

## TAIWAN'S STATUTES ON CROSS-STRAIT RELATIONS

*'Chung Yang Jih Pao' Taipei in Chinese 18 Jul 92*

*Text, as published, of "major articles" of "Statutes Governing Relations Between People in the Taiwan Region and People in the Mainland Region" (FE/1447 A2/6 [24])*

The spirit of legislation of the "Statutes Governing Relations Between People in the Taiwan Region and People in the Mainland Region" is based on the situation that the country is still not unified and the normative principle of "one country with two regions". The statute is to deal with legal issues in exchanges between people from the two sides of the strait.

Some of the major articles of the important statute are as follows:

### Chapter I. General Principles

Article 1. Before the unification of the country, this statute is hereby enacted to insure the security and welfare of people in the Taiwan region, set norms for contacts between the two sides of the Taiwan Strait, and handle legal issues as a result of such contacts. Things that are not covered by this statute shall be governed by other related laws and regulations.

Article 2. The definitions of terms used in this statute are as follows:

1. The Taiwan region means Taiwan, Penghu [Pescadores], Kinmen [Jinmen], Matsu and other areas ruled by the government.

2. The mainland region means territories of the Republic of China excluding the Taiwan region.

3. People in the Taiwan region means people who have records of household registration in the Taiwan region.

4. People in the mainland region means people who have records of household registration in the mainland region or people of the Taiwan region who have gone to live in the mainland region continuously for more than four years.

Article 3. Stipulations of this statute for people in the mainland region also apply to people of the mainland region who are living abroad.

Article 4. The Executive Yuan may establish an organization or designate an organization or entrust a civilian mass organization to handle affairs relating to contacts between people in the Taiwan region and people in the mainland region.

The supervision of the aforementioned civilian mass organization will be governed by law.

Article 5. The organization established according to the above article, the designated organization or civilian mass organization, will not be allowed to conclude any kind of

agreement with legal persons, organizations or other units in the mainland region without the permission of the responsible authorities.

The agreement mentioned above will not be valid unless it is approved by the responsible authorities.

Article 6. To handle affairs relating to contacts between people in the Taiwan region and people in the mainland region, the Executive Yuan may, based on reciprocal principles, allow legal persons, organizations or other units of the mainland region to establish branches in the Taiwan region.

The establishment of such branches as mentioned above will be governed by law.

Article 7. Documents drawn up in the mainland region will be judged as authentic if they are examined and certified by the organization established by the Executive Yuan and organization or civilian mass organization designated by the Executive Yuan.

Article 8. Judicial organizations may ask or entrust the organization or civilian mass organization as described in Article 4 to handle the delivery of legal documents to or make necessary investigations in the mainland region. [Chapter II. Administration

Article 9. When people in the Taiwan region want to go to the mainland region, they should apply for permission from the responsible authorities.

People of the Taiwan region, after entering the mainland region with the aforementioned approval, must not engage in activities which may endanger national security or interests.

Article 10. People in the mainland region are not allowed to enter the Taiwan region without the approval of the responsible authorities.

People from the mainland region who have entered the Taiwan region with approval must not engage in activities which do not conform to the purpose of their approved visit.

The methods of the above-mentioned approval will be formulated by related authorities and promulgated after they have been approved by the Executive Yuan.

Article 11. Applications for employing people from the mainland region will be approved only if recruitment in the Taiwan region offering reasonable working conditions does not meet employers' requirements.

The employment period for people from the mainland region who are hired with permission to work in the Taiwan region is not to exceed one year. In addition, they are not allowed to change employers or work.

Labour contracts for hiring people from the mainland region are to be based on stipulations on fixed-term contracts contained in the Labour Standard Law.

Article 12. When dependents of people from the mainland region who are hired with permission to work in the Taiwan region are injured, become sick, give birth or die in areas not covered by labour insurance, they are not allowed to claim insurance payments.

[No Article 13 as published]

Article 14. A competent organ may nullify the work permission for people from the mainland region who are hired with permission to work in the Taiwan region but who violate these regulations or other laws or decrees.

People from the mainland region whose work permission is nullified should leave the Taiwan region within a specified period. Those who fail to leave within the specified period will be forced to leave according to Article 18.

