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Contents

Interpretation Number……Page

No. 717 ……...1

Is it unconstitutional to limit the ceiling of the retirement income of public functionaries and the retirement of school teachers and staff to reduce the original amount of the deposit preferential provisions?

No. 718 ……....29

Are the provisions of the Assembly and Demonstration Act regarding application for approval which do not exclude urgent and incidental assemblies[y] and demonstrations unconstitutional?

No. 719 ……....41

Is the law unconstitutional to require a government procurement winning bidder hiring more than 100 employees to recruit a certain percentage of indigenous people, and to make the substituting payment for failing to comply?

No. 720 ……57

Before revision of the Detention Act, what judicial remedies are available for a detainee who disagrees with a decision of the detention house in a grievance proceeding?

No. 721 ……63

Are the provisions setting forth the Single Electoral Constituency with Two Votes System for legislator elections, the number of seats of political party representatives, and the 5% threshold for political parties therein unconstitutional?

No.722 ……....77

Is the relevant provision of Regulations Governing Business Income from Professional Practice which only permits the adoption of accrual

accounting for professional joint practitioners or professional associations collecting and disbursing on behalf of members unconstitutional?

No. 723 ……88

Is it unconstitutional to promulgate regulations to prescribe the two-year period for declaring National Health Insurance Medical Service Points?

No. 724 ……98

Is the provision of the Enforcement Regulations for the Supervision and Guidance of Civil Association of All Levels which specifies that the directors and supervisors of a civil association which has been set a time limit for correction shall cease exercising their powers and authorities unconstitutional?

No. 725 ……107

An Interpretation that declares a statute or regulation unconstitutional but invalid only after a period of time currently has no effect on cases for which the Interpretation was sought. Is this unconstitutional?

No. 726 ……119

Is a separate labor-management agreement for working hours and other issues without filing with the competent authority still subject to the restrictions under the Labor Standards Act?

No. 727 ……134

Is the rule that authorizes the competent authority to nullify the resident certificates and related rights and interests of resident military householders who disagree with the reconstruction of old military dependents' villages unconstitutional?

No.728 ……150

Is the relevant provision of the Statutes Governing Ancestor Worship Guilds that guilds existing prior to the promulgation of the Statutes, whether a person is a qualified successor to the guild should be determined by its internal regulations constitutional?

No. 729 ……..…162

Can the Legislative Yuan request investigation files held by the Prosecution?

No. 730 ……..…181

Is Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees unconstitutional?

No. 731 ……..…195

If the portion of the Contested Requirement, which stipulates that those who wish to apply for compensation in land in lieu of cash "shall within the period of the public announcement of the expropriation" submit their application, is unconstitutional, because the date of the public announcement of the expropriation is used to calculate the period during which individuals who are served a written notice of expropriation issued after that date may apply?

No. 732 ……..…205

Is it unconstitutional that the provisions at issue allow competent authorities to expropriate adjacent lands, which are not necessarily required for transportation, in accordance with applicable laws for the purpose of land development?

No. 733 ……..…222

Does the Section 2 of Article 17 of the Civil Associations Act regarding" A chair person shall be elected from the standing directors by the vote of directors and, if no such position of standing directors is set, then selection shall be made by the vote among the directors." violate the Constitution?

No. 734 ……..…231

The Waste Disposal Act authorizes competent authorities to publish the types of act which could be characterized as an act of environmental pollution. Is it consistent with the Constitution to regard the official notices published thereunder, recognizing the unapproved placement of advertisements in designated areas and by a designated

manner as an act of pollution?

No. 735 ……243

Is a no-confidence motion stipulated under Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China permitted to be proposed during an extraordinary session of the Legislative Yuan convened due to other specific matters?

No. 736 ……251

1. Is Article 33 of the Teachers' Act unconstitutional?
2. Is the teacher who claims that his/her rights or legal interests are infringed by the school's concrete measures entitled to file a lawsuit?

No. 737 ……260

Is it unconstitutional that the criminal suspect and his or her counsel only have access to factual issues cited in the detention motion at investigatory stage according to Article 33 Paragraph 1 and Article 101 Paragraph 3 of the Criminal Procedure Code?

No. 738 ……280

1. Is it constitutional for Point 2, Section 1, Subsection 1 of the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry to stipulate that the operating facilities of electronic gaming arcades shall be in compliance with the Self-governing Ordinance?
2. Is it constitutional for Article 5, Paragraph 1, Section 2 of the Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance, Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance (now invalid), and Article 4, Paragraph 1 of the Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (continuously in effect as of December 25, 2014 by promulgation) to respectively regulate that an electronic gaming arcade should maintain a distance of 1,000, 990 or 800 meters away from certain locations?

No. 739 ……302

Is the requirement set forth in Article 8, Paragraph 1 of the Regulation for Encouraging Landowners to Handle Urban Land Consolidation (hereinafter "the Encouraging Consolidation Regulation") to apply for the approval of organizing a preparatory committee by the initiators constitutional? Are the provisions set forth in Article 9, Subparagraph 3 and Article 20, Paragraph 1 of the Regulation which mandate that the preparatory committee shall apply for the approval of the proposed consolidation range, Article 9, Subparagraph 6 and Article 26, Paragraph 1 of the same Regulation which mandate that the preparatory committee shall apply for the approval of the consolidation project, publicly announce, and notify to the landowners constitutional? Are the procedures under the same Regulation regarding that the competent authorities approve the proposed consolidation range and grant a permission to implement the consolidation project constitutional? Is the ratio for reaching an agreement set forth in Article 58, Paragraph 3 of the Equalization of Land Rights Act constitutional?

No. 740 ……326

Whether a service contract for the solicitation of insurance business between an insurance solicitor and the insurance company to which the solicitor belongs is a labor contract under Article 2 Sub-paragraph 6 of the Labor Standards Act?

No. 741 ……341

When an individual applies to this Court for an Interpretation of the Constitution and this Court declares a statute or regulation that has been applied by the court of last instance in its final judgment or ruling to be unconstitutional but invalid only after expiry of a prescribed period of time, may the applicant rely on the Interpretation rendered by this Court to seek a retrial of the case or other redress? May the Prosecutor General rely on the Interpretation rendered by this Court to make an extraordinary appeal?

No. 742 ……352

Is it permitted to challenge by filing an administrative appeal or initiating court proceedings in an administrative court a specific part of an urban plan modification based on a periodic Comprehensive Review of the urban plan, if that specific part either directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals?

No. 743 ……369

Whether lands expropriated for the mass rapid transit system may be used for joint development plan?

No. 744 ……383

Are Article 24, Paragraph 2 of the Statute for Control of Hygiene and Safety of Cosmetics and its punishment as provided in Article 30, Paragraph 1 of the same Statute unconstitutional?

No. 745 ……395

1. Is it unconstitutional to disallow earners of salary income to deduct the full amount of their expenses?
2. The letter ruling issued by the Ministry of Finance characterizes the hourly pay earned by adjunct university teachers as salary income rather than as income earned by a practitioner. Is this letter ruling a violation of the constitutional principle of taxation in accordance with the law?

No. 746 ……412

1. Both Article 20 of the Tax Collection Act and Article 51, Section 1 of the Estate and Gift Tax Act impose a failure-to-pay surcharge on the taxes payable but not paid on time. Are these provisions unconstitutional?
2. Ministry of Finance Letter of Tai-Tsai-Shui No.790445422 (April 8, 1991) and Letter of Tai-Tsai-Shui No. 811680291 (October 9, 1992) hold that, if a taxpayer files an administrative appeal against the amount of additional taxes payable as determined by the peti-

tion decision but does not pay one-half of such taxes until after the payment deadline, a failure-to-pay surcharge shall be imposed for that half of the taxes. Are these two Letters unconstitutional?

3. Article 51, Paragraph 2 of the Estate and Gift Tax Act provides that the interests on the taxes payable and the failure-to-pay surcharges shall accrue from the next day of the payment deadline. Is it unconstitutional ?

No. 747 ……433

Does the landowner have the right to request the user of his or her land to apply for expropriation of the land surface right to the competent authority, if that party carries out road construction by tunneling under or passing over the land to the extent that goes beyond the scope of social responsibility that the owner may be expected to bear, resulting in special sacrifice on the landowner?

No. 748 ……450

Do the provisions of Chapter 2 on Marriage of Part IV on Family of the Civil Code, which do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life, violate constitution's guarantees of freedom of marriage under Article 22 and right to equality under Article 7?

No. 749 ……482

Are the provisions in the Road Traffic Management and Penalty Act that disqualify a taxi driver who was convicted of certain crimes during the time period for professional practice for a fixed period of three years and that revoke all categories of driving license held unconstitutional?

No. 750 ……508

Are the provisions that require a graduate from an overseas department of dentistry to successfully complete training in clinical practice at a medical institution accredited by the competent authorities so as to be eligible to take part in a dentist examination unconstitutional?

No. 751 ……532

1. Article 26, Paragraph 2 of the Administrative Penalty Act stipulates that an administrative penalty may be imposed on top of a final disposition of conditional deferred prosecution. Is it a violation of the Constitution? Article 45, Paragraph 3 of the same Act provides that a payment made [for a conditional deferred prosecution] may be deducted from the penalty on an offense committed before the 2011 Amendment of the same Act but yet to be punished. Is it a violation of the Ex Post Facto principle or the doctrine of legitimate expectation?
2. Does [the old version of] Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, apply to a final disposition of conditional deferred prosecution?

No. 752 ……574

Cases which are listed under the Code of Criminal Procedure, Article 376, Clause 1 and 2:

1. Is it unconstitutional for a case to be not appealable to the court of third instance if the case is first pronounced guilty in the court of first instance but is later overruled on appeal or where the judgement is revoked and the accused is pronounced guilty in the court of second instance?
2. Is it unconstitutional for a case to be not appealable to the court of third instance if the case is first pronounced not guilty in the court of first instance but is later overruled on appeal or where the judgement is revoked and the accused is pronounced guilty in the court of second instance?

No. 753 ……590

1. Does the Gesetzesvorbehalt principle apply to the contract with the National Health Insurance Healthcare Providers? Do the relevant provisions of the National Health Insurance Act authorizing the Competent Authority to issue Regulations Governing Contracting and Management of National Health Insurance Medical Care Insti-

tutions ("Contracting and Management Regulations") violate the principle of clarity and definiteness of statutory authorization?
2. Are provisions of the abovementioned Contracting and Management Regulations concerning contract suspension, refusal of reimbursement, offsets of the period of suspended contract, and deductions of medical expenses exceed the scope of authorization by the enabling statute?
3. Do provisions of the abovementioned Contracting and Management Regulations concerning contract suspension, refusal of reimbursement, and offsets of the period of suspended contract violate the principle of proportionality under the Constitution?

No. 754 ……625

Does filing one import declaration form to evade import duty, commodity tax, and business tax constitute one single conduct or multiple conducts? Do the combined penalties for the tax evasions violate the principle of double jeopardy embraced by a rule-of-law nation?

No. 755 ……638

According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, inmates are not allowed to seek remedies in court. Does the foregoing contradict Article 16 of the Constitution, which protects people's right to institute legal proceedings?

No. 756 ……659

1. Does Article 66 of the Prison Act violate the right to privacy of correspondence protected under Article 12 of the Constitution?
2. Do Subparagraphs 1, 2 and 7, Article 82 of the Enforcement Rules of the Prison Act exceed the authorization of the enabling statute, namely the Prison Act?
3. Does Paragraph 3, Article 81 of the Enforcement Rules of the Prison Act violate the principle of legal reservation in Article 23 and freedom of expression in Article 11 of the Constitution?

No. 757 ……681

Whether the Applicant of J.Y. Interpretation No. 706 can directly use the payment receipt issued by the Execution Court as input tax certificate?

No. 758 ……693

Should a case filed by a landowner pursuant to Article 767, Paragraph 1 of the Civil Code be a dispute arising from a relationship in private law to be adjudicated by ordinary courts, not being influenced by the fact that the means of attack and defense of the two parties involve disputes arising from a relationship in public law?

No. 759 ……699

Which court shall adjudicate disputes where surviving relatives of staff employed by the former Taiwan Provincial Water Supply Company Ltd. claim survivors' compensation?

Index ……710

Relative Laws or Regulations ……710

Keywords ……775

Translators ……847

J. Y. Interpretation No.717（February 19, 2014）*

【Case Concerning Reduction of the Amount of Deposit on Public Insurance Pension Benefit Concessions】

ISSUE: Is it unconstitutional to limit the ceiling of the retirement income of public functionaries and the retirement of school teachers and staff to reduce the original amount of the deposit preferential provisions ?

RELEVANT LAWS:

J. Y. Interpretations Nos. 525, 529, 589, 605, 620（司法院大法官釋字第五二五號、第五二九號、第五八九號、第六０五號、第六二０號解釋）；Article 5 Paragraph 1 Subparagraph 3 and Paragraph 3 of the Constitutional Court Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）；Article 3-1, Paragraphs 1-3 and Paragraphs 7-8 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to Retired Public Functionaries (amended on January 17, 2006, effected on February 16, 2006, and abolished on January 1, 2011)（退休公務人員公保養老給付金額優惠存款要點第三點之一第一項至第三項、第七項及第八項（九十五年一月十七日增訂發布、同年二月十六日施行，一百年一月一日廢止）；

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* Translated by Lawrence L LEE

** Contents within frame, not part of the original text, are added for reference purposes only.

Article 3-1, Paragraphs 1-3 and Paragraphs 7-8 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to Retired School Teachers and Staff (amended on January 17, 2006, effected on February 16, 2006, and abolished on January 1, 2011)（學校退休教職員公保養老給付金額優惠存款要點第三點之一第一項至第三項、第七項及第八項（九十五年一月十七日增訂發布、同年二月十六日施行，一百年一月一日廢止）

KEYWORDS:

principle of legitimate expectation（保護原則）, reliability of interest（信賴利益）, principle of proportionality（比例原則）, principle of prohibition against retroactive law（禁止法律溯及既往原則）, rule of law or constitutional state（法治國）, period of applicability（施行期間）, public interest（公益）, public functionaries（公務人員）, public school educational personnel（公教人員）, retirement（退休）, new pension system（退撫新制）, pension（退休金）, retirement income（退休所得）, public insurance pension payments（公保養老給付）, preferential deposit（優惠存款）, interest（利息）, interest rate（利率）, income replacement rate（所得替代率）**

HOLDING: Article 3-1, Paragraphs 1-3 and Paragraphs 7-8 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Pref-

解釋文：銓敘部中華民國九十五年一月十七日增訂發布、同年二月十六日施行之退休公務人員公保養老給付金額優惠存款要點（已廢止）第三

erential Deposit to Retired Public Functionaries, which was amended on January 17, 2006, effected on February 16, 2006 and abolished on January 1, 2011 by the Ministry of Civil Service, and Article 3-1, Paragraphs 1-3 and Paragraphs 7-8 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to Retired School Teachers and Staff, which was amended on January 17, 2006, effected on February 16, 2006, and abolished on January 1, 2011 by the Ministry of Education, relating to the monthly retirement income for persons on monthly pensions, stipulating that it may not exceed a certain proportion of the retirement income due to persons currently employed in a similar post and at a similar level, deducting the preferential treatment on deposits granted by the public insurance pension payment, does not touch on the principle of prohibition of retroactive law. Before the abolished foregoing provisions became effective, the preferential interest on deposits for retired or serving civil servants and educational personnel indeed deserved to be upheld so as to protect reliability of

點之一第一項至第三項、第七項及第八項、教育部九十五年一月二十七日增訂發布、同年二月十六日施行之學校退休教職員公保養老給付金額優惠存款要點（已廢止）第三點之一第一項至第三項、第七項及第八項，有關以支領月退休金人員之每月退休所得，不得超過依最後在職同等級人員現職待遇計算之退休所得上限一定百分比之方式，減少其公保養老給付得辦理優惠存款金額之規定，尚無涉禁止法律溯及既往之原則。上開規定生效前退休或在職之公務人員及學校教職員對於原定之優惠存款利息，固有值得保護之信賴利益，惟上開規定之變動確有公益之考量，且衡酌其所欲達成之公益及退休或在職公教人員應受保護之信賴利益，上開規定所採措施尚未逾越必要合理之程度，未違反信賴保護原則及比例原則。

interest. Changes to the above regulations were in fact carried out after consideration of the public interest and took into account the public interest sought and the necessity to protect the reliability of interest of retired or serving personnel and teachers. The measures taken by the above regulations did not go beyond the level of what was necessary or reasonable and did not infringe the principle of reliability of interest or that of proportionality.

REASONING: The principle of legitimate expectation touches on the stability of the legal order and dependability of the state's actions. It forms an important part of government by the rule of law. Its purpose is not solely limited to protecting the people's interests. Rather it also has the goal of realizing the public interest. The legitimate interest or legal status which the people can rightly expect to attain according to laws and regulations is a matter of the realization of a reliability that is objectively demonstrable and not purely a matter of desire or expectation. This is what merits protection (see

解釋理由書：信賴保護原則涉及法秩序安定與國家行為可預期性，屬法治國原理重要內涵，其作用非僅在保障人民權益，更寓有藉以實現公益之目的。人民對依法規而取得之有利法律地位或可合理預期取得之利益，於客觀上有表現其信賴之事實，而非純為願望或期待，並具有值得保護之價值者（本院釋字第五二五號解釋參照），其信賴之利益即應加以保護。法規變動（制定、修正或廢止）時，在無涉禁止法律溯及既往原則之情形，對於人民既存之有利法律地位（本院釋字第五二九號解釋參照）或可得預期之利益（本院釋字第六0五號解釋參照），國家除因有憲政

Judicial Yuan Interpretation No. 525). The people's reliability of interest is what should be protected. When laws and regulations are changed (clarified, amended or abolished), without prejudice to the principle of prohibition of retroactive law, regarding a legal status that people already enjoy (see Judicial Yuan Interpretation No. 529) or an expected interest (see Judicial Yuan Interpretation No. 605), apart from cases involving special consideration with respect to constitutional order (see Judicial Yuan Interpretation No. 589), in principle the state has the inherent room to decide whether or not to maintain, and how to maintain, that interest. All that must be considered is whether the people have a reliable expectation based on the old law that merits protection or not and whether or not it conforms to the principle of proportionality.

制度之特殊考量外（本院釋字第五八九號解釋參照），原則上固有決定是否予以維持以及如何維持之形成空間，惟仍應注意人民對於舊法有無值得保護之信賴及是否符合比例原則。

Laws and regulations that grant financial interests to the people and that carry a pre-determined period of applicability, within the said period of time should be accorded a relatively high level of trust. Unless there is an urgent matter

授予人民經濟利益之法規預先定有施行期間者，在該期間內即應予較高程度之信賴保護，非有極為重要之公益，不得加以限制；若於期間屆滿後發布新規定，則不生信賴保護之問題。其未定有施行期間者，如客觀上可使規範

of public interest, they should not be curtailed. Should new regulations be issued after the expiry of the said period of time then the issue of reliability does not arise.

When no period of applicability is mentioned, and if objectively the object of the regulation could expect continuation of applicability—and this can usually be shown by a person's disposition of life and activity—then protection of the reliability of such an interest must be based on changes brought about owing to the necessity of the public interest. Whenever the necessity of the public interest requires changes to laws and regulations, there must still be a response to the clash provoked thereby with protection of the reliability of interest that should be granted to the objects falling within the scope of the regulations. Besides the requirement to avoid a complete cessation of all privileges granted, in examining the level of reductions to be made, one should also consider making such reductions in installments and taking into account differences in the capacity of the objects falling within the scope of the regulations, so as to prevent excessive harm to their reliabil-

對象預期將繼續施行，並通常可據為生活或經營之安排，且其信賴值得保護時，須基於公益之必要始得變動。凡因公益之必要而變動法規者，仍應與規範對象應受保護之信賴利益相權衡，除應避免將全部給付逕予終止外，於審酌減少給付程度時，並應考量是否分階段實施及規範對象承受能力之差異，俾避免其可得預期之利益遭受過度之減損。

ity of interest.

Observing that the retirement income of public functionaries was rather low, the Ministry of Civil Service released the Operational Guidelines Governing the Public Insurance pension payment amount preferential deposit to Retired Public Functionaries (hereafter the Operational Guidelines One) on December 17, 1974 (abolished on January 1, 2011, hereafter the disputed Operational Guidelines One). Hereafter, on July 1, 1995, the new pension system was implemented. The manner of calculating the pension fund was raised by an equal amount of the then current year. This led to some persons receiving monthly pensions from the old or new pension systems or even both at the same time. When the monthly income from the preferential deposit rate under the public insurance fund was added on, their monthly pension was higher than the monthly income of serving personnel of the same rank. This was manifestly unreasonable. As a result, on January 17, 2006, the Ministry of Civil Service amended Article 3-1 of the Operational Guidelines

銓敘部鑒於早期公務人員退休所得偏低，乃於六十三年十二月十七日訂定發布退休公務人員公保養老給付金額優惠存款要點（已於一百年一月一日廢止；下稱系爭要點一）；嗣因於八十四年七月一日實施公務人員退撫新制，退休金基數之計算內涵提高為本（年功）俸加一倍，造成部分同時具有新舊制年資選擇支（兼）領月退休金人員，其月退休金加上公保養老給付每月優惠存款利息之每月所得，高於同等級在職人員之現職每月所得，顯不合理，乃於九十五年一月十七日增訂發布、同年二月十六日施行第三點之一（參見退休公務人員公保養老給付金額優惠存款要點第三點之一修正總說明），其第一項至第三項、第七項及第八項分別規定：「支領月退休金人員之每月退休所得，不得超過依最後在職同等級人員現職待遇計算之退休所得上限百分比；退休所得上限百分比計算如下：（一）核定退休年資二十五年以下者，以百分之八十五為上限；核定退休年資超過二十五年者，每增一年，上限增加百分之一，最高增至百分之九十五。滿六個月以上未滿一年之畸零年資，以一年

One (see the general information to legislative amendment of Article 3-1 of the Operational Guidelines Governing the Public Insurance pension payment amount preferential deposit to Retired Public Functionaries) whose Paragraphs 1-3 and Paragraphs 7-8, respectively, state "that the monthly income of retired public functionaries who are paid a monthly pension shall not exceed the upper limit of a proportion of the retirement income due to persons currently employed in a similar post and at a similar level. Calculation of the upper limit of this proportion is as follows: (1) For those whose years of service at retirement are determined to be 25 years or below, the upper limit is to be 85%; for those whose years of service at retirement are determined to be more than 25 years, for each additional year, the upper limit is to be increased by 1% with a maximum of up to 95%. For those who have completed six months but not yet one year, the rate is to be calculated as one year. (2) For part-time employees of grade 12 and above, or its equivalent, who have a post of administrative leadership as set out in the regulations of the Civil

計。（二）最後在職經銓敘審定簡任第十二職等或相當職等以上，並依公務人員俸給法規規定支領主管職務加給之人員，核定退休年資二十五年以下者，以百分之七十五為上限；核定退休年資超過二十五年者，每增一年，上限增加百分之零點五，最高增至百分之八十。滿六個月以上未滿一年之畸零年資，以一年計。但選擇依第六項第二款第二目第二子目計算主管職務加給者，應依前款規定，計算退休所得上限百分比。」「前項人員每月退休所得超過退休所得上限百分比者，在依公務人員退休法所支領退休給與不作變動之前提下，減少其養老給付得辦理優惠存款之金額，使不超過退休所得上限百分比。」「依前項退休所得上限百分比規定計算之養老給付優惠存款金額高於依第二點、第三點規定所計算養老給付之金額者，應按後者較低金額辦理優惠存款。」「本點規定實施前已退休之公務人員，於本點規定實施後優惠存款期滿續存時，應依最後退休等級及最後服務機關核實證明最後在職時具有前項第二款之俸給項目；其中除技術或專業加給按前項第二款第一目後段之定額標準計算外，應按本點規定實施時待遇標準及當年度（如當年度尚未訂定，則依前一年度）軍公教人員

Service Pay Act, whose years of service at retirement are determined to be 25 years or below, the upper limit is to be 75%; for those whose years of service at retirement are determined to be more than 25 years, for each additional year, the upper limit is to be increased by 0.5% up to maximum of 80%. For those who have completed six months but not yet one year, the rate is to be calculated as one year. But those who choose to calculate the bonus due to executive appointments according to Article 6, Paragraph 2, Subparagraph 2, Item 2 of the Operational Guidelines One should calculate the upper limit of the percentage of retirement in accordance with the preceding paragraph. "The monthly retirement pension of persons referred to in the above Article, whose monthly retirement income exceeds the upper limit of the percentage of retired income, under the premise that retirement income under the Civil Service Retirement Act is not altered, may deduct the sum deposited in the preferential deposit program so as not to exceed the upper limit of the percentage of retirement income." "When the sum of the preferential

年終工作獎金（慰問金）發給注意事項計算每月退休所得及最後在職同等級人員現職待遇。但已退休之公務人員認為以本點規定實施時待遇標準依前項第二款第二目計算主管職務加給較為有利，且可提出證明並經最後服務機關切實審核者，得以該較為有利標準計算之。」「前項人員每月退休所得超過依第一項計算之退休所得上限百分比者，減少其養老給付得辦理優惠存款之金額，使不超過退休所得上限百分比；兼領月退休金者，並依第四項規定計算之。但原儲存之金額較低者，以原儲存之金額為限。」（下稱系爭規定一）限制公務人員退休後以公保養老給付辦理優惠存款之額度。教育部基於相同理由，於六十四年二月三日訂定發布學校退休教職員公保養老給付金額優惠存款要點（已於一百年一月一日廢止；下稱系爭要點二）；嗣因於八十五年二月一日實施學校教職員退撫新制，亦於九十五年一月二十七日增訂發布、同年二月十六日施行第三點之一，其第一項至第三項、第七項及第八項分別規定：「支領月退休金人員之每月退休所得，不得超過依最後在職同薪級人員現職待遇計算之退休所得上限百分比；退休所得上限百分比計算如下：（一）核定退休

deposit calculated in accordance with the provisions of the preceding Article is higher than the amount of the retirement income calculated in accordance with Article 2 and Article 3 of the Operational Guidelines One, the preferential deposit should be handled according to the latter, lower sum." "The Operational Guidelines One regulated that a public functionary who retires before the enforcement of the Operational Guidelines One and whose preferential deposit expired after the enforcement of the Operational Guidelines One shall verify the stipend depending on the last position he/she held and on approval by the service agency he/she last worked in according to Subparagraph 2 of the preceding Paragraph. Beside the technical and professional additional pay calculated by the limits set out in Subparagraph 2, Item 2 of the preceding Paragraph, the monthly retirement income and emoluments offered to current employees of the same rank shall be calculated according to the standards of basic salary under the Operational Guidelines One and the instructions for calculating the monthly retirement income and the

年資二十五年以下者，以百分之八十五為上限；核定退休年資超過二十五年者，每增一年，上限增加百分之一，最高增至百分之九十五。滿六個月以上未滿一年之畸零年資，以一年計。但教師或校長服務滿三十五年，並有擔任教職三十年之資歷，且辦理退休時往前逆算連續任教師或校長五年以上，成績優異者，自第三十六年起，每年增加百分之零點五，以增至百分之九十七點五為限。（二）大專校院校長或教師兼任行政職務支領相當公務人員簡任第十二職等以上主管職務加給者，核定退休年資二十五年以下者，以百分之七十五為上限；核定退休年資超過二十五年者，每增一年，上限增加百分之零點五，最高增至百分之八十。滿六個月以上未滿一年之畸零年資，以一年計；符合增核退休金基數要件者，自第三十六年起，每年增加百分之零點五，最高四十年，上限百分比為百分之八十二點五。但選擇依第六項第二款第三目第二子目計算主管職務加給者，應依前款規定，計算退休所得上限百分比。」「前項人員每月退休所得超過退休所得上限百分比者，在依學校教職員退休條例所支領退休給與不作變動之前提下，減少其養老給付得辦理優惠存款之金額，使不超過退休

emolument granted to serving personnel of the same rank as last held by the retiree set out in the current (or of the previous year if the Guide for the current year has not yet been finalized) Guide Governing the Year-End Working Performance Bonus (condolence payments) to Military, School teachers and Staff. However, should retired public functionaries believe that it would be more in their interest to follow the norms of emolument promulgated in this regulation, rather than calculating the income due their supervisory post according to Subparagraph 2, Item 2 of the preceding Paragraph and they are able to produce evidence as well as approval in fact by the last organization in which they served, then they may make the calculation in accordance with this more favorable norm. "Retired public functionaries referred to in the preceding Paragraph who receive a monthly retirement income exceeding the upper limit of the percentage of retirement income calculated according to the percentages outlined in Paragraph 1 of this Article, deducting the sum deposited in the preferential deposit program of their pen-

所得上限百分比。」「依前項退休所得上限百分比規定計算之養老給付優惠存款金額高於依第二點、第三點規定所計算養老給付之金額者，應按後者較低金額辦理優惠存款。」「本點規定施行前已退休之教育人員，於本點規定施行後優惠存款期滿續存時，應依最後退休薪級及最後服務機關學校核實證明最後在職時具有前項第二款之待遇項目，按本點規定施行時待遇標準及當年度（如當年度尚未訂定，則依前一年度）軍公教人員年終工作獎金（慰問金）發給注意事項計算每月退休所得及最後在職同薪級人員現職待遇。但已退休之教育人員認為以本點規定施行時待遇標準依前項第二款第三目計算主管職務加給較為有利，且可提出證明並經最後服務機關學校切實審核者，得以該較為有利標準計算之。」「前項人員每月退休所得超過依第一項計算之退休所得上限百分比者，減少其養老給付得辦理優惠存款之金額，使不超過退休所得上限百分比；兼領月退休金者，並依第四項規定計算之。但原儲存之金額較低者，以原儲存之金額為限。」（下稱系爭規定二）限制學校教職員退休後以公保養老給付辦理優惠存款之額度。惟系爭規定一、二（下併稱系爭規定）僅適用於核定年資

sion payment, so that it does not exceed the percentage of retirement income, and who also receive a partial monthly retirement payment should calculate their monthly pension according to Paragraph 4 of this Article. However, those whose sum deposited is lower, should take the original sum deposited as the limit" (hereafter the disputed Regulation One). This limits the sum of the preferential deposit granted by the insurance and pension of public functionaries after their retirement. For the same reason, the Ministry of Education on February 3, 1975, released the Operational Guidelines Governing the Public Insurance pension payment amount preferential deposit to retired School Teachers and Staff (abolished on January 1, 2011; hereafter the disputed Operational Guidelines Two); subsequently, due to the implementation of the new pension system regulated by the Regulations of the Statute Governing the Consolation Payment to Surviving Dependents at the Death of School Teachers and Staff for school staff Pension, the Ministry of Education also on January 27, 1996, amended Article 3-1, Paragraphs 1-3, and Para-

兼具退撫新舊制年資之已退休支領月退休金及未退休擬支領月退休金之公務人員及學校教職員（下併稱公教人員），並未影響支領一次退休金、僅具有新制年資或舊制年資之退休及在職公教人員。

graphs 7-8, respectively, of the Operational Guidelines Two which took on February 26, 1996, stating that "the monthly income of retired public functionaries who are paid a monthly pension shall not exceed the upper limit of a proportion of the retirement income due to persons currently employed in a similar post and at a similar level. Calculation of the upper limit of this proportion is as follows: (1) For those whose years of service at retirement are determined to be 25 years or below, the upper limit is to be 85%; for those whose years of service at retirement are determined to be more than 25 years, for each additional year, the upper limit is to be increased by 1% with a maximum of up to 95%. For those who have completed six months but not yet one year, the rate is to be calculated as one year. But teachers or principals who have served for a full 35 years and who have a record as a teacher of thirty years and who when applying for retirement calculate their unbroken service as a teacher or principal for a further five years or more, and who have an outstanding record, from the thirty-sixth year on, add 0.5% for each addi-

tional year up to a maximum of 97.5%. For college and university principals or teachers concurrently holding administrative posts equivalent to public functionaries concurrently holding executive posts of the twelfth rank or above, whose years of service at retirement are determined to be 25 years or below, the upper limit is to be 75%; for those whose years of service at retirement are determined to be more than 25 years, for each additional year, the upper limit is to be increased by 0.5% per year up to a maximum of 80%. For those who have completed six months but not yet one year, the rate is to be calculated as one year. Persons to whom the increased pension applies, from the thirty-sixth year on, add 0.5% per year up to a maximum of 40 years, with an upper limit of 82.5%. But those who according to Article 6, Paragraph 2, Subparagraph 3, Item 2 of the Operational Guidelines Two choose to add their administrative service, should calculate the upper limit of the percentage of retirement in accordance with the preceding paragraph." "The monthly retirement pension of persons referred to in the above Article, whose

monthly retirement income exceeds the upper limit of the percentage of retired income, under the premise that retirement income under the Act Governing the Retirement of School Teachers and Staff, is not altered, may deduct the sum deposited in the preferential deposit program so as not to exceed the upper limit of the percentage of retirement income." When the sum of the preferential deposit calculated in accordance with the provisions of the preceding Article is higher than the amount of the retirement income calculated in accordance with Article 2 and Article 3 of the Operational Guidelines Two, the preferential deposit should be handled according to the latter, lower sum." "Educational personnel who have already retired before the application of this regulation, for whom the term of their preferential deposit is complete and yet continues to exist after the application of this regulation, enjoy the benefits granted in Subparagraph 2 of the preceding Paragraph applicable to their last place of work. The level of income of their pension should be verified according to the last position he/she held and on approval

by the school where they last served. The monthly retirement income and condolence payments of retired school teachers and staff shall be calculated according to the standards of basic salary under the Operational Guidelines Two and the instructions for calculating the monthly retirement income and the emolument granted to serving personnel of the same rank as last held by the retiree set out in the current (or of the previous year if the Guide for the current year has not yet been finalized) Guide Governing the Year-End Working Performance Bonus (condolence payments) to Military, School teachers and Staff. However, should retired educational personnel believe that it would be more in their interest to follow the norms of emolument promulgated in this regulation, rather than calculating the income due their supervisory post according to Subparagraph 2, Item 2 of the preceding Paragraph and they are able to produce evidence as well as approval in fact by the last organization in which they served, then they may make the calculation in accordance with this more favorable norm. “Persons referred to in the pre-

ceding Paragraph who received a monthly retirement income exceeding the upper limit of the percentage of retirement income calculated according to the percentages outlined in Paragraph 1 of this Article, deducting the sum deposited in the preferential deposit program of their pension payment, so that it does not exceed the percentage of retirement income, and who also receive a partial monthly retirement payment should calculate their monthly pension according to Paragraph 4 of this Article. However, those whose sum deposited is lower, should take the original sum deposited as the limit" (hereafter the disputed Regulation Two). This limits the sum of the preferential deposit granted by the insurance and pension payments of teachers and staff at educational establishments after their retirement. Given that the disputed Regulations One and Two (hereafter the disputed Regulations) apply only to retired public functionaries and school teachers and staff who receive a monthly retirement pension approved under both the old and new pension system and public functionaries and school teachers and staff (hereafter public func-

tionaries and educational personnel) who have not yet retired but who plan to receive a monthly pension, and they do not affect retired or serving public functionaries and educational personal who are covered only by the old or the new (not both) pension systems or who take one single lump-sum pension.

In principle, that a new regulation may not be used before the law has come into effect to terminate a state of affairs or a legal relationship is what is meant by the principle of the prohibition of retroactive law. If the legal relationship encompassed by the new regulation crosses over the period of applicability of both old and new laws such that the constituent fact occurs begins to fully take effect only after the new law has come into force, then unless the law rules otherwise, the regulations of the new law should be applied. (see Judicial Yuan Interpretation No. 620). In this situation, application of the new regulation to what has already taken place in the period of applicability of the old, and a fact or legal relationship which continues to exist after the new regulation

按新訂之法規，原則上不得適用於該法規生效前業已終結之事實或法律關係，是謂禁止法律溯及既往原則。倘新法規所規範之法律關係，跨越新、舊法規施行時期，而構成要件事實於新法規生效施行後始完全實現者，除法規別有規定外，應適用新法規（本院釋字第六二0號解釋參照）。此種情形，係將新法規適用於舊法規施行時期內已發生，且於新法規施行後繼續存在之事實或法律關係，並非新法規之溯及適用，故縱有減損規範對象既存之有利法律地位或可得預期之利益，無涉禁止法律溯及既往原則。系爭規定以退休公教人員每月退休所得不得超過依最後在職同等級或同薪級人員現職待遇計算之退休所得一定百分比之方式，對公保養老給付金額優惠存款設有上限，使其原得以優惠利率存款之金額，於系爭規定發布施

has come into force, is not a retroactive application of a new law. So, even if the object's interest accorded by a preexisting legal status or his/her interest that could be expected under the regulations suffer loss, this does not touch on the principle of prohibition of retroactive law. The disputed provisions are only applicable, after coming into force, to the state and to retired public functionaries and educational personnel, in an ongoing legal relationship between public functionaries and educational personnel currently at work, and are not retroactively applicable to realities or legal relationships that have already ended. Furthermore when retired public functionaries and educational personnel according to the disputed Operational Guidelines carry out their preferential deposit, they do so in the form of periodic contracts. As for that part covered by a signed contract that has not yet reached its full term, it is not the case that the disputed Operational Guidelines are uniformly applicable. Taken in the sense explained above, the application of the disputed Operational Guidelines does not touch on the principle of prohibition of retroactive law.

行後減少，致其退休後之優惠存款利息所得顯有降低；同時亦減損在職公教人員於系爭規定生效前原可得預期之相同利益。惟系爭規定僅係適用於其生效後國家與退休公教人員、在職公教人員之間仍繼續存在之法律關係，並非溯及適用於系爭規定生效前業已終結之事實或法律關係。況且退休公教人員依據系爭要點辦理優惠存款，係以定期簽約方式辦理，對於已簽約而期限未屆至之部分，並未一體適用系爭規定。核諸上開說明，系爭規定之適用，尚無涉禁止法律溯及既往原則。

Disputed Operational Guidelines One and Two (hereafter the disputed Operational Guidelines) do not set out any limit to their period of applicability. Much time has passed since their application up to their amendment in 2006. Objectively the objects encompassed by their operation could expect they would continue to be applicable. Public functionaries and educational personnel inevitably took the preferential deposit as grounds for considering whether or not to continue to serve. Moreover, after their retirement most public functionaries and educational personnel were no longer able a salary each month that was comparable to what they received when working. Hence, on the basis of the disputed Operational Guidelines, most public functionaries and educational personnel who met the criteria for preferential deposits at the time of their retirement took the preferential interest rate as an important factor in undertaking financial planning after retirement or in considering whether or not to take voluntary retirement. Especially, before making a decision to choose to collect

系爭要點一、二（下併稱系爭要點）並未訂有實施期限，且其實施迄九十五年修正增訂系爭規定，歷時已久，客觀上可使規範對象預期將繼續施行，公教人員不免將優惠存款作為其繼續服務與否之考量。且公教人員退休後，多數無法如退休前按月領取相同額度之薪給，故符合優惠存款資格之公教人員於退休時，因有系爭要點之規定，多將優惠存款之利益，納入其退休後之財務規劃或作為考量自願退休與否之重要因素；尤其於面臨一次領取或按月領取退休金之選擇時，亦必然以此為其計算比較之基礎，從而應認得享優惠存款之退休公教人員就系爭要點所提供之優惠存款措施，在客觀上已具體表現其信賴，而非僅屬單純之願望，其信賴利益在憲法上亦值得保護。

their pension as a single lump-sum or to receive it in monthly installments, most retired educational personnel will also inevitably calculate the difference based on their preferential deposits. As a result, retired School Teachers and Staff who are able to enjoy the application of preferential deposits regulated by the disputed Operational Guidelines should be objectively recognized as a concrete manifestation of their trust, rather than merely the desire alone, whose reliance interest worthy of protection in the constitution.

Thirty years have gone by since the enactment of the disputed Operational Guidelines in 1974 and their amendment in 2006, many items of the state's economic development and personnel system have undergone major changes. Emoluments and pensions for public functionaries and educational personnel have all been greatly increased. The economic environment and market interest rates have experienced great changes during this time, such that there is a huge difference between the current situation and that when the preferential deposit system was

系爭要點自六十三年訂定以迄於九十五年修正，已逾三十餘年，國家各項社經發展、人事制度均有重大變動，公教人員之待遇、退休所得亦皆已大幅提升。且此期間之經濟環境與市場利率變動甚鉅，與優惠存款制度設計當時之情形亦有極大差異。加以退撫新制之實施，產生部分公教人員加計公保養老給付優惠存款利息之退休所得偏高之不合理現象。系爭規定係為處理此種不合理情形，避免優惠存款利息差額造成國家財政嚴重負擔，進而產生排擠其他給付行政措施預算（如各項社會福利支出），以及造成代際間權益關係失衡等

devised. Additionally, the implementation of the new pension system led to an unreasonable increase in the pension provided by the preferential interest on deposits from public insurance and pensions for some public functionaries and educational personnel. The disputed guidelines are to deal with this unreasonable situation, to prevent an excessive sum from the preferential deposit interest imposing a very serious burden on the state's financial government and to thus ensure that the budget of other executive measures (such as various kinds of social welfare expenditure) is not laid to one side, and prevent an imbalance in relationships of interest between generations and other such problems (cf. the explanation appended to Letter "Ministry-Retirement Tzu 2 No. 1003303171" of the Ministry of Civil Service of January 7, 2011 and Letter "Tai Ren Tzu 3 No. 0990136535" of the Ministry of Education on September 1, 2000). Furthermore, the disputed Operational Guidelines also served the important purpose of looking after the sustainable operation of the state's financial resources. Therefore, the enactment of the disputed Operational

問題（銓敘部一００年一月七日部退二字第一００三三０三一七一號函所附說明書及教育部九十九年九月一日台人（三）字第０九九０一三六五三五號函參照）。且系爭規定亦有兼顧國家財政資源永續運用之重要目的。故系爭要點之訂定確有公益之考量。又系爭規定並未驟然取消優惠存款，而係考量優惠存款之制度，其性質本為對公務人員於退休金額度偏低時之政策性補貼，而非獨立於退休金外之經常性退休給付，始修正為一般退休制度應含之所得替代率，並納入高低職等承受變動能力之差異，暨參酌國際勞工組織所訂退休所得之所得替代率，設置所得上限百分比，以消除或減少部分不合理情形，緩和預算之不當排擠效果。衡酌系爭規定所欲達成之公益及退休或在職公教人員應受保護之信賴利益，系爭規定所採措施尚未逾越必要合理之程度，故未違反信賴保護原則及比例原則。

Guidelines did indeed take public welfare into consideration. Also, the disputed Operational Guidelines did not suddenly cancel preferential deposits. The nature of the preferential deposit system is that of a strategic compensatory measure to deal with times when the retirement pensions of civil servants has fallen low. It is not an independent grant outside the regular retirement pension payments. Rather it was amended so as to become the replacement rate that must be present in any normal pension system, one able to cope with changes in the differences of ability of persons with high or low posts. Also there was consultation of the replacement rate of pensions set out by the International Labor Organization, setting out an upper percentage limit, so as to remove or at least diminish some of the unreasonableness, and avoid the consequence of rejection of the budget. Taking into consideration the public interest which the disputed Operational Guidelines attempt to achieve the benefit of protection of reliability that retired or active public functionaries and educational personnel should enjoy, the measures taken by the

disputed Operational Guidelines have not yet infringed the level of necessary reasonability. Therefore, they do not violate the principle of legitimate expectation nor the principle of proportionality.

