiation process and agreement content, as well as to build public support for institutionalized cross-strait negotiations.

## **3. Agreements will only be negotiated and signed after a national security review**

The legislation establishes standard operating procedures for national security assessments on cross-strait negotiation issues. It requires the competent authorities for the agreements to report negotiation issues and content first to the Executive Yuan for an interagency review and later, to the National Security Council for a second review. Follow-up negotiations and signing of the agreement may only proceed upon assurance that the cross-strait agreements reviewed would not endanger national security.

## **4. Specifying congressional procedures for cross-strait agreements**

The special law has also made references to the Exercise of Legislative Powers Law, intention of Judicial Yuan interpretations, and the precedent of Legislative Yuan proceedings; it includes submission procedures, consistent with that of foreign agreements, for cross-strait agreements to the Legislative Yuan for review or record.

## **5. Specifying negotiation principles, confidentiality obligations and recusal obligations**

The special law also stipulates principles for cross-strait negotiations (parity, dignity, reciprocity, ensuring national security, etc.), as well as the confidentiality obligations and recusal obligations of negotiation participants.

## **6. Referencing the essence of various versions while adhering to constitutional principles**

There are currently several proposed draft versions for supervision of cross-strait agreements. The MAC has studied in detail each version and proposed supervisory rules that correspond to constitutional stipulations and the uniformity of power and responsibility, and which also functions most effectively. For example, the MAC affirms the concepts of public communication and regular review in the public's

version of "Draft Bill Regulating the Signing of Cross-Strait Agreements", and have included the concepts into the government version draft in a manner consistent with the constitutional system and practical operations.

Legislation on the processing and monitoring of cross-strait agreements should be consistent with the constitutional system and should take into account the requirements of negotiations. The MAC has formulated a constitutional, pragmatic and feasible legal system for the processing and monitoring of cross-strait agreements while balancing the need to protect the public's right to know and with consideration to negotiation requirements. The Legislative Yuan is urged to complete the legislation as soon as possible so as satisfy to the public's demands for strengthened congressional oversight.