Article 15. The following acts are prohibited:

1. Helping people of the mainland region illegally enter the Taiwan region;
2. Soliciting people of the Taiwan region and helping them enter the mainland region without permission;
3. Helping people of the mainland region engage in activities without prior approval or in activities that are unrelated to their approved activities;
4. Hiring people from the mainland region without prior approval or engaging in work unrelated to their approved work;
5. Asking other people to do the aforementioned things.

Article 16. People from the mainland region who fall in one of the following categories may apply for permanent residence status in the Taiwan region:

1. Directly related family members of people from the Taiwan region who are over 70 or under 12 years old;
2. Military personnel of Taiwan natives who have stayed in the mainland region since 1945 because of military service problems and their spouses and other directly related family members;
3. Former military officers and soldiers from the national armed forces who were captured in battle or while carrying out special missions after the government moved to Taiwan in 1949 and their spouses and other directly related family members;
4. Persons who were sent at government expense to study in the mainland region before the government moved to Taiwan in 1949 and their spouses and other directly related family members;
5. Descendants of Taiwan natives who went to the mainland region before the government moved to Taiwan in 1949, who had their household registration in the Taiwan region and who have directly related family members or brothers or sisters in the Taiwan region;
6. Fishermen and sailors who had household registrations in the Taiwan region and who have stayed in the mainland region because of shipping accidents or other irresistible forces occurring before 1st November 1987.

The numbers per year of people from the mainland region who apply for permanent residence status in the Taiwan region according to the stipulation of Provision 1 may be limited.

The spouses and other directly related family members of people from the mainland region who meet the requirements specified in Provisions 5 and 6 may also apply for permanent residence status in the Taiwan region.

Article 17. People from the mainland region who fall in one of the following categories may apply for residence status in the Taiwan region:

1. Spouses of people from the Taiwan region who have been married for two years or more or who have children;
2. Those who are approved by competent organs based on political, economic, social, educational, science and technological, or cultural reasons.

In the case of Provision 1, spouses in the Taiwan region who remarried before 1st November 1987 should have the consent of their new spouses before they apply for their new spouse's residence status in the Taiwan region.

The categories and numbers per year of people from the mainland region who apply for resident status in the Taiwan region according to the stipulation of Provision 1 may be limited. The categories and numbers are to be announced by the Executive Yuan after receiving the Legislative Yuan's consent.

Those who apply in accordance with the stipulation of Provision 1 for residence status in the Taiwan region may apply for permanent residence status after they have continuously resided in the Taiwan region for more than two years.

People from the mainland region who are given residence status in the Taiwan region in accordance with the stipulations of Provision 1 or who are given permanent residence status in accordance with aforementioned stipulations will be deprived of their residence status or household registration and will be forced to leave the Taiwan region if evidence shows that their marriages are false.

Article 18. Before judicial proceedings begin or end, security organs may expel people from the mainland region who enter the Taiwan region and who fall into one of the following categories:

1. People entering the Taiwan region without permission;
2. People who enter the Taiwan region with permission but whose permission to stay has expired;
3. People engaging in activities unrelated to their approved activities;
4. People who have been proved to have committed crimes;
5. People who have been proved to have caused a threat to national security or social stability.

Those falling into the above-mentioned five categories may be given temporary shelter before they are forced to leave the Taiwan region.

Provisions 1 and 2 are also applicable to those who entered the Taiwan region before these regulations were put into force.

[No Article 19 as published]

Article 20. People from the Taiwan region who fall into one of the following categories should bear the expenses incurred by expelling people from the mainland region:

1. Those who help people from the mainland region illegally enter the Taiwan region;

2. Those who illegally hire people of the mainland region;

3. Those whose employees from the mainland are expelled according to Provisions 2 or 3 of Article 14.

Organs responsible for enforcing the expulsion are to issue relevant documents to those obliged to bear the expenses of expulsion and to notify them to pay the expenses within a specified period. Those who fail to pay the expenses within the specified period will be handed over to the court.

