

A Tentative Study on the Penalty Norms of the Ordinance on People's Relations between Taiwan and Mainland China

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Abstract—Ever since the Regulation on People's Relations between Taiwan and Mainland China (hereinafter referred to as the Regulation on Cross-Strait People's Relations) was published by Taiwan government on July 31st, 1992, and issued by Executive Yuan (81) on September 16th that year to be implemented from September 18th, it has been amended for 17 times, and the penalty part has also been revised for several times. Because there are many norms of the penalty clauses in Chapter V, after inspection the regulatory agencies' legislation adopts the "highly regulating" principle, which is to strictly manage with the "permission" approach. This is unfavorable for cross-strait relations. After inspection, a number of clauses have high-threshold provisions, accompanied by high penalty and high fine in penalty norms, which has hampered the free operation of the market mechanism, and government's over-regulation will result in negative external effects and harm of over-regulation.

Keywords—regulation; de-regulation; regulatory agencies; agreements; delegation; public interest

I. INTRODUCTION

In regard to the cross-strait relations, the *Act Governing Relations between the People of the Taiwan Area and the Mainland Area*, released in 1992, has been modified twenty two times over the years, providing a solid political foundation for building a legal framework of the cross-strait relations. The Act stresses "opening up in principle and effective control" especially the stipulation concerning penalty sets special emphasis on the attitude and stand of strict in legislation and unshaken over control, this article hereby conducts analysis on it in order to seek the differences in the development of relations between the two areas.

II. THE DEFINITION AND ROLE OF GOVERNMENT REGULATION

Government regulation refers to the action that the government limits and regulates the activities of specific market players in the market by administrative, legal and economic means according to laws and regulations to safeguard the public interest. The specific market players refer to all kinds of enterprises, social groups and their legal persons and natural persons, as well as the institutions and personnel

carrying out the government regulation.¹ The government regulation is supervision, which involves constitutional issues, including basic constitutional issues such as government and market, constitutional democracy, state power and civil liberty, public interest and private interest, the separation of powers, the relationship between the central and local; secondly, the government regulation is the issue of administrative law, which involves the establishment, positioning, power allocation, operation procedure and supervision of the regulatory body². The Regulation on Cross-Strait People's Relations is the regulation (supervision) of government to normalize and institutionalize the interaction between the people on both sides of the Strait. Therefore, "the Regulation on Cross-Strait People's Relations" which is enacted in Taiwan shall be discussed, especially the penalty part, which can detect the degree of its control to provide concrete suggestions.

III. PARTIAL CLAUSES AND PENALTY OF THE THE REGULATION ON CROSS-STRAIT PEOPLE'S RELATIONS

1. Article 4 stipulates that the Executive Yuan may establish or designate institutions to handle matters relating to the people exchange between the Taiwan region and the mainland. The above-mentioned institution or civil society may, with the consent of the entrusting organ, re-entrust the other legal persons with public interest of the preceding paragraph to assist in dealing with the matters relating to the people exchange on both sides of the Strait.... The Mainland Council of the Executive Yuan or Item 1 in Article 4 shall, with the consent of the Executive Yuan, based on the merits and requirements of the matters dealt with entrust legal person in other nonprofit nature with credibility, professional competence and experience other than those prescribed in the preceding paragraph to assist in dealing with the matters relating to the people exchange on both sides of the Strait on a case-by-case basis; and, if necessary, entrust them to sign the agreement on their behalf. The institutions or civil organizations in first and second items may, with the consent

¹ Wang Jian, etc .. Introduction to Government Economic Management. China Renmin University Press, 2007. Page 186.

² Ma Yingjuan. Study on Government's Regulatory Agencies. Peking University Press, 2007, Page18-28.

of the delegation, re-entrust the other legal persons with public interest of the preceding paragraph to assist in dealing with the matters relating to the people exchange on both sides of the Strait. In accordance with the provision of Article 79-1, if the violator goes beyond the scope of the entrustment while being entrusted to handle matters relating to the people exchange on both sides of the Strait or sign agreement, thereby causing damage to the national security or interests, the person in charge of the act shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention or a fine of not more than NT \$ 500,000. For the legal person, group or other institution, the aforesaid fine shall be imposed.