The aim of the retirement system of public functionaries is to protect the dignity and the living conditions of retired public functionaries and educational personnel so that they can be free of worry while at work and devote all their strength to their public task. When the preferential deposits to retired public functionaries are reviewed by the related agencies, in addition to complying with the intention of this Interpretation, they should avoid allowing the retirement income to fall to such an extent that it affects the dignity of life. In reviewing what is a reasonable retirement income, consideration should be given to retired school teachers and staff who have suffered serious hardship or retired from lower level positions by adopting a more favorable formula of calculation to mitigate the impact of changes to their life in retirement and financial planning.

公教人員退休制度，目的在保障退休公教人員之生活條件與尊嚴，俾使其於在職時得以無後顧之憂，而戮力從公。相關機關檢討退休人員優惠存款之規定時，除應符合本解釋意旨外，亦應避免使其退休所得降低至影響生活尊嚴之程度。在衡量公教人員退休所得合理性時，對較低階或情況特殊之退休公教人員，應通過更細緻之計算方式，以減緩其退休後生活與財務規劃所受之衝擊。

One applicant presented letter No. 096338369 issued by the Taipei City Government Department of Education on June 6, 2007 for judicial interpretation. After consulting the Taipei City Government Department of Education, it has been determined that the said letter is the decision of a specific case of administrative punishment, and is not a regulation that could have a wider, more general effect. Therefore, according to Article 5 Paragraph 1 Subparagraph 3 and Paragraph 3 of the Constitutional Court Procedure Act, this part of the applicant's claim is not accepted by the Grand Justices, as is hereby indicated.

聲請人之一就臺北市政府教育局九十六年六月六日北市教人字第０九六三三八三六九０Ｊ號函聲請解釋部分，經查該函係臺北市政府教育局就個案所為之行政處分，非屬具抽象規範效果之法令，是此部分聲請，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此指明。

Justice Yeong-Chin SU filed a concurring opinion.

Justice Sea-Yau LIN filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion, in which Justice Chen-Shan LI, joined.

Justice Shin-Min CHEN filed a con-

本號解釋蘇大法官永欽提出之協同意見書；林大法官錫堯提出之協同意見書；黃大法官茂榮提出之協同意見書；陳大法官春生提出之協同意見書、李大法官震山加入；陳大法官新民提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出之協同意見書；黃大法官璽君提出之部分不同意見書。

curring opinion

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Hsi-Chun filed HUANG a dissenting opinion in part.

EDITOR'S NOTE:

Summary of facts: Applicants Chang Shan-shui as the Director of Personnel, National Fengshan Vocational High School, Lin Ch'ang-i Technician for the Tainan County Government, and Wu Ming-chün, in all 101 persons, are teachers at public high to middle (or lower) schools. Lin Peiyün, a teacher of Taichung Municipal Xinyi Elementary School, and Huang Hsiu-mei, a teacher of Taipei Dong Yuan Elementary School, are retired and receive their pension in monthly installments. All the above receive preferential deposits for their pensions according to the length of their service approved under Public Insurance and executed by the competent authorities (the Ministry of

編者註：

事實摘要：聲請人張山水為國立鳳山高職人事室主任、林長義為臺南縣政府技士，吳明君等 101 人為公立高中以下學校教育人員、林佩韻為臺中市信義國小教師、黃秀美為臺北市東園國小教師，均退休支領月退休金，並分別依主管機關 (銓敘部或縣市政府) 按服務年資核定公保養老給付得辦優惠存款之金額，與臺灣銀行簽定 2 年期定存契約辦理優惠存款，領有優存利息。嗣主管機關依銓敘部 95 年 1 月 17 日增訂發布之退休公務人員公保養老給付金額優惠存款要點及教育部同月 27 日增訂發布之學校退休教職員公保養老給付金額優惠存款要點各該第 3 點之 1 第 1 項至第 3 項及第 7 項規定重予核定，減少聲請人等得辦優存之公保養老給付金額，並

Civil Service or local governments). They signed a two-year contract with the Bank of Taiwan to possess preferential deposit interest rates. Subsequently, the competent authority of the Ministry of Civil Service on January 17, 2006 updated Article 3-1, Paragraphs 1-3 and Paragraph 7 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to Retired Public Functionaries and the Ministry of Education, on the same day of January 17, 2006, renewed Article 3-1, Paragraphs 1-3 and Paragraphs 7 of the Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to the Retirement of School Teachers and Staff whose Article 3-1, Paragraphs 1-3 and Paragraph 7, thereby reducing the sum of the claimants' public insurance and pension, and this continued to be put into practice from the time their original contract had expired, thus reducing the preferential interest they were able to enjoy.

各自原約期滿續存時起適用，致各人所得領之優存利息減少。

The applicants did not accept and each filed an administrative suit in due

聲請人等不服，各循序提起行政爭訟，均經最高行政法院判決駁回確

order, which was confirmed as rejected by the Supreme Administrative Court. On the grounds that the above regulations might be unconstitutional, they submitted petitions for interpretation (in all five petitions were filed). The Justices of the Constitutional Court considered the five cases in turn and judged them to be similar in their allegation of unconstitutionality and so dealt with them together.

定，爰認上開規定有違憲疑義，分別聲請解釋(共5件聲請案)。大法官就各案先後受理，因所主張違憲之標的相同，乃合併審理。

J. Y. Interpretation No. 718（March 21, 2014）*

【Approval for Urgent and Incidental Assembly and Demonstration】

ISSUE: Are the provisions of the Assembly and Demonstration Act regarding application for approval which do not exclude urgent and incidental assemblies[y] and demonstrations unconstitutional ?

RELEVANT LAWS:

Constitution: Articles 14, 23（憲法第十四條、第二十三條）; J.Y. Interpretation: No. 445（司法院釋字第四四五號解釋）; Assembly and Demonstration Act: Paragraph 1, Article 8; Proviso of Paragraph 1, Article 9; Paragraph 2, Article 12（集會遊行法第八條第一項、第九條第一項但書與第十二條第二項）

KEYWORDS:

freedom of assembly（集會自由）, collective action（集體行動）, peaceful expression of opinion（和平表達意見）, people's sovereignty（主權在民）, co-existence（兼容並蓄）, effective protection of assembly（有效保護集會）, maintenance of social order（社會秩序維持）, freedom of Formation（形成自由）, prior approval or notification（事前許可或報備）, urgent assembly（緊急性集會）, incidental assembly

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* Translated by Chun-Yih CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

（偶發性集會）, compulsory stoppage（強制制止）, order of dismissal[to dismiss]（命令解散）, approval system（許可制）**

HOLDING: The provision of Paragraph 1, Article 8 of Assembly and Demonstration Act that holders of outdoor assemblies[y] and demonstrations shall apply with the competent authority for approval, which does not exclude urgent and incidental assembly and demonstration, and the proviso of Paragraph 1, Article 9 and Paragraph 2, Article 12 in relation to the application for approval for urgent assemblies[y] and demonstrations, are contradictory to the Proportionality Principle of Article 23 of the Constitution, and not in compliance [incompliant] with the spirit of the protection of Freedom of Assembly of Article 14 of the Constitution, and shall lose effect from 1 January 2015. J.Y. Interpretation No. 445 [of this Yuan] should be supplemented.

解釋文：集會遊行法第八條第一項規定，室外集會、遊行應向主管機關申請許可，未排除緊急性及偶發性集會、遊行部分，及同法第九條第一項但書與第十二條第二項關於緊急性集會、遊行之申請許可規定，違反憲法第二十三條比例原則，不符憲法第十四條保障集會自由之意旨，均應自中華民國一〇四年一月一日起失其效力。本院釋字第四四五號解釋應予補充。

REASONING: Article 14 of the Constitution provides that the people shall

解釋理由書：人憲法第十四條規定人民有集會之自由，旨在保障人民

have the freedom of assembly. The purpose is to safeguard the people's peaceful expression of opinion[s] by collective action, so as to communicate and dialogue with various levels of [the] society, to form or change public opinion[s], and to influence or supervise the formation of policy or laws. This freedom[It] is based on the idea of the [people's] sovereignty of the people, and is an important basic human right in the implementation of[to implement] democracy [so] as it[to] facilitates thinking and debate, respects [the] differences, and embodies[materialize] the constitutional spirit of co-existence. To protect such freedom, in addition to providing suitable places for assemblies[,] and adopting effective security measures to protect assemblies, the country should enact a[the] law and formulate the system in such a way as to enable the participants in[of] assemblies[y] or demonstrations to exercise their freedom of assembly without fear (cf.[reference made to] J.Y. Interpretation No 445 [of this Yuan]). In using law to restrict people's freedom of assembly[by law], the Proportionality Principle of Article 23 of the Constitution should be

以集體行動之方式和平表達意見，與社會各界進行溝通對話，以形成或改變公共意見，並影響、監督政策或法律之制定，係本於主權在民理念，為實施民主政治以促進思辯、尊重差異，實現憲法兼容並蓄精神之重要基本人權。為保障該項自由，國家除應提供適當集會場所，採取有效保護集會之安全措施外，並應在法律規定與制度設計上使參與集會、遊行者在毫無恐懼的情況下行使集會自由（本院釋字第四四五號解釋參照）。以法律限制人民之集會自由，須遵守憲法第二十三條之比例原則，方符合憲法保障集會自由之本旨。

followed so as to comply with the intention of freedom of assembly as protected by the Constitution.

Outdoor assemblies[y] and demonstrations need various social resources such as places and roads etc. By nature, they are[it is] prone to affect the normal running[original operation order] of [the] society, and may provoke[invoke] counter-measures by [the] opponents[' counter-measure so as] leading to a [to] deepening of conflict[s]. The competent authorities[y] should prepare in advance in order to balance the protection of freedom of assembly and the maintenance of social order. Therefore, those wishing to hold[the promoters of the] an assembly or a[and] demonstration should, with a view to reliability [based on the standing of reliance], cooperation and communication, provide the competent authorities[y] the necessary information in a timely fashion to enable them [competent authority] to understand the nature of the event[s], to take into account[consider the] overall social conditions [as a whole], to effectively plan [properly] the time, location and

室外集會、遊行需要利用場所、道路等諸多社會資源，本質上即易對社會原有運作秩序產生影響，且不排除會引起相異立場者之反制舉措而激發衝突，主管機關為兼顧集會自由保障與社會秩序維持（集會遊行法第一條參照），應預為綢繆，故須由集會、遊行舉行者本於信賴、合作與溝通之立場適時提供主管機關必要資訊，俾供瞭解事件性質，盱衡社會整體狀況，就集會、遊行利用公共場所或路面之時間、地點與進行方式為妥善之規劃，並就執法相關人力物力妥為配置，以協助集會、遊行得順利舉行，並使社會秩序受到影響降到最低程度。在此範圍內，立法者有形成自由，得採行事前許可或報備程序，使主管機關能取得執法必要資訊，並妥為因應。此所以集會遊行法第八條第一項規定，室外之集會、遊行，原則上應向主管機關申請許可，為本院釋字第四四五號解釋所肯認。惟就事起倉卒非即刻舉行無法達到目的之緊急性集會、遊行，實難期待俟取得許可後舉行；另就群眾因特殊原因未經召集自發

manner of public places or roads to be used by the assembly or[and] demonstration, and to properly allocate [properly] the manpower and equipment of law enforcement so as to assist with the successful management of the assembly or[and] demonstration, and to minimize its[the] impact on social order. Within this scope, the legislators shall have the freedom to draw up and[of formation to] adopt a[the] procedure for[of] prior approval or reporting so as to enable the competent authorities[y] to acquire the[necessary] information necessary for law enforcement and to act properly. This is why Paragraph 1, Article 8 of the Assembly and Demonstration Act specifies that outdoor assemblies[y] and demonstrations should, in principle, apply for approval from the competent authorities[y].[, which] This is affirmed by [the] J.Y. Interpretation No. 445 [of this Yuan]. However, it is unlikely that[for those] urgent assemblies[y] and demonstrations which result[s] from an urgent need [urgency] and which cannot achieve their[its] purpose unless they are[being] held immediately, [it is difficult to expect that it] can be held only

聚集，事實上無所謂發起人或負責人之偶發性集會、遊行，自無法事先申請許可或報備。雖同法第九條第一項但書規定：「但因不可預見之重大緊急事故，且非即刻舉行，無法達到目的者，不受六日前申請之限制。」同法第十二條第二項又規定：「依第九條第一項但書之規定提出申請者，主管機關應於收受申請書之時起二十四小時內，以書面通知負責人。」針對緊急性集會、遊行，固已放寬申請許可期間，但仍須事先申請並等待主管機關至長二十四小時之決定許可與否期間；另就偶發性集會、遊行，亦仍須事先申請許可，均係以法律課予人民事實上難以遵守之義務，致人民不克申請而舉行集會、遊行時，立即附隨得由主管機關強制制止、命令解散之法律效果（集會遊行法第二十五條第一款規定參照），與本院釋字第四四五號解釋：「憲法第十四條規定保障人民之集會自由，並未排除偶發性集會、遊行」，「許可制於偶發性集會、遊行殊無適用之餘地」之意旨有違。至為維持社會秩序之目的，立法機關並非不能視事件性質，以法律明確規範緊急性及偶發性集會、遊行，改採許可制以外相同能達成目的之其他侵害較小手段，故集會遊行法第八條第一項未排除緊急性及偶發性

after obtaining approval.[;] In addition, for [those] incidental assemblies and demonstrations where a[the] crowd[s] gathers without prior arrangement[convention] due to special causes and where there is in fact no convener or responsible person, it is not possible to apply for approval or make a report in advance. Although the proviso of Paragraph 1, Article 9 of the same Act, which specifies that "provided that in the event of unforeseeable material urgency and where the purpose cannot be achieved unless being held immediately, the requirement of prior 6 days' application is not applicable", and Paragraph 2, Article 12 of the same Act, which further specifies that "in response to the application based on the proviso of Paragraph 1, Article 9, the competent authority should notify the responsible person in writing within 24 hours of receiving the written application", have relaxed the period of application for urgent assemblies[y] and demonstrations, yet[however], prior application is still required, and there is a waiting period of at most 24 hours pending the competent authority's decision to approve or not [to approve]. In addition,

集會、遊行部分；同法第九條第一項但書與第十二條第二項關於緊急性集會、遊行之申請許可規定，已屬對人民集會自由之不必要限制，與憲法第二十三條規定之比例原則有所牴觸，不符憲法第十四條保障集會自由之意旨，均應自中華民國一〇四年一月一日起失其效力。就此而言，本院釋字第四四五號解釋應予補充。

regarding incidental assemblies[y] and demonstrations, [it is still required of] prior application for approval is still required. Both regulations impose by law on the people [the] obligations which as a matter of fact cannot be abided by and immediately derive the consequential legal effect such when the people cannot apply for approval but hold the assembly and demonstration, the competent authority has the powers of compulsory stoppage, or to order dismissal (reference made to Item 1, Article 25 of the Assembly and Demonstration Act). This is contrary to the intent of J.Y. Interpretation of this Yuan "the freedom of assembly as protected by Article 14 of the Constitution does not exclude incidental assembly", "approval system is not applicable to incidental assembly and demonstration." As to the purpose of maintaining social order, the legislature is not prevented from considering the nature of the event, expressly regulating by law the urgent and incidental assembly and demonstration by means other than the approval system, which will cause lesser aggravation but could achieve the same purpose. Therefore,

Paragraph 1, Article 8 which does not exclude urgent and incidental assembly and demonstration; the proviso of Paragraph 1, Article 9 and Paragraph 2, Article 12 regarding the application for approval for urgent and incidental assembly and demonstration are unnecessary restrictions on people's freedom of assembly, and contradictory to the Proportionality Principle of Article 23 of the Constitution, inconsistent with the intent of the freedom of assembly as protected by Article 14 of the Constitution, and shall lose effect from January 1, 2015. In this regard, the J.Y. Interpretation No. 445 of this Yuan should be supplemented.

The applicants also applied for the interpretation of Paragraph 2, Article 2, Paragraph 1, Article 3, Article 4, Article 6, Paragraph 2, Article 8, Forepart of Paragraph 1, Article 9, Items 2 and 3, Article 11, Paragraphs 1 and 3, Article 12, Articles 14-16, Article 18, Article 22, Article 24, Items 2-4, Paragraph 1, Article 25, Article 28 and Article 30. However, they are not the applicable provisions for the underlying cases, or not the provisions

聲請人等併聲請就集會遊行法第二條第二項、第三條第一項、第四條、第六條、第八條第二項、第九條第一項前段、第十一條第二款、第三款、第十二條第一項、第三項、第十四條至第十六條、第十八條、第二十二條、第二十四條、第二十五條第一項第二款至第四款、第二十八條及第三十條規定解釋部分，或非本件原因案件應適用之規定，或非確定終局判決所適用之規定；另就原因案件應適用及確定終局判決所

applied by the final judgment. In addition, as to the application for those provisions applicable to the underlying cases and applied by the final judgment, ie, Item 1, Paragraph 1 and Paragraph 2, Article 25, Article 29, and Paragraph 1, Article 2 as applied by the final judgment, the application had not submitted concrete reasons for the formation of objective belief that the law is unconstitutional, or objective description of concrete unconstitutionality. The above applications are inconsistent with J.Y. Interpretation Nos. 371, 572 and 590 of this Yuan, or Item 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act, and should not be accepted. It is so indicated herein.

適用之第二十五條第一項第一款、第二項、第二十九條，與確定終局判決所適用之第二條第一項規定聲請解釋部分，聲請意旨尚難謂已提出客觀上形成確信法律為違憲之具體理由，或於客觀上具體敘明究有何違反憲法之處。以上聲請解釋之部分，與本院釋字第三七一號、第五七二號、第五九０號解釋意旨或司法院大法官審理案件法第五條第一項第二款規定不符，應不受理，併此指明。

Justice Ching-You TSAY filed an opinion concurring in part.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Chen-Shan LI filed a dissenting opinion in part, in which Justice Pai-

本號解釋蔡大法官清遊提出之部分協同意見書；蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；湯大法官德宗提出之協同意見書；李大法官震山提出之部分不同意見書，葉大法官百修、陳大法官春生及陳大法官碧玉加入；陳大法官新民提出之部分不同意見書；陳大法官碧玉提出之部分不同意見書；羅大法官昌發提出之部分不同意見書。

Hsiu YEH, Justice Chun-Sheng CHEN and Justice Beyue SU CHEN joined.

Justice Shin-Min CHEN filed an opinion dissenting in part.

Justice Beyue SU CHEN filed an opinion dissenting in part.

Justice Chang-Fa LO filed an opinion dissenting in part.

EDITOR'S NOTE:

Summary of facts: The applicants (A)1. Judge Chen Shi-fan of Taipei District Court, while trying the case of Li Ming-chong (Assistant Professor of Sociology Department of National Taiwan University), who in 2008 without approval led crowds to Executive Yuan to hold an assembly to protest against the visit to Taiwan by Chairman Chen Yun-lin of Association for Relations Across the Taiwan Straits and caused conflict with the security force and was indicted of violating the Assembly and Demonstration Act; 2. The Sixth Criminal Chamber of Taoyuan District Court, while trying the case of Chen Da-chen (lawyer), who in 2007 without approval led crowds to car park of Chihu Presidential Burial Place to hold

編者註：

事實摘要：聲請人(一)1. 臺北地院法官陳思帆為審理李明璁(臺大社會系助理教授)於97年間未經許可率眾至行政院前集會，抗議海協會會長陳雲林來臺所生維安衝突而違反集會遊行法(下稱集遊法)案件；2. 桃園地院刑六庭為審理陳達成(律師)於96年間未經許可率眾至慈湖陵寢停車場集會，舉辦「兩蔣入土為安活動」而違反集遊法案件，各依其確信認所應適用之集遊法第8條第1項、第9條第1項但書、第12條第2項關於集會前應申請許可之規定，及其他數相關規定有違憲疑義，聲請解釋(陳法官併同聲請之條文有第4、6、11第2款、25第1項第3、4款、29條；刑六庭併同聲請之條文有第29、30條)。(二)林柏儀(政大社研所學生)為抗議學費調漲，未經許可

an assembly for the activity of "Bury the Two Presidents Chiang for their peace of minds", and was indicted of violating the Assembly and Demonstration Act, firmly believed that the applicable provisions of Paragraph 1, Article 8, the proviso of Paragraph 1, Article 9, Paragraph 2, Article 12 regarding the application for approval prior to assembly and many other provisions are unconstitutional and applied for interpretation (Judge Chen also applied for the interpretation of Articles 4 and 6, Item 2, Article 11, Items 3 and 4, Paragraph 1, Article 25, Article 29; the Sixth Criminal Chamber also applied for interpretation of Articles 29 and 30); (B) Lin Bo-yi (Student of Graduate School of Sociology of National Chengchi University), who, for the protest against increase of tuition fee, assembled crowds without approval before the Ministry of Education to express their opinion, and was finally convicted the penalty of detention because of violating the Assembly and Demonstration Act, argued that the penalty of the mastermind in Article 29 of the same Act as applied by the final judgment, and the related Articles 2, 4, 6, 8, 9, 11-16,

聚眾至教育部前集會陳訴，遭以違集遊法而判處拘役確定，認判決所適用之同法第 29 條關於首謀者之罰則規定，及具關聯性之第 2、4、6、8、9、11 至 16、18、22、24、25、28 條有違憲疑義，聲請解釋。大法官就各案先後受理後，併案審理。

18, 22, 24, 25 and 28 are unconstitutional and applied for interpretation. The Grand Justices accepted these cases and consolidated into one review proceeding.

J. Y. Interpretation No.719（April 18, 2014）*

【Case Concerning Mandatory Requirement for Government Procurement Winning Bidders to Employ a Certain Percentage of Indigenous People】

ISSUE: Is the law unconstitutional to require a government procurement winning bidder hiring more than 100 employees to recruit a certain percentage of indigenous people, and to make the substituting payment for failing to comply ?

RELEVANT LAWS:

Articles 5, 7, 15 and 23 of the Constitution（中華民國憲法第 5, 7, 15, 23 條）；Paragraph 12, Article 10 of the Amendment to the Constitution（憲法增修條文第十條第十二項）；J.Y. Interpretation Nos. 514, 606, 682, 694, 701 and 716（司法院釋字第五一四、六０六、六八二、六九四、七０一、及七一六號解釋；Article 1 and Paragraphs 1 & 3, Article 12 of Indigenous Peoples' Employment Rights Protection Act（原住民族工作權保障法第一條、第十二條第一項、第三項）；Article 98 of Government Procurement Act（政府採購法第九十八條）；Paragraphs 1 & 2, Article 38 of Persons with Disabilities Rights Protection Act（身心障礙者權益保障法

* Translated by Wei Feng HUANG

** Contents within frame, not part of the original text, are added for reference purposes only.

第三十八條第一項、第二項）；Paragraph 2, Article 107 of Enforcement Rules of Government Procurement Act（政府採購法施行細則第一0七條第二項）；Forepart of Paragraph 2, Article 21 of United Nations Declaration on the Rights of Indigenous Peoples（聯合國原住民族權利宣言第二十一條第二項前段）；Paragraph 1, Article 20 of International Labor Organization's Indigenous and Tribal Peoples Convention（國際勞工組織原住民和部落人民公約第二十條第一項）

KEYWORDS:

substituting payment or fee in substitute（代金）, indigenous people（原住民）, indigenous tribes（原住民族）, government procurement（政府採購）, award-winning bidder（得標廠商）, term of contract performance（履約期間）, employment fund（就業基金）, freedom to operate business（營業自由）, principle of equality（平等原則）, principle of proportionality（比例原則）, active preferential measures（積極優惠措施）, United Nations Declaration on the Rights of Indigenous Peoples（聯合國原住民族權利保障宣言）, International Labor Organization's Indigenous and Tribal Peoples Convention（國際勞工組織原住民和部落人民公約）**

HOLDING: Paragraphs 1 & 3, Article 12 of Indigenous Peoples' Employment Rights Protection Act and Article 98 of Government Procurement Act, requiring that those award-winning

解釋文：原住民族工作權保障法第十二條第一項、第三項及政府採購法第九十八條，關於政府採購得標廠商於國內員工總人數逾一百人者，應於履約期間僱用原住民，人數不得低於總人

bidders from government procurement bids, who have hired more than 100 employees locally, shall employ indigenous people to a minimum of one percent (1%) of its total employees during the term of contract performance and in the event that the award-winning bidder fails to hire the number of indigenous people as stipulated under the law, the bidder shall pay a fee in substitute to the employment fund of Indigenous Peoples Comprehensive Development Fund, are not inconsistent with the principle of equality under Article 7, and the principle of proportionality under Article 23 of the Constitution and are consistent with the constitutional protections of the right to property, and the right of individuals to freely operate business, the essence of the right to work, under Article 15 of the Constitution.

數百分之一，進用原住民人數未達標準者，應向原住民族綜合發展基金之就業基金繳納代金部分，尚無違背憲法第七條平等原則及第二十三條比例原則，與憲法第十五條保障之財產權及其與工作權內涵之營業自由之意旨並無不符。

REASONING: People's freedom to operate a business falls under the constitutional guarantees of people's right to work and property rights under Article 15 of the Constitution (see J.Y. Interpretations Nos. 514, 606 and 716). Any restriction or limitation imposed by the state

解釋理由書：人民營業之自由為憲法第十五條工作權及財產權所保障之內涵（本院釋字第五一四號、第六0六號、第七一六號解釋參照）。國家對於財產權及營業自由之限制，應符合憲法第七條平等原則及第二十三條比例原則。法規範是否符合平等原則之要

on people's freedom to operate a business and property rights shall be in compliance with the principle of equality under Article 7, and the principle of proportionality under Article 23 of the Constitution. Whether the stipulations of a law are in compliance with the constitutional principle of equality should hinge on whether the purpose of the differential treatment is justifiable, and whether between the distinctions created and the stated objective of the law there is a certain degree of connection (see J.Y. Interpretations Nos. 682, 694 and 701). With respect to the restrictions of people's rights in order to pursue a public interest objective, if the means adopted is necessary and the restriction is not excessive, it then is not inconsistent with the principle of proportionality under Article 23 of the Constitution.

求，應視該法規範所以為差別待遇之目的是否正當，其所採取之分類與規範目的之達成之間，是否存有一定程度之關聯性而定（本院釋字第六八二號、第六九四號、第七０一號解釋參照）。另為正當公益之目的限制人民權利，其所採手段必要，且限制並未過當者，始與憲法第二十三條比例原則無違。

Paragraph 1, Article 12 of Indigenous Peoples' Employment Rights Protection Act stipulates: "those bidders winning bids according to Government Procurement Act, and hiring more than 100 employees locally, shall employ indigenous people to a minimum of one percent (1%)

原住民族工作權保障法第十二條第一項規定：「依政府採購法得標之廠商，於國內員工總人數逾一百人者，應於履約期間僱用原住民，其人數不得低於總人數百分之一。」同條第三項規定：「得標廠商進用原住民人數未達第一項標準者，應向原住民族綜合發展基金之

of the total number of employees during the term of contract performance." Paragraph 3 of same Article stipulates: "in the event that the winning bidder fails to hire the number of indigenous people as required under the law, the bidder shall pay a fee in substitute to the employment fund of Indigenous Peoples' Comprehensive Development Fund." Furthermore, Article 98 of Government Procurement Act regulates that: "those bidders winning bids, and hiring more than 100 employees locally, shall employ the physically or mentally disabled or indigenous people to a minimum of two percent (2%) of the total number of employees during the term of contract performance; and in the event that the winning bidder fails to hire the number of indigenous people as required under the law….., the bidder shall pay a fee in substitute….." Said two percent (2%) consists of at least one percent (1%) of disabled and indigenous people, respectively (see Paragraphs 1 and 2, Article 38 of Persons with Disabilities Rights Protection Act and Paragraph 2, Article 107 of Enforcement Rules of Government Procurement Act; with respect to

就業基金繳納代金。」又政府採購法第九十八條亦規定：「得標廠商其於國內員工總人數逾一百人者，應於履約期間僱用身心障礙者及原住民，人數不得低於總人數百分之二，僱用不足者，……應繳納代金……。」其百分之二係包含身心障礙者及原住民至少各百分之一（身心障礙者權益保障法第三十八條第一項、第二項、政府採購法施行細則第一百零七條第二項規定參照；有關原住民部分併稱系爭規定）。系爭規定要求國內員工總人數逾一百人以上之政府採購得標廠商（下稱得標廠商），於履約期間須進用原住民總人數不得低於百分之一（下稱進用一定比例之原住民），係對其是否增僱或選擇受僱對象等營業自由形成一定限制，侵害其財產權及其與工作權內涵之營業自由。而得標廠商未達進用原住民之標準者須繳納代金，則屬對其財產權之侵害。

the portion concerning indigenous people, hereinafter, collectively, referred to as the "regulations in dispute"). The regulations in dispute request the bidder winning bids (the "award-winning bidder"), and hiring more than 100 employees locally, shall employ indigenous people to a minimum of one percent (1%) of its total number of employees during the term of contract performance; consequently, the regulations in dispute restrict or limit the award-winning bidder's freedom to operate business, such as freedom to decide if it should increase the number of employees or who should be hired, and infringe the award-winning bidder's property right and right to freely operate business, the essence of the right to work. Additionally, if the award-winning bidder fails to hire the number of indigenous people, it is then obligated to pay a fee in substitute, which constitutes an infringement on the award-winning bidder's property right.

Article 5 of the Constitution regulates: "The various ethnic groups in the Republic of China shall be treated equally." Paragraph 12, Article 10 of the

憲法第五條規定：「中華民國各民族一律平等。」憲法增修條文第十條第十二項並規定：「國家應依民族意願，保障原住民族之地位及政治參與，

Amendment to the Constitution stipulates: "The state shall, in accordance with the will of the ethnic groups, safeguard the status and political participation of the indigenous people. The state shall also guarantee and provide assistance and encouragement for indigenous people's education, culture, transportation, water conservation, health and medical care, economic activity, land, and social welfare….." The regulations in dispute are set forth by the legislators in order to fulfill the objectives contemplated by the Constitution and the Amendment to the Constitution, to promote the employment of indigenous people and to improve their economic and social conditions by means of a preferential measure to be taken by the award-winning bidder to hire a certain percentage of indigenous people, which is in accord with the spirits of international protection on the indigenous people (see Article 1 of Indigenous Peoples' Employment Rights Protection Act and Forepart of Paragraph 2, Article 21 of United Nations Declaration on the Rights of Indigenous Peoples, 2007, which stipulates: "States shall take effective measures and, 並對其教育文化、交通水利、衛生醫療、經濟土地及社會福利事業予以保障扶助並促其發展……。」系爭規定係立法者為貫徹上開憲法暨憲法增修條文之意旨，促進原住民就業、改善其經濟與社會狀況，而透過得標廠商比例進用之手段所為優惠措施，亦符合國際保障原住民族之精神（原住民族工作權保障法第一條、聯合國原住民族權利宣言 (United Nations Declaration on the Rights of Indigenous Peoples, 2007) 第二十一條第二項前段：「各國應採取有效措施，並在適當情況下採取特別措施，確保原住民族的經濟和社會狀況持續得到改善」及國際勞工組織原住民和部落人民公約 (Indigenous and Tribal Peoples Convention, 1989 (No. 169)) 第二十條第一項：「各國政府在適用於一般勞動者之法律無法對原住民族提供有效保障之情形，應於各該國法令架構下，與原住民族合作，採行特殊措施，以確保原住民族所屬勞動者在受僱及勞動條件上受到有效保障」參照）。是系爭規定係為維護重要之公共利益，目的洵屬正當。

where appropriate, special measures to ensure continuing improvement of their economic and social conditions." Paragraph1, Article 20 of Indigenous and Tribal Peoples Convention, 1989 (No. 169) stipulates: "Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.") Consequently, the objective of the regulations in dispute is to maintain a paramount public interest and therefore is justifiable.

Government procurement is a component of the state's public functions, which not only involves the use of the state's budget but carries a close relationship with the maintenance of public interests. Although the regulations in dispute restrict or limit the award-winning bidder's property right and freedom to operate business, they only require the award-

政府採購係國家公務運作之一環，涉及國家預算之運用，與維護公共利益具有密切關係。系爭規定固然限制得標廠商之財產權及營業自由，然其僅係要求該廠商於其國內員工總人數每逾一百人者，應於履約期間僱用原住民一名，進用比例僅為百分之一，比例不大，整體而言，對廠商選擇僱用原住民之負擔尚無過重之虞；如未進用一定比例之原

winning bidder hiring more than 100 employees locally to employ indigenous people to a minimum of one percent (1%) of its total number of employees during the term of contract performance. Said one percent requirement is not burdensome and in the event the award-winning bidder fails to hire the number as required under the law, the restriction imposed on the award-winning bidder to pay a fee in substitute is not excessive. If the winning bidder fails to hire the requested number of indigenous people, it can pay a fee in substitute on a monthly basis in the amount equivalent to the minimum wage as set forth by the government. Furthermore, the regulations in dispute do not uniformly require that all the winning bidders pay a fee in substitute, but impose such obligation to the award-winning bidders only when the hiring of indigenous people does not reach certain percentage. Prior to bidders' participating in bids, they should assess whether the amount of the substituting payment is too high to bear. Given the substituting payment is to replenish the employment fund of Indigenous Peoples Comprehensive Develop-

住民，亦得按每月基本工資為標準繳納代金代替，對於得標廠商營業自由之限制並未過當。又系爭規定並非規定得標廠商一律須繳納代金，而僅係於未進用一定比例之原住民時，始令得標廠商負繳納代金之義務；至代金是否過高而難以負擔，廠商於參與投標前本得自行評估。參諸得標廠商之繳納代金，係用以充實原住民族綜合發展基金之就業基金，進而促進原住民就業，改善其經濟與社會狀況，系爭規定就有關得標廠商繳納代金之規定，對得標廠商財產權之限制，與其所維護之公共利益間，尚非顯失均衡。綜上，系爭規定並未牴觸憲法第二十三條之比例原則，與憲法第十五條保障之財產權及其與工作權內涵之營業自由之意旨並無不符。

ment Fund to further promote employment of indigenous people and to improve their economic and social conditions, the regulations in dispute requiring the substituting payment, and therefore restricting the award-winning bidder's property right do not clearly lose their balance between the restrictions and the safeguard of public interests. Based on above, the regulations in dispute are not in conflict with the principle of proportionality under Article 23 and are not inconsistent with the protections of the right to property, and the right to freely operate business, the essence of the right to work, under Article 15 of the Constitution.

Based upon the meaning and purpose of the above-mentioned provisions under the Constitution and Amendment to the Constitution, the state is charged with the obligation to protect, assist and promote the development of indigenous peoples. Under the government procurement system, the regulations in dispute, using whether the number of the locally hired employees exceeds 100 as the standard of classification, require that the

基於上開憲法暨憲法增修條文之意旨，國家具有保障扶助並促進原住民族發展之義務。系爭規定乃規範於政府採購制度下，以國內員工總人數是否逾一百人為分類標準，使逾百人之得標廠商，於履約期間負有進用一定比例原住民，以及未達比例者須繳納代金之義務，在政府採購市場形成因企業規模大小不同而有差別待遇。按系爭規定所以為差別待遇，係因國內員工總人數逾百人之廠商，其經營規模較大，僱用

award-winning bidder hiring more than 100 employees locally shall employ a certain percentage of indigenous people during the term of contract performance and make the substituting payment for not being able to meet the percentage, thus creating a differential treatment among the different sizes of the award-wining bidders within the government procurement market. The reason why the regulations in dispute create such a differential treatment is because the bidders who hire more than 100 employees more likely than not have larger operations, more hiring flexibility and better capability to further hire indigenous people. Furthermore, given the regulations in dispute, using whether the number of the locally hired employees by the bidder exceeds 100 as the dividing line for differential treatment, only require that the award-winning bidder employ indigenous people to a minimum of one percent (1%) of the total number of employees, they mean to lower the impact of the differential treatment while realizing the above-stated objectives. There should be a reasonable connection between the differential treat-

員工較具彈性，進用原住民以分擔國家上開義務之能力較高；且系爭規定所為進用比例為百分之一，以百人為差別待遇之分界，其用意在降低實現前開目的所為差別待遇造成之影響。至於此一差別待遇對於目的之達成，仍應有合理之關聯，鑑於現今原住民所受之教育及職業技能訓練程度，通常於就業市場中之競爭力處於相對弱勢，致影響其生活水準，其所採取之分類與達成上開差別待遇之目的間，具有合理之關聯性，與憲法第七條平等原則亦無牴觸。

ment and the achieving of the objectives thereof. Since the level of the indigenous people's education and professional skill is by and large relatively weak as opposed to the competitiveness of the job market, their living conditions are thus affected. The classification adopted by the regulations in dispute has therefore established a reasonable connection with the objectives anticipated to be achieved. Consequently, the regulations in dispute are not in conflict with the principle of equality under Article 7 of the Constitution.

Where there are several alternative measures by which the state may take to achieve the objective to protect, assist and promote the development of indigenous peoples, the measure adopted by the regulations in dispute to require that the award-winning bidder shall employ a certain percentage of indigenous people during the term of contract performance also constitutes one of such alternative measures. Nevertheless, given most of the available jobs are more short-term or require non-technical skills, it may be difficult to enhance the long-term,

國家所採取原住民族之保障扶助發展措施原有多端，系爭規定要求得標廠商於履約期間進用一定比例之原住民，亦屬其中之一環。然因此所能提供者，多屬短期或不具技術性之工作，難以增進原住民長期穩定之工作機會及專業技能，國家仍應透過具體政策與作為，積極實踐上開憲法增修條文對於原住民族工作權之保障，並應就該積極優惠措施，依國家與社會時空環境與保障原住民族工作權之需求，定期檢討修正。又得標廠商未僱用一定比例之原住民而須繳納代金，其金額如超過政府採購金額者，允宜有適當之減輕機制。有

stable employment opportunity and professional skills. Consequently, the state shall actively through substantive policies and measures realize the objective contemplated by the above-mentioned Amendment to the Constitution to protect indigenous peoples' right to work, and regularly review and revise such policies and measures based on the time and environment of the state and the society, as well as the need for the protection over the indigenous people's right to work. Moreover, in the event the award-winning bidder fails to hire a certain percentage of indigenous people, the bidder is charged with the obligation to pay a fee in substitute. If the amount of the fee paid in substitute exceeds that of the government procurement, there should have an appropriate mitigating mechanism by which the amount can be adjusted. Consequently, pursuant to this interpretation, the relevant government agencies shall review and improve the relevant provisions under the Government Procurement Act and Indigenous Peoples' Employment Rights Protection Act as soon as possible.

關機關應依本解釋意旨，就政府採購法及原住民族工作權保障法相關規定儘速檢討改進。

The petitioners (#1 and #3 as listed in the attachment) also alleged Articles 107 and 108 of Enforcement Rules of Government Procurement Act as amended and promulgated on November 27, 2002, violate the principles of equality, proportionality and clarity and definiteness of authorization and the legal principle of the reservation of law, but the petitions had not submitted concrete reasons for the formation of objective belief that the law is unconstitutional, or objective description of concrete unconstitutionality. Furthermore, the petitioners (#1 and #3) alleged Paragraphs 2 and 3, Article 24 of Indigenous Peoples' Employment Rights Protection Act, the petitioner 2 asserted Paragraph 1 of same Article, and the petitioner 4 claimed Paragraph 2 of same Article, had violated their constitutionally protected right of equality and property right; but upon examination, they are not applied by the final judgment and as such, they are not applicable for the interpretation. As such, the above petitions are inconsistent with Item 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act, and shall be dismissed

附表所示聲請人一、三指摘中華民國九十一年十一月二十七日修正發布之政府採購法施行細則第一百零七條、第一百零八條規定，與憲法平等原則、法律保留原則、比例原則、授權明確性原則有違部分，核其所陳，並未具體指明上開規定客觀上究有何牴觸憲法之處；又聲請人一、三指稱原住民族工作權保障法第二十四條第二項、第三項、聲請人二指稱同條第一項及聲請人四指稱同條第二項等規定，侵害其受憲法保障之平等權及財產權部分，惟查該規定未為各該案確定終局判決所適用，不得執以聲請釋憲。是聲請人等上開部分之聲請，均核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此指明。

pursuant to Item 3 of same Article. It is so indicated herein.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Pai-Hsiu YEH filed a concurring opinion.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Sea-Yau LIN filed a dissenting opinion.

Justice Beyue SU CHEN filed a dissenting opinion.

Justice Chang-Fa LO filed a dissenting opinion.

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；葉大法官百修提出之協同意見書；陳大法官新民提出之部分協同部分不同意見書；林大法官錫堯提出之不同意見書；陳大法官碧玉提出之不同意見書；羅大法官昌發提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioners Sinon Corporation, Next Media Ltd., Apply Daily Ltd., and Taiwan High Speed Rail Corporation each participated in government procurement bidding; but due to the fact that the petitioners, after winning the bid, failed to recruit indigenous people at the minimum of one percent (1%) of

編者註：

事實摘要：(一) 聲請人興農公司、壹傳媒出版公司、蘋果日報公司、台灣高鐵公司，各參與政府採購案，因得標後履約期間未依原住民族工作權保障法第 12 條第 1 項及政府採購法第 98 條之規定，進用總員工人數 1％ 之原住民，經行政院原住民族委員會（現為原住民族委員會）依上開工作權保障法第 12

the total employees during the term of contract performance in accordance with Paragraph 1, Article 12 of Indigenous Peoples' Employment Rights Protection Act and Article 98 of Government Procurement Act, each petitioner was ordered by the Council of Indigenous Peoples to make employment substituting payment from NT$500,000 to NT$4,000,000 respectively, in accordance with Paragraph 3, Article 12 of Indigenous Peoples' Employment Rights Protection Act and Article 98 of Government Procurement Act. Given all the petitioners considered that the amount of the employment substituting payment constituted a large amount of money, all the petitioners appealed respectively but eventually lost. As such, each petitioner filed the present petitions for the constitutional interpretation (altogether 4 petitions) alleging the regulations in dispute were in conflict with the right of equality, freedom to operate business and property right under the Constitution. Grand Justices received the petitions respectively but decided to combine the docket.