Article 21. People of the mainland region who enter the Taiwan region with permission are not allowed to register as candidates for government posts; to serve in the armed forces, government organizations, schools and institutions and enterprises run by the government; or to organize political parties, unless they have had a household registration in the Taiwan region for more than 10 years or unless the case is governed by applicable laws.

Article 22. The regulations for examining academic qualifications received in the mainland region and for recognizing these qualifications of people of the Taiwan region as well as people of the mainland region who have acquired permanent residence status in the Taiwan region are to be formulated by the Ministry of Education and promulgated after they are approved by Executive Yuan.

Article 23. People, legal persons, civic bodies and other organizations of the Taiwan region, the mainland region and other regions are not allowed to enrol students in the Taiwan region for educational organs from the mainland region or to serve as a middleman for these educational organs.

Article 24. For individuals, legal persons, groups and organizations in the Taiwan area who draw income from mainland sources, such income should be combined with income from Taiwan sources for income tax purpose.

Taxes paid in the mainland shall be allowed to be deducted from payable taxes.

The amount to be deducted shall not exceed the portion of the additional tax payable as a result of the inclusion of income from mainland sources and calculated at the appropriate tax rate.

[No Article 25 as published]

Article 26. Retired personnel of the military, government, educational and publicly-owned organizations drawing monthly pensions who intend to go to the mainland and make it their permanent residence may apply for and receive a one-time payment of the balance of their annuity calculated on the basis of the lump-sum payment due at the time of retirement, taking into account their length of service and the amount of the monthly pay due to personnel of the equivalent rank and grade at the time of their application, excluding the amount of the monthly pensions already received. Those without a balance or with a balance less than half of the lump-sum payment due at the time of retirement shall be given a one-time payment equivalent to half of the amount of the lump-sum payment due at the time of retirement.

Personnel described in the above paragraph who have

dependents in the Taiwan area should obtain the approval of the dependents before applying.

Article 27. Retired servicemen receiving a living allowance from the Vocational Assistance Commission for Retired Servicemen of the Executive Yuan who are approved to settle in the mainland for permanent residence shall continue receiving the living allowance.

Article 28. Vessels, aircraft and other means of transportation of the Republic of China shall not enter the mainland without the approval of the proper authorities.

Article 29. Vessels, aircraft and other means of transportation of the mainland shall not enter restricted or forbidden waters of the Taiwan area and the restricted zone of the Taipei Flight Information Zone.

Article 30. Neither foreign vessels, aircraft or other means of transportation are allowed to operate directly between ports of the Taiwan area and the mainland, nor is it allowed to use foreign vessels, aircraft or other means of transportation to operate scheduled services, including services between ports of Taiwan and the mainland area via a third region.

The Ministry of Communications may restrict or ban foreign vessels, aircraft and other means of transportation leased, invested in and operated by individuals, legal persons, groups and other organizations in the mainland area from entering seaports or airports in the Taiwan area.

The Ministry of Communications may request the Executive Yuan to lift, entirely or partially, the ban stipulated in the previous paragraph.

Article 31. Air defence units shall warn off or adopt necessary defensive measures if a civilian aircraft from the mainland makes an unauthorized flight into an area in Taipei that is restricted for intelligence purposes.

Article 32. Where a mainland vessel enters Taiwan's restricted or prohibited territorial waters without permission, competent agencies shall expel it; detain it, along with the articles and personnel on board; or take necessary defensive actions.

Article 33. Without permission from competent agencies, individuals, legal persons, organizations or other agencies in Taiwan may not serve as members of or hold any posts in any mainland-based legal persons, organizations or agencies. They also may not jointly set up legal persons, organizations or other agencies with their mainland counterparts, or form alliances with them.

Article 34. Without permission from competent agencies, individuals, legal persons, organizations or other agencies in Taiwan may not bring in, produce, distribute, handle by proxy, broadcast or publish advertisements in Taiwan on mainland products, labour services or other activities, whether through the agency of others or themselves, or on their own initiative. They also may not engage in other promotional activities.

Article 35. Without permission from competent agencies, individuals, legal persons, organizations or other agencies in Taiwan may not invest in or carry out technology cooperative projects with the mainland. They also may not engage in trade

or other commercial activities with their mainland counterparts.