2. Article 4-2 stipulates that the Mainland Affairs Council of the Executive Yuan shall coordinate the handling of the agreement between Taiwan and the mainland; the agreement content shall contain technicality, and be formulated by the competent authority, and get the consent of the Executive Yuan, to be handled by the Mainland Council of the Executive Yuan. The Mainland Affairs Council of the Executive Yuan or competent authorities agreed by the Executive Yuan in the preceding paragraph shall entrust the institutions or non-governmental organizations to sign agreement with the relevant authorities of the Mainland Area or their authorized legal persons, groups or other Institutions in the name of the trustee. The term "agreement" used in this Regulation refers to the instrument signed between Taiwan region and the mainland on the exercise of public power or political issues. However, if the violator goes beyond the scope of the commission while being entrusted to handle matters relating to the people exchange on both sides of the Strait or negotiate to sign the agreement, and results in damage to national security or interests shall, in accordance with Article 79-1, the person in charge shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention or a fine of not more than NT \$ 500,000. In the above situation, in addition to punishing the person in charge, the company, the legal person, group or other institution shall be sentenced to the aforesaid fine.

3. Paragraph 1 of Article 4-4 provides that if personnel is dispatched to the Mainland or other areas to deal with entrusted matters or relevant important business, it shall be submitted to the organ or civil society body as prescribed in Article 4, Paragraph 1 or 2 of the commissioning organ and accept its command, and report the handling situation at any time; it personnel needs to be sent to mainland China for other matters, it shall notify the commissioning organ, institution or civil society as prescribed in Article 4, Paragraph 1 or 2 first. But the violators who go to the mainland without consent shall be fined not less than NT \$ 300,000 but not more than NT \$ 1.5 million according to Article 79-2.

4. Paragraph 4 of Article 4-4 stipulates that the representative and the person entrusted to handle the affairs shall not sign any agreement with the relevant authorities or authorized legal person, group or other institution of the mainland area without the consent of the entrusting organ. The violator shall be fined not less than NT \$ 200,000 and not more than NT \$ 2 million according to the provisions of Article 79-3.

5. Paragraph 1 of Article 5-1 provides that the organs of the local government at all levels in Taiwan shall not, without the authorization of the Mainland Affairs Council of the Executive Yuan, sign agreement with the people, legal persons, organizations or other organs in the Mainland area. It's the same for the public servants, public officials or public representative organs at all levels in Taiwan. Paragraph 2 provides that the people, legal persons, organizations or other institutions in Taiwan region shall, conform to the first paragraph. Violators shall be fined between NT \$ 200,000 and NT \$ 2 million according to Article 79-3. If the circumstances are serious or the same or similar offense is committed, the offender shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or a fine of not more than NT \$ 500,000.

6. Paragraph 2 of Article 9 stipulates that the competent authority may require the airline company or personnel of travel-related business to handle the above-mentioned application procedures. The violator shall, in accordance with the provisions of Article 91 of the same law, be sentenced to a fine of not more than NT \$ 10,000.

7. Paragraph 3 of Article 9 provides that civil servants in Taiwan, the State Security Bureau, the Ministry of Defense, the Investigation Bureau of the Ministry of Justice and their respective agencies shall apply to the Ministry of the Interior for permission for the personnel with the identity of civil servant to enter the mainland. However, the civil servant and policeman in the 10th post grade or under level-4 commissioner who are not subject to the limits... In accordance with the provisions of Paragraph 7 of Article 9, in case of major emergencies, which affect Taiwan's major interests or have major hazard to the cross-strait interaction, the Executive Yuan may announce upon the Legislative Yuan resolution that, within a certain period of time, people in Taiwan are prohibited, or limited to enter the mainland or there may be other necessary disposition. If the Legislative Yuan fails to adopt a resolution within one month of the session, it shall be deemed to have consented to it; but in case of urgency, it can be recognized afterwards. The violator shall, in accordance with Article 91, be sentenced to a fine of not less than NT \$ 20,000 but not more than NT \$100,000.

8. Paragraph 4 of Article 9 stipulates that the people of Taiwan area with the following identity shall apply for entering the mainland area and be examined by the review meeting consisting of the Ministry of the Interior, together with the National Security Bureau, the Ministry of Justice and the Mainland Council of the Executive Yuan: a. Government officials, mayors. b. Personnel engaged in affairs involving state secrets in the fields of national defense, foreign affairs, science and technology, intelligence affairs, mainland affairs or other approved and state security organs. c. Individual or member of civil organizations or institutions entrusted by the organs of the preceding paragraph to engage in affairs involving state secrets. d. Personnel who leaves the office for less than three years in the three paragraphs above. e. The mayor and county magistrate. The violator shall be fined NT \$ 200,000 to NT \$ 1 million according to the provisions of Article 91.