條第 3 項及採購法同條規定，命繳就業代金 50 餘萬元至 4 百餘萬不等。聲請人均不服，認所繳代金已佔各採購案實際履約所得之甚高比例，循序爭訟敗訴確定後，主張各該規定違憲，侵害平等權、營業自由及財產權等，分別聲請解釋 (共 4 案)。大法官就各案先後受理後，併案審理。

J. Y. Interpretation No.720（May 16, 2014）*

【The Judicial Remedies for a Detainee before Revision of Article 6 of the Detention Act】

ISSUE: Before revision of the Detention Act, what judicial remedies are available for a detainee who disagrees with a decision of the detention house in a grievance proceeding ?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 6 of the Detention Act（羈押法第六條）; Article 14, paragraph 1 of the Enforcement Rules for the Detention Act（羈押法施行細則第十四條第一項）; Article 416 of the Criminal Procedure Act（刑事訴訟法第四百十六條）

KEYWORDS:

the right of litigation（訴訟權）, supplementary interpretation（補充解釋）, sanction of segregation（隔離處分）, the court ordering detention（裁定羈押之法院）, the decision in a grievance proceeding（申訴決定）, quasi-motion（準抗告）, detention house（看守所）, detention（羈押）**

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* Translated by Huai-Ching TSAI

** Contents within frame, not part of the original text, are added for reference purposes only.

HOLDING: The provisions of Article 6 of the Detention Act and Article 14, paragraph 1 of the Enforcement Rules for the Detention Act, disallowing a detainee to institute proceedings in court for judicial remedies, were interpreted by Interpretation No. 653 of this Court as violating the people's right of litigation protected by Article 16 of the Constitution, and this Court ordered the government to revise the Detention Act and relevant regulations within two years from the date of publication of the said Interpretation, and to provide detainees with a timely, effective remedy in accordance with the intention of the said Interpretation. Before the revision of the aforementioned laws, a detainee who contests decisions made by the complaint system of the detention house shall be permitted to invoke the quasi-motion provisions of Article 416 of the Criminal Procedural Act to seek remedies from the court ordering the detention. Interpretation No. 653 of this Court shall be supplemented accordingly.

解釋文：羈押法第六條及同法施行細則第十四條第一項之規定，不許受羈押被告向法院提起訴訟請求救濟之部分，業經本院釋字第六五三號解釋，以其與憲法第十六條保障人民訴訟權之意旨有違，宣告相關機關至遲應於解釋公布之日起二年內，依解釋意旨，檢討修正羈押法及相關法規，就受羈押被告及時有效救濟之訴訟制度，訂定適當之規範在案。在相關法規修正公布前，受羈押被告對有關機關之申訴決定不服者，應許其準用刑事訴訟法第四百十六條等有關準抗告之規定，向裁定羈押之法院請求救濟。本院釋字第六五三號解釋應予補充。

REASONING: Detention is the maximum sanction against personal

解釋理由書：羈押為重大干預人身自由之強制處分，受羈押被告認執

freedom. A detainee who thinks that an adverse decision made by the detaining authority exceeds the scope necessary for achieving the purpose of detention, or necessary for maintaining order at the place of detention, thereby unlawfully jeopardizing his/her constitutionally protected rights, should be permitted to bring an action in court for judicial remedy. Article 6 of the Detention Act and Article 14, paragraph 1 of the Enforcement Rules for the same Act, disallowing a detainee to bring action in court for remedies, was declared by Interpretation No. 653 of this Court as contrary to the intention of Article 16 of the Constitution protecting the people's right of litigation, and this Court mandated the government to study and to revise the Detention Act and relevant regulations within two years from the date of publication of the said Interpretation in accordance with the intention of the said Interpretation. However, the two year deadline has not been observed, and the laws are not yet revised. In order to protect the right of litigation for a detainee disagreeing with the treatment or disciplinary action taken by a detention house,

行羈押機關對其所為之不利決定，逾越達成羈押目的或維持羈押處所秩序之必要範圍，不法侵害其憲法所保障之權利者，自應許其向法院提起訴訟請求救濟。羈押法第六條及同法施行細則第十四條第一項之規定，不許受羈押被告向法院提起訴訟請求救濟之部分，業經本院釋字第六五三號解釋，以其與憲法第十六條保障人民訴訟權之意旨有違，宣告相關機關至遲應於該解釋公布之日（中華民國九十七年十二月二十六日）起二年內，依該解釋意旨，檢討修正羈押法及相關法規在案。惟相關規定已逾檢討修正之二年期間甚久，仍未修正。為保障受羈押被告不服看守所之處遇或處分者之訴訟權，在相關法規修正公布前，受羈押被告對有關機關之申訴決定不服者，應許其準用刑事訴訟法第四百十六條等有關準抗告之規定，向裁定羈押之法院請求救濟。本院釋字第六五三號解釋應予補充。

before the revision of the aforementioned laws, a detainee who contests decisions made by the complaint system of the detention house shall be permitted to invoke the quasi-motion provisions of Article 416 of the Criminal Procedural Act to seek remedies from the court ordering the detention. Interpretation No. 653 of this Court shall be supplemented accordingly.

Justice Chen-Shan LI filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Pai-Hsiu YEH filed an opinion concurring in part and dissenting in part.

Justice Ching-You TSAY filed an opinion dissenting in part.

Justice Shin-Min CHEN filed a dissenting opinion.

本號解釋李大法官震山提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官春生提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出協同意見書；葉大法官百修提出部分協同部分不同意見書；蔡大法官清遊提出部分不同意見書；陳大法官新民提出不同意見書。

EDITOR'S NOTE:

Summary of facts: Petitioner Wang Bo-Chun was detained for a cause. He contested a sanction of segregation imposed by the detention house and applied for a review of its decision. His application was deemed groundless. He then instituted an administrative action in court, which was again denied by the Highest Administrative Court by Order No. 1654 of 2004 on the grounds that he was unqualified to initiate an administrative action. The appeal being final he petitioned for an interpretation of the Constitution. The Grand Justices issued Interpretation No. 653, and declared that Article 6 of the Detention Act and Article 14, paragraph 1 of the Enforcement Rules for the same Act disallowing a detainee to bring action in court for remedies, was contrary to the intention of Article 16 of the Constitution protecting the people's right of litigation. The Grand Justices ordered that the government should study and revise the Detention Act and relevant regulations within two years from the date of publication of the Interpretation to provide the detainee with a timely, effective judicial

編者註：

事實摘要：聲請人王伯群因案羈押於看守所，不服所方隔離處分提出申訴，為所方認申訴無理由，復提行政爭訟，亦為最高行政法院 93 年裁字第 1654 號裁定認不得提行政爭訟而駁回確定，乃聲請釋憲。大法官因而作成釋字第 653 號解釋，宣告羈押法第 6 條及同法施行細則第 14 條第 1 項規定，不許受羈押被告向法院提起訴訟請求救濟部分，與憲法第 16 條保障人民訴訟權意旨有違，相關機關至遲應於解釋公布日起 2 年內，檢討修正羈押法及相關法規，就受羈押被告及時有效救濟之訴訟制度，訂定適當規範。

remedy.

Following Interpretation No. 653, the petitioner requested a new trial under Article 273, paragraph 2 of the Administrative Procedural Law. However, the Highest Administrative Court in Order No. 2162 of 2007 was of the opinion that Interpretation No. 653 did not declare pertinent provisions of the Detention Act and so lost effect immediately. Hence it was not beneficial to the petitioner's case. As such, the petitioner's case was deprived of coverage by the aforementioned Administrative Procedural Law. Therefore, the court denied the application for a new trial. The petitioner then requested a supplementary interpretation for Interpretation No. 653.

聲請人據釋字第 653 號解釋循行政訴訟法第 273 條第 2 項規定聲請再審，惟最高行政法院 98 年裁字第 2162 號裁定認，該解釋並未宣告羈押法相關規定即時失效，故並未對聲請人據以聲請解釋之個案有利，非上開行政訴訟法規定規範之範圍，而駁回其再審聲請。聲請人爰就釋字第 653 號解釋聲請補充解釋。

J. Y. Interpretation No. 721（June 6, 2014）*

【Election of the Political Party Proportional Representatives】

ISSUE: Are the provisions setting forth the Single Electoral Constituency with Two Votes System for legislator elections, the number of seats of political party representatives, and the 5% threshold for political parties therein unconstitutional ?

RELEVANT LAWS:

Articles 1, 2, 7, 17 and 129 of the Constitution of the Republic of China（Taiwan）（憲法第一條、第二條、第七條、第十七條、第一百二十九條）；Article 4, Paragraphs 1 and 2 of the Additional Articles of the Constitution of the Republic of China（Taiwan）（憲法增修條文第四條第一項及第二項）；Article 67, Paragraph 2 of Civil Servants Election and Recall Act（公職人員選舉罷免法第六十七條第二項）

KEYWORDS:

constitutional democratic order（自由民主憲政秩序）, principle of the democratic republic（民主共和國原則）, principle of sovereignty of and by the people（國民主權原則）, right of equality（平等權）, suffrage（選舉權）, core content of fundamental rights（基本權核心內涵）, Civil Servants Election and Recall Act（公職人員選舉罷免法）, Single Electoral

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* Translated by Eleanor Y.Y. CHIN

** Contents within frame, not part of the original text, are added for reference purposes only.

Constituency with Two Votes System（單一選區兩票制之並立制）, number of seats of political party proportional representatives（政黨比例代表席次）, threshold for political parties（政黨門檻）**

HOLDING: Article 4, Paragraphs 1 and 2 of the Additional Articles of the Constitution of the Republic of China (Taiwan) ("Constitution") provide the parallel system of the Single Electoral Constituency with Two Votes System, the number of seats of political party proportional representatives and the threshold for political parties. Such provisions do not breach the constitutional democratic order, upon which the Constitution hinges. The provision regarding the parallel system and the threshold for political parties stated in Article 67, Paragraph 2 of the Civil Servants Election and Recall Act has the same content as the aforesaid amendments to the Constitution; hence, it raises no doubt of conflict with the Constitution either.

解釋文：憲法增修條文第四條第一項及第二項關於單一選區兩票制之並立制、政黨比例代表席次及政黨門檻規定部分，並未違反現行憲法賴以存立之自由民主憲政秩序。公職人員選舉罷免法第六十七條第二項關於並立制及政黨門檻規定部分，與上開增修條文規定內容相同，亦不生牴觸憲法之疑義。

REASONING: The Constitution of the Republic of China is the fundamental and supreme law of this country; its amendment shall be made by the governmental body governing constitutional amendment in accordance with constitutional due process. The National Assembly is the constitution-amending body established by the Constitution; an amendment it enacts based on its powers bestowed by the Constitution is of equal status with the original constitutional provisions. If, nonetheless, an amendment should be allowed to alter the existing constitutional provisions which have essential significance and upon which the governing order is founded, the integral governing order of the Constitution would be effectively destroyed. For this reason, such an amendment lacks the requisite appropriateness. Among the constitutional provisions, principles such as the principle of the democratic republic under Article 1 of the Constitution, the principle of sovereignty of and by the people under Article 2, the principle of protection of fundamental rights of the people under Chapter Two as well as the principle

解釋理由書：憲法為國家根本大法，其修改應由修憲機關循正當修憲程序為之。國民大會為憲法所設置之修憲機關，基於修憲職權所制定之憲法增修條文與未經修改之憲法條文，係處於同等位階，惟憲法條文中具有本質之重要性而為規範秩序存立之基礎者，如聽任修改條文予以變更，則憲法整體規範秩序將形同破毀，該修改之條文即失其應有之正當性。憲法條文中，諸如：第一條民主共和國原則、第二條國民主權原則、第二章保障人民權利、以及有關權力分立與制衡之原則，具有本質之重要性，亦為憲法整體基本原則之所在。基於前述規定所形成之自由民主憲政秩序，乃現行憲法賴以存立之基礎，凡憲法設置之機關均有遵守之義務。憲法之修改，除其程序有明顯重大瑕疵或內容涉及自由民主憲政秩序之違反者外，自應予尊重（本院釋字第四九九號解釋參照）。申言之，憲法之修改如未違反前述民主共和國原則、國民主權原則，或未涉人民基本權核心內涵之變動，或不涉權力分立與制衡原則之違反，即未違反自由民主憲政秩序。

regarding checks and balances of governmental powers shall have essential significance, upon which the integrality of fundamental constitutional principles hinges. Such provisions form the constitutional democratic order, which is the foundation of the current Constitution and by which any governmental body established by the Constitution is obligated to abide. Unless its process of amendment contains clear and gross flaws or its content involves a breach of the constitutional democratic order, an amendment to the Constitution shall be respected (with reference to J.Y. Interpretation No. 499). In other words, so long as an amendment to the Constitution does not contradict the principle of the democratic republic and the principle of sovereignty of and by the people, or does not involve alteration to the core contents of fundamental rights of people or the principle of checks and balances of governmental powers, such an amendment does not breach the constitutional democratic order.

Article 4, Paragraphs 1 and 2 of the Additional Articles of the Constitu-

憲法增修條文第四條第一項及第二項規定：「立法院立法委員自第七屆

tion provide that: “Beginning with the Seventh Legislative Yuan, the Legislative Yuan shall have 113 members, who shall serve a term of four years, which is renewable after re-election. The election of members of the Legislative Yuan shall be completed within three months prior to the expiration of each term, in accordance with the following provisions, the restrictions in Articles 64 and 65 of the Constitution notwithstanding: (1) Seventy-three members shall be elected from the Special Municipalities, counties, and cities in the free area. At least one member shall be elected from each county and city. (2) Three members each shall be elected from among the lowland and highland aborigines in the free area. (3) A total of thirty-four members shall be elected from the nationwide constituency and among citizens residing abroad” (“Amendment 1”). “Members for the seats set forth in Subparagraph 1 of the preceding paragraph shall be elected in proportion to the population of each Special Municipality, county, or city, which shall be divided into electoral constituencies equal in number to the number of members to be

起一百一十三人，任期四年，連選得連任，於每屆任滿前三個月內，依左列規定選出之，不受憲法第六十四條及第六十五條之限制：一、自由地區直轄市、縣市七十三人。每縣市至少一人。二、自由地區平地原住民及山地原住民各三人。三、全國不分區及僑居國外國民共三十四人。」「前項第一款依各直轄市、縣市人口比例分配，並按應選名額劃分同額選舉區選出之。第三款依政黨名單投票選舉之，由獲得百分之五以上政黨選舉票之政黨依得票比率選出之，各政黨當選名單中，婦女不得低於二分之一。」（下分稱系爭憲法增修規定一、二）係採單一選區兩票制，即單一選區制與比例代表制混合之兩票制。直轄市、縣市選出之區域立法委員依系爭憲法增修規定二前段規定，採行單一選區制選舉，每選區選出立法委員一人。全國不分區及僑居國外國民立法委員部分，依系爭憲法增修規定二後段規定，依政黨名單投票採比例代表制選舉，並設有百分之五之席次分配門檻，獲得政黨選舉票百分之五以上之政黨始得分配全國不分區及僑居國外國民立法委員席次。單一選區之區域選舉結果與政黨選舉票之選舉結果分開計算兩類立法委員當選人名額（其計算方式以下簡稱並立

elected. Members for the seats set forth in Subparagraph 3 shall be elected from the lists of political parties in proportion to the number of votes won by each party that obtains at least 5 percent of the total vote, and the number of elected female members on each party's list shall not be less than one-half of the total number" ("Amendment 2"). These two amendments adopt the Single Electoral Constituency with Two Votes System, namely, a two-vote system combining the single electoral constituency system with the proportional representation system. Legislators elected from Special Municipalities, counties, and cities are elected based on the single constituency system in accordance with the beginning part of Amendment 2, with one legislator elected from one constituency each. As to those elected from the nationwide constituency and among citizens residing abroad, according to the latter part of the same Amendment they are elected based on the proportional representation system in which ballots are cast to a political party list, and a 5% threshold is required for political parties to be allotted seats. Only those political

制，中華民國九十四年十月出版之國民大會會議實錄第三０四頁參照）。

parties gaining 5% ratio of political party ballots or more will be allotted seats for legislators of the nationwide constituency and citizens residing abroad. The election results of the single electoral constituency and those of political-party ballots are calculated separately in deciding the quotas of these two categories of legislators-elect (the calculation method thereof hereinafter referred to as "Parallel System," with reference to the minutes and stenographic records of the National Assembly published in October 2005, at page 304).

Article 129 of the Constitution stipulates that: "The various kinds of elections prescribed in this Constitution, except as otherwise provided by this Constitution, shall be by universal, equal, and direct suffrage and by secret ballot." The equal suffrage referred to therein is specifically prescribed by the right to equality and suffrage under Articles 7 and 17 of the Constitution. Judging by the language therein, it follows that the constitution-amending body is given room to consider the circumstances and assess the pros and cons. However, since elections are an

憲法第一百二十九條規定：「本憲法所規定之各種選舉，除本憲法別有規定外，以普通、平等、直接及無記名投票之方法行之。」其平等方法部分，為憲法第七條、第十七條有關平等權及選舉權之具體化規定。從其文義可知，修憲機關仍保有衡情度勢、斟酌損益之空間，但選舉既為落實民意政治、責任政治之民主基本原則不可或缺之手段，並同時彰顯主權在民之原則，則所定選舉方法仍不得有礙民主共和國及國民主權原則之實現，亦不得變動選舉權、平等權之核心內涵。而關於各國國會選舉，有重視選區代表性而採相對多數決

indispensable means to implement fundamental democratic principles such as considering public opinion and accountability while manifesting the principle of sovereignty of and by the people, the voting method prescribed must not impede the realization of the principle of the democratic republic and the principle of sovereignty of and by the people, nor shall it alter the core contents of the right to equality and suffrage. As to legislative elections in different countries, some give more weight to the representation of electoral constituencies and adopt the relative majority rule, while others give more weight to the differences in political parties and adopt the political party proportional representation system. These are different alternatives of democratic politics and reflect the differences among political cultures in respective countries. Provisions regarding adjustment to the voting methods of legislators of the Legislative Yuan stated in Amendments 1 and 2 adopt the Parallel System and require the number of seats of political party proportional representatives to be 34 seats. This reflects the choice made by

者，有重視政黨差異而採政黨比例代表制者，實為民主政治之不同選擇，反映各國政治文化之差異。系爭憲法增修規定一、二有關立法院立法委員選舉方式之調整，採並立制及設定政黨比例代表席次為三十四人，反映我國人民對民主政治之選擇，有意兼顧選區代表性與政黨多元性，其以政黨選舉票所得票數分配政黨代表席次，乃藉由政黨比例代表，以強化政黨政治之運作，俾與區域代表相輔，此一混合設計及其席次分配，乃國民意志之展現，並未牴觸民主共和國與國民主權原則，自不得以其他選舉制度（例如聯立制）運作之情形，對系爭憲法增修規定一、二所採取之並立制，指摘為違反自由民主憲政秩序。至系爭憲法增修規定二關於百分之五之政黨門檻規定部分，雖可能使政黨所得選票與獲得分配席次之百分比有一定差距，而有選票不等值之現象。惟其目的在避免小黨林立，政黨體系零碎化，影響國會議事運作之效率，妨礙行政立法互動關係之順暢，何況觀之近年立法委員政黨比例代表部分選舉結果，並未完全剝奪兩大黨以外政黨獲選之可能性，是系爭憲法增修規定二有關政黨門檻規定部分，既無損於民主共和國與國民主權基本原則之實現，而未變動選舉權及

our citizens with respect to democratic politics, with the intention of satisfying both the representativeness of electoral constituency and diversity of political parties. These amendments, providing that the number of seats of political party representatives shall be allotted based on earned political party ballots, aim to enhance the operation of political party politics by means of political party proportional representatives as a way to aid and complement regional representatives. Such a combination and its allotment of seats are a display of the general will of the people, and they do not contradict the principle of the democratic republic and the principle of sovereignty of and by the people. Allegations invoking the practices of other electoral systems (such as an coexisting system) to challenge the Parallel System provided in Amendments 1 and 2 as in breach of the constitutional democratic order shall not be sustained. Although the 5% threshold for political parties provided in Amendment 2 may result in a certain discrepancy between the percentages of ballots received by, and seats allotted to, political parties and cre-

平等權之核心內涵，即應屬修憲機關得衡情度勢，斟酌損益之範疇，自未違反上開自由民主憲政秩序。至公職人員選舉罷免法第六十七條第二項規定有關並立制及政黨門檻規定部分，係依系爭憲法增修規定二而制定，內容相同，自無違憲疑義。

ate an appearance of unequal ballots, its purpose is to ensure the efficiency of legislative operations and the smooth interaction between the executive branch and the Legislature is not impeded by a clustering of small parties and fragmentation of the political party system. In addition, it may be observed from the election results of political party proportional representative elections in recent years that the possibility of winning elections for those political parties which are not the two main parties has not been completely ruled out. As a result, the provision concerning the threshold for political parties stated in Amendment 2 does not hinder the realization of the principle of the democratic republic and the principle of sovereignty of and by the people, nor does it alter the core contents of the right to equality and suffrage. As such, it is within the scope of the constitution-amending body to consider the circumstances and assess the pros and cons, which is not in violation of the aforementioned constitutional democratic order. As for the provision regarding the Parallel System and the threshold for political parties stated in Article 67, Para-

graph 2 of the Civil Servants Election and Recall Act, since it was enacted in accordance with Amendment 2 and its content is identical thereto, such a provision raises no doubt of conflict with the Constitution.

The Petitioner, the Taiwan Constitution Association, was a candidate party in a political party proportional representative election. Subparagraph 1 of Amendment 1 provides that at least one legislator shall be elected from each county and city. Such a provision relates to the division of electoral constituencies instead of to the political party proportional representative elections. Furthermore, the Petitioner did not state how its constitutional right had been injured. The petition in this part does not meet the requirements provided in Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Court Procedure Act. Under Subparagraph 3 of the same provision, such a petition for constitutional interpretation shall not be granted. Moreover, the other petitioner, the Green Party, was a participant in a final and binding judgment and not a party to the judgment at issue. As such, its constitutional right

聲請人制憲聯盟係政黨比例代表選舉部分之候選政黨，系爭憲法增修規定一第一款規定每縣市至少一人，係關於區域選舉選區劃分規定，與政黨比例代表選舉無關，且未敘明其憲法之權利如何因此受有損害，此部分聲請核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。另聲請人綠黨係確定終局判決之參加人，非當事人，其憲法上權利並未因該判決受有侵害，尚不得據以聲請憲法解釋，依前開規定亦應不受理。併此敘明。

was not impaired as a result of the judgment, and hence it may not file a petition for constitutional interpretation on such a ground. Thus, it shall be hereby stated that the petition shall not be accepted in accordance with the aforementioned provisions.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Chen-Shan LI filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Shin-Min CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Mao-Zong HUANG filed a dissenting opinion.

本號解釋蘇大法官永欽提出協同意見書；李大法官震山提出協同意見書；陳大法官春生提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出部分協同部分不同意見書；黃大法官茂榮提出不同意見書。

EDITOR'S NOTE:

Summary of facts: The seventh legislator election took place on January 12, 2008, pursuant to Article 4, Paragraphs

編者註：

事實摘要：第七屆立法委員選舉於中華民國 97 年 1 月 12 日辦理，依憲法增修條文第 4 條第 1 項及第 2 項，

1 and 2 of the Additional Articles of the Constitution and Article 67, Paragraph 2 of Civil Servants Election and Recall Act, adopting the Single Electoral Constituency with Two Votes System, with one vote cast to a regional candidate, while the other went to a political party. The regional legislators thereof were elected from electoral constituencies equal in number to the number of members to be elected (single electoral constituency system), while legislators of the nationwide constituency and citizens residing abroad [thereof] were elected based on a political party list, with those political parties receiving 5% political party ballots or more in proportion to their ratio of received ballots being elected (political party proportional representation system). The Central Election Commission publicized the list of legislators-elect on the 18th day of the same month and year.

及公職人員選舉罷免法第 67 條第 2 項規定，採「單一選區兩票並立制」，一票以區域（含原住民）候選人為投票對象，一票以政黨為投票對象，區域選出立法委員按應選名額劃分同額選舉區選出之（單一選區代表制），全國不分區及僑居國外國民選出立法委員依政黨名單投票，由獲得 5% 以上政黨選舉票之政黨依得票比率選出之 (政黨比例代表制)。中央選舉委員會於同年月 18 日公告當選人名單。

The petitioner, the Taiwan Constitution Association, along with the Civil Party filed an election lawsuit, which was supported by the Green Party, alleging that the preceding provisions governing

聲請人制憲聯盟認上述關於立委選舉之規定，違反國民主權原則，侵害平等選舉原則暨平等權、參政權之保障，有選舉無效及不分區立法委員有當選無效事由，與公民黨共同提起選舉訴

the said legislator election are contradictory to the principle of sovereignty of and by the people, and harm the principle of equal election, as well as the guarantee of the right to equality and suffrage, and that these provisions, in so providing, construct causes for invalid election and for invalidation of the non-regional legislators-elect thereof. The lawsuit was dismissed by the Taiwan High Court in Civil Judgment (2008) Xuan-Shang-Zi No. 9. The Taiwan Constitution Association and the Green Party thus filed a petition for constitutional interpretation on the ground that the preceding provisions in relation to the parallel system of Single Electoral Constituency with Two Votes System, the number of seats of political party proportional representatives, and the threshold for political parties set forth therein as applied in the final binding judgment are contradictory to the principle of sovereignty of and by the people under Article 2 of the Constitution, and the principle of equal election manifested by Articles 7 and 129 of the Constitution.

訟；聲請人綠黨則為訴訟參加。案經臺灣高等法院 97 年度選上字第 9 號民事判決駁回確定。制憲聯盟及綠黨即以確定終局判決所適用之前揭關於單一選區兩票制之並立制、政黨比例代表席次及政黨門檻等規定，牴觸憲法第 2 條國民主權原則、第 7 條及第 129 條等所彰顯之選舉平等原則，聲請解釋。

J. Y. Interpretation No.722（June 27, 2014）*

【Case Concerning Solo Professional Practitioners to Adopt Accrual Basis Accounting to Calculate Income】

ISSUE: Is the relevant provision of Regulations Governing Business Income from Professional Practice which only permits the adoption of accrual accounting for professional joint practitioners or professional associations collecting and disbursing on behalf of members unconstitutional ?

RELEVANT LAWS:

Article 7 of the Constitution（憲法第七條）；J.Y. Interpretation Nos. 682, 694 and 701（司法院釋字第六八二號、第六九四號、第七０一號）；Article 3 and Paragraph 2, Article 10 of the Regulations Governing Business Income from Professional Practice（執行業務所得查核辦法第三條、第十條第二項）；Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 10104020320 dated June 25, 2012（財政部中華民國一０一年六月二十五日台財稅第一０一０四０二０三二０號函）

KEYWORDS:

income from professional practice（執行業務所得）, solo professional practice（單獨執行業務）, professional joint practice（聯合執行業務）, revenues collected and disbursed

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* Translated by Wei Feng HUANG

** Contents within frame, not part of the original text, are added for reference purposes only.

by professional associations on behalf of members（公會代收轉付）, accrual basis accounting（權責發生制）, cash basis accounting（收付實現制）, basis of accounting（會計基礎）, principle of equality（平等原則）**

HOLDING: Paragraph 2, Article 10 of the Regulations Governing Business Income from Professional Practice provides: "Professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their professional associations are eligible to adopt accrual basis accounting to calculate their income; provided, however, that an approval from the tax authority must be obtained at least one month prior to the commencement of the applicable fiscal year; so does any change". Nevertheless, it does not cover solo professional practitioners who incur carry-over revenues and expenses from one fiscal year to another, run on a large scale operation and complicated accounting matters, similar to that of a corporation. As such, there is no rational connection between the differential treatment and the purpose it aims

解釋文：執行業務所得查核辦法第十條第二項規定：「聯合執行業務者或執行業務收入經由公會代收轉付者，得按權責發生制計算所得，惟須於年度開始一個月前，申報該管稽徵機關核准，變更者亦同。」未涵蓋業務收支跨年度、經營規模大且會計事項複雜而與公司經營型態相類之單獨執行業務者在內，其差別待遇之手段與目的之達成間欠缺合理關聯，在此範圍內，與憲法第七條平等原則之意旨不符。

to achieve. It is thus inconsistent with the principle of equality under Article 7 of the Constitution.

REASONING: Article 7 of the Constitution provides that people's right to equality shall be protected. Whether the stipulations of a law are in compliance with the constitutional principle of equality should hinge on whether the purpose of the differential treatment is justifiable under the Constitution, and whether between the distinctions created and the stated objective of the law there is a certain degree of connection. (*see* J.Y. Interpretations Nos. 682, 694 and 701).

解釋理由書：憲法第七條規定人民之平等權應予保障。法規範是否符合平等權保障之要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，其所採取之分類與規範目的之達成之間，是否存有一定程度之關聯性而定（本院釋字第六八二號、第六九四號、第七〇一號解釋參照）。

Article 3 of the Regulations Governing Business Income from Professional Practice provides: "Unless otherwise provided for by the Regulations, cash basis accounting is in principle adopted as the basis of accounting to calculate income from professional practice." Paragraph 2, Article 10 of same Regulations provides: "Professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their profes-

執行業務所得查核辦法第三條規定：「執行業務所得之計算，除本辦法另有規定外，以收付實現為原則。」同辦法第十條第二項規定：「聯合執行業務者或執行業務收入經由公會代收轉付者，得按權責發生制計算所得，惟須於年度開始一個月前，申報該管稽徵機關核准，變更者亦同。」（後者下稱系爭規定）其規定僅使聯合執行業務者或執行業務收入經由公會代收轉付者，得選擇權責發生制，而不適用收付實現制，

sional associations are eligible to adopt accrual basis accounting to calculate their income; provided, however, that an approval from the tax authority must be obtained at least one month prior to the commencement of the applicable fiscal year; so does any change" (hereinafter referred to as "regulations in dispute"). The regulations in dispute only permit those professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their professional associations are eligible to adopt accrual, rather than cash, accounting as the basis to calculate their income from their professional practices. The regulations in dispute thus create a differential treatment resulting from whether the formation is a professional joint practice or the revenue being collected and disbursed by a professional association in terms of whether the option of accrual accounting is available in the calculation of practice income.

以計算其執行業務所得。形成執行業務者因經營型態是否為聯合執業或執行業務收入是否經由公會代收轉付，其執行業務所得之計算有得否選擇權責發生制之差別待遇。

That the regulations in dispute differentiate business models such as professional joint practitioners or professional

系爭規定以經營型態是否為聯合執業或執行業務收入是否經由公會代收轉付之不同，作為得選擇權責發生制之

practitioners whose revenues collected and remitted by their professional associations to be eligible for the adoption of accrual accounting method is based on the consideration that a professional joint practitioner more resembles a profit-seeking corporate organization, with more sizeable scale, and more complex accounting of operational revenue, expenses, and disbursement. In addition, for professional practitioners whose revenues are collected and remitted by their professional associations, they often encounter delayed collection for account receivables that cross-over two fiscal years that may not be appropriate to be entirely counted towards the revenues for the fiscal year. The regulations in dispute are thus promulgated to cover such a situation. (*see* Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 10104020320 dated June 25, 2012) The objective of the regulations in dispute is to have those professional practitioners the option to adopt accrual method to adapt to the nature and operations of their businesses and is thus consistent with the Constitution.

基礎，其分類標準係基於聯合執行業務者與公司組織之營利事業較為類似，經營較具規模，業務收支及盈餘分配等會計事項較為複雜；另執行業務收入經由公會代收轉付者，常有跨年度延後收款情形，其收入不宜全於收取年度計算所得，故設系爭規定，以資兼顧（財政部中華民國一０一年六月二十五日台財稅字第一０一０四０二０三二０號函檢附之說明參照）。系爭規定使受其涵蓋範圍之執行業務者，有選擇權責發生制之權，以適應其事業之性質及營運，目的尚屬合憲。

The regulations in dispute bestow the option for accrual accounting on the basis of business models and method of collecting income. Nevertheless, solo practitioners may also often run businesses on a considerable scale not necessarily smaller than that of professional joint practitioners. The accounting matters for the revenues and expenses of a larger-scale solo practitioner may be just as complicated, if not more, as that of a professional joint practice. Conversely, the scale of a joint practice may not be larger than that of a solo practitioner and the accounting of the business income, expenses and the disbursement of surplus may not involve complicated accounting matters. Given that the revenue and disbursement of a solo practitioner may as well be often delayed and cross over to the next fiscal year, it is thus not suited for being accounted as revenue or expense within a given fiscal year. While the objective of the regulations in dispute is to relax the method of calculating revenues for practitioners having larger-scale operations with more complex accounting and incurring income carry over two fiscal years,

系爭規定賦予執行業務者選擇權責發生制，係以經營型態及業務收入方式為標準。然單獨執行業務亦常有相當經營規模者，並非必然小於聯合執行業務之情形。較大規模之單獨執行業務者業務收入及支出，其會計事項可能與聯合執業者有相同甚至更高之複雜程度。反之聯合執業者，其經營規模未必大於單獨執業者，且其業務收支與盈餘分配未必涉及複雜會計事項。又單獨執業者，因其業務特性或經營規模，其收款或付款亦可能常有跨年度延後，且不宜完全由收取或支出年度計算所得之情形。系爭規定之目的在放寬經營較具規模且會計事項較為複雜，以及收入有跨年度延後收款之執行業務者之所得計算方式，使其有選擇權責發生制之權。然此目的無法以經營型態及業務收入之方式作為分類而達成。系爭規定未涵蓋業務收支跨年度、經營規模大且會計事項複雜而與公司經營型態相類之單獨執行業務者在內，其差別待遇之手段與目的之達成間欠缺合理關聯，在此範圍內，與憲法第七條平等原則之意旨不符。

and to provide option for accrual accounting. However, the objective cannot be achieved by just using business models and method of revenue collection as the means to categorize. The regulations in dispute do not cover solo professional practitioners who incur carry-over revenues and expenses from one fiscal year to another, run on a large scale operation and accounting matters similar to that of a corporation. As such, there is no rational connection between the differential treatment and the purpose it aims to achieve. It is thus inconsistent with the principle of equality under Article 7 of the Constitution.

The petitioner also alleged that Article 3, Paragraph 1 of Article 10 and Subparagraph 1 of Article 31 of the Regulations Governing Business Income from Professional Practice as well as Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 861907562 dated July 31, 1997, were in violation of the Constitution and therefore petitioned for interpretation. The aforementioned allegation only disputed the appropriateness of the court's finding

聲請人另指摘執行業務所得查核辦法第三條、第十條第一項、第三十一條第一款規定及財政部八十六年七月三十一日台財稅第八六一九0七五六二號函，有違憲疑義，聲請解釋憲法部分，僅係爭執法院認事用法之當否，並未具體指摘該等規定於客觀上究有何牴觸憲法之處；又聲請人就本院釋字第三七七號解釋聲請補充解釋部分，查該號解釋並無文字晦澀或論證不周之情形，核無補充解釋之必要；是上開部分

of facts and application of laws but had not submitted concrete reasons for the formation of objective belief that the law is unconstitutional, or objective description of concrete unconstitutionality. Furthermore, the petitioner filed a petition for an additional interpretation of J.Y. Interpretation No. 377. Upon examination, there is not any ambiguity or incompleteness of the J.Y. Interpretation No. 377; thus, no supplemental interpretation is needed. As such, the above petitions do not comply with Item 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act, and should be dismissed pursuant to Item 3 of same Article. It is so indicated herein.

核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此指明。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Sea-Yau LIN filed an opinion dissenting in part.

Justice Chi-Ming CHIH and Justice Ming CHEN jointly filed an opinion dissenting in part.

本號解釋湯大法官德宗提出部分協同意見書；黃大法官茂榮提出協同意見書；陳大法官碧玉提出協同意見書；林大法官錫堯提出部分不同意見書；池大法官啟明、陳大法官敏共同提出部分不同意見書；羅大法官昌發提出部分不同意見書；黃大法官璽君提出、陳大法官敏加入不同意見書。

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Hsi-Chun HUANG, filed a dissenting opinion, in which Justice Ming CHEN, joined.

EDITOR'S NOTE:

Summary of facts: The Income Tax Act adopts accrual and cash method as the basis for accounting. Article 22 provides that corporate income tax shall, in principle, adopt the former basis, whereas individual income tax shall adopt the latter, as confirmed by J.Y. Interpretation No. 377. With respect to "income derived from professional practice", Category 2, Paragraph 1, Article 14 of Income Tax Act authorizes the Ministry of Finance to prescribe the "Regulations Governing Income from Professional Practice" (the "Regulations") and Article 3 of the Regulations provides: "Unless otherwise provided by the Regulations, cash basis accounting is in principle applied as the basis of accounting to calculate income from professional practice"; whereas Paragraph 2, Article 10 provides that only those "professional joint practitioners" or

編者註：

事實摘要：所得稅法採用之會計基礎有「權責發生制」及「收付實現制」二種。第 22 條規定，營利事業所得稅原則上採用前者；個人綜合所得稅採用後者，則為釋字第 377 號解釋所肯認。惟對於計入個人綜合所得分類中之「執行業務所得」，同法第 14 條第 1 項第 2 類規定授權財政部訂定「執行業務所得查核辦法」，該辦法第 3 條規定，執行業務所得之計算，除該辦法另有規定外，以收付實現為原則；第 10 條第 2 項復規定，僅「聯合執行業務者」或「執行業務收入經由公會代收轉付者」經申報核准後，得按權責發生制計算所得。

"professional practitioners whose income from professional practice are collected and remitted through and by their professional associations on their behalf", are eligible to adopt accrual basis to calculate income once being approved.

The petitioner, Chang, Huan Chen, who was in charge of Landseed Hospital obtained an approval in 1998 to adopt accrual basis accounting to calculate income. He filed his 1999 individual income tax return based on the accrual basis method and listed NT$0 income from his professional practice earned from the hospital. In 2002, National Taxation Bureau of the Northern District opined that the petitioner was not eligible to adopt accrual basis to calculate his income because he is neither in joint practice nor a solo practitioner whose income being collected and disbursed by his professional association under Article 10, Paragraph 2 of the Regulations. Consequently, his income should be calculated by adopting cash basis accounting pursuant to Article 3 of the Regulations. National Taxation Bureau of the Northern District thus re-

聲請人張煥禎係壢新醫院負責人，於87年間獲准以權責發生制記帳，其據以申報88年度綜合所得稅列報取自醫院之執行業務所得為新臺幣（下同）0元。91年間北區國稅局認，聲請人非執行業務所得查核辦法第10條第2項所定之聯合執行業務者或執行業務收入經由公會代收轉付者，其所得計算本不得採權責發生制，而應依同辦法第3條收付實現制之規定辦理，乃撤銷核准，改依收付實現制重予計算，核定聲請人88年度之執行業務所得為26,388,247元。聲請人不服提起行政爭訟，經最高行政法院98年判字第738號判決駁回確定，爰認上開查核辦法規定及財政部相關函釋違憲，聲請解釋；併就釋字第377號解釋，聲請補充解釋。

voked its previous approval, and adopted cash basis method to have recalculated the petitioner's income from professional practice in 1999 at NT$26,388,247. The petitioner, for relief, had filed an administrative litigation which was finally and conclusively overruled by Supreme Administrative Court decision No. 98-Pan-Tzu-738. Consequently, the petitioner asserted that the regulations in dispute and relevant directives of the Ministry of Finance were unconstitutional and petitioned for interpretation, together with a request for a supplemental interpretation on J.Y. Interpretation No. 377.

J. Y. Interpretation No.723（July 25, 2014）*

【The Period for Declaring National Health Insurance Medical Service Points】

ISSUE: Is it unconstitutional to promulgate regulations to prescribe the two-year period for declaring National Health Insurance Medical Service Points ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）；J. Y. Interpretation No. 474（司法院釋字第四七四號解釋）；Article 50, Paragraphs 1 and 2, and Article 52 of the National Health Insurance Act (as enacted and published on August 9, 1994)（全民健康保險法第五十條第一項、第二項、第五十二條（八十三年八月九日制定公布））；Article 62, Paragraph 2 of the National Health Insurance Act（as amended and published on January 26, 2011（全民健康保險法第六十二條第二項（一００年一月二十六日修正公布））；Article 6, Paragraph 1 of the Regulations Governing the Review on Medical Services of National Health Insurance Medical Care Institutions (as amended and published on December 29, 2000)（全民健康保險醫事服務機構醫療服務審查辦法第六條第一項（八十九年十二月二十九日修正發

* Translated by Spenser Y. HO

** Contents within frame, not part of the original text, are added for reference purposes only.

布））；The Regulations Governing the Review on National Health Insurance Medical Expense Declaration and Payment as well as Medical Services（as amended and published on January 24, 2012）（全民健康保險醫療費用申報與核付及醫療服務審查辦法（一0一年十二月二十四日修正發布））

KEYWORDS:

the right to property（財產權）, declaration period（申報期限）, interim disposition（暫時處分）, statute of limitation（消滅時效制度）, rights of public law（公法上請求權）, national health insurance （全民健康保險）, medical service points（醫療服務點數）, the principle of legal reservation（法律保留原則）**

HOLDING: Article 6, Paragraph 1 of the Regulations Governing the Review on Medical Services of National Health Insurance Medical Care Institutions (the "Regulations") as amended and published on December 29, 2000 provided: "The Insurer shall not make payment to the contracted medical care institution if such an institution declares its medical service points after the two-year declaration period provided in the preceding article" (the "Provision"). (The Regulations were amended and promulgated on

解釋文：中華民國八十九年十二月二十九日修正發布之全民健康保險醫事服務機構醫療服務審查辦法第六條第一項規定：「保險醫事服務機構申報醫療服務點數，逾前條之申報期限二年者，保險人應不予支付。」（該辦法於九十一年三月二十二日修正發布全文，該條項規定並未修正，一0一年十二月二十四日修正刪除）有違法律保留原則，侵害人民之財產權，與憲法第十五條及第二十三條規定之意旨不符，應不予適用。

March 22, 2002, leaving the Provision unchanged. The Provision was deleted as of the amendment on January 24, 2012.) The aforesaid Provision contradicts the principle of legal reservation and breaches the right to property of the people. It is inconsistent with the constitutional intention of Articles 15 and 23 of the Constitution of the Republic of China (Taiwan). As such, the Provision shall not be applicable.

As to the interim disposition filed by the petitioner, since the case has been addressed by this interpretation, the interim disposition has become unnecessary. Therefore, it shall be dismissed.

聲請人聲請暫時處分部分，因本案業經作成解釋，無作成暫時處分之必要，應予駁回。

REASONING: The purpose of a statute of limitation is to respect pre-existing factual status and maintain the stability of the legal order, which pertains to public interest and significantly affects the rights and obligations of the people. Whether the statute of limitation is for rights of claim under public law or private law, it shall be expressly stipulated by law. Its stipulation shall not be delegated to the executive branch, nor shall it be

解釋理由書：消滅時效制度之目的在於尊重既存之事實狀態，及維持法律秩序之安定，與公益有關，且與人民權利義務有重大關係，不論其係公法上或私法上之請求權消滅時效，均須逕由法律明定，自不得授權行政機關衡情以命令訂定或由行政機關依職權以命令訂之，始符憲法第二十三條法律保留原則之意旨（本院釋字第四七四號解釋參照）。

stipulated in regulations promulgated by the executive branch by its own authority. Only then will the statute of limitation be considered to be consistent with the constitutional intention of the principle of legal reservation under Article 23 of the Constitution (with reference to J.Y. Interpretation No. 474).