Those who conducted, without permission, and prior to the implementation of this statute, investment, technology cooperation, trading or other commercial activities as specified in the preceding paragraph shall apply for permission with competent agencies within three months from the day procedures for obtaining permission for such activities are implemented. If the parties concerned fail to apply by the deadline, or fail to gain permission upon application, they shall be considered as having acted without permission.

Article 36. Without permission from competent agencies, banking and insurance institutions in Taiwan, or their branches in countries or regions outside Taiwan, may not establish direct business contacts with mainland-based legal persons, organizations or agencies, or their branches in countries or regions outside the mainland.

The Ministry of Finance shall work out procedures for granting permission for contacts mentioned in the preceding paragraph and shall submit them to the Executive Yuan for approval and promulgation.

Article 37. Without permission from competent agencies, no mainland-based publications, films, video shows, or radio and television programmes may be allowed into Taiwan or be distributed, produced or broadcast in Taiwan.

The Government Information Office under the Executive Yuan shall work out procedures for granting permission for activities mentioned in the preceding paragraph and shall submit them to the Executive Yuan for approval and promulgation.

Article 38. Mainland-issued currency and negotiable instruments shall not be allowed into Taiwan; however, those cleared with customs upon entry may be taken out.

Article 39. Chinese relics from the mainland may be transported out of Taiwan if they have been shipped in for public display with permission from competent agencies.

Other than the relics mentioned in the preceding paragraph, competent agencies shall restrict or ban the public display in Taiwan of cultural relics and artefacts from the mainland if the latter violate laws and regulations, endanger public order or undermine social customs.

Article 40. Mainland-based articles shipped or hand-carried into Taiwan shall be regarded as imports, and they shall be subject to laws and regulations governing shipped-in articles in the areas of inspection, quarantine, management and customs collection and administration.

### Chapter III. Civil Cases

Article 41. Unless specified otherwise in the statute, law in the Taiwan area shall apply to civil cases between people from the Taiwan area and people from the mainland area.

Unless specified otherwise in the statute, regulations in the mainland area shall apply to civil cases between people in the mainland area and between them and foreigners.

The terms of place of act, contract, occurrence and performance, the locus, and the place of litigation or

arbitration in this chapter refer to Taiwan or the mainland areas.

Article 42. Where the Statute stipulates that regulations of the mainland area shall apply and where different mainland regulations exist, the regulations of the place of residence of the parties shall apply.

Article 43. Where the Statute stipulates that regulations of the mainland area shall apply and where there are no explicit stipulations in the mainland area concerning the legal relationship or the mainland regulations defer to the law of the Taiwan area, the law of the Taiwan area shall apply.

Article 44. Where regulations of the mainland area shall apply in accordance with statute and where regulations of the mainland area contradict public order or good customs, the law of the Taiwan area shall apply.

Article 45. Where an act or fact of legal relationship in a civil case occurs in both the Taiwan area and the mainland area, the Taiwan area shall be the place of act or fact.

[No Articles 46-51 as published]

Article 52. The regulations of the place of act shall apply in determining the method and other requirements of marriage or divorce by mutual agreement.

The law of the Taiwan area shall apply in determining the reasons for ruling on divorce.

Article 53. Where one spouse is from the Taiwan area and another is from the mainland area, the validity of the marriage or divorce shall be in accordance with the law of the Taiwan area.

Article 54. Where one person from the Taiwan area and another from the mainland area marry in the mainland area, the system governing the couple's property shall be in accordance with the regulations of the mainland area. Property in the Taiwan area, however, shall be governed by the law of the Taiwan area.

Article 55. The requirements for claiming children out of wedlock shall be in accordance with the regulations of the place of residence of the claimer and the claimed.

The validity of the claim shall be in accordance with the regulations of the place of residence of the claimer.

Article 56. The establishment and termination of the adoption shall be in accordance with the regulations of the place of residence of the adopter and the adopted.

The validity of the adoption shall be in accordance with the regulations of the place of the adopter.

Article 57. Where one parent is from the Taiwan area and another is from the mainland area, the legal relationship between the parents and the children shall be in accordance with the regulations of the place of residence of the father; where there is no father or the father is a dependent of the mother, the regulations of the place of residence of the mother shall apply.