9. Paragraph 1 of Article 15 provides that those who let the people of the mainland area enter Taiwan area illegally shall, according to Article 79, be sentenced to fixed-term imprisonment of not less than one year but not more than seven years and a fine of less than NT \$ 1 million. And the offender who commits the crime referred to in the preceding paragraph for making profits shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall be fined not less than NT \$ 5 million. The principal criminal of the above two paragraphs shall be sentenced to fixed-term imprisonment of not less than five years, and a fine of not more than NT \$ 10 million. The unaccomplished offender of the above three paragraphs shall be sentenced to...

10. Paragraph 2 of Article 15 stipulates that those who let the people of Taiwan region enter the Mainland while knowing they have no permission shall be sentenced to fixed-term imprisonment of not more than six months, criminal detention or a fine of not more than NT \$ 100,000 according to the provisions of Article 84.

11. Paragraph 3 of Article 15 provides that those who let the people of the mainland China engage in activities not authorized or incompatible with the purpose of the license in Taiwan area shall be sentenced to fixed - term imprisonment of not more than six months, criminal detention or a fine of not more than NT \$ 100,000 according to Article 87.

12. Paragraph 4 of Article 15 stipulates that those who employ or retain people from the mainland area to engage in work in Taiwan region without permission or beyond the permitted scope, the Article 5 stipulates that those who introduce other persons to the acts mentioned in the preceding paragraph between two parties, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or a fine of not more than NT \$ 300,000 according to Article 83. Anyone who violates the provisions of Paragraph 5 of Article 15 for making profits shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine of not more than NT \$ 600,000. For the legal person's representative or legal person, or natural person's agent, employee or other practitioner who commits the above two crimes for operating business, in addition to the punishing the perpetrator, the legal person or natural person shall be sentenced to a fine of not more than that of the two preceding acts. But if the legal representative or natural person has done their best to prevent the occurrence of violation, they are not subject to the limits

13. Article 23 provides that the people, legal persons, organizations or other institutions in Taiwan region, the mainland area and other regions may, upon approval, handle enrollment matters for the educational institutions in the Mainland or offer middleman services in Taiwan area. The licensing system shall be formulated by the Ministry of Education and submitted to the Executive Yuan for approval. Violators shall be sentenced to fixed - term imprisonment of not more than one year, criminal detention or a fine of not more than NT \$ 1 million if they engage in recruitment or inter - mediate introduction according to Article 82.

14. Article 28 provides that the ship, aircraft and other means of transport of the Republic of China, with the competent authority's permission, may sail to the mainland areas. The licensing and administrative measures shall be formulated by the Ministry of Communications and relevant authorities and submitted to the Executive Yuan for approval within 18 months after the amendment of the Regulation is approved; if necessary, it shall be extended after reporting to the Legislative Yuan for future reference. Paragraph 1 of Article 28-1 provides that the ship, aircraft and other means of transport of the Republic of China shall not privately transport people from the Mainland area to countries or regions outside Taiwan area and the mainland. Paragraph 2 stipulates that the people in Taiwan area shall not use the ship, aircraft or other means of transport that does not belong to the Republic of China, or privately transport people from the Mainland area to countries or regions outside Taiwan area and the mainland via the ship, aircraft and other means of transport of the Republic of China. The violator of Article 2 shall, in accordance with Article 80: if the owner, operator of the ship, aircraft or other means of transport that does not belong to the Republic of China or captain, aircraft commander or driver of other means of transport violates the provisions of Paragraph 1 of Article 28 or the provisions of Paragraph 1 of Article 28-1, or if the people of Taiwan area violate Paragraph 2 of Article 28-1, in accordance with Article 80, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine of not less than NT \$ 1 million but not more than NT \$ 15 million. But if the act is decided by the captain or commander or driver of the ship, aircraft or other means of transport of the Republic of China, the captain or commander or driver is punished. If the owner or operator of the ship, aircraft or other means of transport of the Republic of China in the preceding paragraph is the legal person, in addition to punishing the perpetrator, the legal person shall be liable to a fine prescribed in the preceding paragraph. But if the legal person has done his/her best to prevent the occurrence of violation, they are not subject to the limits