Article 50, Paragraph 1 of the National Health Insurance Act as enacted and published on August 9, 1994 stipulated: "The contracted medical care institution shall declare to the Insurer its medical service points representing the medical services it rendered and its pharmaceutical expenses based on the standard for payment of medical expenses and the criterion of pharmaceutical price." Paragraph 2 of the same article provided: "The Insurer shall calculate the value of each point based on the budget allocated in the preceding article and the total points of medical service as reviewed by the Insurer. The Insurer shall pay each contracted medical care institution according to the reviewed points." No declaration period was stipulated for contracted medical

中華民國八十三年八月九日制定公布之全民健康保險法第五十條第一項規定：「保險醫事服務機構應依據醫療費用支付標準及藥價基準，向保險人申報其所提供醫療服務之點數及藥品費用。」同條第二項規定：「保險人應依前條分配後之醫療給付費用總額經其審查後之醫療服務總點數，核算每點費用；並按各保險醫事服務機構經審查後之點數，核付其費用。」對保險醫事服務機構申報醫療服務點數，並未規定申報期限。主管機關依據同法第五十二條規定：「保險人為審查保險醫事服務機構辦理本保險之醫療服務項目、數量及品質，應遴聘具有臨床或實際經驗之醫藥專家，組成醫療服務審查委員會；其審查辦法，由主管機關定之。」訂定發布全民健康保險醫事服務機構醫療服務審查辦法，嗣於八十九年十二月二十九

care institutions to declare their medical service points. Article 52 of the same Act further indicated: “In reviewing the quantity and quality of medical service items rendered by contracted medical care institutions, the insurer shall retain those medical and pharmaceutical specialists with clinical or practical experience to form a medical service review commission. The regulations governing such reviews shall be established by the competent authorities.” Mandated by this provision, the competent authorities established and promulgated the Regulations Governing the Review on Medical Services of National Health Insurance Medical Care Institutions (the “Regulations”). The competent authorities further amended Article 6, Paragraph 1 of the Regulations on December 29, 2000, which stated: “The Insurer shall not pay the contracted medical care institution if the institution declares its medical service points after the two-year declaration period provided in the preceding article has expired” (the “Provision”). (The Regulations were amended and promulgated on March 22, 2002, where the Provision remained un-

日修正發布第六條第一項規定：「保險醫事服務機構申報醫療服務點數，逾前條之申報期限二年者，保險人應不予支付。」（該辦法於九十一年三月二十二日修正發布全文，該條項規定並未修正，下稱系爭規定，一〇一年十二月二十四日修正發布全文，其名稱改為全民健康保險醫療費用申報與核付及醫療服務審查辦法，並刪除系爭規定；另於一〇〇年一月二十六日修正公布全民健康保險法，將第五十條改列為第六十二條，並增訂第二項規定：「前項費用之申報，應自保險醫事服務機構提供醫療服務之次月一日起六個月內為之。但有不可抗力因素時，得於事實消滅後六個月內為之。」）是系爭規定就保險醫事服務機構申報醫療服務點數之期限規定為二年。

changed [hereinafter referred to as the "Provision in Dispute"]. The Regulations were further amended and promulgated on January 24, 2012 and were renamed "The Regulations Governing the Review on National Health Insurance Medical Expense Declaration and Payment as well as Medical Services," where the Provision in Dispute was deleted. Meanwhile, the National Health Insurance Act was amended and published on January 26, 2011, where Article 50 was moved to Article 62 with Paragraph 2 added, which reads: "Contracted medical care institutions should declare the medical expenses in the preceding paragraph from the first day of the month following the treatment up to six months after. However, should there be unavoidable circumstances, another six months after the facts will be provided.") Accordingly, the Provision in Dispute sets the declaration period for two years for contracted medical care institutions to declare their medical service points.

In declaring the medical service points to the Insurer, the contracted medical care institution is exercising its rights

保險醫事服務機構向保險人申報其所提供醫療服務之點數，係行使本於全民健康保險法有關規定所生之公法上

of claim under public law based on relevant provisions of the National Health Insurance Act. After the Insurer has reviewed the total medical service points and calculated the expense amount for each point in order to pay the expense, those points then have property values. Thus, the declaration period provided by the Provision in Dispute is a statute of limitation on the rights of claim under public law. With regard to the declaration of medical service points, the Provision in Dispute hence uses an executive regulation to impose a statute of limitation on the rights of claim under public law. In so doing, it creates an extra restriction that is not mandated by law and that breaches the principle of legal reservation as well as infringing the right to property of the people. As such, it is inconsistent with the constitutional intention of Articles 15 and 23 of the Constitution, and therefore shall not be applicable.

請求權，而經保險人審查醫療服務總點數及核算每點費用以核付其費用，其點數具有財產價值，故系爭規定之申報期限即屬公法上請求權之消滅時效期間。是系爭規定就醫療服務點數之申報，逕以命令規定公法上請求權之消滅時效期間，增加法律所無之限制，有違法律保留原則，侵害人民之財產權，與憲法第十五條及第二十三條規定之意旨不符，應不予適用。

As to the interim disposition filed by the petitioner, since the case has been addressed by this interpretation, the interim disposition has become unnecessary. Ac-

聲請人聲請暫時處分部分，因本案業經作成解釋，無作成暫時處分之必要，應予駁回。

cordingly, it shall be dismissed.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Sea-Yau LIN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

本號解釋蘇大法官永欽提出之協同意見書；林大法官錫堯提出之協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出之協同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioner, Chang-Rong Qiu, as in the Clinic of Dentist Qiu, declared his clinic's medical expenses incurred during the months from June to August, November, and December of 2005, as well as January of 2006 to the Bureau of National Health Insurance under the Department of Health, the Executive Yuan (now, after restructuring, called the National Health Insurance Administration of the Ministry of Health and Welfare, the Executive Yuan). Such expenses were denied declaration due to incomplete information. Upon review by the Northern Branch of the Bureau of National Health Insurance, the denial

編者註：

事實摘要：聲請人邱昌榮即邱牙醫診所，因向行政院衛生署中央健康保險局（現改制為行政院衛生福利部中央健康保險署）申報 94 年 6 至 8、11、12 月及 95 年 1 月醫療費用資料不全被刪申請審議，經健保局北區分局重新核定，仍以資料未補送維持原議而否准。聲請人提行政爭訟敗訴確定後，復行就上開月份醫療費用補送資料進行申報，健保局以申報程序完成且業經訴訟駁回確定，無由重為核定，不予受理。聲請人再提行政爭訟，為臺北高等行政法院 98 年度訴字第 285 號判決以同一事件重行起訴於法未合，以及縱非屬同一事件，然因已逾全民健康保險醫事服務機構醫療服務審查辦法第 6 條第 1 項所定

of declaration was confirmed due to incomplete information. After losing the administrative litigation that he initiated, the petitioner attempted to declare the medical expenses for the aforementioned time period by submitting supplementary information. Nevertheless, the Bureau of National Health Insurance held that the declaration procedures had been concluded and that the case had been dismissed by litigation, and thus there was no cause to accept the declaration. The petitioner brought yet another administrative litigation, which was dismissed per Taipei High Administrative Court Judgment (2009) Su-Zi No. 285 on the grounds of initiating repetitive lawsuits on the same matter, which is against the law. In addition, no payment was to be made after the expiration of the two-year declaration period as stipulated by Article 6, Paragraph 1 of the Regulations Governing the Review on Medical Services of National Health Insurance Medical Care Institutions, and the case was thus dismissed. On appeal, the Supreme Administrative Court rendered a final judgment dismissing the case as an unlawful appeal pursuant to Supreme

2 年申報期限，亦應不予支付而駁回；案經最高行政法院 98 年度裁字第 2219 號裁定以上訴不合法駁回確定，爰主張系爭規定，有牴觸憲法第 15 條、第 23 條規定及釋字第 474 號解釋之疑義，聲請解釋憲法暨暫時處分。

Administrative Court Ruling (2009) Cai-Zi No. 2219. In response, the petitioner asserted that the Provision in Dispute raises doubts of conflicting with Articles 15 and 23 of the Constitution as well as J.Y. Interpretation No. 474, and filed this petition for a constitution interpretation and an interim disposition.

J. Y. Interpretation No.724（August 1, 2014）*

【Civil Association Being Set a Time Limit for Correction】

ISSUE: Is the provision of the Enforcement Regulations for the Supervision and Guidance of Civil Association of All Levels which specifies that the directors and supervisors of a civil association which has been set a time limit for correction shall cease exercising their powers and authorities unconstitutional ?

RELEVANT LAWS:

Articles 14, 15, and 23 of the Constitution（憲法第十四條、第十五條、第二十三條）；J.Y. Interpretation: Nos. 443, 479, and 659（司法院釋字第四四三號、第四七九號、第六五九號 解 釋 ）；Article 58, Paragraph 1, Civil Associations Act（人民團體法第五十八條第一項）；Article 20, Paragraph 1, Implementing Measures for Regulations for the Supervision and Guidance of Civil Associations at All Levels (as amended and promulgated on June 15, 2006)（督導各級人民團體實施辦法第二十條第一項（九十五年六月十五日修正發布）

KEYWORDS:

freedom of association （結社自由）, freedom of occupation （職業自由）, right to work （工作權）, principle of statutory reservation （法律保留原則）, civil association （人民

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* Translated by Chun-Yih CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

團體）, timely reorganization（限期整理）, legal effect（法律效果）, power and authority of directors and supervisors（理事監事之職權）, occupational association（職業團體）**

HOLDING: The provision of Paragraph 1, Article 20 of Enforcement Regulations for the Supervision and Guidance of Civil Association of All Levels as amended and promulgated on 15 June 2006 by the Ministry of Interior that "where a civil association is set a time limit for correction by the competent authority, the powers and authorities of its directors and supervisors shall cease" is contradictory to the Principle of Statutory Reservation of Article 23 of the Constitution, and infringes upon the Freedom of Association and Right to Work as protected by Articles 14 and 15 of the Constitution, and shall lose effect one year after the publication of this Interpretation at the latest.

解釋文：內政部中華民國九十五年六月十五日修正發布之督導各級人民團體實施辦法第二十條第一項：「人民團體經主管機關限期整理者，其理事、監事之職權應即停止」規定部分，違反憲法第二十三條法律保留原則，侵害憲法第十四條、第十五條保障之人民結社自由及工作權，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

REASONING: Article 14 of the Constitution regarding the Freedom of Association not only safeguards the

解釋理由書：本憲法第十四條結社自由規定，不僅保障人民得自由選定結社目的以集結成社、參與或不參與

people to freely choose the purpose of an association to form an association, to participate or not to participate the formation and related matters of the association, but also protects the association which is collectively formed by individual persons from being unlawfully restricted in terms of its formation, continuance and the promotion of associated activities (cf. J.Y. Interpretation No. 479). In addition, the Freedom of Occupation is necessary for the enrichment of people's life and free development of personality. It is within the scope of protection of the Right to Work of Article 15 of the Constitution regardless of whether the nature of occupation is public interest or self interest, profit seeking or non-profit seeking (cf. J.Y. Interpretation No. 659). The election of directors and supervisors of a civil association and the exercise of their powers and duties involve the operation of an association, the realization of ideas of the association members, and the protection of the Freedom of Occupation of the directors and supervisors. Any restriction on the above people's rights and freedoms shall be imposed by statute or an order

結社團體之組成與相關事務，並保障由個別人民集合而成之結社團體就其本身之形成、存續及與結社相關活動之推展，免受不法之限制（本院釋字第四七九號解釋參照）。另職業自由為人民充實生活內涵及自由發展人格所必要，不因職業之性質為公益或私益、營利或非營利而有異，均屬憲法第十五條工作權保障之範疇（本院釋字第六五九號解釋參照）。人民團體理事、監事之選任及執行職務，涉及結社團體之運作，會員結社理念之實現，以及理事、監事個人職業自由之保障。對人民之上開自由權利加以限制，須以法律定之或經立法機關明確授權行政機關以命令訂定，始無違於憲法第二十三條之法律保留原則（本院釋字第四四三號解釋參照）。

issued by an administrative agency as expressly authorized by the legislative body so as not to contradict the Principle of Statutory Reservation of Article 23 of the Constitution (cf. J.Y. Interpretation No. 443).

Paragraph 1, Article 58 of the Civil Association Act provides that "where a civil association violates a law or its constitution or encumbers public welfare, the competent authority may warn it, cancel its resolution, or stop whole or a part of its business, and order it to improve within a specified time limit; in case improvement is not made within the time limit or in serious circumstances, the following punishments may be executed: 1. Recall of the personnel. 2. Setting a time limit for correction. 3. Abolishment of the permit. 4. Disincorporation." Among them, the "setting a time limit for correction" involves the restriction on the Freedom of Association and the directors' and supervisors' Right to Work. The procedure to be followed and the legal effect shall be regulated by statute, or by an order issued by an administrative agency as expressly

人民團體法第五十八條第一項規定：「人民團體有違反法令、章程或妨害公益情事者，主管機關得予警告、撤銷其決議、停止其業務之一部或全部，並限期令其改善；屆期未改善或情節重大者，得為左列之處分：一、撤免其職員。二、限期整理。三、廢止許可。四、解散。」其中限期整理部分，因事涉結社自由與理事、監事工作權所為之限制，其應遵行程序及法律效果，自應以法律定之，或由立法機關明確授權行政機關以命令訂定。

authorized by the legislative body.

Paragraph 1, Article 20 of Enforcement Regulations for the Supervision and Guidance of Civil Association of All Levels as amended and promulgated on 15 June 2006 by the Ministry of Interior specifies that "where a civil association is set a time limit for correction by the competent authority, the powers and authorities of its directors and supervisors shall cease." Its effect restricts people's Freedom of Association and directors' and supervisors' Right to Work, but without express statutory authorization. It is contradictory to the Principle of Statutory Reservation of Article 23 of the Constitution, and infringes upon the Freedom of Association and Right to Work as protected by Articles 14 and 15 of the Constitution, and shall lose effect one year after the publication of this Interpretation at the latest.

內政部九十五年六月十五日修正發布之督導各級人民團體實施辦法第二十條第一項：「人民團體經主管機關限期整理者，其理事、監事之職權應即停止」規定部分，其效果限制人民之結社自由及理事、監事之工作權，卻欠缺法律明確授權依據，違反憲法第二十三條法律保留原則，侵害憲法第十四條、第十五條保障之人民結社自由及工作權，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

With respect to the occupational association of the civil association, in light of historical background, the current relevant legal systems require mandatory

人民團體中之職業團體，其現行相關法制，基於歷史背景，雖強制會員入會，但並未普遍賦予公權力，相關法規對其又採較強之監督，主管機關宜考

memberships, but without conferring public powers on it. And relevant regulations take a stronger stance on its supervision. The competent authority had better take into account social evolution, and in its legislative policy prudentially adapt the functions that various occupational associations should have, and the corresponding strength of supervision to establish appropriate legal regulations. It is so indicated along with the Interpretation.

量當前社會變遷，於立法政策上審慎調整各種職業團體應有之功能及相應配合之監督強度，建立適當之法制規範，併此指明。

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG, filed a concurring opinion, in which Justice Beyue SU CHEN, joined.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Shin-Min CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

本號解釋蘇大法官永欽提出協同意見書；黃大法官茂榮提出、陳大法官碧玉加入之協同意見書；陳大法官春生提出協同意見書；陳大法官新民提出協同意見書；陳大法官碧玉提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出部分協同部分不同意見書；黃大法官璽君提出、林大法官錫堯加入之不同意見書。

Justice Hsi-Chun HUANG, filed a dissenting opinion, in which Justice Sea-Yau LIN, joined.

EDITOR'S NOTE:

Summary of facts: The applicant Peng Cheng Hsiung was the 8th Chairman of Hsin Chu Chamber of Commerce. Upon the expiration of his term on 15 July 2007, the election of new directors and supervisors were not completed. The Hsin Chu City Government agreed to a 3 months' extension for election from the expiration of the term. However, the Chamber of Commerce had not completed the election upon the expiration of the extended period. The Hsin Chu City Government issued a letter to the Chamber on 15 October, informing that a time limit was set for correction pursuant to Article 58 of the Civil Association Act, and according to Paragraph 1, Article 20 of the Enforcement Regulations for the Supervision and Guidance of Civil Association of All Levels, "where a civil association is set a time limit for correction by the competent authority, the powers and authorities of its directors and super-

編者註：

事實摘要：聲請人彭正雄為新竹市商業會第 8 屆理事長，因 96 年 7 月 15 日任期屆滿未完成理監事改選，經新竹市政府以不超過第 8 屆任期滿後 3 個月為限同意延期改選。惟商業會於改選期限屆滿前仍未完成改選，竹市府乃於同年 10 月 15 日函知該會，依人民團體法第 58 條規定為限期整理處分，且依督導各級人民團體實施辦法第 20 條第 1 項「限期整理者，其理事、監事之職權應即停止」(系爭規定)，而停止聲請人理事職權，另遴選整理小組進行整理工作。嗣整理小組召開第 9 屆第 1 次會員代表大會，選出新任理監事及理事長。聲請人不服上開限期整理處分，提起行政爭訟，經最高行政法院 99 年判字第 833 號判決駁回確定，爰主張系爭規定剝奪人民團體理、監事職權違憲，聲請解釋。

visors shall cease," and that the powers and authorities of the applicant as a director was ceased and a correction team was formed to engage in the correction. Afterwards, the correction team convened the members assembly which elected new directors, supervisors and Chairman. The applicant objected to the disposition of setting a time limit for correction and initiated an administrative action, which was finally overruled by the Supreme Administrative Court in 99-Pan-Tze No. 833 judgment. The applicant claimed that the Enforcement Regulations unconstitutionally deprived of the powers and authorities of directors and supervisors of civil associations, and applied for Interpretation.

On the other hand, the Chamber sued the applicant for compensation of loss of deposits used by the applicant after the cease of powers and authorities. However, the applicant also sued the Chamber for the return of the premise of the Chamber which was previously occupied by the applicant. Final judgments of the two cases (Taiwan High Court Judgment

又商業會亦訴請聲請人應就其停職後擅用該會存款造成之差額負損害賠償，及聲請人亦訴請商業會返還原由其占用之該會房屋。兩案經台灣高等法院 100 年度上易字第 692 號民事判決、最高法院 101 年度台上字第 1451 號民事判決聲請人敗訴確定，聲請人亦主張該 2 判決所適用之系爭規定違憲，分別聲請解釋。

100-Shan-Yi-Tze No. 692 and Supreme Court 101 Tai-Shan-Tze No. 1451, respectively) were rendered in favor of the Chamber. The applicant claimed that the Enforcement Regulations as applied by the two judgments were unconstitutional, and applied for Interpretation respectively.

The Grand Justices accepted the three applications, and consolidated them into one review proceeding.

大法官就3案先後受理，合併審理。

J. Y. Interpretation No.725（October 24, 2014）*

【The Effects of an Interpretation that Declares a Statute or Regulation Unconstitutional but Invalid Only after a Prescribed Period of Time on Cases for Which the Interpretation Was Sought】

ISSUE: An Interpretation that declares a statute or regulation unconstitutional but invalid only after a period of time currently has no effect on cases for which the Interpretation was sought. Is this unconstitutional ?

RELEVANT LAWS:

Article 78 of the Constitution（憲法第七十八條）；J. Y. Interpretation Nos. 177 and 185（司法院釋字第一七七號、第一八五號解釋）；Pan Zi Precedent No. 615 of the Supreme Administrative Court（2008）（最高行政法院九十七年判字第六一五號判例）；Article 273, Section 2 of the Administrative Litigation Act（行政訴訟法第二百七十三條第二項）；Article 64-1, Section 1, Paragraph 1 of the Juvenile Delinquency Act（少年事件處理法第六十四條之一第一項第一款）

KEYWORDS:

Interpretations sought by individuals（人民聲請解釋）, a statute or regulation is unconstitutional but invalid only after a prescribed period of time（違憲法令定期失效）, the cases for

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which an Interpretation is sought（原因案件）, re-trial（再審）, extraordinary appeal （非常上訴）, declaration（諭知）, remedy in substance（實質救濟）, supplemental Interpretation（補充解釋）, vacuum in the law on a particular issue（法規真空）, remedy in particular cases （個案救濟）**

HOLDING: When the Judicial Yuan declares a statute or regulation unconstitutional but invalid only after a prescribed period of time, the individual who has applied for constitutional interpretation may seek a re-trial and other remedies. The Prosecutor General may also make an "extraordinary appeal". Courts cannot dismiss such re-trials and extraordinary appeals on the grounds that the statute or regulation remained valid during the prescribed period of time. If the Judicial Yuan declares remedies specifically applicable to the cases for which the Interpretation was sought, the courts should adjudicate the re-trial and extraordinary appeal in accordance with the Judicial Yuan's declaration. If the Judicial Yuan does not declare remedies specifi-

解釋文：本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令於一定期限後失效者，聲請人就聲請釋憲之原因案件即得據以請求再審或其他救濟，檢察總長亦得據以提起非常上訴；法院不得以該法令於該期限內仍屬有效為理由駁回。如本院解釋諭知原因案件具體之救濟方法者，依其諭知；如未諭知，則俟新法令公布、發布生效後依新法令裁判。本院釋字第一七七號及第一八五號解釋應予補充。最高行政法院九十七年判字第六一五號判例與本解釋意旨不符部分，應不再援用。行政訴訟法第二百七十三條第二項得提起再審之訴之規定，並不排除確定終局判決所適用之法令經本院解釋為牴觸憲法而宣告定期失效之情形。

cally applicable to the cases for which the Interpretation was sought, however, the courts should adjudicate a re-trial and extraordinary appeal after a new statute or regulation takes effect. This Interpretation is a supplemental Interpretation of J.Y. Interpretations No. 177 and No. 185. The part of the Supreme Administrative Court's (2008) Pan Zi Precedent No. 615 that is inconsistent with this Interpretation, from now on, ceases to be binding. In addition, Article 273, Section 2 of the Administrative Litigation Act does not preclude a re-trial for cases where a final judgment is rendered but the statute or regulation on which the final judgment was based has been declared unconstitutional but invalid only after a prescribed period of time.

REASONING: Judicial Yuan Interpretation No. 177 states that J.Y. Interpretations sought by individuals shall also affect cases for which the Interpretations were sought. J.Y. Interpretation No. 185 states that Article 78 of the Constitution authorizes the Judicial Yuan to interpret the Constitution and render

解釋理由書：本院釋字第一七七號解釋：「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力。」第一八五號解釋：「司法院解釋憲法，並有統一解釋法律及命令之權，為憲法第七十八條所明定，其所為之解釋，自有拘束全國各機關及人民之效力，各機關處理有關事項，應依解釋

uniform interpretations of laws and regulations, implying that J.Y. Interpretations bind all government offices and people in the territory, that every government office has to apply J.Y. Interpretations in its handling of relevant matters, that judicial precedents which are inconsistent with J.Y. Interpretations are invalid, and that when the Judicial Yuan declares a statute or regulation unconstitutional but invalid only after a prescribed period of time, the individual person who applied for constitutional interpretation may seek retrial or extraordinary appeal of the cases for which the Interpretation was sought. Both J.Y. Interpretation No. 177 and No. 185 enable applicants to seek remedies for cases for which the Interpretation was sought, but they do not explicitly address the issue of whether an Interpretation that declares a statute or regulation unconstitutional but invalid only after a prescribed period of time should affect the cases for which the Interpretation was sought. Therefore, there is a need for a supplemental Interpretation.

意旨為之，違背解釋之判例，當然失其效力。確定終局裁判所適用之法律或命令……，經本院依人民聲請解釋認為與憲法意旨不符，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由……。」均在使有利於聲請人之解釋，得作為聲請釋憲之原因案件（下稱原因案件）再審或非常上訴之理由。惟該等解釋並未明示於本院宣告違憲之法令定期失效者，對聲請人之原因案件是否亦有效力，自有補充解釋之必要。

The Judicial Yuan may declare a statute or regulation unconstitutional but invalid only after a prescribed period of time for the following reasons. First, the Judicial Yuan respects relevant government offices' powers to adjust laws and regulations. Second, the Judicial Yuan also considers the nature of the laws and regulations at issue, the sectors they impact, and the time required for the legislative or rule-promulgation process to play out. Third, based on these two premises, the Judicial Yuan does not want to declare a statute or regulation unconstitutional and therefore invalid immediately; this can cause a vacuum in the law on a particular issue or a sudden, tremendous impact on the legal order. The Judicial Yuan also hopes to give relevant government offices time to deliberate thoroughly and carefully so that their laws or regulations are consistent with J.Y. Interpretations. These considerations, however, do not change the substance of J.Y. Interpretations of the law or regulations at issue as unconstitutional. Interpretations No. 177 and 185 empower applicants to seek remedies in cases for which the Interpretation was

本院宣告違憲之法令定期失效者，係基於對相關機關調整規範權限之尊重，並考量解釋客體之性質、影響層面及修改法令所須時程等因素，避免因違憲法令立即失效，造成法規真空狀態或法秩序驟然發生重大之衝擊，並為促使主管機關審慎周延立法，以符合本院解釋意旨，然並不影響本院宣告法令違憲之本質。本院釋字第一七七號及第一八五號解釋，就本院宣告法令違憲且立即失效者，已使聲請人得以請求再審或檢察總長提起非常上訴等法定程序，對其原因案件循求個案救濟，以保障聲請人之權益，並肯定其對維護憲法之貢獻。為貫徹該等解釋之意旨，本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令定期失效者，聲請人就原因案件應得據以請求再審或其他救濟（例如少年事件處理法第六十四條之一第一項第一款所規定聲請少年法院重新審理），檢察總長亦得據以提起非常上訴；法院不得以法令定期失效而於該期限內仍屬有效為理由駁回。為使原因案件獲得實質救濟，如本院解釋諭知原因案件具體之救濟方法者，依其諭知；如未諭知，則俟新法令公布、發布生效後依新法令裁判。本院釋字第一七七號及第一八五號解釋應予補充。最高行政法院

sought so that the rights and interests of the applicants may be protected and their contributions to the Constitution affirmed. Further, for the purpose of protecting the rights and interests of the applications as well as upholding the Constitution, when the Judicial Yuan declares a statute or regulation unconstitutional but invalid only after a prescribed period of time, the individual who applied for constitutional interpretation may seek a re-trial in the cases for which the Interpretation was sought, as well as other remedies. An example of such other remedies include a re-trial) by the Juvenile Court as provided for in Article 64-1, Section 1, Paragraph 1 of the Juvenile Delinquency Act. The Prosecutor General may also make an "extraordinary appeal". Courts cannot dismiss such requests for re-trial or extraordinary appeal on the ground that the statute or regulation remained valid during the prescribed period of time. If the Judicial Yuan declares specific remedies in cases for which the Interpretation was sought, the courts should adjudicate the re-trial and extraordinary appeal in accordance with the Judicial Yuan's declara-

九十七年判字第六一五號判例：「司法院釋字第一八五號解釋……僅係重申司法院釋字第一七七號解釋……之意旨，須解釋文未另定違憲法令失效日者，對於聲請人據以聲請之案件方有溯及之效力。如經解釋確定終局裁判所適用之法規違憲，且該法規於一定期限內尚屬有效者，自無從對於聲請人據以聲請之案件發生溯及之效力。」與本解釋意旨不符部分，應不再援用。

tion. If the Judicial Yuan does not declare remedies specifically for cases for which the Interpretation was sought, the courts should adjudicate a re-trial or extraordinary appeal after a new statute or regulation takes effect. This Interpretation is a supplemental Interpretation of J.Y. Interpretation No. 177 and No. 185. The part of Pan Zi Precedent (panli) No. 615 of the Supreme Administrative Court (2008) that is inconsistent with this Interpretation ceases to be binding after this Interpretation is announced.

Article 273, Section 2 of the Administrative Litigation Act states that, when a statute or regulation that is applied in final judgments is declared unconstitutional, the applicant may seek a re-trial. Article 273, Section 2, however, does not preclude a re-trial in cases where a final judgment is rendered and the statute or regulation on which the final judgment is based has been declared unconstitutional but invalid only after a prescribed period of time. Therefore, Article 273, Section 2 of the Administrative Litigation Act is not inconsistent with J.Y. Interpretations No.

行政訴訟法第二百七十三條第二項規定：「確定終局判決所適用之法律或命令，經司法院大法官依當事人之聲請解釋為牴觸憲法者，其聲請人亦得提起再審之訴。」並不排除確定終局判決所適用之法令經本院解釋為牴觸憲法而宣告定期失效之情形，與本院釋字第一七七號、第一八五號及本解釋所示，聲請人得依有利於其之解釋就原因案件請求依法救濟之旨意，並無不符，亦不生牴觸憲法之問題。

177, No. 185, and this Interpretation, and therefore is constitutional.

The following pleadings are dismissed on procedural grounds:

(1) Several applicants seek a supplemental Interpretation for J.Y. Interpretation No. 188, but that Interpretation addressed the effects of the uniform interpretation made by Judicial Yuan, which is distinct from the issue of the present Interpretation (addressing the effects of an interpretation that declares a statute or regulation unconstitutional but invalid only after a prescribed period of time).

(2) One applicant, when challenging the constitutionality of Article 178, Section 1, Paragraph 4 of the Securities Trading Act, as passed on July 19, 2000, and Article 273, Section 1, Paragraph 1 of the Administrative Litigation Act, fails to specify objectively why such clauses are unconstitutional.

(3) One applicant challenges the constitutionality of Article 8, Section 1 and Article 8, Section 2 (second half of the section) of the Rules and Review Procedures for Director and Supervisor Share

部分聲請人聲請補充解釋本院釋字第一八八號解釋，查該解釋係就統一解釋之效力問題所為，與本件所涉因解釋憲法而宣告法令定期失效之問題無關。聲請人之一就行為時即中華民國八十九年七月十九日修正公布之證券交易法第一百七十八條第一項第四款、行政訴訟法第二百七十三條第一項第一款聲請解釋部分，其聲請意旨尚難謂於客觀上已具體敘明究有何違反憲法之處。其另就行為時即八十六年五月十三日修正發布之公開發行公司董事、監察人股權成數及查核實施規則第八條第一項及第二項後段聲請解釋，然該等規定業經本院釋字第六三八號解釋為違憲，無再為解釋之必要。另一聲請人指摘九十九年五月十二日修正公布之都市更新條例第三十六條第一項前段（八十七年十一月十一日制定公布及九十七年一月十六日修正公布之同條例第三十六條第一項前段規定之意旨相同）規定違憲部分，經查其原因案件之確定終局裁定並未適用該項規定，自不得以之為聲請解釋之客體。又另二聲請人分別聲請補充本院釋字第六五八號及第七０九號解釋，然

Ownership Ratios at Public Companies, as promulgated on May 13, 1997. Such a challenge, however, is rendered moot by J.Y. Interpretation 638, which has declared such clauses unconstitutional.

(4) Another applicant challenges the constitutionality of Article 36, Section 1 (first half) of the Urban Renewal Act, as revised on May 12, 2010. (The same rule is also found in the first half of Section 1 Article 36 of the Urban Renewal Act as promulgated on November 11, 1998 and in the same clause as revised on January 16, 2008.) However, as the disputed provision is not applied in the final judgment on the basis of which the applicant brought the case to the Judicial Yuan, the Judicial Yuan cannot consider its constitutionality.

(5) Two other applicants separately apply for supplemental Interpretations of J.Y. Interpretation No. 658 and No. 709, respectively, but their pleadings fail to support the need for a supplemental Interpretation. The aforementioned pleadings are dismissed on procedural grounds, as they are inconsistent with Article 5, Section 1, Paragraph 2 of the Act for the

其並未具體指明該等解釋有何文字晦澀或論證不周而有補充之必要，其聲請依法亦有未合。聲請人等上開部分之聲請，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，均應不予受理，併此敘明。

Adjudication Procedure for Judicial Yuan Grand Justices and should thus be dismissed pursuant to Article 5, Section 3 of the same Act.

Justice Chen-Shan LI filed a concurring opinion.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Pai-Hsiu YEH filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed an opinion concurring in part and dissenting in part.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

本號解釋李大法官震山提出之部分協同意見書；蘇大法官永欽提出之協同意見書；葉大法官百修提出之協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出之協同意見書；陳大法官春生提出之部分協同部分不同意見書；陳大法官新民提出之部分協同部分不同意見書。

EDITOR'S NOTE:

Summary of facts: Judicial Yuan Interpretation No. 725 was rendered as a result of four applications brought by five individuals—(1) Ke-ming Gao, (2) Yi-zhao Huang, (3) Fang-ze Ke and Guo-

編者註：

事實摘要：聲請人 1. 高克明 2. 黃益昭 3. 柯芳澤、張國隆 4. 王廣樹等人，前分別因確定之訴訟事 (案) 件聲請釋憲，經大法官先後作成釋字第 638、658、670 及 709 號 4 解釋，宣告各案

long Zhang, and (4) Guang-shu Wang—who, after losing four separate litigations, separately applied for constitutional interpretation. The Judicial Yuan announced J.Y. Interpretations No. 638, No. 658, No. 670, and No. 709, declaring the statutes and regulations at issue unconstitutional and, therefore, invalid after a prescribed period of time. Relying on J.Y. Interpretations No. 638, No. 658, No. 670, and No. 709, these five individuals requested a retrial. The Supreme Administrative Court and the Wrongful Imprisonment Compensation Committee of the Judicial Yuan, however, rejected their requests, deeming them inconsistent with J.Y. Interpretations No. 177 and No. 185 and Pan Zi Precedent No. 615 of the Supreme Administrative Court (2008), as well as Article 273, Section 2 of the Administrative Litigation Act. These five individuals separately claiming unconstitutionality therefore applied for interpretation of Pan Zi Precedent No. 615 of the Supreme Administrative Court (2008) and of Article 273, Section 2 of the Administrative Litigation Act. They also applied for supplementary interpretations of J.Y. Interpretations No.

所指法令違憲定期失效。聲請人等據各該解釋請求再審或重審，惟均被最高行政法院或司法院冤獄賠償委員會，以與釋字第 177 號、第 185 號解釋，最高行政法院 97 年判字第 615 號判例或行政訴訟法第 273 條第 2 項規定不符，分別裁判駁回。聲請人等乃分別主張該最高行政法院判例、行政訴訟法第 273 條第 2 項規定違憲，聲請解釋，並就第 177 號、第 185 號解釋補充解釋 (共 4 聲請案)。大法官就各案先後受理並合併審理。

177 and No. 185. Given their common issue, the Judicial Yuan adjudicated these four cases jointly.

J. Y. Interpretation No.726（November 21, 2014）*

【Legal Effect of the Separate Agreement under Article 84-1 of the Labor Standards Act without Filing with the Competent Authority】

ISSUE: Is a separate labor-management agreement for working hours and other issues without filing with the competent authority still subject to the restrictions under the Labor Standards Act ?

RELEVANT LAWS:

Articles 15 and 153 of the Constitution（憲法第十五條、第一百五十三條）；J.Y. Interpretation Nos. 185, 494 & 578（司法院釋字第一八五號、第四九四號、第五七八號解釋）；Article 71 of the Civil Code（民法第七十一條）；Articles 1, 24, 30, 32, 36, 37, 39, 49 & 84-1 of the Labor Standards Act（勞動基準法第一條、第二十四條、第三十條、第三十二條、第三十六條、第三十七條、第三十九條、第四十九條、第八十四條之一）

KEYWORDS:

Labor Standards Act（勞動基準法）, working hours（工作時間）, regular days off（例假）, holidays（休假）, female workers' night work（女性夜間工作）, approval and record（核備）, wages（工資）, overtime wages（加班費）, separate labor-management agreement（勞雇雙方另行約定）,

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* Translated by Yen-Chia CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

labor right（勞工權益）, effect in public law（公法效果）, freedom of contract（契約自由）, violation of mandatory or prohibitive regulations（違反強制或禁止之規定）, self-governance（私法自治）, state control（國家管制）, labor relations（勞動關係）, mandatory regulations（強制規定）, uniform interpretation（統一解釋）**

HOLDING: Article 84-1 of the Labor Standards Act is a mandatory regulation whereby the agreed upon working schedule, regular days off, vacation, and night shift for female workers' night work shall be filed with the local competent authority. Failing to do so will not preclude the restrictions imposed by Articles 30, 32, 36, 27, and 49 of the Act on the agreement, and will result in unfavorable legal consequences to the employer under public law, and, in the event of a civil dispute, the court shall, taking into account the particular circumstances of each individual case, adjust the arrangement in accordance with the above stated Article 30 and so forth and calculate the wages in accordance with Articles 24 and 39 of the

解釋文：勞動基準法第八十四條之一有關勞雇雙方對於工作時間、例假、休假、女性夜間工作有另行約定時，應報請當地主管機關核備之規定，係強制規定，如未經當地主管機關核備，該約定尚不得排除同法第三十條、第三十二條、第三十六條、第三十七條及第四十九條規定之限制，除可發生公法上不利於雇主之效果外，如發生民事爭議，法院自應於具體個案，就工作時間等事項另行約定而未經核備者，本於落實保護勞工權益之立法目的，依上開第三十條等規定予以調整，並依同法第二十四條、第三十九條規定計付工資。

Act, in order to fulfill the legislative intent of protecting workers' rights and benefit.

REASONING: Article 84-1 of the Labor Standards Act (hereinafter the Act) provides: "(First Paragraph) After the approval and public announcement of the Central Competent Authority, the following types of workers may arrange their own working hours, regular days off, holidays, and female workers' night work through other agreements with their employers. These agreements shall be submitted to the local competent authorities for approval and record and shall not subject to the restrictions imposed by Articles 30, 32, 36, 37 and 49 of the Act: (1) Supervisory, administrative workers, and professional workers with designated responsibility; (2) Monitoring or intermittent jobs; and (3) Other types of job in special nature. (Second Paragraph) The agreement made under the preceding paragraph shall be in writing and shall use the basic standards contained in the Act as reference and shall not be detrimental to the health and well-being of the workers" (hereinafter the Disputed Provision).

解釋理由書：勞動基準法（下稱本法）第八十四條之一規定：「經中央主管機關核定公告之下列工作者，得由勞雇雙方另行約定，工作時間、例假、休假、女性夜間工作，並報請當地主管機關核備，不受第三十條、第三十二條、第三十六條、第三十七條、第四十九條規定之限制。一、監督、管理人員或責任制專業人員。二、監視性或間歇性之工作。三、其他性質特殊之工作。（第一項）前項約定應以書面為之，並應參考本法所定之基準且不得損及勞工之健康及福祉。（第二項）」（下稱系爭規定）係為因應部分性質特殊工作之需要，在法定條件下，給予雇主與特定勞工合理協商工作時間等之彈性，而於中華民國八十五年十二月二十七日增訂公布。

This Provision was amended and promulgated on December 27, 1996 in order to meet the needs of some types of work with special characteristics. This Disputed Provision sought to provide flexibility for certain types of workers to negotiate reasonable working hours, among other things, with their employers in accordance with requirements prescribed by the law.

The 102 Tai-Shang Zi No. 1866 Civil Judgment of the Supreme Court held that, for works being approved and announced by the Central Competent Authority to be applicable under the Disputed Provision, a separate laborer-management agreement concerning daily work schedule, basic monthly working hours, overtime hours, and calculation method of overtime pay is not invalid under the Disputed Provision, despite the fact that it is not filed with the local competent authority and is in violation of administrative regulations. The meaning and purpose of the judgment, in its totality, holds the separate agreement between the employees and management is nevertheless enforce-

最高法院一０二年度台上字第一八六六號民事判決認為，經中央主管機關核定公告得適用系爭規定之工作，其由勞雇雙方所為，有關每日正常工作時間、每月基本服勤時數、加班時數及加班費費率計算方式之另行約定，依系爭規定，並非無效，不因未報請當地主管機關核備，有違行政管理規定，而有不同。綜合該判決整體意旨，勞雇雙方之另行約定，雖未經當地主管機關核備，仍有規範勞動關係之效力，從而可排除本法第三十條、第三十二條、第三十六條、第三十七條及第四十九條規定（下合稱第三十條等規定）之限制。惟最高行政法院一００年度判字第二二六號判決則認為，系爭規定明定須在「勞雇雙方另行約定」並「報請當地

able on the labor relationship, and thus being able to exclude the application of Articles 30, 32, 36, 37 and 49 (hereinafter Articles 30 and so forth), even without the filing approval and recording by the local competent authority. However, the 100 Pan Zi No. 266 Judgment of the Supreme Administrative Court held that the Disputed Provision explicitly states that a separate agreement is not subject to the restrictions under Articles 30 and so forth only if both the requirements of "separate laborer-management agreement" and "filing with the local competent authority" are met. It follows that the labor relationship under the separate agreement between the employer and employee is still subject to the restrictions under Articles 30 and so forth without being filed with the local competent authority. The 98 Cai Zi No. 400 Ruling of the Supreme Administrative Court took the same rationale. Therefore, there is an inconsistency between the opinions held by the Supreme Court and the Supreme Administrative Court, the two highest courts of final instance of the two different judicial systems, on the legal effect and scope of

主管機關核備」二項要件具備下，始不受本法第三十條等規定之限制。循其見解，勞雇雙方之另行約定，如未經當地主管機關核備，其勞動關係仍應受本法第三十條等規定之限制。最高行政法院九十八年度裁字第四００號裁定亦持相同見解。是最高法院及最高行政法院二不同審判系統之終審法院間，就勞雇雙方依系爭規定所為之另行約定，如未經當地主管機關核備，效力是否受影響及其影響程度為何，發生見解之歧異。

a separate agreement between a employer and employee without filing with the local competent authority.

Article 15 of the Constitution provides: “The right of existence, the right of work, and the right of property shall be guaranteed to the people.” Article 153 of the Constitution provides: “(First Paragraph) The State, in order to improve the livelihood of laborers and farmers and to improve their productive skill, shall enact laws and carry out policies for their protection. (Second Paragraph) Women and children engaged in labor shall, according to their age and physical condition, be accorded special protection.” Based upon this meaning, the Act seeks to protect workers’ rights and interests, strengthen the laborer-management relationship, and promote social and economic development by stipulating the minimum standards of working conditions concerning wages, working hours, regular days off, holidays, retirement, and compensation for occupational accidents. While an employer may, taking into consideration the nature of its business and the labor

憲法第十五條規定：「人民之生存權、工作權及財產權，應予保障。」第一百五十三條規定：「國家為改良勞工及農民之生活，增進其生產技能，應制定保護勞工及農民之法律，實施保護勞工及農民之政策。（第一項）婦女兒童從事勞動者，應按其年齡及身體狀態，予以特別之保護。（第二項）」基於上開意旨，本法乃以保障勞工權益，加強勞雇關係，促進社會與經濟發展為目的，規定關於工資、工作時間、休息、休假、退休、職業災害補償等勞工勞動條件之最低標準。雇主固得依事業性質及勞動態樣與勞工另行約定勞動條件，但仍不得低於本法所定之最低標準（本院釋字第四九四號、第五七八號解釋參照）。衡酌本法之立法目的並考量其規範體例，除就勞動關係所涉及之相關事項規定外，尚課予雇主一定作為及不作為義務，於違反特定義務時亦有相關罰則，賦予一定之公法效果，其規範具有強制之性質，以實現保護勞工之目的（本法第一條規定參照）。而工作時間、例假、休假、女性夜間工作（下稱

condition, separately negotiate terms of employment contract with workers, such terms may not fall below the minimum standards prescribed by the Act (*see* J.Y. Interpretation Nos. 494 and 578). Factoring in the legislative purpose and the regulatory style of the Act, in addition to providing regulations on matters related to labor relations, the Act further imposes certain duties on what the employer should act or not to act, as well as penalties for breach of certain duties. Thus the Act carries certain features of public law and its provisions are mandatory by nature so asto protect workers (*see* Article 1 of the Act). Given that working hours, regular days off, holidays, and female workers' night work are the core issues of labor relations, and can have significant impact on the health and well-being of workers, the Act thus provides Article 30 and so forth to govern these matters, and sets the minimum standards of working conditions guaranteed by the law. Unless the Act provides otherwise, neither the laborers nor the employers may usurp them in the name of freedom of contract.

