

MAC Issues a Letter of Interpretation Clarifying Questions over the Application of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area: Confirms that Civil Servants Transferring Flights in the Mainland "Enter" Mainland China, but does not Expand Management Regulations

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The Mainland Affairs Council (MAC) stated that, according to Article 9 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (the "Cross-Strait Act"), serving civil servants and retired or discharged personnel in specific capacities must have permission or apply for approval to "enter" mainland China. On January 26, 2017, the MAC clarified questions on the existing law pertaining to whether civil servants transferring flights in mainland China "enter" mainland China. The MAC interpretation does not expand management regulations, nor does it prohibit civil servants from transferring flights in the Mainland.

The MAC explained that prior to the opening of direct cross-Strait flights, the people of Taiwan could not transfer flights to other countries from mainland China. The opening of direct cross-Strait transportation links engendered a demand among the people and civil servants of Taiwan for flight transfers in the Mainland. In the course of front-line border control enforcement, the National Immigration Agency under the Ministry of the Interior had questions over whether civil servants transferring flights in the Mainland "enter" mainland China as defined under Article 9 of the Cross-Strait Act and whether permission is required for flight transfers in mainland China. It therefore asked the MAC to render an interpretation of the regulations.

The MAC emphasized that it convened a meeting with the relevant agencies on November 10, 2010, to resolve doubts over the application of the law. It confirmed that mainland Chinese airports are part of the "Mainland Area" as stipulated in Article 2 of the Cross-Strait Act and areas under control of the Chinese Communists as stipulated in Article 3 of the Cross-Strait Act Enforcement Rules. Article 9 of the Cross-Strait Act stipulates that application is required to "enter" mainland China and does not stipulate that application is only required for "immigration" to mainland China. The meeting therefore concluded that civil servants transferring flights at mainland Chinese airports, whether by "immigration

transfer" or "transit transfer," "enter" the Mainland as stipulated under Article 9 of the Cross-Strait Act and must first apply for permission or approval. On January 26, 2017, the MAC drafted a letter of interpretation according to the conclusions of the meeting and issued a notification to the various agencies.

The MAC reiterated that the letter of interpretation is only a legal interpretation on questions regarding the application of provisions of Article 9 in the existing Cross-Strait Act to provide a clear and consistent standard to facilitate enforcement of the law. The interpretation does not expand management regulations. Moreover, related personnel with permission or approval may still transfer flights in the Mainland. It does not expand on the scope of application as stipulated under Article 9 of the Cross-Strait Act, nor does it impose any prohibitory measures or strengthened controls on the scope of application. External parties should not read too much into the interpretation.