15. Article 30 stipulates that foreign ship, civil aircraft and other means of transport may not directly sail between the ports and airports of Taiwan region and the mainland; the foreign ship, civil aircraft and other means of transport shall not be used to operate the regular route business of the third regional navigating between the ports and airports of Taiwan region and the mainland. If the ship, vessel, civil aircraft and other means of transport mentioned above are leased, invested or operated by the people, legal person, group or other institution in the mainland area, the Ministry of Communications may restrict or prohibit them from entering the port and airport in Taiwan. Paragraph 1 stipulates that the Ministry of Communications may, when necessary, report to the Executive Yuan for the approval on relief of all or part. The management, transportation operation and other matters that should be complied with after relief are allowed to be handled with the existing navigation regulations, and the Ministry of Commerce may discuss with the relevant organs on the management approach on demand. Those who violate the provisions of Paragraph 1 of Article 30, shall be fined NT \$ 3 million to NT \$ 15 million according to Article 85 and the ship, civil aircraft or other means of transport is prohibited to

enter the ports and airports in Taiwan within a certain period of time. If the owner or operator in the preceding paragraph does not have a branch office in Taiwan, after the punishment is confirmed, the competent authority may ask the ship, civil aircraft or other means of transport of them to leave the ports and airports in Taiwan until the fine is paid up. But those who provided security with the same amount of the fine are not subject to this limit.

16. The provisions of Article 32 (repelling, detaining and lien of Mainland ships) stipulates if a mainland ship enters a restricted or prohibited water area in Taiwan without permission, the competent authority may repel or detain the ship and articles, detain the personnel or for the necessary defensive disposal. The ship or article or personnel detained in the preceding paragraph, shall be subject to the following penalty by the competent authority within three months: I. The ship or articles detained shall be returned if they are not involved in the violation; and shall be confiscated if the circumstances are serious. II. The retained personnel shall, after investigation, be transferred to the relevant authorities in accordance with the provisions of Article 18 of the Regulation to be accepted, repatriated or forced to leave the border. Before the implementation of this Regulation, if the detained mainland ship, article and personnel have been handled by the competent authority, it shall prevail. In accordance with the provisions of Article 80, if the mainland ship violates the provisions of Paragraph 1 of Article 32 and gets detained, the owner, operator or captain, driver shall be sentenced to a fine of NT \$ 300,000 to NT \$ 15 million...

17. Article 33 provides that the people, legal person, group or other institution in Taiwan area may, unless otherwise stipulated by the law, hold post legal person, group or other institution of the mainland area or act as other members. The people, legal person, group or other institutions in Taiwan region shall not serve in party military administrative or political organs and groups in the mainland region which are banned by the competent authorities of the Mainland Affairs Council of the Executive Yuan or as other members. In any of the following circumstances, the people, legal person, group or other organization in Taiwan region may hold post in the Mainland or as members:

(1) Those who hold post in the party, military, administrative or political organs (organizations) or groups of the mainland region or serve as members have not been prohibited by the provisions of the preceding paragraph.

(2) The competent authorities and the Mainland Affairs Council of the Executive Yuan announce for any concern of the effect on the interests of national security or on the basis of policy needs.

If the people of Taiwan area serve or act as members in a legal person, group or other institutions in the mainland area, they shall not engage in any act that prejudices the national security or interests... The violator with identity in Paragraph 4 of Article 9 shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine of not more than NT \$ 500,000 according to Article 90. Those who take post without permission shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or

a fine of not more than NT \$ 300,000. If the civil servants who are on the job or have resigned from office for less than three years violate the provisions of Paragraph 2 of Article 33 other than the preceding paragraph, they shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or a fine of not more than NT \$ 300,000 in accordance with Article 90. Those who do not have the above two circumstances and violate the provisions of Paragraph 2 or 3 of Article 33 shall be fined NT\$ 100,000 to NT \$ 500,000 according to Article 90. Those who violate the provisions of Paragraph 4 of Article 33 shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention according to the same article and shall be fined not more than NT \$ 500,000. In accordance with the provisions of Article 90-1, the people, legal person, organization or other institutions of the mainland jointly set up legal person, group, other institutions or initiate alliance. The above-mentioned licensing system shall be formulated by the relevant competent authority and submitted to the Executive Yuan for approval. Before the commencement of this regulation, those who have serve or act as member in legal person, group or other institution, or have jointly established legal person, group or other institution or have initiated alliance with the people, legal persons, organizations or other institutions of the mainland area shall apply for permission to the competent authority within six months from the implementation of the licensing system of the preceding paragraph, those who fail to apply within the time limit or do not apply are considered as not permitted. In accordance with Article 90-1, civil servants with the identity Paragraph 1, 2 or 5 of Article 9-4 who have retired from office for less than three years and violate the provisions of Paragraph 2 of Article 33 shall lost the right to receive retired employees and their related rights...