工作時間等事項）乃勞動關係之核心問題，影響勞工之健康及福祉甚鉅，故透過本法第三十條等規定予以規範，並以此標準作為法律保障之最低限度，除本法有特別規定外，自不容勞雇雙方以契約自由為由規避之。

The characteristics, responsibilities, and performance of different types of work vary from one to another due to the continuing development of the society and the vast expansion of economic activity. The legislature, therefore, set up minimum standards for different types of working conditions. In order to meet the needs of certain special types of works, the Disputed Provision allows laborers in those categories , as approved and publicly announced by the Central Competent Authority, to engage in separate negotiations with their employers on working hours and other matters to preclude the restrictions imposed by Article 30 and so forth if such an agreement has been filed to the local competent authority for approval and recordation. The requirement for public announcement by the Central Competent Authority and filing with the local competent authority is to realize the protection of workers' rights and benefit, as well as to prevent arbitrary and abusive practice in determining of the scope of special types of work, and the agreement between laborers and management. Accordingly, for those approved and pub-

惟社會不斷變遷，經濟活動愈趨複雜多樣，各種工作之性質、內容與提供方式差異甚大，此所以立法者特就相關最低條件為相應之不同規範。為因應特殊工作類別之需要，系爭規定乃就經中央主管機關核定公告之特殊工作者，容許勞雇雙方就其工作時間等事項另行約定，經當地主管機關核備，排除本法第三十條等規定之限制。中央主管機關之公告與地方主管機關之核備等要件，係為落實勞工權益之保障，避免特殊工作之範圍及勞雇雙方之約定恣意浮濫。故對於業經核定公告之特殊工作，如勞雇雙方之約定未依法完成核備程序即開始履行，除可發生公法上不利於雇主之效果外，其約定之民事效力是否亦受影響，自應基於前述憲法保護勞工之意旨、系爭規定避免恣意浮濫及落實保護勞工權益之目的而為判斷。

licly announced special types of works, if a labor-management agreement should have been carried out without completing the filing and approval process prescribed by law, it can create detrimental effect to the employer under public law. In addition, how the agreement may be impacted under the civil law hinges upon the consideration over the aforementioned constitutional intent to protect workers, as well the legislative purpose of the Dispute Provision to prevent arbitrary abuse, and to realize the protection on workers' rights and benefit.

Article 71 of the Civil Code provides: "A juridical act which violates an imperative or prohibitive provision of the act is void except voidance is not implied in the provision." This provision aims to balance between state control and the principle of self-governance. The purpose and content of a state regulation should certainly be taken into consideration in determining whether it is mandatory under this Article , as well as the legal effect resulting from its violation. Although an administrative procedure, the filing of a spe-

民法第七十一條規定：「法律行為，違反強制或禁止之規定者，無效。但其規定並不以之為無效者，不在此限。」係在平衡國家管制與私法自治之原則。在探究法規範是否屬本條之強制規定及違反該強制規定之效力時，自須考量國家管制之目的與內容。勞雇雙方就其另行約定依系爭規定報請核備，雖屬行政上之程序，然因工時之延長影響勞工之健康及福祉甚鉅，且因相同性質之工作，在不同地區，仍可能存在實質重大之差異，而有由當地主管機關審慎逐案核實之必要。又勞方在談判中通常

cial labor-management agreement to, and seeking approval of, the local competent authority in accordance with the Disputed Provision is a necessary step to conduct a cautious and substantial review over each case in light of the significant impact on the health and well-being of workers from the extension of working hours. In addition, works of the same nature may still vary greatly from one region to another, which warrants a substantial review by the local competent authority on a case-by-case basis. Furthermore, given that the labor side tends to be the weaker in an negotiation and more receptive to undue influence, . Since the filing requirement of the separate agreement between the labor and management to the local competent authority under the Disputed Provision is both a direct control over the contents of labor relations and entails control over more than a mere providing of the agreement content, it follows that the Disputed Provision should naturally be deemed to have the authority of direct intervention of civil labor relations. To construe otherwise, i.e., where the filing requirement only results unfavorable to the employer

居於弱勢之地位，可能受到不當影響之情形，亦可藉此防杜。系爭規定要求就勞雇雙方之另行約定報請核備，其管制既係直接規制勞動關係內涵，且其管制之內容又非僅單純要求提供勞雇雙方約定之內容備查，自應認其規定有直接干預勞動關係之民事效力。否則，如認為其核備僅發生公法上不利於雇主之效果，系爭規定之前揭目的將無法落實；且將與民法第七十一條平衡國家管制與私法自治之原則不符。故系爭規定中「並報請當地主管機關核備」之要件，應為民法第七十一條所稱之強制規定。而由於勞雇雙方有關工作時間等事項之另行約定可能甚為複雜，並兼含有利及不利於勞方之內涵，依民法第七十一條及本法第一條規定之整體意旨，實無從僅以勞雇雙方之另行約定未經核備為由，逕認該另行約定為無效。系爭規定既稱：「……得由勞雇雙方另行約定……，並報請當地主管機關核備，不受……規定之限制」，亦即如另行約定未經當地主管機關核備，尚不得排除本法第三十條等規定之限制。故如發生民事爭議，法院自應於具體個案，就工作時間等事項另行約定而未經核備者，本於落實保護勞工權益之立法目的，依本法第三十條等規定予以調整，並依本法

under public law, will not only fail to fulfill the aforementioned legislative purpose of the Disputed Provision, but also contradict the principle of balancing state control and self-governance under Article 71 of the Civil Code. Accordingly, the "filing to the local competent authority as well" requirement within the Disputed Provision should be deemed to be mandatory under Article 71 of the Civil Code. Given that matters concerning working hours, among other things, in a separate labor-management agreement can be rather complex, and may entail issues both favorable and unfavorable to the labor side, viewing the meaning and purpose of Article 71 of the Civil Code, and Article 1 of the Act in its entirety, that separate labor-management agreement cannot be simply and summarily avoided on the ground that it is not filed for approval. Now that the Disputed Provision provides: ". . . labor and management may agree otherwise . . . and filed with the local competent authority for approval without subjecting to the restrictions of. . .," it follows that failing to do so will not preclude the restrictions imposed by Articles 30 and so forth of the

第二十四條、第三十九條規定計付工資。

Act on the agreement. In the event of a civil dispute, the court shall, taking into account the particular circumstances of each individual case, adjust the arrangement in accordance with the above stated Article 30 and so forth and calculate the wages in accordance with Articles 24 and 39 of the Act, in order to fulfill the legislative intent of protecting workers' rights and benefit.

With regard to the petitioners' request for a uniform interpretation from the inconsistency between the 102 *Tai Shang* Zi No. 1866 civil judgment and J.Y. Interpretation No. 494, since the interpretations of the Judicial Yuan have the binding effect upon every institution and person in the country (*see* J.Y. Interpretation No. 185) the J.Y. Interpretation prevails if a court should hold differently. this portion of the petition is hereby dismissed as it is inconsistent with Article 7, Paragraph 3, of the Constitutional Court Procedure Act.

關於聲請人認最高法院一０二年度台上字第一八六六號民事判決與本院釋字第四九四號解釋理由書表示之見解有異，而聲請統一解釋部分，按本院大法官解釋有拘束全國各機關及人民之效力（本院釋字第一八五號解釋參照）；故如法院見解與本院大法官解釋有異，自應以本院解釋為準。此部分之聲請，核與司法院大法官審理案件法第七條第一項第二款之要件不符，依同條第三項規定，應不受理。

Justice Mao-Zong HUANG filed a concurring opinion.

本號解釋黃大法官茂榮提出之協同意見書；陳大法官敏提出，林大法官

Justice Ming CHEN, filed a concurring opinion, in which Justice Sea-Yau LIN, joined.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG filed an opinion concurring in part and dissenting in part.

Justice Yeong-Chin SU filed an opinion dissenting in part and concurring in part.

錫堯加入之協同意見書；陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；陳大法官新民提出之部分協同部分不同意見書；黃大法官璽君提出之部分協同部分不同意見書；蘇大法官永欽提出之一部不同一部協同意見書。

EDITOR'S NOTE:

Summary of facts: The Kaohsiung branch of the G4S Security Corporation Taiwan (hereinafter G4S) hired petitioner Jun-Cai Pang and other six petitioners as security guards for cash-in-transit. Both sides signed and executed an employment contract but failed to file with the local competent authority for approval. The petitioners argued that the clause "shall not subject to the restrictions imposed

編者註：

事實摘要：聲請人龐俊財等 7 人受僱於臺灣士瑞克保全公司高雄分公司 (下簡稱士瑞克公司) 擔任現金運送保全員。勞雇雙方簽訂僱用合約書，惟該公司未將合約書報請當地主管機關核備。聲請人等認勞動契約未經核備，無勞動基準法第 84 條之 1 規定「不受…規定之限制」之適用，仍應受同法第 30 條工時上限之限制，亦應依第 24 條關於延長工時加計工資方法計付加班

by Articles 30, 32, 36, 37 and 49 of the Act" provided in Article 84-1 of the Act does not apply since the agreement was not filed and their working hours are still subject to the restriction under Article 30 of the Act and their overtime wages shall also be calculated in accordance with the methods set forth under Article 24 of the Act. The petitioners sued for overtime paid, alleged that G4S paid much lower overtime wages than the average hourly wages of the petitioners, thus in violation of the agreement, and also apparently lower than the amount calculated in accordance with Article 24 of the Act. The 102 *Tai Shang* Zi No. 1866 Civil Judgment of the Supreme Court, in its final disposition, dismissed the case.

費。然士瑞克公司所給付之加班費，遠低於聲請人等之平均時薪，違反僱用合約內容，亦顯低於依第 24 條計算之數額，乃訴請給付加班費。案經最高法院 102 年度台上字第 1866 號民事判決駁回確定。

The petitioners argued that there is an inconsistency between the Supreme Court judgment and prior rulings of the Supreme Administrative Court on the application of the Articles, since the Supreme Court held that failure to file a separate labor-management agreement is "not invalid," and is still subject to the restrictions under Articles 30 and so forth of

聲請人認該最高法院民事判決表示勞雇雙方依系爭規定所為另行約定未經核備「並非無效」仍受同法第 30 條等規定限制之見解，與最高行政法院 100 年度判字第 226 號判決及 98 年度裁字第 400 號裁定適用同一法律所表示，須勞雇雙方另行約定並經核備始不受限制之見解歧異，亦與釋字第 494 號解釋理由書意旨有異，爰聲請統一解釋。

the Act whereas the Supreme Administrative Court has held otherwise. In 100 *Pan Zi* No. 266 Judgment and 98 Cai Zi No. 400 Ruling, the Supreme Administrative Court held that a separate agreement is not subject to the restriction under Article 30 of the Act only if it is filed with the competent authority. The petitioners also argued that the Supreme Court judgment is inconsistent with the reasoning of J.Y. Interpretation No. 494 and petitioned for uniform interpretation.

J. Y. Interpretation No.727（February 6, 2015）*

【Case Concerning the Nullification of the Rights and Interests of Resident Military Householders Who Disagree with the Reconstruction of Villages of Old Military Dependents】

ISSUE: Is the rule that authorizes the competent authority to nullify the resident certificates and related rights and interests of resident military householders who disagree with the reconstruction of old military dependents' villages unconstitutional ?

RELEVANT LAWS:

Article 7 of the Constitution of the Republic of China (Taiwan)（中華民國憲法第七條）；J.Y. Interpretations Nos. 457, 485, 682, 694, 701, 719 and 722（司法院釋字第四五七號、第四八五號、第六八二號、第六九四號、第七0一號、第七一九號、第七二二號）；Articles 5, 22, and 23 of the Act for Rebuilding Old Quarters for Military Dependents（as enacted and published on February 5, 1996）（中華民國八十五年二月五日制定公布之國軍老舊眷村改建條例第五條、第二十二條、第二十三條）；Article 22, Paragraph 1 of the Act for Rebuilding Old Quarters for Military Dependents (as amended and published on January 3, 2007)（中華民國九十六

* Translated by Eleanor Y.Y. CHIN

** Contents within frame, not part of the original text, are added for reference purposes only.

年一月三日修正公布之國軍老舊眷村改建條例第二十二條第一項）；Article 13, Paragraph 2, and Article 14 of the Enforcement Rules of the Act for Rebuilding Old Quarters for Military Dependents（as enacted and published on July 23, 1996）（中華民國八十五年七月二十三日訂定發布之國軍老舊眷村改建條例施行細則第十三條第二項、第十四條）

KEYWORDS:

principle of equality（平等原則）, legislative authority（立法形成自由）, Military Dependents' Village Reconstruction Act（眷改條例）, resident military householders' resident certificates and related rights and interests（眷舍居住憑證及原眷戶權益）**

HOLDING: Article 22 of the Act for Rebuilding Old Quarters for Military Dependents (hereinafter referred to as "Military Dependents' Village Reconstruction Act," enacted and published on February 5, 1996) stipulates that: "Where more than three-quarters of the resident military householders in a military dependents' village to be reconstructed agree with the reconstruction, the competent authority shall be entitled to nullify the resident certificates and benefits of the householders who disagree

解釋文：中華民國八十五年二月五日制定公布之國軍老舊眷村改建條例（下稱眷改條例）第二十二條規定：「規劃改建之眷村，其原眷戶有四分之三以上同意改建者，對不同意改建之眷戶，主管機關得逕行註銷其眷舍居住憑證及原眷戶權益，收回該房地，並得移送管轄之地方法院裁定後強制執行。」（九十六年一月三日修正公布將四分之三修正為三分之二，並改列為第一項）對於不同意改建之原眷戶得逕行註銷其眷舍居住憑證及原眷戶權益部分，與憲法第七條之平等原則尚無牴觸。惟同意

with the reconstruction and recall their houses subject to compulsory execution upon the jurisdictional district court's ruling." (Three-quarters was amended to two-thirds, and the aforesaid paragraph moved as Paragraph 1, as amended and published on January 3, 2007.) The portion that authorizes the nullification of resident certificates and the related rights and interests of resident military householders who disagree with the reconstruction of old military dependents' villages is not in contravention with the principle of equality enshrined in Article 7 of the Constitution. Resident military householders who agree with the reconstruction of old military dependents' villages not only have the right to purchase residence units built, and to receive a government subsidy for the purchase pursuant to Article 5, Paragraph 1 of the Military Dependents' Village Reconstruction Act, but also a subsidy for moving expenses and reimbursement of demolition costs pursuant to Article 13, Paragraph 2 and Article 14 of the Enforcement Rules of the Act respectively. Resident military householders who disagree with the reconstruction

改建之原眷戶除依眷改條例第五條第一項前段規定得承購住宅及輔助購宅款之權益外，尚得領取同條例施行細則第十三條第二項所定之搬遷補助費及同細則第十四條所定之拆遷補償費，而不同意改建之原眷戶不僅喪失前開承購住宅及輔助購宅款權益，並喪失前開搬遷補助費及拆遷補償費；況按期搬遷之違占建戶依眷改條例第二十三條規定，尚得領取拆遷補償費，不同意改建之原眷戶竟付之闕如；又對於因無力負擔自備款而拒絕改建之極少數原眷戶，應為如何之特別處理，亦未有規定。足徵眷改條例尚未充分考慮不同意改建所涉各種情事，有關法益之權衡並未臻於妥適，相關機關應儘速通盤檢討改進。

of old military dependents' villages not only lose their aforementioned rights to purchase residence units and to receive a purchase subsidy, they also lose access to a subsidy for the expenses of moving house and reimbursement of demolition costs. In addition, householders occupying their properties illegally who move out within the time limit stipulated in Article 23 of the Military Dependents' Village Reconstruction Act are entitled to receive reimbursement for demolition costs; however, resident military householders who disagree with reconstruction are not entitled to anything. Furthermore, the Act is silent on how to deal with the few resident military householders who disagree with reconstruction because they lack the financial means to provide their own payment for the subsequent purchase of a residence unit. This is sufficient to show that the Military Dependents' Villages Reconstruction Act has not yet been fully considered in the light of the various issues that could arise from disagreement with reconstruction. The competing legal interests have not yet reached an acceptable balance; therefore, the relevant

competent authorities should complete a thorough review and make improvements as soon as possible.

REASONING: The Principle of Equality enshrined in Article 7 of the Constitution does not refer to a formal equality in an absolute or mechanical sense, but rather, a substantive equality that protects the legal position of the people. The legislative authority, based on the value system of the Constitution and legislative intent, exercises discretion and considers whether inherent differences in subject matter justify reasonable differences in treatment. Whether a particular law complies with the principle of equality should be determined by whether the intent of the differential treatment is constitutional, and whether there exists a certain level of connection between the legislative intent and the adopted method of classification (*see* J.Y. Interpretations Nos. 682, 694, 701, 719 and 722). The actions of State authorities in implementing public administration should also comply with the constitutional requirements listed above while engaging in private acts that

解釋理由書：憲法第七條平等原則並非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，立法機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理之差別待遇。法規範是否符合平等原則之要求，應視該法規範所以為差別待遇之目的是否合憲，及其所採取之分類與規範目的之達成間，是否存有一定程度之關聯性而定（本院釋字第六八二號、第六九四號、第七０一號、第七一九號、第七二二號解釋參照）。國家機關為達成公行政任務，以私法形式所為之行為，亦應遵循上開憲法之規定（本院釋字第四五七號解釋參照）。立法機關就各種社會給付之優先順序、規範目的、受益人範圍、給付方式及額度等有關規定，自有充分之形成自由，得斟酌對人民保護照顧之需求及國家財政狀況等因素，制定法律，將福利資源為限定性之分配（本院釋字第四八五號解釋參照），倘該給付規定所以為差別待遇之目的係屬正當，且所採手段與目的之達成間具合理關聯，即與平等原則

are subject to private law (*see* J.Y. Interpretation No. 457). The legislative body has full legislative authority with regard to the sequence of priorities, legislative intent, scope of beneficiaries, form and amount of payment and other related regulations with respect to all types of social welfare benefits. The legislative body shall consider the need to protect and care for the people, the State's financial status and other factors in enacting laws and making controlled allocation of social welfare resources (*see* J.Y. Interpretation No. 485). If the purpose behind the differential treatment in a social welfare benefit scheme is proper, and the method adopted has a reasonable connection with the purpose, then it is not in contravention of the principle of equality.

無違。

Article 22 of the Military Dependents' Village Reconstruction Act enacted and published on February 5, 1996, states that: "Where more than three-quarters of the resident military householders in the military dependents' villages to be reconstructed agree with the reconstruction, the competent authority shall be entitled to

八十五年二月五日制定公布之眷改條例第二十二條規定：「規劃改建之眷村，其原眷戶有四分之三以上同意改建者，對不同意改建之眷戶，主管機關得逕行註銷其眷舍居住憑證及原眷戶權益，收回該房地，並得移送管轄之地方法院裁定後強制執行。」（九十六年一月三日修正公布將四分之三修正為三分

nullify the resident certificates and benefits of the householders who disagree with the reconstruction and recall their houses subject to compulsory execution upon the jurisdictional district court's ruling." (Three-quarters was amended to two-thirds, and the aforesaid paragraph moved as Paragraph 1, as amended and published on January 3, 2007; hereinafter referred to as the "Contested Provision".) Resident military householders who disagree with reconstruction are subject to nullification of their resident certificates and related rights and interests, and are precluded from enjoying the rights and interests of those resident military householders who agree with reconstruction as set out under Article 5, Paragraph 1 of the Military Dependents' Village Reconstruction Act, such as, the right to purchase residence units built pursuant to the Act and to receive a government subsidy for the purchase. As a result, this creates differential treatment between resident military householders who agree with reconstruction and those who do not.

之二，並改列為第一項；下稱系爭規定）對於不同意改建之原眷戶得逕行註銷其眷舍居住憑證及原眷戶權益，而不能如同意改建之原眷戶享有依眷改條例第五條第一項前段規定承購依同條例興建之住宅及由政府給與輔助購宅款等權益，形成與同意改建者間之差別待遇。

The provision of living quarters in military dependents' villages for soldiers is a social service in the nature of a loan relationship (*see* J.Y. Interpretation No. 457), the termination of which does not require the consent of the resident military householder. The legislative purpose of the Contested Provision is based on the special circumstances surrounding the deteriorating state of the villages of old military dependents. In order to discourage resident military householders from waiting passively, which interferes with the overall progress of the reconstruction of military dependents' villages and leads to increased reconstruction costs, a threshold of agreement and a method of differential treatment is provided, marked by nullification of the resident certificates and related rights and interests of those who disagree with the reconstruction. This encourages resident military householders to persuade each other to quickly come to consensus, and vacate the premises within the specified time limit. This allows for the most cost-effective use of the land and protects the interest of the general public. All resident military household-

軍人之眷舍配住，為使用借貸性質之福利措施（本院釋字第四五七號解釋意旨參照），其終止原不以配住眷戶之同意為必要。系爭規定之立法目的，係考量老舊眷村之特殊環境，為避免眷戶持續觀望而影響眷村改建整體工作之執行進度，徒使改建成本不斷增高，乃藉同意門檻之設定暨對不同意改建之原眷戶註銷其眷舍居住憑證及原眷戶權益之差別待遇手段，促使原眷戶間相互說服，以加速凝聚共識，並據以要求按期搬遷，達成土地使用之最佳經濟效益，以維護公共利益。所有原眷戶均有相同機會同意改建而取得相關權益，並明知不同意改建即無法獲得相關權益。是系爭規定所為差別待遇之目的要屬正當，且所採差別待遇手段與前開立法目的之達成間具有合理關聯，與憲法第七條平等原則尚無牴觸。

ers have the same opportunity to agree to the reconstruction and acquire the related rights and interests, and they know clearly that they will not have access to those rights and interests if they disagree with the reconstruction. The purpose of the differential treatment in the Contested Provision is proper, and the method adopted for differential treatment has a reasonable connection with the aforementioned legislative purpose, therefore it is not in contravention with the principle of equality enshrined in Article 7 of the Constitution.

Resident military householders who agree with the reconstruction of the villages of old military dependents not only have the right to purchase residence units built, and to receive a government subsidy for the purchase pursuant to Article 5, Paragraph 1 of the Military Dependents' Village Reconstruction Act, but also a subsidy for moving expenses and reimbursement of demolition costs pursuant to Article 13, Paragraph 2 and Article 14 of the Enforcement Rules of the Act respectively. Resident military householders who disagree with the reconstruction

惟同意改建之原眷戶除依眷改條例第五條第一項前段規定得承購住宅及輔助購宅款之權益外，尚得領取同條例施行細則第十三條第二項所定之搬遷補助費及同細則第十四條所定之拆遷補償費，而不同意改建之原眷戶不僅喪失前開承購住宅及輔助購宅款權益，並喪失前開搬遷補助費及拆遷補償費；況按期搬遷之違占建戶依眷改條例第二十三條規定，尚得領取拆遷補償費，不同意改建之原眷戶竟付之闕如；又對於因無力負擔自備款而拒絕改建之極少數原眷戶，應為如何之特別處理，亦未有規定。足徵眷改條例尚未充分考慮不同意

of old military dependents' villages not only lose their aforementioned rights to purchase residence units and to receive a purchase subsidy, they also lose access to a subsidy for the expenses of moving house and reimbursement of demolition costs. In addition, householders occupying their properties illegally who move out within the time limit stipulated in Article 23 of the Military Dependents' Village Reconstruction Act are entitled to receive reimbursement for demolition costs; however, resident military householders who disagree with reconstruction are not entitled to anything. Furthermore, the Act is silent on how to deal with the few resident military householders who disagree with reconstruction because they lack the financial means to provide their own payment for the subsequent purchase of a residence unit. This is sufficient to show that the Military Dependents' Villages Reconstruction Act has not yet been fully considered in the light of the various issues that could arise from disagreement with reconstruction. The competing legal interests have not yet reached an acceptable balance; therefore, the relevant

改建所涉各種情事，有關法益之權衡並未臻於妥適，相關機關應儘速通盤檢討改進。

competent authorities should complete a thorough review and make improvements as soon as possible.

Petitioner No. 1 listed in the Appendix points out that the nullification portion of the Contested Provision in the Military Dependents' Villages Reconstruction Act does not have a specified period of limitation. The petitioner questions its constitutionality and petitions for constitutional interpretation. However, it cannot be said that concrete reasons were provided to support an objective belief that the law is unconstitutional, therefore the petition is not in compliance with the requirements specified in J.Y. Interpretations Nos. 371, 572 and 590 for constitutional interpretation and shall be dismissed. Petitioner No. 2 listed in the Appendix asserts that the Contested Provision adopted in the Highest Administrative Court Judgment (2010) Pan-Zi No. 391 is unconstitutional and petitions for constitutional interpretation. However, because the petitioner is not the appellant in the aforementioned judgment, this petition is not in compliance with Article 5, Paragraph 1, Subparagraph 2 of

附表編號一聲請人指摘眷改條例就系爭規定關於註銷部分，未設除斥期間，有違憲疑義，聲請解釋憲法部分，尚難謂已提出客觀上形成確信法律為違憲之具體理由，與本院釋字第三七一號、第五七二號、第五九0號解釋所闡釋法官聲請解釋憲法之要件不合，應不受理。又附表編號二聲請人指摘最高行政法院九十九年度判字第三九一號判決所適用之系爭規定有違憲疑義，聲請解釋憲法部分，因其等並非前開判決之當事人，此部分聲請與司法院大法官審理案件法第五條第一項第二款規定不合，應不受理。另附表編號三聲請人指摘九十七年五月三十日修正發布之國軍老舊眷村改建基地完工後無法辦理交屋處理原則第六點之（四）及九十七年六月十七日修正發布之辦理國軍老舊眷村改建注意事項第伍點之三，有違憲疑義，聲請解釋憲法部分，並未具體敘明該規定於客觀上究有何牴觸憲法之處，而使其憲法上權利因此受有如何之侵害，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規

the Constitutional Court Procedure Act, and shall be dismissed. In addition, Petitioner No. 3 listed in the Appendix asserts that Point 6.4 of the Principles in Dealing with Inability to Complete Transaction after Reconstruction of Old Military Dependents' Villages (as amended and published on May 30, 2008), and Point 5.3 of the Special Instructions in Dealing with Reconstruction of Old Military Dependents' Villages (as amended and published on June 17, 2008) are unconstitutional and petitions for constitutional interpretation. However, the petitioner did not provide an adequate explanation as to how exactly the rules are objectively in contravention of the Constitution, and how the petitioners' constitutional rights have been violated as a consequence. The petition is not in compliance with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretations Procedure Act, and shall be hence dismissed pursuant to Paragraph 3 of the same Article 5 thereof.

定，應不受理，併此指明。

Appendix

No.	Petitioner	Source and Final and Binding Judgment
1	5th Panel of the Taipei High Administrative Court	Taipei High Administrative Court Judgment (2011) Su-Geng-Yi-Zi No. 215
		Taipei High Administrative Court Judgment (2013) Su-Zi No. 419
2	Wang Taiyang, Cui Taishun, Zhang-Hu Guangsu, Chen Yusheng, Ma-Lin Guixiang, Su Xiaopeng, Su Yongzhong, Du Diankun, Du Dianwu, Du Dianwen, Zheng Shuyun, Zheng Shiqin, Zheng Shijie, Zhang Mengchang, Guo Qingchang.	Highest Administrative Court Judgment (2010) Pan-Zi No. 391
3	Chen Wenxiong	Taipei High Administrative Court Judgment (2011) Su-Zi No. 360

附表

編號	聲請人	原因事件或確定終局判決
一	臺北高等行政法院第五庭	臺北高等行政法院一００年度訴更一字第二一五號事件
		臺北高等行政法院一０二年度訴字第四一九號事件
二	王泰祥、崔台順、張湖光素、陳庾生、馬林貴香、蘇曉芃、蘇詠中、杜典崑、杜典武、杜典文、鄭淑雲、鄭世欽、鄭世傑、張孟嘗、郭清場	最高行政法院九十九年度判字第三九一號判決

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Sea-Yau LIN filed a concurring opinion.

Justice Hsi-Chun HUANG filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Mao-Zong HUANG filed a dissenting opinion.

Justice Pai-Hsiu YEH filed a dissenting opinion.

Justice Shin-Min CHEN filed a dissenting opinion.

本號解釋湯大法官德宗提出部分協同意見書；蘇大法官永欽提出協同意見書；林大法官錫堯提出協同意見書；黃大法官璽君提出協同意見書；羅大法官昌發提出協同意見書；黃大法官茂榮提出不同意見書；葉大法官百修提出不同意見書；陳大法官新民提出不同意見書。

EDITOR'S NOTE:

Summary of facts: (1) The petitioners, consisting of 122 persons including Yang Xirong, were resident military householders of different military dependents' villages. Their resident certificates and related rights and interests were nullified by the Ministry of Defense pursuant to Article 22 of the Act for Rebuilding Old Quarters for Military Dependents (hereafter referred to as the "Military De-

編者註：

事實摘要：聲請人(一)楊熙榮等122人分別係不同眷村之原眷戶，因不同意所居住眷村辦理改建，經國防部依國軍老舊眷村改建條例（下稱眷改條例）第22條規定，註銷眷舍居住憑證及原眷戶權益，並因而喪失承購住宅之相關權益，亦不得領取搬遷補助費或拆遷補償費。聲請人等不服，分別提起行政爭訟敗訴確定，認該規定及97年5月30日國軍老舊眷村改建基地完

pendents' Village Reconstruction Act") because the householders did not agree with the reconstruction of the villages they were residing in. Further, they also lost all related rights and interests with respect to the purchase of residences built pursuant to the Military Dependents' Village Reconstruction Act, and any subsidy for moving expenses and reimbursement of demolition costs. The Petitioners felt wronged, and applied separately to confirm the findings of their lost administrative litigation. Together they assert that Article 22 of the Military Dependents' Village Reconstruction Act, Point 6.4 of the Principles in Dealing with Inability to Complete Transaction after Reconstruction of Old Military Dependents' Villages (as amended and published on May 30, 2008), and Point 5.3 of the Special Instructions in Dealing with Reconstruction of Old Military Dependents' Villages (as amended and published on June 17, 2008), contravene, amongst others, Articles 7, 10, 15 and 23 of the Constitution, and thereby they petitioned separately for constitutional interpretation resulting in a total of 13 petitions. (2) The 5th Panel of

工後無法辦理交屋處理原則第六點之（四）、97 年 6 月 17 日辦理國軍老舊眷村改建注意事項第伍點之三，牴觸憲法第 7 條、第 10 條、第 15 條、第 23 條等規定，分別聲請解釋，共 13 件聲請案。(二) 臺北高等行政法院第五庭為審理 100 年度訴更一字第 215 號及 102 年度訴字第 419 號國軍老舊眷村改建條例事件，認應適用之同規定及其關於註銷部分，未設除斥期間，有牴觸憲法第 23 條比例原則，侵害人民受憲法第 10 條、第 15 條保障之居住自由及財產權，聲請解釋。

the Taipei High Administrative Court presided over Judgments (2011) Su-Geng-Yi-Zi No. 215 and (2013) Su-Zi No. 419 regarding the reconstruction of military dependents' villages. The Court asserted the rules adopted by previous findings and its nullification portion, that the lack of a specified period of limitation contravenes the principle of proportionality enshrined in Article 23 of the Constitution, and violates the guarantee of freedom of residence and property rights enshrined in Articles 10 and 15 of the Constitution, and thereby petitioned for constitutional interpretation.

J. Y. Interpretation No.728（March 20, 2015）*

【Case Concerning Whether a Person is a Qualified Successor to an Existing Ancestor Worship Guild Shall Be Determined in Accordance with its Internal Regulations】

ISSUE: Is the relevant provision of the Statutes Governing Ancestor Worship Guilds that guilds existing prior to the promulgation of the Statutes, whether a person is a qualified successor to the guild should be determined by its internal regulations constitutional ?

RELEVANT LAWS:

Articles 7,14,15 and 22 of the Constitution（憲法第七條、第十四條、第十五條、第二十二條）；Paragraph 6, Article 10 of the Amendment to the Constitution（憲法增修條文第十條第六項）；Subparagraph 1of Article 3, forepart and latter part of Paragraph 1 of Article 4, Paragraphs 2 & 3 of Article 4 and Article 5 of Statutes Governing Ancestor Worship Guilds（祭祀公業條例第三條第一款、第四條第一項前段、第四條第一項後段、第四條第二項、第四條第三項、第五條）；Subparagraph 2, Paragraph 1 of Article 5 of the Constitutional Court Procedure Act（司法院大法官審理案件法第五條第

* Translated by Wei Feng HUANG

** Contents within frame, not part of the original text, are added for reference purposes only.

一項第二款）； Articles 2 and 5 of United Nations Convention on the Elimination of All Forms of Discrimination Against Women （聯合國消除對婦女一切形式歧視公約第二條、第五條）

KEYWORDS:

gender（性別）, internal regulations（規約）, successor（派下員）, property rights（財產權）, ancestor worship guild（祭祀公業）, gender equality（性別平等）, perception of clan（宗族觀念）, standard of classification（分類標準）, differential treatment（差別待遇）, freedom of association （結社自由）, freedom of contract（契約自由）, autonomy of private law（私法自治） , obligation of protection（保護義務）, principle of the stability of law（法安定性原則）, principle of the prohibition of retroactive law or ex post facto law（法律不溯及既往原則）**

HOLDING: The forepart part of Paragraph 1 of Article 4 of the Statutes Governing Ancestor Worship Guilds stipulates: “For guilds that existed before the promulgation of the Statutes, whether a person is a qualified successor to a guild should be determined by its internal regulations.” does not use gender as a criterion for determining the status of a successor. In general, most, if not all, of the related internal regulations of guilds follow the

解釋文：祭祀公業條例第四條第一項前段規定：「本條例施行前已存在之祭祀公業，其派下員依規約定之。」並未以性別為認定派下員之標準，雖相關規約依循傳統之宗族觀念，大都限定以男系子孫（含養子）為派下員，多數情形致女子不得為派下員，但該等規約係設立人及其子孫所為之私法上結社及財產處分行為，基於私法自治，原則上應予尊重，以維護法秩序之安定。是上開規定以規約認定祭祀公業

traditional perception of clans in restricting succession to male offspring (including adopted children) only. As a result, female offspring are prohibited to be successors in most circumstances. However, the enactment of the internal regulations for the guilds is an act performed by the founders and their descendants to form an association and dispose of their property under private law. Therefore, based on the principle of the autonomy of private law, the internal regulations shall be respected for the preservation of the stability of the law. The foregoing provision which stipulates whether a person is a qualified successor to a guild should be determined by the internal regulations of the guild and should not be in conflict with the gender equality guara.

派下員，尚難認與憲法第七條保障性別平等之意旨有違，致侵害女子之財產權。

REASONING: The Petitioner requested an interpretation of the constitutionality of Article 4 of the Internal Regulation Governing the Management of the Ancestor Worship Guild of Lu Wan-Chun (hereinafter referred to as the "Internal Regulation"), as prescribed on July 31, 1986, which was applied by the Su-

解釋理由書：本件聲請人對最高法院九十九年度台上字第九六三號民事判決（下稱確定終局判決）所引中華民國七十五年七月三十一日訂定之祭祀公業呂萬春管理章程第四條有違憲疑義，聲請解釋。查該管理章程非司法院大法官審理案件法第五條第一項第二款所稱之法律或命令，本不得據以聲請解

preme Court in the civil judgment of No. 99-Tai-Shun-Tzu-963 (2010) (hereinafter referred to as the "final judgment"). The Internal Regulation did not fall within the purview of the "statute" or "administrative regulation" referred to in Subparagraph 2, Paragraph 1 of Article 5 of the Constitutional Interpretation Procedure Act, and therefore was not eligible for a petition of interpretation. However, given that the final judgment applied the forepart of Paragraph 1 of Article 4 of the Statutes Governing Ancestor Worship Guilds, which stipulates: "For guilds that existed before the promulgation of the Statutes, whether a person is a qualified successor to a guild should be determined by its internal regulations" (hereinafter referred to as "disputed provision"), as the basis of its reasoning and thus cited the Internal Regulation, the Petitioner requesting an interpretation in accordance with the aforesaid article of the Constitutional Interpretation Procedure Act (which is wrongfully stated as Article 4, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act in the petition) shall therefore be deemed to request an interpretation on the constitu-

釋，惟確定終局判決係適用祭祀公業條例第四條第一項前段規定：「本條例施行前已存在之祭祀公業，其派下員依規約定之。」（下稱系爭規定）為主要之判決基礎，而引用上開管理章程之內容，聲請人既據司法院大法官審理案件法上開規定（聲請書誤植為司法院大法官會議法第四條第一項第二款）聲請解釋，應可認係就系爭規定而為聲請，本院自得以之作為審查之標的，合先敘明。

tionality of the disputed provision. Hence, this court has the authority to review the disputed provision as the subject matter of this interpretation. This shall be indicated first.

An ancestor worship guild is an association formed by the properties donated by the founders for the purpose of providing services for ancestor worship or other forms of worship (see Article 3, Subparagraph 1 of the Statutes Governing Ancestor Worship Guilds). The establishment and existence of an ancestor worship guild involves the freedom of association, property rights and freedom of contract of the founders and also of their descendants. The disputed provision constitutes differential treatment in substance in cases where the relevant internal regulations follow the traditional perception of clans in restricting succession to male offspring (including adopted children) only. Thus, female offspring are prohibited from becoming successors in most cases. However, the disputed provision does not provide gender as a criterion in form for determining the status of the

祭祀公業係由設立人捐助財產，以祭祀祖先或其他享祀人為目的之團體（祭祀公業條例第三條第一款規定參照）。其設立及存續，涉及設立人及其子孫之結社自由、財產權與契約自由。系爭規定雖因相關規約依循傳統之宗族觀念以男系子孫（含養子）為派下員，多數情形致女子不得為派下員，實質上形成差別待遇，惟系爭規定形式上既未以性別作為認定派下員之標準，且其目的在於維護法秩序之安定及法律不溯及既往之原則，況相關規約係設立人及其子孫所為之私法上結社及財產處分行為，基於憲法第十四條保障結社自由、第十五條保障財產權及第二十二條保障契約自由及私法自治，原則上應予以尊重。是系爭規定實質上縱形成差別待遇，惟並非恣意，尚難認與憲法第七條保障性別平等之意旨有違，致侵害女子之財產權。

successor and the objective is to preserve the stability of the law and the principle of the prohibition of retroactive law. Furthermore, the enactment of internal regulations for guilds is an act performed by their founders and their descendants by which an association is formed and property disposed of under private law. This should, in principle, be respected based on the protection of the freedom of association in Article 14 of the Constitution, the protection of property rights in Article 15 of the Constitution, and the protection of freedom of contract and the autonomy of private law in Article 22 of the Constitution. Therefore, even though such a disputed provision may constitute differential treatment in substance, since it is not arbitrary, it is not in conflict with the principle of gender equity embodied in Article 7 of the Constitution nor does it infringe women's right to property.

Nevertheless, the latter part of Paragraph 1 of Article 4 of the Statutes Governing Ancestor Worship Guilds stipulating that "For those guilds without any internal regulations or applicable rules

惟祭祀公業條例第四條第一項後段規定：「無規約或規約未規定者，派下員為設立人及其男系子孫（含養子）。」係以性別作為認定派下員之分類標準，而形成差別待遇，雖同條第二

under the internal regulations, successors should be the male offspring of the family (including adopted children)", uses gender as a criterion for determining the status of a successor, and thus constitutes differential treatment. Paragraph 2 of the same article provides that "For those current successors without any male offspring, female members of the family, who have not been married, are qualified to serve as successors". Paragraph 3 of the same article provides that "Others (women, adopted female children and adopted sons-in-law) fulfilling one of the following criteria can serve as successors too: (1) when two-thirds (2/3) of the current successors agree in writing; (2) when two-thirds (2/3) of the attending successors agree in a meeting at which 50% of the surviving members of the guild must be present". In such cases the issue of differential treatment is considered as having been mitigated or even eliminated. Furthermore, Article 5 provides that "After the Statutes take effect, in cases of inheritance, the successors of the guild as well as its legal entity shall be those persons who jointly

項規定：「派下員無男系子孫，其女子未出嫁者，得為派下員……。」第三項規定：「派下之女子、養女、贅婿等有下列情形之一者，亦得為派下員：一、經派下現員三分之二以上書面同意。二、經派下員大會派下現員過半數出席，出席人數三分之二以上同意通過。」等部分，已有減緩差別待遇之考量，且第五條規定：「本條例施行後，祭祀公業及祭祀公業法人之派下員發生繼承事實時，其繼承人應以共同承擔祭祀者列為派下員。」亦已基於性別平等原則而為規範，但整體派下員制度之差別待遇仍然存在。按「中華民國人民，無分男女……，在法律上一律平等」、「國家應維護婦女之人格尊嚴，保障婦女之人身安全，消除性別歧視，促進兩性地位之實質平等。」憲法第七條及憲法增修條文第十條第六項分別定有明文。上開憲法增修條文既然課予國家應促進兩性地位實質平等之義務，並參酌聯合國大會一九七九年十二月十八日決議通過之消除對婦女一切形式歧視公約（Convention on the Elimination of All Forms of Discrimination against Women）第二條、第五條之規定，國家對於女性應負有積極之保護義務，藉以實踐兩性

take responsibility to provide services for ancestor worship". Thus the law is based on the principle of gender equity. However, differential treatment within the system of succession still exists. According to Article 7 of the Constitution, "All citizens of the Republic of China, irrespective of sex, shall be equal before the law"; Paragraph 6, Article 10 of the Amendment to the Constitution also specifies: "The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further promote substantive gender equality." By the foregoing amendment to the Constitution, the State is charged with the duty to promote substantive gender equality. Additionally, considering Articles 2 and 5 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the State shall bear a positive duty and provide legal protection for women to realize substantive gender equality. In determining the status of successors for guilds that existed before the promulgation of the Statutes Governing Ancestor Worship Guilds, relevant government agencies should conduct a timely

地位之實質平等。對於祭祀公業條例施行前已存在之祭祀公業，其派下員認定制度之設計，有關機關自應與時俱進，於兼顧上開憲法增修條文課予國家對女性積極保護義務之意旨及法安定性原則，視社會變遷與祭祀公業功能調整之情形，就相關規定適時檢討修正，俾能更符性別平等原則與憲法保障人民結社自由、財產權及契約自由之意旨。

review and modification of the related law to ensure that they are keeping pace with time, taking into consideration the State's positive duty to protect women under the foregoing amendment to the Constitution, the principle of the stability of law, changes in social conditions and the adjustment of functions within an ancestor worship guild, so as to conform to the principle of gender equality and the constitutional intent to safeguard the people's freedom of association, property rights and freedom of contract.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Shin-Min CHEN filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Beyue SU CHEN filed an opinion concurring in part and dissenting in part.

Justice Chen-Shan LI filed a dissenting opinion.