[No Article 58 as published]

Article 59. The obligation of support shall be in accordance with the regulations of the place of residence of the person responsible for the support.

Article 60. Where an inheritor is from the mainland area, matters concerning inheritance shall be in accordance with the regulations of the mainland area. The inheritance of property in the Taiwan area, however, shall be in accordance with the law of the Taiwan area.

Article 61. The requirements for making or rescinding the will of a person from the mainland area and the validity of the will shall be in accordance with the regulations of the mainland area. The donation of property in the Taiwan area through the making of a will, however, shall be in accordance with the law of the Taiwan area.

Article 62. Mainland-issued regulations shall apply to conditions necessary for performing or retracting an act involving donations by individuals on the mainland. They shall also apply to the validity of such an act. Where the donated property is located in Taiwan, the laws of the latter shall apply.

Article 63. Legal relations of a civic nature established prior to the implementation of this statute between individuals in Taiwan and on the mainland, among individuals on the mainland, and between mainland individuals and foreigners shall be deemed valid, without prejudice to Taiwan's public order or wholesome social practices. The same is true with the rights and obligations arising from such relations.

The preceding paragraph shall not apply if the exercise or transfer of rights has been subject to other laws and regulations prior to the implementation of this statute.

Before national unification, no action shall be taken regarding the following debt obligations:

1. Outstanding bonds denominated in foreign currency and issued on the mainland before 1949, or short-term government gold bonds issued in 1949; and

2. All debt obligations incurred by national institutions and bureaux, or by the financial institutions with which they banked, before the government withdrew from the mainland.

Article 64. Interested parties may not apply for a nullification of the original marriage if either spouse of a couple who live separately - in Taiwan and on the mainland - remarried before 4th June 1985. Remarriage entered into after 5th June 1985 and before 1st November 1987 shall be considered valid.

In cases where both spouses have remarried, the original marriage shall become null and void on the day of the later one of the remarriages.

Article 65. Except for circumstances specified in Paragraph 5 of Article 1079 of the Civil Law, the courts shall not recognize any of the following circumstances regarding the adoption of mainland-born children by individuals in Taiwan:

1. Where the individuals concerned already have children of their own or have adopted children;
2. Where the individuals concerned adopt more than two children at the same time; and
3. Where the individuals concerned adopt children without undergoing verification by agencies established or designated by the Executive Yuan or by civic groups commissioned by the Executive Yuan for this purpose.

Article 66. Where individuals on the mainland inherit property from individuals in Taiwan, they shall file a written notice within two years of inheriting the property with the court where the individuals making the inheritance reside. Failure to do so after the deadline has passed shall be considered a waiver of inheritance rights.

Where the property is inherited before the implementation of this statute, the time limit mentioned in the preceding paragraph shall commence from the day of the implementation of this statute.

Article 67. Where individuals on the mainland inherit property in Taiwan in accordance with the law, the total value of property acquired by each of them may not exceed 2m NT dollars. The excess property shall be given to individuals in Taiwan who have the same right to inheritance. In the absence of such individuals, the excess property shall be given to individuals in Taiwan who are next in the inheritance line. In the absence of individuals of either of the aforesaid categories, the excess property shall be appropriated into the national coffers.

This statute shall not apply to property legally taken into the national coffers before its implementation. Money in special accounts established for temporary custody in accordance with laws and regulations shall be handled pursuant to this statute.

Where the testator wills his property in Taiwan to individuals, legal persons, organizations or other agencies on the mainland, the total value of such property may not exceed 2m NT dollars.

Inheritors on the mainland may not acquire property referred to in the first paragraph if it is immovable property on which inheritors in Taiwan reside. The value of such property shall not be included in the total value of inheritance.

Where individuals on the mainland cannot secure rights to immovable property through inheritance pursuant to relevant regulations, the said rights shall be converted into monetary terms.

[No Article 68 as published]

Article 69. Individuals on the mainland may not secure or establish rights to immovable property in Taiwan; nor are they allowed to lease various types of land specified in Article 17 of the Land Law.

Article 70. Legal persons, organizations or other agencies from the mainland region shall not engage in legal proceedings in the Taiwan region without permission.