Article 33-1 provides that the people, legal person, group or other institutions of Taiwan region shall not, without the permission of the competent authority, conduct any of the following acts: I. Any legal acts with party, military, administrative or political organs (organizations) and groups in the mainland, or organs and groups involved in political work in Taiwan or affecting national security or interests in any form. II. Cooperation with the people, legal person, group or other institutions of the mainland area on political content. III. Jointly establish political legal person, group or other institutions with the people, legal person, group or other institutions of the mainland.... In accordance with the provisions of Article 33-2 of the same law, the local government organs or the local legislative organs at all levels shall, without the Mainland Council of the Executive Yuan submitting to the Executive Yuan for approval, set up alliance with local authorities in the mainland region. Before the amendment of this Regulation is implemented, the acts in the preceding paragraph that have been carried out and shall continue after the amendment is implemented shall be submitted to the Executive Yuan within three months from the implementation of the amendment of this Regulation. Those who do not apply for approval within the time limit or not agreed by the Executive Yuan shall be considered as not submit for consent.

18. Article 33-3 stipulates that alliance or written agreement on cooperation between all schools in Taiwan area

and the mainland schools shall be submitted to the Ministry of Education, and the act of setting up alliance or signing written agreement on cooperation shall not be done within thirty days from the day that the Ministry of Education accepts its application; if the Ministry of Education has not decided within 30 days, it's considered as agreed. The alliance or contents of the cooperation of written agreement in the preceding paragraph shall not violate the provisions of the law or involve political content... In summary, in accordance with the provisions of Article 90-2, those who violate the Paragraph 1 of Article 33-1 or Paragraph 1 of Article 33-2 shall be sentenced to fine of NT \$ 100,000 to 500,000, and shall be subject to continuous penalty. Those who violate Paragraph 2 of Article 33-1 or Paragraph 1 or 2 of Article 33-3 shall be fined not less than NT \$ 10,000 but not more than NT \$ 500,000, and the competent authority may order them to declare or correct within the time limit, and those who have not declared or corrected shall be punished in succession until they declare or correct.

19. Article 34 stipulates that the goods, labor, service or other matters in the mainland area permitted by this Regulation may be advertised, published or have other promotional activities in Taiwan area. The content of the preceding activity may not contain the following:

- (1) Propaganda of the CCP for any political purpose.
- (2) Violation of the existing Mainland policy or government decree.
- (3) Obstruction of public order or good customs...

The first advertising activity and the preceding activity shall be handled by the relevant authorities. If there is any doubt, it shall be examined and decided by the Review Committee consisting of Mainland Affairs Council of the Executive Yuan, relevant authorities and experts and scholars. The management of the first advertising activity shall be handled by the relevant laws and regulations of advertisements, and shall be submitted to the Executive Yuan for approval by the relevant authorities of the Mainland Affairs Council of the Executive Yuan to formulate management measures. The violator shall, in accordance with the provisions of Article 80, entrust, be entrusted or carry out advertisement playing, publishing or other promotional activities in Taiwan area in respect of goods, labor, services or other matters in the Mainland beyond Article 34, or those who violate the provisions of Paragraph 2 of Article 34 or the provisions of Paragraph 2 shall be fined not less than NT \$ 100,000 and not more than NT \$ 500,000.

20. Article 35 provides that the people, legal person, group or other institutions in Taiwan may, with the permission of the Ministry of Economic Affairs, engage in investment or technical cooperation in the mainland area; their products or business projects of investment or technical cooperation, according to the concern for national safety and industrial development, be divided into prohibited type or general type, and the Ministry of Economic Affairs set up the list of projects and the principle of case review with the relevant authorities and announce it. But investment below a certain amount shall be declared; the limit is ordered and announced by the