Justice Mao-Zong HUANG filed a dissenting opinion.

Justice Pai-Hsiu YEH filed a dis-

本號解釋蘇大法官永欽提出之協同意見書；陳大法官新民提出之協同意見書；湯大法官德宗提出之協同意見書；陳大法官碧玉提出之部分協同部分不同意見書；李大法官震山提出之不同意見書；黃大法官茂榮提出之不同意見書；葉大法官百修提出之不同意見書；羅大法官昌發提出之不同意見書。

senting opinion.

Justice Chang-Fa LO filed a dissenting opinion.

EDITOR'S NOTE:

Summary of facts: The petitioner Lu Pi-Lien (in an uxorilocal marriage) is the eldest daughter of Lu Chin-Jung, who is one of the successors to the Ancestor Worship Guild of Lu Wan-Chun. The other petitioner, Lu Chia-Sheng, is Lu Pi-Lien's son (He carries his mother's surname). Lu Chin-Jung's living was maintained by the petitioners and he had three sons, none of whom has a male child. When Lu Chin-Jung and two of his sons passed away, only the youngest son, Lu Hsueh-Chuan, remained. The forepart of Article 4 of the Internal Regulations Governing the Management of the Ancestor Worship Guild of Lu Wan-Chun, as prescribed on July 31, 1986, provides that "In a case where the registered successor has died, the lineal heirs have the right to appoint a representative to assume the status of successor, provided, however, that a woman has no right of inheritance pursuant to the relevant government regu-

編者註：

事實摘要：聲請人呂碧蓮(贅婚)為祭祀公業呂萬春派下員呂進榮之長女，聲請人呂家昇為呂碧蓮之子(從母姓)。呂進榮受聲請人等撫養，惟另有3子均無男嗣。呂進榮與2子先後亡故，僅餘三子呂學川1人。依該祭祀公業於75年7月31日訂定之祭祀公業呂萬春管理章程第4條前段規定：「登記在案派下員亡故時，其直屬有權繼承人公推一名為代表繼任派下員，惟依照政府有關規定，凡女子無宗祠繼承權。」致呂進榮之派下員身分僅由呂學川1人繼承。聲請人等乃訴請主張亦得繼承派下權。案經臺灣板橋（現為新北）地方法院判決駁回其訴；嗣上訴，歷臺灣高等法院97年度上字第617號民事判決、最高法院99年度台上字第963號民事判決（下稱確定終局判決），皆以適用祭祀公業條例第4條第1項前段規定「本條例施行前已存在之祭祀公業，其派下員依規約定之。」而依上該管理章程所定僅「男系直屬有權繼承人有繼承派下員之資格」為由，駁回其訴而確

lations". Consequently, succession to Lu Chin-Jung's registered membership in the Ancestor Worship Guild of Lu Wan-Chun is inherited only by Lu Hsueh-Chuan. The petitioners thus initiated litigation to claim their right to inherit the status of successor but the case was dismissed by the Banciao District Court (now New Taipei District Court). The petitioners then appealed but it was dismissed both in the civil judgment of the Taiwan High Court No. 97-Shun-Tzu-617 (2008) and in the civil judgment of the Supreme Court No. 99-Tai-Shun-Tzu-963 (2010) (hereinafter referred to as "final judgment"). All above-mentioned civil judgments applied the forepart of Paragraph 1 of Article 4 of the Statutes Governing Ancestor Worship Guilds, which stipulates: "For the guilds that existed before the promulgation of the Statutes, whether a person is a qualified successor to a guild should be determined by its internal regulations" and referred to the foregoing Internal Regulation which indicates that "only the male lineal heirs are qualified to inherit the status of successor" as the reasoning. Consequently, the petitioners then

定。聲請人等乃認確定終局判決所適用之上該管理章程有牴觸憲法第 7 條之疑義，聲請解釋。

requested an interpretation on the ground that the disputed provision applied in the final judgment was unconstitutional under Article 7 of the Constitution.

J. Y. Interpretation No.729（May1, 2015）*

【Legislative Yuan's Power to Request Investigation Files】

ISSUE: Can the Legislative Yuan requestinvestigation files held by the Prosecution ?

RELEVANT LAWS:

Constitution: Articles63, Article 67, Paragraph 2（憲法第六十三條、第六十七條第二項）；Additional Articles of the Constitution: Article 3, Paragraph 2, Subparagraph 1, Article 5, Paragraph 1, Article 6, Paragraph 2, Article 7, Paragraph 2（憲法增修條文第三條第二項第一款、第五條第一項、第六條第二項、第七條第二項）；J.Y. Interpretation: Nos. 325, 585, and 633（司法院釋字第三二五號、第五八五號、第六三三號解釋）；Law Governing the Legislative Yuan's Power: Article 58, Article 47, Paragraph 1（立法院職權行使法第四十五條、第四十七條第一項）；Court Organization Act: Article 66, Paragraph 10（法院組織法第六十六條第十項）；Operation Rules Governing Special Task Forcefor Surveillance and Request of Judiciary and Organic Law and Statutes Committee, Legislative Yuan: Rules 11, 12（立法院司法及法制委員會監聽調閱專案小組運作要點第十一點、第十二點）

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* Translated by Chun-Yih CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

KEYWORDS:

Legislative Yuan（立法院）, power to request materials for reference（要求提供資料參考權）, power to request documents（文件調閱權）, Law Governing the Legislative Yuan's Power（立法院職權行使法）, prosecution（檢察機關）, investigation power（偵查權）, investigation files（偵查卷證）, separation of powers and checks and balances（權力分立與制衡）, original documents（文件原本）, copies（影本）, J.Y. Interpretation No. 325（釋字第三二五號解釋）, Communication Security and Surveillance Act（通訊保障及監察法）**

HOLDING: The Prosecution represents the State to investigate and prosecute crimes. Based on the principles of Separation of Powers and of Checks and Balances, and in order to protect the Prosecution's right to independently exerciseits powers, the Legislative Yuan shall not requestrelevant files incases pendingthe Prosecution's investigation. If the Legislative Yuan requests filesof cases which the Prosecution'sinvestigation has been completed and a non-prosecutorial disposition has been rendered or the matter has been closed by other methods, the

解釋文：檢察機關代表國家進行犯罪之偵查與追訴，基於權力分立與制衡原則，且為保障檢察機關獨立行使職權，對於偵查中之案件，立法院自不得向其調閱相關卷證。立法院向檢察機關調閱已偵查終結而不起訴處分確定或未經起訴而以其他方式結案之案件卷證，須基於目的與範圍均屬明確之特定議案，並與其行使憲法上職權有重大關聯，且非屬法律所禁止者為限。如因調閱而有妨害另案偵查之虞，檢察機關得延至該另案偵查終結後，再行提供調閱之卷證資料。其調閱偵查卷證之文件原本或與原本內容相同之影本者，應經立

request shall be based on a specific proposal of which the purpose and scope are clearand must be closely relatedtothe exerciseof the Legislative Yuan'sconstitutional powers, and must further be limited to the extent that such requestis not forbidden by law. If the request may compromise theinvestigation ofother cases, the Prosecution may withhold the provision of the files until the investigation ofsuchother cases is concluded. If the request of investigation files is fororiginal documents or copies identical to the original documents, the request must be made by a resolution of the general meeting of the Legislative Yuan; the request for reference materials can only be made by resolution of the general meeting or the committee of the Legislative Yuan. The use of information so known due to the request shall be limited to the extent necessary for the Legislative Yuan to exercise its constitutional powers, and the rights and interests of the relevant parties(such as reputation, privacy, trade secrets, etc.)shall be protected. J.Y. Interpretation No. 325 is hereby supplemented.

法院院會決議；要求提供參考資料者，由院會或其委員會決議為之。因調閱卷證而知悉之資訊，其使用應限於行使憲法上職權所必要，並注意維護關係人之權益（如名譽、隱私、營業秘密等）。本院釋字第三二五號解釋應予補充。

REASONING: This case originated fromthe Judiciary and Organic Laws and Statutes Committee of the Legislative Yuan (hereinafter "JOLSC").When the JOLSC reviewed the bills for the partial amendment of the Communication Security and Surveillance Act, it requested Petitioner, the Supreme Prosecutors Office, based on Article 45 of the Law Governing the Legislative Yuan's Power, to provide the application for communication and surveillance, transcripts, surveillance transcripts, and government documents from the files of the case 100 Te-Ta-Zi No. 61 for its review. Petitioner claimed that pursuant to the intents of J.Y. Interpretation Nos. 325 and 585, investigationpower of Prosecutors is exercised as an independent power from others; such power is protected by the Constitution just as Judges' trial power is protected in criminalcases, and as theinvestigation files are part of investigation proceedings, which are not disclosed to the public, files are thus not within the scope of the Legislative Yuan's power of request. Even where an investigation is completed and the Prosecutors are found to have committedillegal acts

解釋理由書：本件緣於立法院司法及法制委員會（下稱司法及法制委員會）為審查通訊保障及監察法部分條文修正草案等法律案，依立法院職權行使法第四十五條規定，向聲請人最高法院檢察署調閱該署一００年度特他字第六一號偵查卷證之通訊監察聲請書、筆錄、監聽譯文、公文等卷證文書影本及監聽光碟片。聲請人認依司法院釋字第三二五號、第五八五號解釋意旨，檢察官之偵查係對外獨立行使職權，與法官之刑事審判，應同受憲法保障，且偵查卷證係偵查行為之一部，為犯罪偵查不公開之事項，非屬立法院所得調閱之事物範圍。即令案件偵查終結後，若檢察官有違法、不當之情事，亦應由監察院調查。立法院僅能在制度、預算、法律等事項對檢察機關進行通案監督，應無介入個案調閱偵查卷證之餘地等情，而拒絕提供調閱之卷證。司法及法制委員會因認聲請人之檢察總長迴避監督、藐視國會，將檢察總長函送監察院調查。是聲請人即有本於偵查職權而與立法院調閱文件之職權發生適用憲法之爭議，乃報請其上級機關法務部，層轉行政院聲請解釋憲法。經核與司法院大法官審理案件法第五條第一項第一款、第九條之規定相符，應予受理，合先敘明。

or misconduct, the investigation shallbe conducted by the Control Yuan. The Legislative Yuan can only generally oversee the Prosecution in matters such as the system, budget, and the laws, and there is no power of the Legislative Yuan to intervene inan individual case, and request investigation files. Petitioner thus refused to provide to the Legislative Yuan the files as requested. JOLSC thus regarded the Prosecutor Generalas destructing the Legislative Yuan, supervision and accused the Prosecutor General of contempt of the Legislative Yuan, and referred the case to the Control Yuan for investigation. As such, there is controversy over the exercise of Petitioner's investigation power and the Legislative Yuan's power to request documents in applying the Constitution, and Petitioner thus requested its supervising entity, the Ministry of Justice, to further submit the controversy to the Executive Yuan to petition for the interpretation of Constitution.The petition is in compliance with Article 5, Paragraph 1, Subparagraph 1 and Article 9 of the Constitutional Court Procedure Act,and was accepted accordingly.

In order to exercise the powers granted by the Constitution, other than following the provisions of Article 67, Paragraph 2, of the Constitution, and Article 3, Paragraph 2, Subparagraph 1, of the Additional Articles to the Constitution, after resolution of its general meeting or a committee meeting, the Legislative Yuan can request relevant authorities to provide reference materials for issues related to the proposal; when necessary, after a resolution is passed in its general meeting, the Legislative Yuan can request original documents. The authorities to which such request is made cannot decline such request unless such decline is made in accordance with the law or for other justifiable reasons. However, where the independent exercise of power by a government authorityis protected by the Constitution, such asin litigation cases the investigation and trial related disposition and files before a final and binding judgment is granted, the power to request documents is by nature restricted. J.Y. Interpretation 325 has already clarified this issue. Following the intents of the aforementioned Interpretation issued by this

立法院為行使憲法上所賦予之職權，除依憲法第六十七條第二項及憲法增修條文第三條第二項第一款辦理外，得經院會或其委員會之決議，要求有關機關就議案涉及事項提供參考資料；必要時並得經院會決議調閱文件原本。受要求調閱之機關非依法律規定或有其他正當理由不得拒絕。但國家機關獨立行使職權受憲法之保障者，如訴訟案件在裁判確定前就偵查、審判所為之處置及其卷證等，立法院對之調閱文件本受有限制，業經本院釋字第三二五號解釋在案。嗣依循本院上開解釋意旨制定之立法院職權行使法第四十五條規定：「立法院經院會決議，得設調閱委員會，或經委員會之決議，得設調閱專案小組，要求有關機關就特定議案涉及事項提供參考資料（第一項）。調閱委員會或調閱專案小組於必要時，得經院會之決議，向有關機關調閱前項議案涉及事項之文件原本（第二項）。」第四十七條第一項前段復規定：「受要求調閱文件之機關，除依法律或其他正當理由得拒絕外，應於五日內提供之。」立法院要求提供參考資料權及文件調閱權，係輔助立法院行使憲法職權之權力，故必須基於與議決法律案、預算案或人事同意權案等憲法上職權之特定議案有重大關

Yuan, the Law Governing the Legislative Yuan's Power thus stipulates that "the Legislative Yuan, aftera resolution passed by the general meeting, may establish a Request Committee, or after resolution by a committee, may form a Special Task Force, to request relevant authorities to provide reference materials regarding specific proposal related issues (Paragraph 1). When necessary, the Request Committee or the Special Task Force may, by resolution of the general meeting, request the relevant authorities to provide original documents related toissues involved in the proposal as identified in the preceding paragraph (Paragraph 2)."Furthermore, Article 47, forepart of Paragraph 1, stipulates that "the authorities to which a request has been made, unless they may refuse such request in accordance with the laws or for other justifiable reasons, must provide with the requested documents within five days."The Legislative Yuan's powers to request provision of reference materials and files is an ancillary power assisting the Legislative Yuan to exercise its constitutional powers; therefore, the specific proposal request must be rel-

聯者，始得為之。為判斷文件調閱權之行使是否與立法院職權之行使有重大關聯，上開立法院職權行使法第四十五條第一項所稱特定議案，其目的及範圍均應明確。

evant to the resolution forstatute, budget, or consent to appointment of nominees which are significantly related to the exercise of constitutional powers over specific proposals. To decide whether the exercise of the request power is significantly related to the exercise of the Legislative Yuan's powers, the purpose and scope of the aforementioned "specific proposal" in Article 45, Paragraph 1, of the Law Governing the Legislative Yuan's Power must both be clearly identified.

As the Prosecution's files are significantly related to the prosecution of crimes, the files bear uniqueness and importance. If the investigative contentof cases pending criminal investigation is leaked, such leak will enable suspects to conspire or to escape, and will further undermine the effects of investigation and have an impact on thesocial order. Based on the principles of Separation of Powers and of Checks and Balances, and the protection of the Prosecution to independently exercise its powers, the Legislative Yuan shall not request relevant files pending the Prosecution's investigation.

按檢察機關之偵查卷證與偵查追訴犯罪有重要關係，有其特殊性與重要性。正在進行犯罪偵查中之案件，其偵查內容倘若外洩，將使嫌疑犯串證或逃匿，而妨礙偵查之成效，影響社會治安，基於權力分立與制衡原則及憲法保障檢察機關獨立行使職權，立法院自不得調閱偵查中之相關卷證。至於偵查終結後，經不起訴處分確定或未經起訴而以其他方式結案（例如檢察實務上之簽結）之案件，既已終結偵查程序及運作，如立法院因審查目的與範圍均屬明確、且與其憲法上職權有重大關聯之特定議案所必要，又非屬法律所禁止，並依法定組織及程序調閱者，因尚無實質

As for cases in which the Prosecution's investigation has been completed and a non-prosecutorial disposition has been confirmed or has been closed by other methods without an indictment (e.g., sign-off in prosecutorial practices), asthe investigation process and actions have concluded, and if the purpose and scope of such request are clearly and significantly related to the Legislative Yuan's necessary exercise of its constitutional powers, and such request is not forbidden by law, and the request is made in accordance with statutory organization and process, due to the reason that investigation power would not be compromised in substance, after a resolution of a general meeting of the Legislative Yuan, such closed case files can then be requested. Additionally, wherea case is closed after investigation with a finalized non-prosecutorial disposition or has been closed by other methods without indictment, if materials in the file are related to the same defendants or other defendants in other cases, and if the request could compromise the investigation ofthe other related cases, to enable the Prosecutors in their independent ex-

妨礙偵查權行使之虞，自得於經其院會決議調閱上述已偵查終結之卷證。另個案雖已偵查終結經不起訴處分確定或未經起訴而以其他方式結案，惟卷內證據資料如與檢察官續查同一被告或他被告另案犯罪相關者，倘因調閱而洩漏，將有妨害另案偵查追訴之虞，為實現檢察官獨立行使職權追訴犯罪，以落實國家刑罰權，檢察機關得延至該另案偵查終結提起公訴、或不起訴處分確定或未經起訴而以其他方式結案後，再行提供調閱之卷證資料。至調閱與偵查卷宗文件原本內容相符之影本，因影本所表彰文書之內容與原本相同，依前述意旨，亦應經立法院院會決議。本院釋字第三二五號解釋應予補充。另立法院行使文件調閱權，如未符合憲法或法律上之要求，自構成受調閱機關得予拒絕之正當理由。

ercise of powers of criminal prosecution and so as to achieve the exerciseof State power of penalty, the Prosecution may withhold its files and refusethe request until the investigations of the other related cases are concluded with indictments, finalized non-prosecutorial dispositions, or by other methods without indictment. As for requesting the investigation files ofcopies identical to the original documents, because the content in such copies isthe same as in the original documents, according to the intents identified above, suchrequest can only be made by a resolution of the general meeting of the Legislative Yuan. J.Y. Interpretation No. 325 should be supplemented. Moreover, when the Legislative Yuan exercises the power to request, if such request violates the Constitution or relevant laws, there constitutes a justifiable reason to reject such request.

When the Legislative Yuan exercises it constitutional power and requestsoriginal documents or copies of investigation cases files from the Prosecution, as the content of the investigation files may

立法院行使憲法上職權，向檢察機關調閱偵查卷證之文件原本或影本，由於偵查卷證之內容或含有國家機密、個人隱私、工商秘密及犯罪事證等事項，攸關國家利益及人民權利，是立法

contain matters of State secrets, personal privacy, commercial secrets, or criminal evidence relating to national interests or personal rights, the use of information so known due to the request should be limited to the extent necessary for the Legislative Yuan or its Members to exercise its or their constitutional powers, and the Legislative Yuan and its Members must protect the rights and interests (such as reputation, privacy, and trade secrets) of the relevant parties. With respect to matters that must be kept confidential pursuant to relevant laws, the Legislative Yuan and its Members must also duly fulfill its or their obligation to maintain such confidentiality; in addition, with respect to any specific case the Legislative Yuan cannot make any comment or resolution on the investigation process, non-prosecutorial disposition, or closure without indictment with other methods, unrelated tothe exercise of its constitutional power. This is a plain interpretation in accordance with the principles of the Separation of Powers, Checks and Balances, and mutual respect among the branches of government.

院及其委員因此知悉之資訊，其使用自應限於行使憲法上職權所必要，並須注意維護關係人之權益（如名譽、隱私、營業秘密等），對依法應予保密之事項亦應善盡保密之義務；且不得就個案偵查之過程、不起訴處分或未經起訴而以其他方式結案之結論及內容，為與行使憲法上職權無關之評論或決議，始符合權力分立、相互制衡並相互尊重之憲政原理，乃屬當然。

The power of the Legislative Yuan is different from that of the Control Yuan, and each deals with the matters within its scope of power. The power to request documents exists so that the Legislative Yuan can exercise its legislative power using information gained from materials requested; whereas the investigative power of the Control Yuan exists to enable the Control Yuan to exercise its controlling powers of impeachment, censorship, and corrective measures. Therefore, the nature, function, and purpose of the two powers are distinctive, and there is no overlapping or conflict with respect to the respective powers. Thus the Legislative Yuan's exercise of the power to request documents does not invade the Control Yuan's investigation power. As such, the Prosecution cannot reject a request based on the argument that the Legislative Yuan's power invades the Control Yuan's investigation power.

立法院與監察院職權不同，各有所司。立法院之文件調閱權，以調閱文件所得資訊作為行使立法職權之資料；而監察院之調查權，則係行使彈劾、糾舉、糾正等監察職權之手段，二者之性質、功能及目的均屬有別，並無重疊扞格之處。是立法院行使文件調閱權，自無侵犯監察院調查權之問題，檢察機關自不得執此拒絕調閱。

When the Legislative Yuan exercises the power to request documents, if the exercise conflicts with the government agency to which the request is directed

立法院行使文件調閱權，如與受調閱之機關發生諸如：所調閱之事項是否屬於國家機關獨立行使職權受憲法保障之範疇、是否基於與立法院憲法上職

in the way such that certain controversies emerge, the Legislative Yuan and the government agency to which the request is directed should better resolve the controversies through negotiation routes, or by the judiciary after enacting a law specifying the prerequisite and procedure. Such controversies may include the following: whether the matter subject to the request is within the realm of a government agency's independent exercise of its powers as protected by the Constitution, whether the request is significantly related to the specific proposal within the Legislative Yuan's constitutional powers, whether the scope of the request is forbidden by law, whether the request is made by statutory organization and process, and whether the refusal of a request is made with justifiable reason. It is hereby pointed out that the relevant agencies must establish the legal mechanism to resolve disputes among agencies as soon as possible.

權之特定議案有重大關聯、是否屬於法律所禁止調閱之範圍、是否依法定組織及程序調閱、以及拒絕調閱是否有正當理由等爭議時，立法院與受調閱之機關，宜循協商途徑合理解決，或以法律明定相關要件與程序，由司法機關審理解決之。相關機關應儘速建立解決機關爭議之法律機制，併此指明。

Petitioner complained that the content of Articles 11 and 12 passed by the JOLSC's resolution on the "Operation Rules Governing the Special Task for-

聲請人指摘司法及法制委員會決議通過之「監聽調閱專案小組運作要點」（下稱運作要點）第十一點、第十二點之內容，逾越立法院職權行使法

Surveillance and Request (the "Rules")" exceeds the scope of the power created by Article 45 of the Law Governing the Legislative Yuan's Power, conflicts with Article 63 of the Constitution and with J.Y. Interpretation No. 325, and petitioned for interpretation. It is founded that the Rules are merely internal operating guidelines for the purpose of establishing methods to request investigation files of the case 100 Te-Ta-Zi No. 61, so that the JOLSC can exercise the power to request files as mandated by Article 45 of the Law Governing the Legislative Yuan's Power (see Tai-Li-Yuan-Si-Zi No. 1034300280, the Legislative Yuan, May 7, 2014). Therefore, the Rules, by their nature, are a bylaw of the Committee, passed so as to assist the operation of the Task Force, and thus should be categorized as a matter for the internal operation of the Committee, and there is no issue of a law or order being in conflict with the Constitution. This part of the petition, does not meet the elements of Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act, and pursuant to Paragraph 3 of the same Article, shall not be accepted. The petition

第四十五條之範圍，牴觸憲法第六十三條及本院釋字第三二五號等解釋，聲請解釋。經查該運作要點僅係司法及法制委員會為行使立法院職權行使法第四十五條之文件調閱權，就如何調閱一００年度特他字第六一號偵查卷證之目的而自行訂定，俾作為該監聽調閱專案小組內部議事運作之作業準則（立法院中華民國一０三年五月七日台立院司字第一０三四三００二八０號函參照）。是該運作要點性質上乃該委員會之內規，用以協助所設調閱專案小組運作而訂定，要屬該委員會內部議事運作之事項，尚不生法律或命令牴觸憲法之問題。此部分聲請，核與司法院大法官審理案件法第五條第一項第一款規定不符，依同條第三項規定，應不受理。聲請意旨另以，司法及法制委員會依立法院職權行使法第四十五條第一項向聲請人調閱偵查卷證，惟聲請人依司法院釋字第五八五號、第六三三號解釋意旨及政府資訊公開法等法律規定，並無提供給閱之義務；再依法院組織法第六十六條第十項規定，檢察總長除年度預算案及法律案外，無須至立法院列席備詢，此與運作要點第十一點規定調閱專案小組會議召開時，得邀請被調閱文件之機關首長含檢察總長率同有關人員列席說

further claimed that although the JOLSC requests the files pending an investigation under Article 45, Paragraph 1 of the Law Governing the Legislative Yuan's Power, nonetheless, based on the intents of J.Y. Interpretation Nos. 585 and 633, and on the Freedom of Government Information Law, Petitioner is not obligated to provide the files for the Legislative Yuan's review; moreover, according to Article 66, Paragraph 10, of the Court Organization Act, Petitioner argues that except for annual budget proposals and legislation proposals, the Prosecutor General is not required to attend the meetings of the Legislative Yuan for questioning, which is different from Article 11 of the Regulations, which stipulates that when a meeting of the Special Task Force is convened, it may invite the chief of the government agency from which the document is requested, including the Prosecutor General, for explanation. Based on these arguments, Petitioner requested a unified interpretation. According to Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act, "a central or local government agency whose opinion on the

明之見解，亦屬有異。為此，聲請統一解釋云云。按司法院大法官審理案件法第七條第一項第一款本文規定：「中央或地方機關，就其職權上適用法律或命令所持見解，與本機關或他機關適用同一法律或命令時所已表示之見解有異者」得聲請統一解釋。核聲請人所陳，並未敘明其與他機關對同一法律或命令所已表示之見解有異。是此部分統一解釋之聲請，核與司法院大法官審理案件法第七條第一項第一款之規定不合，依同條第三項規定，亦應不受理。

application of laws or regulations, is different from that expressed by the same agency or another agency regarding application of the same laws or regulation, ”the agency can petition for a unified interpretation. However, Petitioner has not stated that its opinion is different from that of another agency on the same laws or regulations. Therefore, this part of the petition for a unified interpretation is not meeting the requirements of Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act,and shall not be accepted according to Paragraph 3 of the same Article.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Chen-Shan LI filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Sea-Yau LIN filed an opinion concurring in part and dissenting in part.

Justice Ching-You TSAY filed an opinion concurring in part and dissenting in part.

本號解釋蘇大法官永欽提出之協同意見書；李大法官震山提出之協同意見書;陳大法官春生提出之協同意見書;林大法官錫堯提出之部分協同部分不同意見書；蔡大法官清遊提出之部分協同部分不同意見書；陳大法官新民提出之部分協同部分不同意見書；羅大法官昌發提出之部分協同部分不同意見書；湯大法官德宗提出之部分協同部分不同意見書；陳大法官碧玉提出之部分不同意見書；黃大法官茂榮提出之部分不同意見書。

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Chang-Fa LO filed an opinion concurring in part and dissenting in part.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Beyue SU CHEN filed a dissenting opinion in part.

Justice Mao-Zong HUANG filed a dissenting opinion.

EDITOR'S NOTE:

Summary of facts: In November 2013, the JOLSC, for the purpose of reviewing the bill for partial amendment of the Communication Security and Surveillance Act, and according to Article 45 of the Law Governing the Legislative Yuan's Power, requested for its review that Petitioner, the Supreme Prosecutors Office, provide the application for communication and surveillance, transcripts, surveillance transcripts, and government documents from the files of the case 100 Te-Ta-Zi No. 61. Petitioner claimed that

編者註：

事實摘要：102 年 11 月間立法院司法及法制委員會（下稱司法及法制委員會）為審查通訊保障及監察法部分條文修正草案等法律案，依立法院職權行使法第 45 條規定，向聲請人最高法院檢察署調閱該署 100 年度特他字第 61 號偵查卷證之通訊監察聲請書、筆錄、監聽譯文、公文等卷證文書影本及監聽光碟片。聲請人認依釋字第 325 號、第 585 號解釋意旨，檢察官之偵查係對外獨立行使職權，應受憲法保障，且偵查卷證係偵查行為之一部，為偵查不公開之事項，非立法院所得調閱之範圍。即

pursuant to the intents of J.Y. Interpretation Nos. 325 and No. 585, investigation by Prosecutors is protected by the Constitution as an independent exercise of power externally, and as the investigation files are part of investigation proceedings which shall not be disclosed to the public, files are thus not within the scope of the Legislative Yuan's request. Even where an investigation is completed, should the Prosecutors be found to have committed illegal acts or misconduct, the investigation must be conducted by the Control Yuan. The Legislative Yuan can only generally oversee the Prosecution in respect of the system, budget, and the laws, and the Legislative Yuan has no power to request investigation files of individual case. Petitioner thus refused to provide the Legislative Yuan with the case files requested. JOLSC thus regarded the Prosecutor Generalas evading the Legislative Yuan's supervision and contempt of the Legislative Yuan, and thus submitted the wrongdoing to the Control Yuan for investigation. Petitioner therefore claimed that there were constitutional controversies over the exercise of its investigation

令案件偵查終結後，若檢察官有違法、不當情事，亦應由監察院調查。立法院僅能在制度、預算、法律等事項對檢察機關進行通案監督，無介入個案調閱偵查卷證之餘地，拒絕提供調閱之卷證。司法及法制委員會乃認檢察總長迴避監督、藐視國會，而函送監察院調查。聲請人爰主張本於行使偵查職權而與立法院調閱文件之職權發生適用憲法爭議，報請上級機關法務部層轉行政院，聲請解釋憲法暨統一解釋。

power and the Legislative Yuan's power to request documents, and through its supervising agency, the Ministry of Justice, and then the Executive Yuan, submit the petition for constitutional interpretation and unified interpretation.

J. Y. Interpretation No.730（June 18, 2015）*

【Calculation of the Number of Years Working for Government for the Pension of Public School Teachers and Employees Who Retired But Were Later Hired by the Government Again】

ISSUE: Is Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees unconstitutional ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）；J. Y. Interpretations Nos. 443 and 488（司法院釋字第四四三號、第四八八號解釋）；Articles 5, 8, 14, 21-1, Section 1 and 22 of the Act Governing the Retirement of Public School Teachers and Employees（學校教職員退休條例第五條、第八條、第十四條、第二十一條之一第一項、第二十二條）；Article 19, Section 1 and Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees（學校教職員退休條例施行細則第十九條第一項、第二項）

KEYWORDS:

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* Translated by Chi CHUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

public school teachers and employees（公立學校教職員）, being hired by the government after retiring from the government（再任或轉任）, retired from the government for the second time（重行退休）, combining the number of years working for government for two jobs as the basis for calculating pension (年資合併計算), limiting pensions due to the retirement of public school teachers and employees（退休金限制）, property rights（財產權）, the principle of statutory reservation（法律保留原則）**

HOLDING: Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees states that, for public school teachers and employees who retired but were later hired by the government again, the number of years working for government at their second retirement should include the number of years for their first government employment, but the total number of years working for government cannot exceed the ceiling set by Article 5 and Article 21-1, Section 1 of the Act Governing the Retirement of Public School Teachers

解釋文：學校教職員退休條例施行細則第十九條第二項有關已領退休（職、伍）給與或資遣給與者再任或轉任公立學校教職員重行退休時，其退休金基數或百分比連同以前退休（職、伍）基數或百分比或資遣給與合併計算，以不超過同條例第五條及第二十一條之一第一項所定最高標準為限之規定，欠缺法律具體明確之授權，對上開人員依同條例請領退休金之權利，增加法律所無之限制，侵害其受憲法第十五條保障之財產權，與憲法第二十三條法律保留原則有違，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

and Employees. Article 19, Section 2 of the Implementing Regulations is hereby declared unconstitutional, as it restricts the rights of teachers and employees but is not concretely and clearly authorized by a statute. The property rights of these teachers and employees, as protected by Article 15 of the Constitution, are infringed, and the principle of statutory reservation, as stipulated by Article 23 of the Constitution, is violated. Therefore, Article 19, Section 2 of the implementing regulations should lose its legal effect no later than one year from the date on which this interpretation is announced.

REASONING: Article 15 of the Constitution states that property rights of the people should be protected. Public school teachers' and employees' right to receive pension funds in accordance with the Act Governing the Retirement of Public School Teachers and Employees (hereinafter Disputed Statute) is a property right protected by the Constitution. Under the principle of statutory reservation stipulated in Article 23 of the Constitution, only statutes or regulations promulgated

解釋理由書：人民之財產權應予保障，憲法第十五條定有明文。公立學校教職員依學校教職員退休條例（下稱系爭條例）請領退休金之權利，乃屬憲法保障之財產權。對上開權利加以限制，須以法律定之或經立法機關具體明確授權行政機關以命令訂定，始無違於憲法第二十三條之法律保留原則（本院釋字第四四三號、第四八八號解釋參照）。系爭條例施行細則第十九條第二項規定：「前項人員重行退休時，其退休金基數或百分比連同以前退休

by administrative offices with concrete and clear authorization from the Legislative Yuan may restrict such property rights. (J. Y. Interpretation No. 443 and No. 488.) The legal provision disputed by the petitioners— Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees—states that, for public school teachers and employees who had once retired but were later hired by the government again, the number of years working for government should include the number of years of their first government employment, but the total number of years working for government cannot exceed the ceiling set by Article 5 and Article 21-1, Section 1 of the Disputed Statute. (hereinafter Disputed Provision) As Article 19, Section 2 of the Implementing Regulations restricts teachers' and employees' right to apply for pension funds in accordance with the Disputed Statute, it requires concrete and clear authorization by a statute.

（職、伍）基數或百分比或資遣給與合併計算，以不超過本條例第五條及第二十一條之一第一項所定最高標準為限……。」（下稱系爭規定）係限制同條第一項所指已領退休（職、伍）給與或資遣給與者再任或轉任公立學校之教職員，依系爭條例請領退休金之權利，自應經法律具體明確授權始得定之。

The first half of Article 5, Section 2 of the Disputed Statute states that the

系爭條例第五條第二項前段規定：「一次退休金，以退休生效日在職同薪

lump-sum pension payment should be calculated in the following manner: The salary earned by a government employee at the same rank as the retiring government employee on the date of the retirement should be half of the base amount or unit. Each year that the retiring employee spent working for government would entitle him or her to receive one and a half times the base amount or unit. The maximum amount of the lump-sum pension payment is 53 units for 35 years of working for the government. The first half of Article 5, Section 3 states that the monthly pension payment should be calculated in the following manner: The salary earned by a government employee at the same rank as the retiring government employee on the date of the retirement should be half of the base amount or unit. Each year that the retiring employee spent working for government would entitle him or her to receive 2 percent of the base amount or unit every month. The maximum amount for the monthly pension payment is 70 percent of the salary earned by a government employee at the same rank on the retiring government employee's date of re-

級人員之本薪加一倍為基數，每任職一年給與一個半基數，最高三十五年給與五十三個基數。」同條第三項前段規定：「月退休金，以在職同薪級人員之本薪加一倍為基數，每任職一年，照基數百分之二給與，最高三十五年，給與百分之七十為限。」其立法意旨係為規定退休金計算之基數，並受三十五年最高退休金基數之限制，惟未明確規定對於何種任職年資應予採計、退休後再任公立學校教職員之再任年資是否併計等事項。另系爭條例第二十一條之一第一項規定：「教職員在本條例修正施行前後均有任職年資者，應前後合併計算。但本條例修正施行前之任職年資，仍依本條例原規定最高採計三十年。本條例修正施行後之任職年資，可連同累計，最高採計三十五年……有關前後年資之取捨，應採較有利於當事人之方式行之。」其立法意旨係為配合該條例第八條有關公立學校教職員退休金制度之變革，解決公立學校教職員於新制施行前後均有任職年資，其年資如何計算之新舊法適用問題，乃明定其修法前後年資應合併計算，惟亦未明確規定公立學校教職員重行退休年資應與前次退休年資合併計算最高採計三十五年。又系爭條例第十四條規定：「依本條例退休者，

tirement. Such maximum amount for the monthly pension payment is given for 35 years of working for the government. The legislative intent is to provide for the base amount, or the unit, for the calculation of pension funds, and cap such calculation at 35 years of working for the government. Sections 2 and 3 of Article 5, however, do not clearly specify what type of years working for government should be used in the calculation or how to calculate the number of years working for government for public school teachers and employees who retired from the government but were later hired by the government again. Article 21-1, Section 1 of the Disputed Statute states that for public school teachers and employees who had worked for government both before and after the Disputed Statute was amended, the number of years working for government before and after the first retirement should be combined for the purpose of calculating the amount of the pension funds due. Further, the maximum number of years working for government before the Disputed Statute was amended was thirty, and the maximum number of years working for

如再任公教人員時，無庸繳回已領之退休金；其退休前之任職年資，於重行退休時不予計算。」於公立學校教職員依法退休後再任公立學校教職員之情形，係採取分段方式計算任職年資，仍未明確規定公立學校教職員重行退休年資應與前次退休年資合併計算其年資之最高標準。

government after the amended Disputed Statute took effect was thirty-five (inclusive of the years working for government before the Disputed Statute was amended). Therefore, the Disputed Statute stipulates that the calculation should be made in a way that is most favorable for retiring public school teachers and employees. The legislative intent of Article 21-1, Section 1 of the Disputed Statute is to resolve the transition problem that arises from the reform of the pension system of public school teachers and employees stipulated by Article 8 of the Disputed Statute. Some teachers and employees worked for government both before and after Article 8 of the Disputed Statute was amended. Article 21-1, Section 1 states that the number of years working for government before and after the Disputed Statute was amended should be combined for the purpose of calculating the amount of pension funds. However, it does not clearly state that public school teachers and employees who had retired once and later hired by the government again should be subject to the maximum of 35 years working for government when the amount of pension

funds was calculated. Article 14 of the Disputed Statute states that public servants who had retired in accordance with the Disputed Statute may be hired by the government again; that such public servants do not have to pay the pension that they receive back to the government; and that the years at their first government job cannot be counted when calculating their pension funds at their retirement from the second government job. In other words, Article 14 of the Disputed Statute calculates the years working for government separately for each government job; it does not stipulate a ceiling on the number of years working for government when the years working for government for the two government jobs are combined.

Article 14 of the Disputed Statute separates the years working for government before first retirement and the years working for government during the second government job, but does not authorize Article 19, Section 2 of the Implementing Regulations. Neither can the statutory authorization be found in Article 5, Sections 2 and 3 or Article 21-1, Section 1 of the

系爭條例第十四條僅規定退休前之任職年資與再任年資應分別計算，且同條例第五條第二項前段、第三項前段及第二十一條之一第一項均不能作為系爭規定之授權依據，而系爭條例施行細則又僅係依據同條例第二十二條概括授權所訂定，是系爭規定欠缺法律具體明確授權；且無從依系爭條例整體解釋，推知立法者有意授權主管機關就再任或

Disputed Statute. The only statutory authorization for Article 19, Section 2 of the Implementing Regulations is the generic authorization in Article 22 of the Disputed Statute. Therefore, Article 19, Section 2 is not concretely and clearly authorized by a statute. In addition, it is impossible to derive from the statute as a whole the interpretation that the Legislative Yuan intended to stipulate a ceiling for the number of years working for government for retiring teachers and employees who had retired once from the government and were later hired by the government again. Article 19, Section 2 of the Implementing Regulations sets the ceiling for the number of years working for government at thirty-five when the retiring teacher or employee has already retired once from the government. It also adds a restriction on such a retiring teacher's or employee's right to a statutory pension, hurting the property rights protected by Article 15 of the Constitution, and is inconsistent with the principle of statutory reservation as provided by Article 23 of the Constitution.

轉任公立學校教職員重行退休年資是否合併計算其最高退休年資之事項，以命令為補充規定。系爭規定就再任或轉任公立學校教職員重行退休時，其退休金基數或百分比連同以前退休（職、伍）基數或百分比或資遣給與合併計算，以不超過系爭條例第五條及第二十一條之一第一項所定最高標準為限，對其退休金請求權增加法律所無之限制，侵害其受憲法第十五條保障之財產權，自與憲法第二十三條法律保留原則有違。

In order to take care of retired public school teachers and employees and to reasonably balance the treatment of current and retired public school teachers and employees, many factors must be considered in terms of establishing a system for the retirement of the public school teachers and employees who had already retired once from the government. Such factors include the number of years working for government that do or do not count toward the pension, whether the years on the first government job should be treated separately or combined with the years on the second government job, how to avoid imbalance between public school teachers and employees who had already retired once from the government and those who have the same number of years working for government but have not retired, and whether it is necessary to, on the basis of fairness, including all public school teachers' and employees' rights and interests in retirement, and public finance, stipulate a ceiling for the maximum number of years working for government. All of these factors should be adequately considered, and the system should consist of statutes or

為實踐照顧退休公立學校教職員之目的，平衡現職教職員與退休教職員間之合理待遇，有關退休後再任公立學校教職員之重行退休制度，其建構所須考量之因素甚多，諸如任職年資採計項目與範圍、再任公立學校教職員前之任職年資是否合併或分段採計、如何避免造成相同年資等條件之再任公立學校教職員與非再任公立學校教職員之退休給與有失衡之情形、是否基於整體公立學校教職員退休權益之公平與國家財政等因素之考量而有限制最高退休年資之必要等，均應妥為規畫，並以法律或法律具體明確授權之法規命令詳為規定。相關機關至遲應於本解釋公布之日起一年內，依本解釋意旨，檢討修正系爭條例及相關法規，訂定適當之規範。屆期未完成修法者，系爭規定失其效力。

implementing regulations concretely and clearly authorized by statutes. The relevant government offices should review the status quo and establish a new system no later than one year from the date on which this interpretation is announced. If no such a system is established by then, the current system loses its legal effects.

The following claims made by the petitioners are dismissed on procedural grounds. One petitioner claims that Tui San Zi Letter No. 2010757 issued by the Ministry of Civil Service, Examination Yuan on April 10, 2001 (hereinafter Disputed Letter), is inconsistent with Articles 18 and 23 of the Constitution. On the one hand, the petitioner sought redress through administrative litigation and received Su Zi Judgment No. 100, rendered by the Taipei High Administrative Court in 2010. The petitioner appealed, but the appeal was dismissed for failing to state concretely how the appealed judgment was inconsistent with the law. (Supreme Administrative Court Cai Zi Ruling No. 1817) Therefore, the petitioner should have chosen Su Zi Judgment No. 100,

聲請人之一認最高行政法院九十九年度裁字第一八一七號裁定及臺北高等行政法院九十九年度訴字第一００號判決，所適用之銓敘部九十年四月十日九０退三字第二０一０七五七號書函（下稱系爭書函），有牴觸憲法第十八條及第二十三條規定之疑義，聲請解釋。查該聲請人曾就上開臺北高等行政法院判決提起上訴，經上開最高行政法院裁定，以未具體指摘原判決違背法令，上訴不合法駁回確定，是應以上開臺北高等行政法院判決為確定終局判決，合先敘明。次查系爭書函係銓敘部就公務人員退休法所為函釋，確定終局判決則依學校教職員退休條例及其施行細則規定為裁判，並非援用系爭書函作為裁判依據，不得據以聲請解釋。另一聲請人認系爭條例施行細則第十九條第一項規定，有牴觸憲法第十五條、第

rendered by the Taipei High Administrative Court in 2010, as the object for constitutional interpretation by the Judicial Yuan. Whereas the Disputed Letter addressed the Act Government the Retirement of Public Servants, Su Zi Judgment No. 100 dealt with the Act Government the Retirement of Public School Teachers and Employees and the implementing regulations. Therefore, the Disputed Letter cannot be the basis for applying for a constitutional interpretation. The petitioner claimed that Article 19, Section 1 of the Implementing Regulations violates Articles 15, 23, and 172, and therefore sought a constitutional interpretation. This Court does not think the application states clearly why Article 19, Section 1 violates the Constitution. For these reasons, the applications do not meet the requirements set out in Article 5, Section 1, Paragraph 2 of the Constitutional Court Procedure Act and should be dismissed in accordance with Article 5, Section 3 of the same Act.

