

The rules of a peaceful presidential transition

Written by Chen In-chin 陳仁欽

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According to Constitutional Interpretation No. 627, it is the right of the president to appoint the premier. After today's election, the most important issue would be the peaceful transition of presidential powers.

A peaceful transfer involves whether President Ma Ying-jeou's (馬英九) administration would step down ahead of time and how well the legislature would follow through on its oversight function.

Following the 2012 presidential and legislative elections, Ma said on several occasions that his second term in office began on the next day, and on Feb. 6, 2012, he appointed Sean Chen premier. Based on the principles of sincerity and credibility, Ma's term in office should end today. The Ma administration should promptly hand over power, according to fundamental constitutional and democratic principles established in Constitutional Interpretation No. 499. This would decrease the period between the election and the transition of power and minimize political upheaval.

After a new legislature assembles on Feb. 1, Vice President Wu Den-yih (吳登益) should resign and Ma should nominate a candidate to be appointed by the legislature as the next vice president to remain in office until May 20, the constitutionally stipulated end of the presidential term. Once the vice president has been appointed, Ma should resign and the vice president should assume presidential duties until May 20, as per the Constitution.

If Ma wants to set a precedent, he could follow this procedure and, in addition, nominate the president-elect as vice president, who would then be appointed president when Ma steps down.

The president would then appoint a premier based on public opinion as represented by the legislature.

A second scenario is that the Ma administration does not hand over power to the new government ahead of time. In that case, it would be difficult to find a caretaker president who would be accepted both by the outgoing and incoming governments. Appointing a new Cabinet

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for only three months would also create uncertainty.

A third scenario is that Ma and Wu do not resign, but that Ma appoints a premier nominated by the president-elect. This would result in a lack of transparency and sincerity between the outgoing and incoming governments. The situation under former president Lee Teng-hui (李登輝) and former premier Hau Pei-tsun (郝伯村) comes to mind. This would be even worse than a fourth scenario, which is that the new legislature oversees the transition of power from Ma to the new president.

If the third scenario were to be realized, who would have the final say if the new premier and the outgoing president clash over policies?

According to Constitutional Interpretation No. 627, the outgoing president remains commander-in-chief and retains the right to promulgate new legislation, conclude agreements, declare war and sign peace treaties. These rights overlap with the rights of the premier during the transition period and it is an issue that is unlikely to be resolved in just three months.

Regardless of which of these four scenarios is realized, the next legislature should draft a presidential transition act.

The legislature should establish a committee dedicated to overseeing government actions, and use its powers to review the budget, make decisions on treaties and agreements — in accordance with Constitutional interpretations No. 329 and No. 520 — and oversee laws and regulations to guarantee a peaceful transition of power in accordance with the Act Governing the Legislature's Exercise of Power (立法院行使權法).

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Translated by Perry Svensson

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