Ministry of Economic Affairs. The people, legal person, group or other institutions of Taiwan region may engage in commercial activities with the people, legal person, group or other institutions of the mainland. However, the projects that shall be approved by the Ministry of Economic Affairs or are prohibited by it shall be handled according to relevant provisions. The people, legal person, group, or other institutions in Taiwan may, with the permission of the competent authority, engage in the trade between Taiwan region and the mainland of China; their licensing, import and export items and regulations, opening conditions and procedures, import and export stopping regulations and other import and export management methods shall be formulated by the relevant competent authority and submitted to the Executive Yuan for review... In summary, those who violated Paragraph 1 of Article 35 to engage in the investment or technical cooperation of general projects shall fined NT \$ 50,000 to 25 million, and shall be ordered to stop or correct within the time limit; those who have not stopped or corrected within the time limit shall be punished continuously. Those who violate the provisions of Paragraph 1 Article 35 by engaging in investment or technical cooperation of prohibited projects and shall be fined not less than NT \$ 50,000 but not more than NT \$ 25 million and ordered to stop; those who do not stop or commit the same violation again after stopping shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention, or a fine of not more than NT \$ 25 million. For the legal person, group or other institutions who commit the crimes mentioned in the preceding paragraph, the person in charge shall be punished. Those who violate the provisions of Paragraph 2 of Article 35 by engaging in commercial acts shall be fined not less than NT \$ 50,000 but not more than NT \$ 5,000,000 and shall be ordered to stop or correct its action within a prescribed time limit; those who do not stop or correct within the time limit shall receive continuous penalty. For those who violate the provisions of Paragraph 3 of Article 35 by engaging in trade acts, in addition to the punishment stipulated by law, the competent authorities may cease their import and export of goods for two months to one year or revoke their registration as import and export enterprise.

21. Article 36 provides that the financial and insurance institutions in Taiwan and their branches set up in countries or regions outside Taiwan area may, with the permission of the Ministry of Finance, have direct business contact with the legal person, group and other institutions of the Mainland and their branches set up in countries or regions outside mainland China. If the financial, insurance, securities and bond institutions of the mainland China establish branches in Taiwan, they shall submit to the Ministry of Finance for approval; the relevant investment matters shall be handled in accordance with the provisions in the preceding article. The permitting condition, business scope, procedure, management, restriction and other measures for compliance in the preceding two paragraphs shall be formulated by the Ministry of Finance and submitted to the Executive Yuan for review. In accordance with Article 81 of this Law, those who violate the provisions of Paragraph 1 or 2 of Article 36 shall be fined not less than NT \$ 2 million and not more than RMB 10 million, and shall be ordered to stop or correct within a prescribed time limit; who do not stop or

correct within the time limit, commit or the same violation again after stopping shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine of not more than NT \$ 15 million. If Taiwan financial, insurance, securities and bond institutions set up branches in countries or regions outside Taiwan and violate the restrictions or prohibition orders of Paragraph 4, Article 36 approved by the Ministry of Finance, the person in charge is sentenced to fixed-term imprisonment of or not more than 3 years, criminal detention or a fine of not less than NT \$ 1 million but not more than NT \$ 15 million. For the former two cases, in addition to punishing the person in charge of the behavior, the financial, insurance, securities and bond institutions are sentenced to former previous two fines. The provisions of Paragraphs 1 and 2 shall apply to offenders outside the territory of the Republic of China.

22. Article 36-1 provides that the administration and punishment of the mainland funds in and out of Taiwan shall be governed by the provisions of Article 6, Article 20, Article 22, Article 20, Article 24 and Article 26 of the Foreign Exchange Control Act; when it has a major influence on the financial market or foreign exchange market in Taiwan, the Central Bank and relevant authorities may restrict or prohibit. A fine of NT \$ 3 million to NT \$ 15 million shall be imposed on those who violate the restriction or prohibition order issued by Article 36-1 according to Article 85-1. The central bank shall designate a bank violating the foreign exchange business and may, according to the seriousness of the case, suspend part or all of its foreign exchange business for a certain period of time.

23. Article 37 provides that publications, films, video programs and radio and television programs in the mainland area, with the permission of the competent authorities, may enter Taiwan region, or be distributed, sold, produced, broadcast, exhibited or watched in Taiwan... According to Article 88, those who violate Article 38 shall be fined NT \$ 40,000 to NT \$ 200,000. The above-mentioned publications, films, video programs or radio and television programs shall be confiscated no matter they belong to whom.