二十三條及第一百七十二條規定之疑義，聲請解釋部分，核其聲請意旨，尚難謂客觀上已具體敘明該規定究有何違反憲法之處。是聲請人等上開聲請，均核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。

Justice Chen-Shan LI filed a concurring opinion.

Justice Mao-Zong HUANG filed a

本號解釋李大法官震山提出之協同意見書；黃大法官茂榮提出之協同意見書；羅大法官昌發提出之協同意見書；

concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Yeong-Chin SU filed an opinion concurring in part and dissenting in part.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

蘇大法官永欽提出之部分協同部分不同意見書；陳大法官新民提出之部分協同部分不同意見。

EDITOR'S NOTE:

Summary of facts: 1. One petitioner Lin Jing-zi was an employee of Tainan Normal Professional School until she retired in March 1985. Later she was hired by the National Tainan University and retired in January 2009. In accordance with Article 19, Paragraph 2 of the Implementing Regulations (hereinafter the Disputed Provision) for the Act Governing the Retirement of Public School Teachers and Employees (hereinafter the Disputed Statute), the calculation of seniority towards her second retirement shall not exceed the maximum allowed under Articles 5 and 21-1, Paragraph 1 of the Disputed Statute. The Petitioner sued and having exhausted judicial remedies, alleged that the Dis-

編者註：

事實摘要：一、聲請人林靜子曾任前臺灣省立臺南師範專科學校工友，其於中華民國（下同）74 年 3 月間辦理退職並領取退職金。嗣後，聲請人再任國立臺南大學組員，並於 98 年 1 月間退休；惟其重行退休之退休金年資採計，依學校教職員退休條例施行細則第 19 條第 2 項規定（下稱系爭規定），不得超過學校教職員退休條例（下稱系爭條例）第 5 條及第 21 條之 1 第 1 項所定之最高標準。對此，聲請人不服，經用盡審級救濟後，認確定終局裁判所適用之系爭規定，及銓敘部 90 年 4 月 10 日 90 退三字第 2010757 號書函，有違憲之虞，故聲請解釋。

puted Provision, as applied by the final judgment, and Memorandum Tui San Zi No. 2010757, issued by the Ministry of Civil Service, Examination Yuan on April 10, 2001, are inconsistent with the Constitution and petitioned for a constitutional interpretation.

2. The other Petitioner, Lu A-fu, was employed by Taiwan Power Company. After his retirement, he was appointed as a professor at the National Hsinchu Education University. The petitioner later retired in 2009 and the calculation of his years working for government for pension was subject to similar limitation by the Disputed Provision. The Petitioner litigated and exhausted judicial remedies. The Petitioner alleged that the Disputed Provision applied by the final judgment and Article 19, Paragraphs 1 and 2 of its Implementing Regulations are inconsistent with the Constitution and filed the petition for interpretation.

二、另一聲請人呂阿福曾先任職於臺電公司，退休後再任國立新竹教育大學教授。而後，聲請人申請於 98 年間退休，惟其重行退休之退休金年資採計，亦同受系爭規定所限制，對此聲請人不服而提起訴訟。經用盡審級救濟後，聲請人認確定終局裁判所適用之系爭規定，及系爭條例施行細則第 19 條第 1 項規定，有違憲之虞，故聲請解釋。

J. Y. Interpretation No.731（July 31, 2015）*

【Case Concerning the Starting Date of Application for Compensation in Land, Rather Than Cash, in Cases of Zone Expropriation】

ISSUE: If the portion of the Contested Requirement, which stipulates that those who wish to apply for compensation in land in lieu of cash "shall within the period of the public announcement of the expropriation" submit their application, is unconstitutional, because the date of the public announcement of the expropriation is used to calculate the period during which individuals who are served a written notice of expropriation issued after that date may apply ?

RELEVANT LAWS:

Article 15 of the Constitution of the Republic of China (Taiwan)（憲法第十五條）；J.Y. Interpretations Nos. 709, 689, 663, 652, 579, 516 and 400（司法院釋字第七０九號、第六八九號、第六六三號、第六五二號、第五七九號、第五一六號、第四００號解釋）；Articles 18 and 22, Paragraph 1 of Article 39, and Paragraph 1 of Article 40 of the Land Expropriation Act（土地徵收條例第十八條、第二十二條、第三十九條第一項、第四十條第一項）

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* Translated by Spenser Y. HO

** Contents within frame, not part of the original text, are added for reference purposes only.

KEYWORDS:

zone expropriation（區段徵收）, compensation in land rather than cash（抵價地）, compensation for expropriation（徵收補償）, application（申請期間）, public announcement（公告期間）, service（送達）, property rights（財產權）, due process in administrative procedures（正當行政程序）**

HOLDING: Article 40, Paragraph 1 of the Land Expropriation Act (enacted and published on February 2, 2000) stipulates that: "When carrying out zone expropriation, an original landowner who does not wish to receive cash as compensation, shall, within the period of the public announcement of the expropriation and enclosing relevant supporting documents, apply to the competent authority of the governing municipality or county (city) in writing for compensation in land rather than cash…." (This particular Article was amended and promulgated on January 4, 2012. However, this requirement was not corrected; it is hereinafter referred to as the "Contested Requirement".) With regard to the requirement that applications shall be submitted

解釋文：中華民國八十九年二月二日制定公布之土地徵收條例第四十條第一項規定：「實施區段徵收時，原土地所有權人不願領取現金補償者，應於徵收公告期間內，檢具有關證明文件，以書面向該管直轄市或縣（市）主管機關申請發給抵價地。……」（該條於一０一年一月四日修正公布，惟該項規定並未修正；下稱系爭規定）關於應於公告期間內申請部分，於上開主管機關依同條例第十八條規定以書面通知土地所有權人，係在徵收公告日之後送達者，未以送達日之翌日為系爭規定申請期間起算日，而仍以徵收公告日計算申請期間，要求原土地所有權人在徵收公告期間內為申請之規定，不符憲法要求之正當行政程序，有違憲法第十五條保障人民財產權之意旨，應自本解釋公布之日起一年內檢討修正。逾期未修正

within the period of a public announcement, during which the aforementioned competent authority, pursuant to Article 18 of the same Act, gives written notice to the landowner(s) and the landowner(s) is served with a written notice after the date of the public announcement of the expropriation, the Contested Requirement fails to state that the day after the written notice is served should be used as the starting date of the application period. Rather the date of the public announcement of the expropriation continues to be used to calculate the period for application. This requirement demands that the original landowner(s) submit their applications within the period of the public announcement of the expropriation, which is inconsistent with due process in administrative procedure as required by the Constitution, and contravenes the legislative intent of Article 15 of the Constitution which guarantees the people's right to property. Accordingly, it shall be reviewed and corrected within one year from the date of publication of this interpretation. If it is not so corrected by the deadline, this portion shall become null and void.

者，該部分失其效力。

REASONING: The people's right to property is guaranteed by Article 15 of the Constitution. Although the State may, according to law, expropriate the people's property for public use or other objects of public interest, it should forthwith provide reasonable, and comparable compensation, so that it complies with the legislative intent of the constitutional guarantee of the right to property (*see* J.Y. Interpretations Nos. 400, 516, 579, and 652). Under zone expropriation carried out according to the Land Expropriation Act (hereinafter referred to as the Contested Act), the original landowner(s) may apply for land in compensation that is suitable for construction post-expropriation. The value of the land granted in compensation shall be deducted from the cash compensation which the landowner would otherwise have been entitled to (*see* Article 39, Paragraph 1 of the Contested Act). This deduction in terms ofland is a method of compensation for the act of expropriation. The period of application for compensation in land rather than cash involves a limitation on the people's right to property, and therefore due process in

解釋理由書：人民之財產權應受憲法第十五條之保障。國家因公用或其他公益目的之必要，雖得依法徵收人民之財產，但應儘速給予合理、相當之補償，方符憲法保障財產權之意旨（本院釋字第四００號、第五一六號、第五七九號、第六五二號解釋參照）。土地徵收條例（下稱系爭條例）之區段徵收，原土地所有權人得申請以徵收後可供建築之抵價地折算抵付補償費（系爭條例第三十九條第一項參照），該抵價地之抵付，自屬徵收補償之方式。而申請發給抵價地之申請期限，涉及人民財產權之限制，自應踐行正當之行政程序，包括應確保利害關係人及時獲知相關資訊，俾得適時向主管機關主張或維護其權利（本院釋字第六六三號、第六八九號、第七０九號解釋參照）。

administrative procedures shall apply, including efforts to ensure that all interested persons receive the relevant information in a timely manner, thereby allowing them to assert, or otherwise protect, their rights against the competent authorities in appropriate circumstances (*see* J.Y. Interpretations Nos. 663, 689, and 709).

Article 18 of the Contested Act stipulates that: "Upon receiving notice of approval for an application for expropriation from the Central Competent Authority, the competent authority of the governing municipality or county (city) shall forthwith make a public announcement, and notify the owner(s) of land or land improvements and the holders of other rights by written notice. (Paragraph 1) The period of the public announcement referred to in the preceding paragraph shall be thirty (30) days. (Paragraph 2)" With regard to the expropriation, the competent authority of the governing municipality or county (city) shall provide a public announcement and written notice, in order to ensure the owners of land or land improvements and holders of other rights are aware of

系爭條例第十八條規定：「直轄市或縣（市）主管機關於接到中央主管機關通知核准徵收案時，應即公告，並以書面通知土地或土地改良物所有權人及他項權利人。（第一項）前項公告之期間為三十日。（第二項）」準此，關於徵收處分，直轄市或縣（市）主管機關應踐行公告及書面通知之程序，以確保土地或土地改良物所有權人及他項權利人知悉相關資訊，俾適時行使其權利，必要時並請求行政救濟。而於區段徵收之情形，依系爭條例第三十九條第一項規定，有現金補償及抵價地補償二種法定補償方式可供原土地所有權人選擇。如原土地所有權人不願領取現金補償，依系爭規定，則應於徵收公告期間內向該管直轄市或縣（市）主管機關申請發給抵價地。惟於徵收公告內容以書面通知原土地所有權人，係在徵收公告

any relevant information, thereby allowing them to exercise their rights where appropriate, and to seek administrative remedies when necessary. Further, in cases of zone expropriation, pursuant to Article 39, Paragraph 1 of the Contested Act, there are two legal methods of compensation for the original landowner(s) to choose from: cash compensation or compensation in land rather than cash. If the original landowner(s) does not wish to receive compensation in cash, according to the Contested Requirement, they shall apply to the competent authority of the governing municipal or county (city)for compensation in land rather than cashwithin the period of the public announcement of the expropriation. However, in the event that the content of the public announcement of expropriation is provided to the original landowner(s) by written notice and the landowner(s) are served after the starting date of the public announcement, if the day of reception of the written notice is not used as the starting date for the period of application, but rather the starting date of the public announcement of the expropriation continues to be used to calculate

日之後送達者，如不以送達之翌日為該申請期限之起算日，而仍以徵收公告日計算前揭三十日之期間，要求原土地所有權人在徵收公告期間內為申請，將無法確保原土地所有權人適時取得選擇補償方法所需之資訊，並享有前述三十日之選擇期間，不符憲法要求之正當行政程序，有違憲法第十五條保障人民財產權之意旨，應自本解釋公布之日起一年內檢討修正。逾期未修正者，該部分失其效力。

the aforementioned 30-day period, then this requires the original landowner(s) to submit their applications within the period set by the public announcement of the expropriation, which will not ensure the original landowner(s) can receive the timely information needed to choose a method of compensation, nor will it allow them to enjoy the aforementioned 30-day period of time. This is inconsistent with due process in administrative procedure required by the Constitution, and contravenes the legislative intent of Article 15 of the Constitution which guarantees the people's right to property. It thus shall be reviewed and corrected within one year from the date of publication of this interpretation. If it is not corrected by the deadline, this portion shall become null and void.

In order to ensure the original landowner(s) receive sufficient information to decide whether to apply for compensation in terms of land rather than cash, it is advisable that the competent authority should, at the time of making a public announcement of the expropriation

為確保原土地所有權人取得充分資訊以決定是否申請抵價地，主管機關宜於徵收公告及書面通知時，一併告知預估之抵價地單位地價；又原土地所有權人對於徵收補償價額提出異議時（系爭條例第二十二條參照），其申請發給抵價地之期間宜否隨之展延，均事涉區

and providing written notice thereof, also provide an estimated compensatory land unit value. Further should the original landowner(s) disagree with the amount of compensation offered (see Article 22 of the Contested Act), the authority should consider whether the application period for compensation in land in lieu of cash should be extended. These matters relate to the guaranteed rights and interests of the owners of land under zone expropriation. The competent authority shall review these related requirements together.

段徵收土地所有權人之權益保障，主管機關應就相關規定一併檢討，併予指明。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Sea-Yau LIN filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Pai-Hsiu YEH filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

本號解釋湯大法官德宗提出之部分協同意見書；林大法官錫堯提出之協同意見書；黃大法官茂榮提出之協同意見書；葉大法官百修提出之協同意見書；陳大法官春生提出之協同意見書；羅大法官昌發提出之協同意見書。

EDITOR'S NOTE:

Summary of facts: The Chiayi City Government in dealing with the zone expropriation development project in the Huzi-nei area of the city, required use of land within the Huzi-nei area. The expropriation was announced after approval by the Ministry of the Interior, with the period of the public announcement starting on August 3, 2009 and ending on September 2. Fu-Di-Hua-Zi Letter No. 0981603588 was sent out on July 29, 2009 to give notice to the petitioners, and the petitioners were served with a written notice on August 5, 2009. The petitioners submitted their applications for compensation in land rather than cash to the Chiayi City Government on September 4 of the same year, to which the Chiayi City Government responded by letter that the petitioners' applications were submitted after the elapse of the period of the public announcement, and thus Chiayi City could not permit land to be offered as compensation in lieu of cash. The petitioners disagreed, and initiated administrative litigation accordingly. After exhausting all levels of appeal, they felt the

編者註：

事實摘要：嘉義市政府為辦理該市湖子內區段徵收開發案，需用該市湖子內地區土地，經內政部核准公告徵收，公告期間自98年8月3日起至9月2日止，並於98年7月29日以府地劃字第0981603588號函通知聲請人，該書面通知於98年8月5日送達聲請人。聲請人於同年9月4日向嘉義市政府提出申請發給抵價地，經嘉義市政府函復聲請人其提出申請已逾越公告期間，無法准予發給抵價地。聲請人不服，循序提起行政訴訟。經用盡審級救濟途徑後，認確定終局判決所適用之系爭規定，有違憲疑義，聲請解釋。

Contested Requirement deemed appropriate by the confirmed final judgment might contravene the Constitution, and thereby petitioned for this interpretation.

J. Y. Interpretation No.732（September 25, 2015）*

【Expropriation of Lands Adjacent to Mass Rapid Transit System Facilities】

ISSUE: Is it unconstitutional that the provisions at issue allow competent authorities to expropriate adjacent lands, which arenot necessarily required for transportation, in accordance with applicable laws for the purpose of land development ?

RELEVANT LAWS:

Articles 10, 15, 23, and Article 143, Paragraph 1, of the Constitution（憲法第十條、第十五條、第二十三條、第一百四十三條第一項）；J.Y. Interpretation Nos. 400 and 709（司法院釋字第四００號、第七０九號）；Paragraph 2 of Article 1, Paragraph 2 of Article 3, and Paragraphs 3 and 4 of Article 4 of the Land Expropriation Act（土地徵收條例第一條第二項、第三條第二款、第四條第三項、第四項）；Article 7, Paragraph 3, of the Mass Rapid Transit Act（promulgated on July 1, 1988）, and Article 7, Paragraphs 2, of the Mass Rapid Transit Act（amended on May 30, 2001）（大眾捷運法第七條第三項（77.7.1）、第七條第二項、第四項（90.5.3））；Article 9, Paragraph 1, of the Regulations for the Joint Development of Land Adjacent to or Contiguous with the Mass Rapid Transit System（promulgated on February 15,

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* Translated by Yen-Chia CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

1990）（大眾捷運系統土地聯合開發辦法第九條第一項79.2.15））；Article 208, Sub-paragraph 2, of the Land Act（土地法第二百零八條第二款）

KEYWORDS:

land expropriation（徵收）, adjacent lands（毗鄰地區土地）, joint development（聯合開發）, mass rapid transit system-facilities（捷運設施）, transportation（交通事業）, right to property（財產權）, freedom of residence（居住自由）**

HOLDING: Article 7, Paragraph 4, of the Mass Rapid Transit Act amended on May 30, 2001 (hereinafter the "Mass Rapid Transit Act 2001") provides: "The land required for . . . the development of areas adjacent to the Mass Rapid Transit system . . . may be expropriated by competent authorities in accordance with applicable laws." Article 7, Paragraph 3, of the Mass Rapid Transit Act promulgatedon July 1, 1988 (hereinafter the "Mass Rapid Transit Act 1988") provides: "Lands used for joint development . . .may be expropriated." Article 9, Paragraph 1, of the Regulations for the Joint Development of Land Adjacent to or Contiguous with the Mass Rapid Transit System (hereinafter

解釋文：中華民國九十年五月三十日修正公布之大眾捷運法（下稱九十年捷運法）第七條第四項規定：「大眾捷運系統……其毗鄰地區辦理開發所需之土地……，得由主管機關依法報請徵收。」七十七年七月一日制定公布之大眾捷運法（下稱七十七年捷運法）第七條第三項規定：「聯合開發用地……，得徵收之。」七十九年二月十五日訂定發布之大眾捷運系統土地聯合開發辦法（下稱開發辦法）第九條第一項規定：「聯合開發之用地取得……，得由該主管機關依法報請徵收……。」此等規定，許主管機關為土地開發之目的，依法報請徵收土地徵收條例（下稱徵收條例）第三條第二款及土地法第二百零八條第二款所規定交通事業所必須者以外

the "Regulations for Joint Development of Land") provides: "Lands used for joint development . . . may be acquired by competent authorities in accordance with applicable laws. . ." These provisions allow competent authorities to expropriate adjacent lands, which are not lands necessarily required for transportation as prescribed under Article 3, Sub-paragraph 2, of the Land Expropriation Act (hereinafter the "Expropriation Act") and Article 208, Paragraph 2, of the Land Act, in accordance with applicable laws for the purpose of land development. What lies within this scope isinconsistent with the principle of proportionality under Article 23 of the Constitution, as well as the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence, and shall no longer be applicable from the date of this Interpretation.

之毗鄰地區土地，於此範圍內，不符憲法第二十三條之比例原則，與憲法保障人民財產權及居住自由之意旨有違，應自本解釋公布之日起不予適用。

REASONING: Article 15 of the Constitution provides that the people's right to property shall be protected. The purpose of this Article is to guarantee each individual the freedom to exercise

解釋理由書：憲法第十五條規定人民財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發

their rights to use, profit by, and dispose of their property during the existence of the property, and to prevent infringements by the government or any third party, so as to guarantee individual freedom, personal development, and maintain personal dignity (*see* J.Y. Interpretation Nos. 400 and 709). Article 143 of the Constitution expressly states that private ownership of land acquired by the people in accordance with the laws shall be protected and restricted by law. Moreover, people's freedom of residence is protected under Article 10 of the Constitution. The expropriation of private land by the State not only imposes a restriction on people's right to property, but also has a serious impact on the freedom of residence of persons, if any, legally residing on the expropriated land(s). In addition to giving reasonable and prompt compensation to landowners in accordance with the laws, the expropriation of private land by the State must be necessary for the purpose of public use or other public interests so as not to contradict Article 23 of the Constitution.

展人格及維護尊嚴（本院釋字第四００號及第七０九號解釋參照）。人民依法取得之土地所有權，應受法律之保障與限制，亦為憲法第一百四十三條第一項所明定。又人民居住自由亦屬憲法第十條保障之範圍。國家徵收人民土地，不但限制人民財產權，如受徵收之土地上有合法居住者，亦嚴重影響其居住自由。徵收人民土地除應對土地所有權人依法給予合理及迅速之補償外，自應符合公用或其他公益目的之必要，始無違於憲法第二十三條之規定。

Article 7, Paragraph 4, of the Mass Rapid Transit Act 2001 provides: "The land required for . . . the development of areas adjacent to the Mass Rapid Transit system . . . may be expropriated by competent authorities in accordance with applicable laws" (hereinafter "Provision 1"). Provision 1 allows the competent authorities to expropriate adjacent lands close to the routes, depots, or stations of the Mass Rapid Transit system (hereinafter the "Mass Rapid Transit System Facilities") in accordance with applicable laws for the purpose of land development. Here, "expropriation in accordance with applicable laws" refers to land expropriation in accordance with the Expropriation Act. Article 1, Paragraph 2, of the Expropriation Act provides: "Land expropriation shall be governed by this Act. Matters not provided for in this Act shall be governed by other applicable laws." Thus, other applicable laws shall apply when the Expropriation Act does not mention the scope of land expropriation. Article 3, Sub-paragraph 2, of the Expropriation Act provides: "The State may expropriate private lands in order to carry out any of

九十年捷運法第七條第四項規定：「大眾捷運系統……其毗鄰地區辦理開發所需之土地……，得由主管機關依法報請徵收。」（下稱系爭規定一）許主管機關為土地開發之目的，依法報請徵收大眾捷運系統路線、場、站（下稱捷運設施）土地之毗鄰地區土地。所稱依法報請徵收，係指依徵收條例之規定為之。徵收條例第一條第二項規定：「土地徵收，依本條例之規定，本條例未規定者，適用其他法律之規定。」就徵收土地之範圍而言，徵收條例未規定者，應適用其他法律之規定。徵收條例第三條第二款規定：「國家因公益需要，興辦下列各款事業，得徵收私有土地；徵收之範圍，應以其事業所必須者為限：……二、交通事業。……」準此，其徵收除應為興辦該第三條所規定之事業外，其徵收土地之範圍，並應確為興辦該事業所必須。大眾捷運系統屬徵收條例第三條第二款所規定之交通事業，其所得徵收土地之範圍，應為捷運交通事業所必須之土地。依系爭規定一所得報請徵收作為開發用地之毗鄰地區土地，包括與捷運設施用地相連接、與捷運設施用地在同一街廓內且能與捷運設施用地連成同一建築基地、與捷運設施用地相鄰之街廓而以地下道或陸橋相連

the undertakings listed in the following sub-paragraphs to serve the needs of the public. The scope of the expropriation should be limited according to what a given undertaking requires:… (2) Transportation. …"Accordingly, the expropriation must conform to the undertakings set out in Article 3 of the Expropriation Act and its scope must indeed be such as is required for carrying out these undertakings. The Mass Rapid Transit system is a form of transportation prescribed in Article 3, Sub-paragraph 2, of the Expropriation Act. The scope of land which may be expropriated for the Mass Rapid Transit system is therefore limited to the extent required for such an undertaking. Under Provision 1, adjacent lands which may be expropriated for the purpose of land development include lands immediately adjacent to Mass Rapid Transit System Facilities, lands located in the same street block and which can be integrated into the construction site of lands required for Mass Rapid Transit System Facilities, and lands located in street blocks neighboring Mass Rapid Transit System Facilities and connected via an underpass

通等之土地（九十年捷運法第七條第二項參照），此等徵收土地之範圍，難謂全為捷運交通事業所必須，其徵收非捷運交通事業所必須之土地，自已限制人民之財產權，並對其上合法居住者嚴重影響其居住自由。又七十七年捷運法第七條第三項規定：「聯合開發用地……，得徵收之。」（下稱系爭規定二）雖未設有前述「依法報請徵收」之要件，然其程序自應受當時有效之徵收法律之規範。開發辦法第九條第一項規定：「聯合開發之用地取得……，得由該主管機關依法報請徵收……。」（下稱系爭規定三）對聯合開發用地之取得，亦設有「依法報請徵收」之要件。徵收條例係八十九年二月二日制定公布，故聲請人之一原因案件所適用之七十七年捷運法，應以當時之土地法有關徵收之相關規定作為報請徵收之依據。然就徵收土地之範圍言，土地法第二百零八條第二款規定：「國家因左列公共事業之需要，得依本法之規定，徵收私有土地。但徵收之範圍，應以其事業所必需者為限。……二、交通事業。……」故其徵收除應為興辦該第二百零八條所規定之事業外，其徵收土地之範圍，並應確為興辦該事業所必須。然系爭規定二、三許興辦捷運交通事業時，就聯合開發用

or overpass (*see* Article 7, Paragraph 2, of the Mass Rapid Transit Act 2001). It is hard to say that the scope of this type of expropriated land is wholly within what is required for the Mass Rapid Transit system. The expropriation of private land not necessarily required for the Mass Rapid Transit system is itself a restriction of the people's right to property and also has a serious impact on the freedom of residence of persons legally residing there. Article 7, Paragraph 3, of the Mass Rapid Transit Act 1988 provides: "Lands used for joint development . . . may be expropriated" (hereinafter "Provision 2"). Although there is no "expropriation in accordance with applicable laws" requirement in Provision 2, the expropriation of private land by the State nonetheless shall be in accordance with applicable laws in force at the time. Article 9, Paragraph 1, of the Regulations for Joint Development of Land provides: "Lands used for joint development . . . may be acquired by the competent authority in accordance with applicable laws. . ." (hereinafter "Provision 3"). Provision 3 also sets forth an "expropriation in accordance with appli-

地報請徵收；七十七年捷運法對「聯合開發之用地」並無範圍之界定。是依系爭規定二、三報請徵收土地之範圍，難謂全為捷運交通事業所必須，其徵收非捷運交通事業所必須之土地，亦已限制人民之財產權，並對其上合法居住者嚴重影響其居住自由。

cable laws" requirement for acquisition of private lands used for joint development (by the State). The Expropriation Act was enacted and promulgated on February 2, 2000. Given that the Mass Rapid Transit Act 1988 applies in one of the underlying cases that the petitioners argued in this petition, the legal basis for the expropriation of private lands by the State in such case shall be the applicable regulations set forth in the Land Act in force at the time. With regard to the scope of land which may be expropriated by the State, Article 208 of the Land Act provides: "By meeting the requirements of the following public undertakings the State may compulsorily purchase private lands according to the provisions of this Act, but the scope of the expropriation should be limited according to what a given undertaking requires:.. (2) Transportation…"Therefore, in addition to that the expropriation must be necessary for carrying out the undertakings set out in Article 208 of the Land Act, the scope of land which may be expropriated must, indeed, be such as is required for carrying out the said undertaking. Nevertheless, Provisions 2

and 3, which allow the expropriation of lands used for joint development by the State in order to carry out the transportation purposes of the Mass Rapid Transit system, as well as the Mass Rapid Transit Act 1988, which contains the said "lands used for joint development" requirement, set no limit to the scope of "lands used for joint development". It is hard to say that the scope of land which may be expropriated in accordance with Provisions 2 and 3 is wholly within what is required for the Mass Rapid Transit system. The expropriation of private land not necessarily required for the Mass Rapid Transit system is itself a restriction of the people's right to property and also has a serious impact on the freedom of residence of persons legally residing there.

If the expropriation of land by the State, which deprives the people of their land ownership and may even greatly impact the freedom of residence of persons legally residing on the expropriated land(s), is not done for a public cause, then it must conform to the legitimate purposes of other public interests.The expro-

國家以徵收方式剝奪人民土地所有權，甚而影響土地上合法居住者之居住自由，如非為公用，則須符合其他公益之正當目的。徵收捷運交通事業所必須之土地，屬為興辦交通事業公用之目的；而主管機關辦理毗鄰地區土地之開發，係在有效利用土地資源、促進地區發展並利大眾捷運系統建設經費之取得

priation of land necessarily for the Mass Rapid Transit System is a taking that fulfills the purpose of building a transportation system for public use. In addition, the development of adjacent land carried out by competent authorities does have its legitimate public interest purpose be cause it uses resources of land effectively, promotes local development, and helps obtain funding for the construction of the Mass Rapid Transit system(*see* Office of the Secretariat, Legislative Yuan, Special Issue No. 114 – The Mass Rapid Transit Act 253 (Office of the Secretariat, Legislative Yuan eds., 1989) (referring to the legislative purpose of the Act)). Yet, when the State expropriates adjacent land that lies outside what is required for transportation (hereinafter "land not required for transportation")in accordance with applicable laws for the purposes of using resources of land, promoting local development and assisting in obtaining funding for construction, the expropriation leads to a redistribution or transfer of the good of the resources of land to the State or some other private owners, thereby making it such that the original owners of the

（立法院秘書處編印，《法律案專輯第一百一十四輯－大眾捷運法案》，立法院秘書處，七十八年，第二五三頁等所示立法目的參照），固有其公益上之目的。然國家為利用土地資源、促進地區發展並利建設經費之取得等目的，依法報請徵收交通事業所必須者以外之毗鄰地區土地（下簡稱非交通事業所必須之土地），將使土地資源之利益重新分配或移轉予國家或其他私人享有，造成原土地所有權人遭受土地損失之特別犧牲。另為達利用土地資源、促進地區發展並利建設經費之取得等目的，非不得以適當優惠方式與土地所有權人合作進行聯合或共同開發、以市地重劃之方式使原土地所有權人於土地重新整理後仍分配土地、以區段徵收使原土地所有權人取回與原土地同價值之土地、或以其他適當且對土地所有權侵害較小之方式達成。系爭規定一、二、三以使土地所有權人遭受特別犧牲之方式，徵收非交通事業所必須之土地進行開發，並非達成土地資源有效利用、地區發展並利國家建設經費之取得目的所不得不採之必要手段，且非侵害最小之方式。其許主管機關為土地開發之目的，依法報請徵收非交通事業所必須之土地，於此範圍內，不符憲法第二十三條之比例原則，

land are forced to make a special sacrifice of the loss of their land. Furthermore, in order to achieve the purposes of using the resources of land, promoting local development, and obtaining funding for construction, as a last resort these goals may be attained by cooperating in joint- or co-development on preferential terms with the owners of the land, or by means of a redrawing of urban land such that after the land has been re-arranged the original landowners may still be recipients of the redistributed land, or by zone expropriation such that the original owners of the land receive land of equivalent value to their original land, or by other appropriate and less harmful means to the owners of the land. Provisions 1, 2, and 3 (hereinafter the "Provisions at issue") are such that the owners of the land may be forced to make a special sacrifice when the expropriation leads to development of land not required for transportation. These are not the only means that can be used nor are they the least harmful ways possible to attain the goals of the effective use of the resources of land, local development and helping the State to obtain funding for construc-

與憲法保障人民財產權及居住自由之意旨有違，應自本解釋公布之日起不予適用。

tion. Inasmuch as the Provisions at issue allow competent authorities to expropriate lands not required for transportation in accordance with applicable laws for the purpose of land development, they are inconsistent with the constitutional principle of proportionality under Article 23 of the Constitution, as well as the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence, and shall no longer be applicable from the date of this Interpretation.

One of the petitioners alleged that Article 7, Paragraphs 1, 2, and 7, of the Mass Rapid Transit Act 2001, Article 4, Paragraph 1, and Article 6 of the Regulations for Joint Development of Land, the proviso of Article 10, Paragraph 2, and Articles 13, 14, and 15 of the Expropriation Act, which were applied in the judgment of the Supreme Administrative Court 99 Pan 1259 (2010)(hereinafter the "final and binding judgment"), are unconstitutional. Nevertheless, this Court found that the aforementioned provisions were not applied in the final and bind-

聲請人之一認最高行政法院九十九年度判字第一二五九號判決（下稱確定終局判決）所適用之九十年捷運法第七條第一項、第二項及第七項、開發辦法第四條第一項及第六條、徵收條例第十條第二項但書、第十三條、第十四條及第十五條等規定違憲，惟該等規定並未為確定終局判決所適用，自不得據以聲請解釋。另一聲請人就七十七年捷運法第七條所規定毗鄰地區之土地，認為違反法律明確性，同條第一項認違反比例原則，惟本解釋已宣告系爭規定二於許主管機關為土地開發之目的，報請徵收土地法第二百零八條第二

ing judgment. Thus, these provisions are insufficient to serve as a basis for a petition for interpretation. On the other hand, another petitioner argued that Article 7 of the Mass Rapid Transit Act 1988, in respect ofthe phrase "adjacent areas of land" prescribed therein, is in violation of the principle of clarity and definiteness of law, and that Paragraph 1 of the same Article is in violation of the principle of proportionality. However, in this Interpretation this Court has held thatProvision 2 shall no longer be applicable in the circumstance where this Provision allows competent authorities to expropriate lands not necessarily required for transportation in accordance with Article 208, Sub-paragraph 2, of the Land Actfor the purpose of land development. Moreover, with regard to the meaning and purpose of this portion of the petition, the petitioner failed to specifically point out the unconstitutionality of the provisions mentioned above from an objective point of view. Along these lines, the aforesaid petitions do not meet the requirements prescribed in Article 5, Paragraph 1, Sub-paragraph 2, of the Constitutional Interpretation Procedure

款所規定交通事業所必須者以外之毗鄰地區土地部分，不予適用；且聲請人此部分聲請意旨，亦難謂已客觀具體指摘究有何違反憲法之處。是上開聲請，均核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。

Act and shall be dismissed accordingly.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Chen-Shan LI filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO, filed a concurring opinion, in which Justice Ching-You TSAY, joined.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG, filed an opinion concurring in part and dissenting in part, in which Justice Chi-Ming CHIH and Justice Ming CHEN, joined.

Justice Pai-Hsiu YEH filed an opinion concurring in part and dissenting in part.

Justice Sea-Yau LIN filed a dissenting opinion.

本號解釋蘇大法官永欽提出之協同意見書；李大法官震山提出之協同意見書；黃大法官茂榮提出之協同意見書；陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出，蔡大法官清遊加入之協同意見書；陳大法官新民提出之部分協同部分不同意見書；黃大法官璽君提出，池大法官啟明、陳大法官敏加入之部分協同部分不同意見書；葉大法官百修提出之部分協同部分不同意見書；林大法官錫堯提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1.For the construction of Wanlong Station on the Xindian Line of the Taipei Metro Mass Rapid Transit system, the Taipei City Government needed to acquire six parcels of landwith a total area of 0.0328 hectares, including three parcels of land located at lot numbers 351-4, 352, and 356-1 of Sub-section 4 of Xinglong Road in Wenshan District of Taipei City (land for traffic use), as well as three parcels of land located at lot numbers 199-6, 351-3, and 356 of the same Section (adjacent lands, residential district). Thus, the Taipei City Government submitted an application for land expropriation, along with other relevant materials such as land-use plans and cadastral maps, to the Ministry of Interior. The Ministry of Interior approved the Taipei City Government's application for land expropriation in its Tai-Nei-Di-Zi No. 0920060925 dated May 2, 2003. After receiving approval from the Ministry of Interior, the Taipei City Government disclosed its land expropriation plan to the public in its Fu-Di-Si-Zi No. 09202091000 announcement dated June 3,

編者註：

事實摘要：一、臺北市政府為辦理台北都會區大眾捷運系統新店線萬隆站工程，需用坐落於台北市文山區興隆路 4 小段第 351-4、352、356-1 地號之 3 筆土地（交通用地），以及坐落於同段第 199-6、351-3、356 地號之 3 筆土地（毗鄰地，住宅區）等 6 筆土地，面積 0.0328 公頃，乃檢附徵收土地計畫書及圖等有關資料，報請內政部以民國 92 年 5 月 2 日台內地字第 0920060925 號函核准徵收，交由臺北市政府以 92 年 6 月 3 日府第四字第 09202091000 號公告，並發函通知聲請人。聲請人不服，循序提請行政爭訟。用盡審級救濟途徑後，認最高行政法院 99 年度判字第 1259 號確定終局判決所適用之 90 年捷運法第 7 條第 4 項等規定，有違憲之疑義，聲請解釋。

2003 and informed the petitioners with official notices. Nevertheless, the petitioners disagreed with the decision of the Taipei City Government and sought remedies by filing administrative litigation accordingly. After exhausting all available measures for *see*king relief in appellate review, the petitioners filed their petition for interpretation by arguing that Article 7, Paragraph 4, of the Mass Rapid Transit Act 2001 as well as other provisionsapplied in the judgment of the Supreme Administrative Court 99 Pan 1259 (2010) are allegedly in violation of the Constitution.

2. For the construction of the Xindian Line of the Taipei Metro Mass Rapid Transit system, the Taipei County Government submitted to the Ministry of Interior a land expropriation application for 239 parcels of land located at lot numbers 47-81 of Section Dapinglin, Sub-section Qizhang in Xindian City of Taipei County (now renamed as Xindian District of New Taipei City). After receiving approval from the Ministry of Interioron January 24, 1991, the Taipei County Government (now renamed the New Taipei City Gov-

二、臺北市政府為興辦臺北都會區大眾捷運系統新店線工程，報經內政部以民國 80 年 1 月 24 日函准予徵收坐落臺北縣新店市（改制後為新北市新店區）大坪林段七張小段 47-81 地號等 239 筆土地，並交由臺北縣政府（改制後為新北市政府）公告。聲請人等先於 97 年間，分別請求臺北縣政府向內政部申請撤銷部分土地之徵收，經台北縣政府審查，認未符合撤銷徵收之規定，並函復否准撤銷徵收之處理結果，聲請人等不服，循序提起行政爭訟。用盡審級救濟途徑後，認最高行政法院 101 年

ernment) disclosed its land expropriation plan to the public. In the year of 2008, the petitioners separately filed to the Taipei County Government requesting it to apply to the Ministry of Interior for revocation of approval of the expropriation for some parts of the expropriated lands. However, in its review the Taipei County Government found that the petitioners' requests did not meet the requirements for revocation of approval of the expropriation and therefore declined the petitioners' requests with official written notices. The petitioners disagreed with the decision of the Taipei County Government and sought remedies by filing administrative litigation accordingly. After exhausting all available measures for seeking relief in appellate review, the petitioners filed their petition for interpretation by alleging that Article 7, Paragraph 3, of the Mass Rapid Transit Act 1988, Article 9, Paragraph 1, of the Regulations for Joint Development of Land, and other provisions applied in the judgment of the Supreme Administrative Court 101 Pan 722 (2012) are arguably in violation of the Constitution.

度判字第 722 號確定終局判決所適用之 77 年捷運法第 7 條第 3 項及開發辦法第 9 條第 1 項等規定，有違憲之疑義，聲請解釋。

J. Y. Interpretation No.733（October 30, 2015）*

【Case Regarding the Selection of a Chairperson in a Professional Association】

ISSUE: Does the Paragraph 2 of Article 17 of the Civil Associations Act regarding" A chair person shall be elected from the standing directors by the vote of directors and, if no such position of standing directors is set, then selection shall be made by the vote among the directors." violate the Constitution ?

RELEVANT LAWS:

Article 14 and 23 of the Constitution（憲法第十四條、第二十三條）；J. Y. Interpretations No. 644（司法院釋字第六四四號解釋）；Article 1, Paragraph 1 of Article 17, Article 18, Paragraph 1 of Article 25, Paragraph 1 of Article 28, Article 35, 41 and 49 of the Civil Associations Act（人民團體法第一條、第十七條第二項、第十八條、第二十五條第一項、第二十八條第一項、第三十五條、第四十一條、第四十九條）

KEYWORDS:

director（理事）, charter（章程）, responsible（負責人）, chair person（理事長）, freedom of association（結社自由）, civil association（人民團體）, association（結社團體）, professional association（職業團體）,

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* Translated and edited by Chia Chieh CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

internal structure（內部組織）, autonomy（自主決定）, standing director（常務理事）, selection（產生方式）, principle of proportionality（比例原則）, necessary extent（必要程度）**

HOLDING: Paragraph 2 of Article 17 of the Civil Associations Act regarding" A chair person shall be elected from the standing directors by the vote of directors and, if no such position of standing directors is set, then selection shall be made by the vote among the directors." has imposed restriction beyond necessary extent on the autonomy of the professional associations on internal structures and affairs and thus violates the principle of proportionality encompassed in Article 23 of the Constitution and the right to the freedom of association in Article 14 of the Constitution and shall lose validity a year from the official declaration of this interpretation.

解釋文：人民團體法第十七條第二項關於「由理事就常務理事中選舉一人為理事長，其不設常務理事者，就理事中互選之」之規定部分，限制職業團體內部組織與事務之自主決定已逾必要程度，有違憲法第二十三條所定之比例原則，與憲法第十四條保障人民結社自由之意旨不符，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

REASONING: Article 14 of the Constitution regarding the freedom

解釋理由書：憲法第十四條規定人民有結社之自由，旨在保障人民為

of association is to protect the people's right to form and to participate in an association for a specific purpose under a common will, guaranteed with protection on the duration, autonomy on internal structure and affairs as well as freedom on activities (referring to the Constitution Interpretation Number 644). The election of a chair person or other responsible person is under the same protection by the freedom of association as well. Yet, the associations of all sorts could carry different meanings to individuals, societies or democratic systems, form connection of various degrees with public interest and thus be subjected to legal restrictions at different levels. The restriction imposed on the aforementioned election procedure may vary according to the nature of the association and no such issue regarding constitutional violation on the principle of proportionality will arise if means taken has not exceeded the necessary scope.

特定目的，以共同之意思組成團體並參與其活動之權利，並確保團體之存續、內部組織與事務之自主決定及對外活動之自由（本院釋字第六四四號解釋參照）。結社團體代表人或其他負責人產生方式亦在結社自由保障之範圍。惟各種不同結社團體，對於個人、社會或民主憲政制度之意義不同，與公共利益之關聯程度亦有差異，受法律限制之程度亦有所不同。對上開產生方式之限制，應視結社團體性質之不同，於所採手段未逾必要程度內，始無違憲法第二十三條之比例原則。

Paragraph 2 of Article 17 of the Civil Associations Act provides that "Where the quota of directors and supervisors is not less than three (3) respectively, as pro-

人民團體法第十七條第二項規定：「前項各款理事、監事名額在三人以上者，得分別互選常務理事及常務監事，其名額不得超過理事或監事總額之三分

vided in the preceding Paragraph, standing directors and standing supervisors may be elected by and from the directors and supervisors, and the quota may not exceed one-third (1/3) of the total number of directors and supervisors respectively; furthermore, a chairperson of the board of directors shall be elected by the directors from the standing directors, or elected by and from the directors if there is no standing director.", under which, a chairperson shall be elected by the directors as clearly required by the words " a chairperson of the board of directors shall be elected by the directors from the standing directors, or elected by and from the directors if there is no standing director."(Hereinafter referred to as disputed clause.) Such disputed clause is made non-mandatory on the social and political associations by Articles 41 and 49 that allow the exception on the election of employees if otherwise provided in their charter; Yet it remains mandatory to the professional associations regarding their selection of chairpersons unless provided otherwise by other laws (referring to Article 1 of the same law) on virtue of the limit imposed on the internal

之一；並由理事就常務理事中選舉一人為理事長，其不設常務理事者，就理事中互選之……。」其中有關「由理事就常務理事中選舉一人為理事長，其不設常務理事者，就理事中互選之」部分（下稱系爭規定），明定理事長應由理事選舉之。雖因同法第四十一條及第四十九條分別就社會團體與政治團體選任職員之選任，均明定得於其章程中另定之，而使系爭規定適用於社會團體與政治團體部分不具強制性；但就職業團體而言，除其他法律有特別規定外（同法第一條規定參照），系爭規定仍屬對理事長產生方式之強制規定，自係對人民團體內部組織與事務之自主決定所為之限制。

affairs and discretion of the civil associations.