Article 71. If a legal person, organization or agency from the mainland region should engage, under its own name, in legal proceedings with other parties in the Taiwan region without permission, all parties to the proceedings shall bear joint liability for their act.

Article 72. Without permission from competent agencies, legal persons, organizations or other agencies from the mainland region shall not hold membership or any offices of any legal persons, organizations or other agencies in the Taiwan region.

The competent agencies concerned shall work out procedures for granting the permission mentioned in the

preceding paragraph and shall submit them to the Executive Yuan for approval and promulgation.

Article 73. Recognition may not be granted to foreign companies in which individuals, legal persons, organizations or other agencies from the mainland region hold a total of more than 20% of the shares. Any recognition already granted may be revoked.

This provision shall also apply to foreign companies in which individuals, legal persons, organizations or other agencies from the mainland region act as the most influential shareholders.

Article 74. Without prejudice to public order or wholesome social practices in the Taiwan region, adjudications on civil cases or decisions on civil arbitrations made in the mainland region may be granted recognition by the court upon application.

#### Chapter IV. Criminal Cases

Article 75. Those who committed crimes in the mainland region or on board mainland vessels or aircraft and who have been punished in the mainland region shall still receive a sentence in accordance with the law. Nonetheless, the convict may be exempted entirely or partially from serving the sentence.

Article 76. Either spouse of a married couple living separately in Taiwan or on the mainland who has committed bigamy or has lived together with a non-spouse in pursuit of a long-term relationship prior to 1st November 1987 shall be exempted from retroactive legal action or punishments. This provision shall also apply to the other party to the bigamy or the extramarital living partner.

Article 77. Any residents of the mainland region who committed, in regions outside Taiwan, crimes in violation of domestic or foreign laws and who enter the Taiwan region with permission may be exempted from retroactive indictment or punishments, if they have declared the truth in their entry applications. This provision shall also apply to any such persons who enter the Taiwan region to participate in meetings or activities conducted with approval from competent agencies, after being exempted from making the declaration by an ad hoc approval.

Article 78. If the copyrights or other rights of residents of the mainland region should be violated in the Taiwan region, their rights to demand a public prosecution or to institute private legal action shall be limited to the rights of litigation enjoyed by Taiwan residents in the mainland region.

#### Chapter V. Punishment

Article 79. Violators of Provision 1 of Article 15 shall be given not more than five years of fixed-term imprisonment or detention, or a maximum fine of 500,000 NT dollars, or both.

Article 80. Owners or operators of vessels, aircraft or other means of transport of the Republic of China or ship and aircraft captains or drivers of other means of transport who enter the mainland area in violation of the Provision 1 of Article 28 shall be given a maximum fixed-term imprisonment

or detention of three years, or a fine of 1m to 5m NT dollars, or both. Nonetheless, in cases of entry into the mainland region as a consequence of a decision by the ship or aircraft captains or drivers of other means of transport themselves, only the captains or drivers will be subject to punishment.

Article 81. Persons who take part in deciding on establishing direct business contacts without permission in violation of Article 36, shall be given up to three years of fixed-term imprisonment or detention, or a fine between 1m and 15m NT dollars, or both.

[No Article 82-85 as published]

Article 86. Persons who engage in investment, technological cooperation, trade or other commercial activities in violation of the Provision 1 of Article 35 shall be fined an amount between 3m and 15m NT dollars and be ordered to stop the investment, technological cooperation, trade or other commercial activities within a time limit and shall be liable to further punishments upon failure to stop such activities within the time limit.

#### Chapter VI. Supplementary Articles

[No Article 87-94 as published]

Article 95. Prior to carrying out work related to direct exchange of trade and direct exchange of air and shipping services between the Taiwan region and the mainland region, as well as to entry by residents of the mainland region into the Taiwan region, competent agencies shall obtain an approval by resolution of the Legislative Yuan. In the event of failure on the part of the Legislative Yuan to vote on a resolution within one month of its session, consent will be deemed to have been given.

Article 96. Detailed rules and regulations and the date for enforcing this statute shall be decided by the Executive Yuan.

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(Source: SWB, 1.8.92)