24. Article 38 stipulates that the currency issued by the mainland shall not enter or leave Taiwan area unless its amount is below the quota set by the Financial Supervision and Administration Commission of the Executive Yuan. The passengers should take the initiative to declare the part exceeding the quota to the Customs and Excise Department, which shall be sealed by the passengers themselves in the customs, and allowed to take out when leaving the country. The Financial Supervisory Commission of the Executive Yuan may, in conjunction with the Central Bank, formulate measures to permit the issuance of currency vouchers in the Mainland and to enter and exit Taiwan region. After Taiwan region and the mainland of China sign the bilateral currency settlement agreement or establish a bilateral currency settlement mechanism, the Foreign Exchange Control Act applies to the management of the currency issued in the mainland. Prior to the signing of the bilateral currency settlement agreement or the establishment of the mechanism, the method of management and settlement of the currency issued in the mainland in Taiwan shall be formulated by the

Central Bank in conjunction with the Financial Supervision and Administration Commission of the Executive Yuan. In accordance with the provisions of Article 92, those who violate Paragraph 1 or 2 of Article 38 without permission or declaration of the currency, the Customs may confiscate the exceeding part. For those who violate the provisions of Paragraph 4 of Article 38 by exchanging, trading or other transaction, the currency and money issued in the mainland of China shall be confiscated, and fined not less than NT \$ 300,000 but not more than NT \$ 1.5 million ...

25. Article 39 provides that the Chinese Antiquities of the mainland areas may, as permitted by the Competent Authority, be shipped in for public display or exhibition in Taiwan area and shipped out. For the cultural relics and art works of the mainland apart from the preceding paragraph which violate laws and ordinances, disturbs public order or good morals, the competent authorities may restrict or prohibit their public display or exhibition in Taiwan area... In accordance with Article 93, the cultural relics and art works of those who violate the restrictions or prohibitions stipulated in Paragraph 2 of Article 39 shall be confiscated by the competent authorities.

26. Article 40 stipulates that the profit-making enterprises in the Mainland shall not engage in business in Taiwan without the permission of the competent authority and the establishment of branch or office in Taiwan area; if their branches are operating in Taiwan, the provisions of Article 9, 10, 12-25, 28-1, 388, 391-393, 397, 438 and 448 of the Corporation Law are applicable... In accordance with Article 93-2, those who violate the provisions of Paragraph 1 of Article 40-1 by engaging in business without permission shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or a fine of not more than NT \$ 150,000, and shall bear civil liability; if there are two or more perpetrator, they shall be jointly liable for civil liability, and the competent authority shall fine them of not less than NT \$ 20,000 but not more than NT \$ 100,000 and order them to stop or correct within a prescribed time limit. Those who fail to stop or correct within the time limit shall be sentenced to a continuous punishment.

27. Article 40-2 provides that non-profit legal person, group or other institutions in the Mainland shall not establish offices or branches in Taiwan area to engage in business activities without the permission of the competent authorities. The non-profit legal person, organization or other institution in the mainland with permission to engage in business activities in Taiwan shall not engage in any activities that are inconsistent with the scope of the license... In accordance with Article 93-3, a fine of not more than NT \$ 500,000 shall be imposed for a breach of the provisions of Paragraph 1 or 2 of Article 40bis and the order shall be ordered to cease; The perpetrator shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or a fine of not more than NT \$ 500,000 for the same violator.

28. Article 73 stipulates that the people, legal person, group and other institutions of the mainland area or companies investing in third areas may not engage in investment activities in Taiwan area without the permission of the competent authority. For those who invest the provisions of the preceding

paragraph or establish company according to the Company Law, the investor shall not be subject to the restriction on the domestic domicile in Paragraph 1 of Article 266 of the same law. The qualification, permitting condition, procedure, investment method, project and quota, investment ratio, settlement of exchange, examination and approval, transfer of investment, matters and procedures for application, format of application and other matters of the investor required in Paragraph 1 shall be formulated by the relevant competent authority and submitted to the Executive Yuan for approval. The enterprise invested in accordance with Paragraph 1 shall report the financial statements, change of shareholders' shareholding or other designated data in accordance with the provisions stipulated in the preceding paragraph or by the order of the competent authority. The competent authority may send personnel to inspect, and the investment enterprise shall not avoid, hinder or refuse... In accordance with Article 93-1, for those who violate the provisions of Paragraph 1 of Article 73 by engaging in an investment, the competent authority shall impose a fine of not less than NT \$ 200,000 and not more than NT \$ 600,000, stop the shareholders' rights, and order them to stop or withdraw investment; those who fail to correct within the time limit shall be subject to consecutive penalty until its correction; if it is a branch of a foreign company, it shall notify the company registration authority to revoke or abolish its license. In accordance with the provisions of Article 93-1, those who violate provisions of Paragraph 4 of Article 73 by not declaring despite the requirement of declaration, or declaring falsely or incompletely shall be fined NT \$ 60,000 to 300,000 by the competent authority, and shall be ordered to declare, correct or accept inspection within a prescribed time limit; those who have not yet declared, corrected or accepted inspection shall be subject to continuous punishment until they declare, correct or accept inspection. According to Article 93, for those who violate the business which is permitted to be invested provided by Paragraph 1 of Article 73, and those who violate the provisions of transferring investment in Paragraph 3 of Article 73, the Competent Authority may impose a fine of between NT \$ 60,000 and NT \$ 300,000 and a deadline for correction; those who have not corrected within the time limit shall be subject to continuous punishment until they correct. If the investor or investment enterprise violates the provisions prescribed in Paragraph 3 of Article 70 by not handling or declaring falsely or incompletely while being required to be examined and declared, the competent authority shall impose a fine of NT \$ 60,000 to NT \$ 300,000 and a deadline for correction to carry out the examination and approval, declaration or rectification; if they have not yet been examined, declared or corrected, they shall be punished continuously until they are examined, declared or corrected. If the agent of the investor declares falsely due to intentional or gross negligence, the competent authority may impose a fine of not less than NT \$ 60,000 and not more than NT \$ 300,000. When the competent authority punish the investor according to the provisions of the preceding five paragraphs, it shall deliver to the agent of the investor or invested business; if it's fine, the invested business executes it; after the implementation of the invested business, it has the right of claim to the investor, and may recover its shares at the market price and shall not be subject to the limitation prescribed in Paragraph 1 of Article

167 of the Company Law; the recovered shares shall be handled according to the provisions of Paragraph 2 of Article 167. In accordance with the provisions of Article 93-1, investors who violate of the provisions of Article 73-1 shall be fined NT \$ 120,000 to 600,000 by the competent authority and order to stop the rights of shareholders, and stop or withdraw the investment; if they fail to correct within the time limit, they may be punished continuously until the correction; a branch of a foreign company may notify the company registration authority to revoke or abolish its license.

IV. THE REVIEW AND ASSESSMENT OF THE CONTENT OF THE PENALTY

1. The penalty section of the Regulation shall adopt a licensing system for cross-strait civil exchange and commercial and trade activities and so on, with specific and definite norms to achieve predictable objectives. But it's such code of conduct is highly regulated, it will have a negative effect on the interaction between the people on the both sides of the Strait, for example, Article 70 of the Regulation stipulates that investment in Taiwan area by the enterprises from the opposite side must be reported to the competent authorities of the government for approval; those who have not get the permission can not engage it. Those who violate shall be fined by the competent authority, and a high threshold shall be set for interaction of cross-strait non-profit institutions, which is adverse to cross-strait civil exchanges.

2. Article 40-2 stipulates that non-profit legal person, group or other institutions in mainland China may not set up offices or branches in Taiwan area to engage in business activities without the permission of the competent authority. The third sector of non-profit organizations will be restricted to develop in Taiwan. Again, Article 23 formulates the licensing approach that the mainland schools shall get approved by Taiwan Ministry of Education for student recruitment or middleman services in Taiwan, if the approach is too restrictive, it's not conducive to the development of cross-strait academic exchanges.

3. At present, the advanced countries in the world generally adopt deregulation in market control. Although the Regulation on Cross-Strait People's Relations belongs to highly political regulation, the competent authorities as control organs should adjust the situation, regularly review the articles that are outdated or unreasonable to amend them, rather than restrict the exchange of people, group or other institutions by highly regulating regulation.

4. For the articles in penalty provision, the relevant government departments outside the Executive Yuan's Mainland Council shall integrate and publish the official data of the Mainland Affairs Council of the Executive Yuan in respect of the permitting condition, business scope, procedure, management, restriction and other matters to be complied with for reference.

5. If the penalty part is full of excessive control of the provisions to prevent harm, it is adverse for the cross-strait exchange, so there shall be less standard appropriate adjustments based on review.

V. CONCLUSION

This study focuses on the Regulation on Cross-Strait People's Relations enacted by Taiwan authorities, which belongs to political laws and have a lot of regulatory requirements on the exchange of people across the Strait, focusing on the control surface which is to strengthen prevention of harm rather than norms to promote the beneficial, which increases the difficulty of the cross-strait exchange. With authorized legislation, many relevant government departments have formulated relevant laws and regulations and added many restrictions, which is not conducive to cross-strait interaction. There are many excessively strict control and unreasonable places in part of the articles and penalty in preceding regulation, which needs Taiwan government to review and amend in line with the trend of deregulation rather than increase the burden of the people, which is adverse to the real intention of the cross-strait practical exchange.

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