The purpose of the disputed clause is to help the civil associations with their healthy development (Legislature Gazette, volume 77, issue 38). In addition, professional associations are composed of people from the same units, groups or professions (refer to Article 35 of the Civil Associations Act) for purposes of coordinating relations among same professions, advancing common interests and promoting social and economic progress. The chairperson of a professional association should not only act on behalf of the association in participation of all activities but also execute responsibility according to Article 18 of the Civil Associations Law "The directors and supervisors of the civil associations should execute their respective responsibility according to the resolutions and charters."; Further, the chairperson is under a duty to convene the members of congress (member of representatives) and directors' meeting pursuant to Paragraph 1 of Article 25 "The members' (member representatives)

查系爭規定之目的在於輔導人民團體健全發展（立法院公報第七十七卷第三十八期，第一八九頁參照）。又職業團體係以協調同業關係，增進共同利益，促進社會經濟建設為目的，由同一行業之單位、團體或同一職業之從業人員組成之團體（人民團體法第三十五條規定參照）。職業團體之理事長，除對外代表該團體參與各項活動外，依人民團體法第十八條「人民團體理事會、監事會應依會員（會員代表）大會之決議及章程之規定，分別執行職務」之規定，負有執行職務之義務；且依同法第二十五條第一項「人民團體會員（會員代表）大會，分定期會議與臨時會議二種，由理事長召集之」及第二十九條第一項「人民團體理事會、監事會，每三個月至少舉行會議一次，並得通知候補理事、候補監事列席」等規定，亦負有召集會員（會員代表）大會及召集理事會之義務。該等職務之履行，事關內部組織及事務運作，影響團體之健全發展。法律規定對理事長產生方式之限制，如未逾達成其立法目的之必要程度，固非不許，惟職業團體理事長不論

congress of a civil association is divided into two types: periodical meetings and temporary meetings, and both shall be convened by the chairperson of the board of directors." and Paragraph 1 of Article 29 "The board of directors and the board of supervisors of a civil association shall hold a meeting every three (3) months, and may notify the alternate directors and alternate supervisors to attend the meeting as non-voting delegates." The execution of such responsibility, due to their connection with internal structure and operation of affairs, will affect the sound development of the association. The restraint imposed by the law on the election of a chairperson, if not going beyond the necessary extent of the legislative purpose, is not impermissible, yet the election of a chairperson of a professional association, whether indirectly by the directors, directly by the members or by other appropriate methods set forth in charters, causes no interference to the purpose on achieving a healthy development of an association and improvement on the progress of the social economy. The disputed clause mandatorily requires that a chairperson of the

由理事間接選舉，或由會員直接選舉，或依章程規定之其他適當方式產生，皆無礙於團體之健全發展及促進社會經濟建設等目的之達成。系爭規定強制規定「由理事就常務理事中選舉一人為理事長，其不設常務理事者，就理事中互選之」，致該團體理事長未能以直接選舉或由章程另定其他方式產生，已逾越達成系爭規定立法目的之必要。是系爭規定限制職業團體內部組織及事務之自主決定已逾必要程度，有違憲法第二十三條所定之比例原則，與憲法第十四條保障人民結社自由之意旨不符，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。至某些性質特殊之職業團體，其他法律基於其他公益目的，就其理事長產生之方式所為之限制規定，不在本件解釋範圍。

board of directors shall be elected by the directors from the standing directors, or elected by and from the directors if there is no standing director.", thus causing the failure of election either by direct vote or by any other method prescribed in the charter of the chairperson from the association, has exceeded the necessary extent of the legislative purpose entertained in the disputed clause. Therefore, the disputed clause limiting internal structure and autonomy on the operation of affairs of a professional association has exceeded the necessary extent and thus has violated the principle of proportionality encompassed in Article 23 and the freedom of association in our Constitution and shall lose validity no later than a year from the date that this interpretation is officially announced. As to the limits found in other laws imposed on certain professional associations with special nature on their election of chairpersons are not covered by this interpretation.

Justice Mao-Zong HUANG, Justice Beyue SU CHEN and Justice Chen-Huan WU jointly filed a concurring opinion.

本號解釋黃大法官茂榮、陳大法官碧玉、吳大法官陳鐶共同提出之協同意見書；羅大法官昌發、黃大法官虹霞

Justice Chang-Fa LO and Justice Horng-Shya HUANG jointly filed a concurring opinion.

Justice Dennis Te-Chung TANG filed a concurring opinion.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Yeong-Chin SU filed an opinion dissenting in part.

共同提出之協同意見書；湯大法官德宗提出之協同意見書；陳大法官新民提出之部分協同部分不同意見書；蘇大法官永欽提出之部分不同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioner, the Teachers Association of Kaohsiung County, had passed a resolution clearly providing in their charter that both chairperson and vice chairperson be elected directly by vote of the members of congress with status both as directors and standing director granted simultaneously; Then the resolution together with the meeting minutes were forwarded to the supervising government branch to be recorded for future reference. However, the supervising branch of the local government has rejected this resolution recorded for reference regarding the election of the chairperson on account of their failure to

編者註：

事實摘要：聲請人高雄縣教師會於該會會員代表大會決議，在章程明定該會正副理事長由會員代表大會代表直接選舉產生，並為當然理事及常務理事；嗣依規定，將決議及會議記錄送交主管機關備查。惟主管機關以該會決議涉及理事長選舉方式部分，與系爭規定不符不予備查，並請聲請人檢討修正。聲請人不服提起行政爭訟，經最高行政法院 99 年度判字第 1243 號判決，認系爭規定為公法上強制規定，予以駁回而告確定。聲請人乃以確定終局判決所適用之系爭規定，侵害聲請人之結社自由，有違憲法第 7 條平等原則等，聲請本院解釋。

comply with the disputed clause and has further demanded correction. The petitioner, to challenge the decision, brought an administrative suit which resulted in dismissal by the Judgment with Docket Number Pan Zi 1243 from the administrative court which was of the opinion on the mandatory nature of the public law. The petitioner then brings this petition for interpretation by this Judicial Yuan on the reason that the disputed clause applied in the affirmed judgment from the administrative court has infringed on the petitioners' right to the freedom of association and thus has violated the equal protection principle encompassed in Article 7 of our Constitution.

J. Y. Interpretation No.734（December 21, 2012）*

【Recognizing Placement of Advertisements as an Act of Environmental Pollution】

ISSUE: The Waste Disposal Act authorizes competent authorities to publish the types of act which could be characterized as an act of environmental pollution. Is it consistent with the Constitution to regardthe official notices published thereunder, recognizing the unapproved placement of advertisements in designated areas and by a designated manner as an act of pollution ?

RELEVANT LAWS:

Articles 11 & 23 of the Constitution（憲法第十一條、第二十三條）；Articles 1 & 27 of the Waste Disposal Act（廢棄物清理法第一條、第二十七條）；Official Notice of Tainan City Ref. No. Huan-fei 09104023431 issued on December 9, 2002 by the Tainan City Government（臺南市政府九十一年十二月九日南市環廢字第０九一０四０二三四三一號公告）；Official Notice of the Tainan City Government Ref. No. Huan-guan 10000507010 issued on January 13, 2011 by the Tainan City Government（臺南市政府一００年一月十三日南市府環管字第一０００五０七０一０號公告）

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* Translated by Ching-Yuan HUANG and Chia-Chi CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

KEYWORDS:

Waste Disposal Act（廢棄物清理法）, official notice（公告）, acts that pollute the environment（污染環境行為）, the principle of clarity of authorization of law（法律授權明確性原則）, roadways （道路）, fixed structures（土地定著物）, advertisements （廣告）, the principle of statutory reservation（法律保留原則）, freedom of speech（言論自由）, public places（公共場所）**

HOLDING: Article 27, Subparagraph XI of theWaste Disposal Act providing that "The following acts are strictly prohibited within designated clearance areas. . . XI. Other acts that pollute the environment officially announced by the competent authority" is consistent with the principle of clarity of authorization of law guaranteed by Article 23 of the Constitution.

解釋文：廢棄物清理法第二十七條第十一款規定：「在指定清除地區內嚴禁有下列行為：……十一、其他經主管機關公告之污染環境行為。」與憲法第二十三條之法律授權明確性原則尚無違背。

The Official Notice of Tainan CityRef. No. Huan-fei 09104023431 issued on December 9, 2002 bythe Tainan City Government (the same text was reissued asthe Official Notice of the Tainan CityGovernmentRef. No.Huan-guan

臺南市政府中華民國九十一年十二月九日南市環廢字第０九一０四０二三四三一號公告之公告事項一、二（該府改制後於一００年一月十三日以南市府環管字第一０００００五０七０一０號公告重行發

10000507010on January 13, 2011 after the reconstruction of Tainan City Government) is deemed to exceed the scope of power granted by the enabling statute and be inconsistent with the principle of statutory reservation, since it is stipulated by the above official notice that placing of advertisements should be recognized as an act of pollution and indiscriminately forbidden and punished regardless of the fact whether placing of advertisements impairs environmental hygiene or public health and whether or not it equals the pattern of polluting the environment listed in Article 27, SubparagraphsI to X ofthe Waste Disposal Act. Therefore, the aboveofficial notice shall cease to be effective no later than three months after the date of promulgation of this interpretation.

布，內容相當），不問設置廣告物是否有礙環境衛生與國民健康，及是否已達與廢棄物清理法第二十七條前十款所定行為類型污染環境相當之程度，即認該設置行為為污染行為，概予禁止並處罰，已逾越母法授權之範圍，與法律保留原則尚有未符。應自本解釋公布之日起，至遲於屆滿三個月時失其效力。

REASONING: In principle any restriction imposed on people's fundamental rights shall be regulated by law, but, when it is appropriate, the legislative body is allowed to authorize competent authorities to promulgate orders as supplementary regulations (*see* J.Y. Interpretations Nos. 443 and 488). However, the

解釋理由書：人民基本權利之限制，原則上應以法律為之，依其情形，固非不得由立法機關授權主管機關發布命令為補充規定（本院釋字第四四三號、第四八八號解釋參照）。惟其授權之目的、內容及範圍均應具體明確。主管機關據以發布之命令，亦不得逾越授權之範圍，始為憲法之所

purpose, content and scope of the authority so granted must be clear and precise. Andthe orders promulgated by the competent authority thereunder are permitted by the Constitution only if they are within the scope of this authority. This has been repeatedly explained in our previous interpretations (*see* J.Y. Interpretation Nos.568, 658, 710 and 730). The issue of whether the authority granted is clear and precise must be judged by the correlated meaning of the provisions as a whole rather than a rigid reading of the text of the provisions (*see* J.Y. Interpretations Nos. 394 and 426).

許，迭經本院解釋在案（本院釋字第五六八號、第六五八號、第七一０號、第七三０號解釋參照）。授權是否具體明確，應就該授權法律整體所表現之關聯意義為判斷，非拘泥於特定法條之文字（本院釋字第三九四號、第四二六號解釋參照）。

According to Article 1, the legislative purposes of the Waste Disposal Actare:“the effective clearance and disposal of waste, improvement of environmental sanitation and maintenance of public health”. And, according to Article 27, Subparagraph XI of the Waste Disposal Act, which provides that “The following acts are strictly prohibited within designated clearance areas. . . XI. Other acts that pollute the environment officially announced by the competent authority”

按廢棄物清理法第一條揭示其立法目的為「有效清除、處理廢棄物，改善環境衛生，維護國民健康」。第二十七條第十一款規定：「在指定清除地區內嚴禁有下列行為：……十一、其他經主管機關公告之污染環境行為。」（下稱系爭規定）係授權主管機關就指定清除區域內禁止之該法第二十七條所列舉十款行為外，另為補充其他污染環境行為之公告，則主管機關據此發布公告禁止之行為，自須達到與前十款所定行為類型污染環境相當之程度。另從其

(hereinafter "the Article at issue"), the competent authorities are authorized to additionally publish official notices that supplement acts of environmental pollution other than those listed in Article 27, SubparagraphsI to X of the same Act. Therefore, the acts accordingly prohibited by the official notice of the competent authority shall equal the pattern of polluting environment listed in SubparagraphsI to X. In addition, it is deduced from Subparagraph III ("The polluting of the ground, pools of water, drainage gutters, walls, beams or pillars, utility poles, trees, roadways, bridges or other fixed structures.") and Subparagraph X ("The posting or painting of advertisements that pollutes fixed structures.") of this Act that the meaning of the act of environmental pollution referred thereto is not limited to discarding waste. Other acts that impair environmental hygiene and public health are also included in the meaning. Hence, the Article at issue is still consistent with the principle of clarity of authorization of law derived from Article 23 of the Constitution.

中第三款：「於路旁、屋外或屋頂曝晒、堆置有礙衛生整潔之物」及第十款：「張貼或噴漆廣告污染定著物」規定應可推知，該法所稱污染環境行為之內涵，不以棄置廢棄物為限，其他有礙環境衛生與國民健康之行為亦屬之。故系爭規定尚與憲法第二十三條之法律授權明確性原則無違。

The official Notice of Tainan City Ref. No. Huan-fei 09104023431published on December 9, 2002 in accordance with the Article at issue, provides that: “Matters to be announced: 1. Within the designated clearance areas in this city, placing advertisements without approval of the competent authority, in the manner of hanging, hitching, attaching, painting, plastering, erecting, pining, clipping, laying or other manners on roadways, walls, beams or pillars, utility poles, trees, bridges, drainage gutters, pools of water or other fixed structures, will be recognized as acts of environmental pollution. 2. “Roadways” addressed in the preceding paragraph refer to roads, streets, alleys, roadway traffic islands, sidewalks, squares, walkways, hallways or other places provided for public traffic. . . .” (the same text was reissued as the Official Notice of the Tainan City Government Ref. No. Huanguan 10000507010 on January 13, 2011 after the reconstruction of the Tainan City Government.These two official notices are collectively referred to as “the official notices at issue” hereinafter. The official notices at issue, which provide that plac-

臺南市政府於九十一年十二月九日據系爭規定發布之南市環廢字第０九一０四０二三四三一號公告：「公告事項：一、本市清除地區內，未經主管機關核准，於道路、牆壁、樑柱、電桿、樹木、橋樑、水溝、池塘或其他土地定著物張掛、懸繫、黏貼、噴漆、粉刷、樹立、釘定、夾插、置放或其他方法設置廣告物者，為污染環境行為。二、前項所稱之『道路』，指公路、街道、巷弄、安全島、人行道、廣場、騎樓、走廊或其他供公眾通行之地方。……」（該府改制後於一００年一月十三日以南市府環管字第一０００五０七０一０號公告重行發布，內容相當；下併稱系爭公告）以未經主管機關核准，於其所示之場所，以所示之方式設置廣告物者，為污染環境行為，而不問設置廣告物是否有礙環境衛生與國民健康，及是否已達與廢棄物清理法第二十七條前十款所定行為類型污染環境相當之程度，即認該設置行為為污染環境行為，概予禁止並處罰，已逾越母法授權之範圍，與法律保留原則尚有未符。主管機關應儘速依前開意旨修正相關規範，使未經主管機關核准而設置廣告物者，仍須達到前開污染環境相當之程度，始構成違規之污染環境行

ing advertisements without approval of the competent authority in the designated waysand in designated areas shall be recognized as acts of environmental pollution and indiscriminately forbidden and punished, regardless of the fact whether placing advertisements impairs environmental hygiene or public health and whether or not it equals the pattern of polluting the environment listed in Article 27, SubparagraphsI to X of the Waste Disposal Act, are deemed to exceed the scope of power granted by the enabling statute and are inconsistent with the principle of statutory reservation. The competent authority shall promptly amend the relevant regulations in accordance with the reasoning above in order to distinctively characterize unapproved placement of advertisements as being equal to the above pattern of polluting the environment and as being an act of illegal environmental pollution. And the official notices at issue shall cease to be effective no later than threemonths after the date of promulgation of this interpretation.

為。並自本解釋公布之日起，至遲於屆滿三個月時失其效力。

Article 11 of the Constitution stipu-

憲法第十一條規定，人民之言論

lates that people's freedom of speech shall be protected. Given that freedom of speech carries the functions of self-fulfillment, communication of viewpoints, pursuing truth, gratification of the people's right to know, formation of public opinion and promotion of all kinds of rational political and social activities, thus constituting an essential mechanism in the maintenance of the normal development in a democratic and diverse society, the State must endeavor to provide protection to the maximum extent (*see* J.Y. Interpretations Nos. 509, 644 and 678). Since advertising also carries the function of expressing an opinion, and may thus be included in the coverage of the right to free speech guaranteed in Article 11 of the Constitution (*see* J.Y. Interpretations Nos. 414 and 623), the expression of opinions and communicationof viewpoints to others in public places in the common manner shall not be prohibited. Even though the official notices at issue were not published for the purpose of restricting people's freedom of speech or other fundamental rights guaranteed by the Constitution, such restrictions imposed on people's freedom

自由應予保障。鑒於言論自由具有實現自我、溝通意見、追求真理、滿足人民知的權利，形成公意，促進各種合理之政治及社會活動之功能，乃維持民主多元社會正常發展不可或缺之機制，國家應給予最大限度之保障（本院釋字第五０九號、第六四四號、第六七八號解釋參照）。廣告兼具意見表達之性質，屬於憲法第十一條所保障之言論範疇（本院釋字第四一四號、第六二三號解釋參照），而公共場所於不妨礙其通常使用方式之範圍內，亦非不得為言論表達及意見溝通。系爭公告雖非為限制人民言論自由或其他憲法上所保障之基本權利而設，然於具體個案可能因主管機關對於廣告物之內容及設置之時間、地點、方式之審查，而否准設置，造成限制人民言論自由或其他憲法上所保障之基本權利之結果。主管機關於依本解釋意旨修正系爭公告時，應通盤考量其可能造成言論自由或其他憲法上所保障之基本權利限制之必要性與適當性，併此指明。

of speech or other fundamental rights may occur when, in individual cases, the competent authority disapprovesof the placing of advertisements after reviewing the context thereof and the time, place and manner of the placement. Hence, when the competent authority amends the official notices at issue according to this interpretation, the necessity and appropriateness of the possible constraint imposed on people's freedom of speech or other fundamental rights guaranteed by the Constitution shall be comprehensively and thoroughly considered.

The petitioner further alleged that the Supreme Administrative Court took a narrower view in its Ref. No. Cai-zi-3491 Ruling (2010) on the issue of "materiality" under Article 235 of the Administrative Litigation Act revised as of October 28, 1998 when compared with other similar cases, thus constraining the people's right of instituting legal proceedings. This shall be characterized as a mere accusation of the legitimacy of fact-finding and law-application of the courts. In addition, the petitioner may not petition for an interpre-

聲請人另認最高行政法院九十九年度裁字第三四九一號裁定就八十七年十月二十八日修正公布之行政訴訟法第二百三十五條「原則性」所為之闡釋，對同類事件之認定過嚴，限制人民訴訟權。惟此核屬對於法院認事用法之指摘。又聲請人主張臺南市政府環境保護局一００年一月十一日環管字第一０００五０三九九０號公告將臺南市所轄行政區域均列為指定清除地區，有涵蓋過廣之虞。經查確定終局判決並未適用上開公告，自不得以之為聲請解釋之客體。上開聲請解釋部分，核與司

tation ofthe official notice Ref. No. huanguan- 10000503990 of the Environmental Protection Bureau of the Tainan City Governmentissued on January 11, 2011, which designated the entire administrative district governed by Tainan City as a designated clearance area, which the petitioner deems to be excessive, since the court did not apply the official notice indicated above in the final and binding judgment. The aforementioned portions of the petition are not consistent with Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Court Procedure Act and shall all be dismissed in accordance with Paragraph 3 of the same Article.

法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，均應不予受理，併此敘明。

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Pai-Hsiu YEH filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concur-

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；葉大法官百修提出之協同意見書；陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出之協同意見書；蔡大法官明誠提出之協同意見書；陳大法官新民提出之部分協同部分不同意見書；湯大法官德宗提出之部分協同部分不同意見書；黃大法官璽君提出之部分不同意見書；黃大法官虹霞提出之不同意見書。

ring opinion.

Justice Ming-Cheng TSAI filed a concurring opinion.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG filed an opinion dissenting in part.

Justice Horng-Shya HUANG filed a dissenting opinion.

EDITOR'S NOTE:

Summary of facts: On June 22, 2009, the petitioner in this case hung slogans, without prior approval, to protest against the People's Republic of China and promote Falun Dafa within the area designated, in accordance with Article 27, SubparagraphXI of the Waste Disposal Act, by the Environmental Protection Bureau of the Tainan City Government. The Bureau recognized the act as a violation of the aforementioned provision and thus fined the petitioner NT$1,200 in accordance with Article 50, Subparagraph 3 of the

編者註：

事實摘要：本件聲請人 98 年 6 月 22 日在臺南市政府環境保護局依廢棄物清理法第 27 條第 11 款公告之清除區域內，未經該局核准，張掛抗議中共布條及法輪大法好布幔，該局認為已違反前開規定，即依同法第 50 條第 3 款裁處新台幣 1200 元。聲請人不服，提起訴願，經 98 年 11 月 13 日南市行救字第 09826593560 號訴願決定撤銷原處分。臺南市環保局於 98 年 12 月 21 日再以南市環廢處字第 9812087 號裁處書裁處 600 元罰鍰。聲請人仍不服，訴願遭駁回後，即提起行政訴訟。案經高

same Act. The petitioner was not satisfied and filedan administrative appeal against the administrative act, which was revoked by Ref. No. Xing-jiu- 09826593560 Decision of the administrative appeal board of Tainan City on November 13, 2009 thereafter. The Bureau upon further consideration fined the petitioner NT$600 by Huan-fei-chu No. 9812087 administrative decision of Tainan City on December 21, 2009. The petitioner was still not satisfied and thus filedan administrative appeal against the administrative act and an administrative litigation in sequence. The aforementioned administrative litigation was dismissed by the Jian-zi No. 214 Judgement (2010) of the Kaohsiung High Administrative Court (hereinafter "The final and binding judgment") and then further dismissed by Cai-zi No. 3491 Ruling (2010) of the Supreme Administrative Court due to its failure to comply with the requirements of an appeal. The petitioner advocated that the regulations and official notices at issue applied by the final and binding judgement are not consistent with the Constitution, thus she petitioned for interpretation.

雄高等行政法院 99 年度簡字第 214 號判決駁回（下稱確定終局判決），並經最高行政法院 99 年度裁字第 3491 號裁定以上訴不合法為由駁回。聲請人認確定終局判決所適用之系爭規定及系爭公告，有違憲之疑義，聲請解釋。

J. Y. Interpretation No.735（February 4, 2016）*

【No-confidence Motion Proposed during the Extraordinary Session】

ISSUE: Is a no-confidence motion stipulated under Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China permitted to be proposed during an extraordinary session of the Legislative Yuan convened due to other specific matters ?

RELEVANT LAWS:

Article 3 of the Amendments to the Constitution（憲法增修條文第 3 條）；Article 69 of the Constitution（憲法第 69 條）；Article 6 of the Legislative Yuan Organization Act（立法院組織法第 6 條）；Article 37 of the Legislative Yuan Power Exercise Act（立法院職權行使法第 37 條）

KEYWORDS:

no-confidence motion（不信任案）, Legislative Yuan（立法院）, extraordinary session（臨時會）**

HOLDING: Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China

解釋文：中華民國憲法增修條文第三條第二項第三款規定：「行政院依左列規定，對立法院負責，……三、

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* Translated by Chung-Lin CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

stipulates: “The Executive Yuan shall be accountable to the Legislative Yuan in accordance with the following provisions; … (3) With the signatures of more than one-third of the total members, the Legislative Yuan may propose a no-confidence motion against the Premier of the Executive Yuan. After 72 hours since the no-confidence motion is made, an open-ballot vote shall be cast within 48 hours. …” The purpose of this provision is to require the open ballot vote to be completed within the provided time limit so as to avoid the delay and suspension that affects political stability. But the provision does not require that a no-confidence motion must be proposed during an ordinary session. Article 69 of the Constitution stipulates: “In any of the following circumstances, the Legislative Yuan may hold an extraordinary session: 1. At the request of the President; 2. At the request of no less than one-fourth of its Members.” It only stipulates the procedure of convening an extraordinary session and does not limit the subject matters that can be reviewed therein. Therefore, the Constitution does not prohibit the Legislative Yuan from re-

立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。不信任案提出七十二小時後，應於四十八小時內以記名投票表決之。……」旨在規範不信任案應於上開規定之時限內，完成記名投票表決，避免懸宕影響政局安定，未限制不信任案須於立法院常會提出。憲法第六十九條規定：「立法院遇有左列情事之一時，得開臨時會：一、總統之咨請。二、立法委員四分之一以上之請求。」僅規範立法院臨時會召開之程序，未限制臨時會得審議之事項。是立法院於臨時會中審議不信任案，非憲法所不許。立法院組織法第六條第一項規定：「立法院臨時會，依憲法第六十九條規定行之，並以決議召集臨時會之特定事項為限。」與上開憲法規定意旨不符部分，應不再適用。如於立法院休會期間提出不信任案，立法院應即召開臨時會審議之。

viewing a no-confidence motion in an extraordinary session. Article 6, Paragraph 1 of the Legislative Yuan Organization Act provides: "An extraordinary session shall be proceeded in accordance with Article 69 of the Constitution, and only the specific matters that the extraordinary session is convened for can be decided." The part that is not consistent with the meaning and purpose of the aforementioned Constitution provision shall no longer be applicable. When a no-confidence motion is proposed during recess, the Legislative Yuan shall immediately convene an extraordinary session to review the motion.

REASONING: Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China stipulates: "The Executive Yuan shall be accountable to the Legislative Yuan in accordance with the following provisions; … (3) With the signatures of more than one-third of the total members, the Legislative Yuan may propose a no-confidence motion against the Premier of the Executive Yuan. After 72 hours since the no-confidence motion is made, an

解釋理由書：中華民國憲法增修條文第三條第二項第三款規定：「行政院依左列規定，對立法院負責，……三、立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。不信任案提出七十二小時後，應於四十八小時內以記名投票表決之。（前段，下稱系爭憲法規定）如經全體立法委員二分之一以上贊成，行政院院長應於十日內提出辭職，並得同時呈請總統解散立法院；不信任案如未獲通過，一年內不得對同一行政院院長再提不信任

open-ballot vote shall be cast within 48 hours. …[the former part, *hereinafter* the Disputed Constitutional Provision] Should more than one-half of the total Legislative Yuan members approve the motion, the Premier of the Executive Yuan shall resign within ten days, and may simultaneously petition the President to dissolve the Legislative Yuan; in the event that the no-confidence motion fails to carry, no re-submission of a no-confidence motion against the same Premier of the Executive Yuan may be permitted within one year. [the later part]" The mechanism of a no-confidence motion is established for ensuring party discipline, resolving political stalemate, and realizing political accountability, and also has the positive effect of stabilizing politics (see the Illustration of Constitution Amendment Proposal No. 1 at the Second Session of the Third National Assembly in May, 1997). To avoid a delay and suspension that affects political stability, the Disputed Constitutional Provision provides that after 72 hours since the no-confidence motion is proposed, an open-ballot vote shall be cast within 48 hours. But it does not require that a no-

案。（後段）」不信任案制度係為建立政黨黨紀，化解政治僵局，落實責任政治，並具穩定政治之正面作用（中華民國八十六年五月第三屆國民大會第二次會議修憲提案第一號說明參照）。為避免懸宕影響政局安定，系爭憲法規定乃規範不信任案提出七十二小時後，應於四十八小時內完成記名投票表決，並未限制不信任案須於立法院常會中提出。又憲法第六十九條規定：「立法院遇有左列情事之一時，得開臨時會：一、總統之咨請。二、立法委員四分之一以上之請求。」僅規範立法院臨時會召開之程序，並未限制臨時會得審議之事項。基於儘速處理不信任案之憲法要求，立法院於臨時會審議不信任案，非憲法所不許。惟立法院組織法第六條第一項規定：「立法院臨時會，依憲法第六十九條規定行之，並以決議召集臨時會之特定事項為限。」未許於因其他特定事項而召開之臨時會審議不信任案，與上開憲法規定意旨不符，就此部分，應不再適用。系爭憲法規定既未限制不信任案之提出時間，如於立法院休會期間提出不信任案，立法院自應即召開臨時會審議之。

confidence motion must be proposed in an ordinary session. In addition, Article 69 of the Constitution stipulates: "In any of the following circumstances, the Legislative Yuan may hold an extraordinary session: 1. At the request of the President; 2. At the request of no less than one-fourth of its Members." It only stipulates the procedure of convening an extraordinary session and does not limit the subject matters that can be reviewed therein. In light of the constitutional requirement of a speedy disposition of a no-confidence motion, it is not disallowed by the Constitution for the legislative Yuan to review a no-confidence motion in an extraordinary session. However, Article 6, Paragraph 1 of the Legislative Yuan Organization Act provides: "An extraordinary session shall be proceeded in accordance with Article 69 of the Constitution, and only the specific matters that the extraordinary session is convened for can be decided." On the part that does not permit the review of a no-confidence motion in an extraordinary session convened due to other specific matters, it is not consistent with the meaning and purpose of the aforementioned

Constitution provision and shall no longer be applicable. Since the Disputed Constitutional Provision does not restrict the timing of proposing a no-confidence motion, when a no-confidence motion is proposed during recess, the Legislative Yuan shall immediately convene an extraordinary session to review the motion.

Article 37 of the Legislative Yuan Power Exercise Act is a provision concerning the procedure of the introduction and review of a no-confidence motion. Although this matter falls within legislative self-governance, it is worth noting that, as a matter of course, the provision shall comply with the requirement that the Disputed Constitutional Provision imposes: After 72 hours since a no-confidence motion is proposed, the process of an open-ballot vote shall be completed within 48 hours.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a

立法院職權行使法第三十七條乃關於不信任案提出、進行審議程序之規定，固屬立法院國會自律事項，惟仍應注意符合系爭憲法規定所示，不信任案提出七十二小時後，應於四十八小時內完成記名投票程序之意旨，自屬當然，併此指明。

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發、黃大法官虹霞、蔡大法官明

concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO, Justice Horng-Shya HUANG and Justice Ming-Cheng TSAI jointly filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Ming CHEN filed an opinion concurring in part and dissenting in part.

Justice Pai-Hsiu YEH filed an opinion dissenting in part.

Justice Shin-Min CHEN filed an opinion dissenting in part.

誠共同提出之協同意見書；林大法官俊益提出之協同意見書；陳大法官敏提出之部分協同部分不同意見書；葉大法官百修提出之部分不同意見書；陳大法官新民提出之部分不同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioners, 46 Legislative Yuan members including Chien-min Ke, proposed a no-confidence motion against the Premier of the Executive Yuan in accordance with Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China and Chapter 6 of the Legislative Yuan Power Exercise Act during the First Extraordinary Session of the First Session of the Eighth Legisla-

編者註：

事實摘要：聲請人立法委員柯建銘等四十六人，就於中華民國一０一年七月二十五日立法院第八屆第一會期第一次臨時會，依中華民國憲法增修條文第三條第二項第三款及立法院職權行使法第六章規定，對行政院院長提出不信任案，經立法院院長王金平以與立法院組織法第六條第一項規定不符，裁示無法於該次臨時會處理，認有牴觸憲法之疑義，並認立法院職權行使法第三十七條，自「不信任案提報院會」七十二小

tive Yuan on July 25, 2012. The president of the Legislative Yuan, Jin-Pyng Wang, ruled that the motion cannot be addressed in that extraordinary session because it is not consistent with Article 6, Paragraph 1 of the Legislative Yuan Organization Act. The petitioners believe that the ruling has violated the Constitution. They also believe that Article 37 of the Legislative Yuan Power Exercise Act, which stipulates that a review session shall be convened after 72 hours since "the no-confidence motion is submitted to a Yuan Sitting," violates the meaning and purpose of the Amendment to the Constitution regarding a timely vote after 72 hours since "the no-confidence motion is proposed." Therefore, they filed the petition for an interpretation of the Constitution in accordance with Article 5, Paragraph 1, Subparagraphs 1 and 3 of the Constitutional Court Procedure Act.

時後召開審查之規定，違反系爭憲法增修條文自「不信任案提出」七十二小時後依時限表決之意旨，爰依司法院大法官審理案件法第五條第一項第一款及第三款規定，向本院聲請解釋憲法。

J. Y. Interpretation No.736（March 18, 2016）*

【Judicial Remedy for Teachers Whose Rights Are Infringed by the Schools' Corrective Measures】

ISSUE: 1. Is Article 33 of the Teachers' Act unconstitutional ?

2. Is the teacher who claims that his/her rights or legal interests are infringed by the school's concrete measures entitled to file a lawsuit ?

RELEVANT LAWS:

Article 16 of the Constitution of the Republic of China (Taiwan) (January 1, 1947)（憲法第十六條）；Articles 29, 31& 33 of the Teacher's Act（June 18, 2014）（教師法第二十九條、第三十一條及第三十三條）；Article 2 of the Outlines for Evaluating Teachers of National Cheng Kung University（國立成功大學教師評量要點第二點）

KEYWORDS:

Where there is a right , there is a remedy（有權利即有救濟）, rights or legal interests（權利或法律上利益）, registered record of absence（曠職登記）, dock pay（扣薪）, remaining at the same pay grade according to the annual performance review（年終成績考核留支原薪）, teaching evaluation（教師評量）, appeal and re-appeal（申訴再申訴）, judicial remedy（司法救濟）**

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* Translated by Ed Ming-Hui HUANG

** Contents within frame, not part of the original text, are added for reference purposes only.

HOLDING: Based on the mandate that where there is a right, there is a remedy under Article 16 of the Constitution, a teacher who claims that his/her rights or legal interests are infringed by a school's disposition is entitled to file a lawsuit, either pursuant to the Administrative Litigation Act or to the Code of Civil Procedure. Article 33 of the Teachers' Act: "If the teacher does not wish to appeal nor is not satisfied with the results of the appeal and re-appeal, he/she can file litigation based on its nature according to law, or ask for aid in accordance with the Rules on Administrative Appeal or the Administrative Litigation Law or other related regulations such as protection laws." merely prescribes the procedures for judicial remedy when a teacher claims his/her rights or legal interests are infringed. It does not restrict the rights of the public school teacher to institute an administrative litigation and thus does not violate the protection of peoples' right to institute legal proceedings under Article 16 of the Constitution.

REASONING: Article 16 of

解釋文：本於憲法第十六條有權利即有救濟之意旨，教師認其權利或法律上利益因學校具體措施遭受侵害時，得依行政訴訟法或民事訴訟法等有關規定，向法院請求救濟。教師法第三十三條規定：「教師不願申訴或不服申訴、再申訴決定者，得按其性質依法提起訴訟或依訴願法或行政訴訟法或其他保障法律等有關規定，請求救濟。」僅係規定教師權利或法律上利益受侵害時之救濟途徑，並未限制公立學校教師提起行政訴訟之權利，與憲法第十六條保障人民訴訟權之意旨尚無違背。

the Constitution guaranteeing people the right of instituting legal proceedings means that a person shall have the right to judicial remedies when his/her right or legal interest is infringed. Based on the constitutional principle—where there is a right, there is a remedy, when a person's right or legal interest is infringed, the state shall provide such a person an opportunity to institute legal proceedings in court, to request a fair trial in accordance with the due process of law, and to obtain timely and effective remedies, which shall not be limited simply because of his/her status or occupations (in reference to J.Y. Interpretations No. 430& No. 653).

解釋理由書：憲法第十六條保障人民訴訟權，係指人民於其權利或法律上利益遭受侵害時，有請求法院救濟之權利。基於有權利即有救濟之憲法原則，人民權利或法律上利益遭受侵害時，必須給予向法院提起訴訟，請求依正當法律程序公平審判，以獲及時有效救濟之機會，不得僅因身分或職業之不同即予以限制（本院釋字第四三０號、第六五三號解釋參照）。

Article 33 of the Teachers' Act: "If the teacher does not wish to appeal nor is not satisfied with the results of the appeal and re-appeal, he/she can file litigation based on its nature according to law, or ask for aid in accordance with the Rules on Administrative Appeal or the Administrative Litigation Law or other related regulations such as protection laws." merely prescribes the procedures for judicial redress when a teacher claims his/

教師法第三十三條規定：「教師不願申訴或不服申訴、再申訴決定者，得按其性質依法提起訴訟或依訴願法或行政訴訟法或其他保障法律等有關規定，請求救濟。」僅係規定教師權利或法律上利益受侵害時之救濟途徑，並未限制公立學校教師提起行政訴訟之權利，與憲法第十六條保障人民訴訟權之意旨尚無違背。教師因學校具體措施（諸如曠職登記、扣薪、年終成績考核留支原薪、教師評量等）認其權利或法

her rights or legal interests are infringed. It does not restrict the rights of the public school teacher to institute an administrative litigation and thus does not violate the protection of peoples' right to institute legal proceedings under Article 16 of the Constitution. Just as ordinary people, a teacher who claims his/her right or legal interest is infringed by the school's concrete measures (such as "registered record of absence,""dock pay,""remaining at the same paygrade according to the annual performance review" and "teaching evaluation"…etc.), is entitled to file a lawsuit for judicial redress either pursuant to the Administrative Litigation Act or the Code of Civil Procedure so as to be in compliance with the constitutional principle—where there is a right, there is a remedy. It is a matter of course that the reviewing court should, to an adequate extent, defer to the judgement of the school based upon their expertise and familiarity with the facts (in reference to J. Y. Interpretation No. 382 & No. 684).

律上利益受侵害時，自得如一般人民依行政訴訟法或民事訴訟法等有關規定，向法院請求救濟，始符合有權利即有救濟之憲法原則。至受理此類事件之法院，對於學校本於專業及對事實真象之熟知所為之判斷，應予以適度之尊重，自屬當然（本院釋字第三八二號、第六八四號解釋參照）。

One of the petitioners also filed a

另聲請人之一聲請就本院釋字第

petition for modifying or supplementing J.Y. Interpretation No.382, which is an interpretation dealing with the issue of the judicial remedy for students being sanctioned by the school. The judgment of the Supreme Administrative Court 100-Pan-Tze No. 1127 (2011) quoted this Interpretation simply for clarifying the legal status of public school—an institution established by various levels of governments pursuant to laws and regulations to carry out educational functions and possessing the status of administrative agencies. It did not apply the said Interpretation to decide whether public school teachers can sue against the school's corrective measures. The petitioner also alleges that Article 2, Paragraph 3, Subparagraph 3 & 6 of the Outlines for Evaluating Teachers of National Cheng Kung University are in conflict with J.Y. Interpretation No. 432 because the phrases "outstanding contribution" and "concrete and distinguished (achievement)" of the requirements for exemption from merit evaluation are so vague as to violate the principle of clarity and definiteness of law. In addition, the evaluation must be reviewed by the fac-

三八二號解釋為變更或補充解釋部分，經查該號解釋係關於學校對學生所為處分之救濟，最高行政法院一００年度判字第一一二七號判決僅藉以說明公立學校係各級政府依法令設置實施教育之機構，具有機關之地位，並未適用該號解釋論斷公立學校對教師之措施可否救濟，自不得據以聲請解釋。該聲請人又主張國立成功大學教師評量要點第二點第三項第三款及第六款關於教師申請免評量規定中所謂「卓越貢獻」、「具體卓著」等用語，違反法律明確性原則，與釋字第四三二號解釋有違；且審查程序仍須由院、校教評會審查，可能推翻系教評會由專業學者所為判斷，與學術自由之保障及釋字第四六二號解釋之意旨不符等語。核其所陳，尚難謂客觀上已具體敘明上開規定究有何牴觸憲法之處。是該聲請人上開部分之聲請，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，均應不予受理，併此敘明。

ulty evaluation committee of each college and university so that the professional judgment made by the department's faculty evaluation committee may be overthrown and therefore such a process is inconsistent with the academic freedom and the keynote of J.Y. Interpretation No. 462. However, in view of the petitioner's arguments, he failed to articulate how the above provisions violate the Constitution specifically. Hence these petitions do not meet the requirements stipulated in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and should be dismissed in accordance with Paragraph 3 of the same Article. It is so noted here.

Justice Yeong-Chin SU filed concurring opinion.

Justice Mao-Zong HUANG filed concurring opinion.

Justice Chang-Fa LO filed concurring opinion, in Justice Horng-Shya HUANG joined.

Justice Dennis Te-Chung TANG filed concurring opinion, in Justice Beyue SU CHEN, Justice Horng-Shya

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；羅大法官昌發提出，黃大法官虹霞加入之協同意見書；湯大法官德宗提出，陳大法官碧玉、黃大法官虹霞加入之協同意見書；蔡大法官明誠提出之協同意見書；林大法官俊益提出之協同意見書；陳大法官春生提出之部分不同意見書；陳大法官新民提出之部分不同意見書；黃大法官璽君提出之部分不同意

HUANG joined.

Justice Ming-Cheng TSAI filed concurring opinion.

Justice Jiun-Yi LIN filed concurring opinion.

Justice Chun-Sheng CHEN filed dissenting opinion in part.

Justice Shin-Min CHEN filed dissenting opinion in part.

Justice Hsi-Chun HUANG filed dissenting opinion in part.

Justice Ming CHEN filed dissenting opinion in part, in Justice Chun-Sheng CHEN and Justice Hsi-Chun HUANG joined.

見書；陳大法官敏提出，陳大法官春生、黃大法官璽君加入之不同意見書。

EDITOR'S NOTE:

Summary of facts: Petitioner Tsai Man-ting is a teacher at Caota Junior High School in Taoyuan County (now Taoyuan City). He did not ask for leave by complying with the Regulations of Leave-Taking of Teachers so that the school took three measures of "registered record of absence," "dock pay," and "remaining at the same pay grade" against him. Objecting to the foregoing measures, the petitioner filed an appeal and a re-appeal

編者註：

事實摘要：一、聲請人蔡滿庭係桃園縣（現改制為桃園市）立草漯國民中學教師，因其未依教師請假規則請假，遭學校為「曠職登記」、「扣薪」及「留支原薪」之處置。聲請人對上開三處置不服，分別提起申訴、再申訴，遞遭駁回。嗣提起行政訴訟，經臺北高等行政法院 99 年度訴字第 761 號裁定認起訴不合法予以駁回；提起抗告，亦經最高行政法院 100 年度裁字第 974 號裁定（確定終局裁定）認抗告無理由予

in succession and both were denied. Then he instituted an administrative litigation but the Taipei High Administrative Court, in its 99 Su-Tze No. 761 ruling (2010), dismissed the case for lack of legal conformity. He filed a motion to set aside the court ruling and was again denied by the ruling of the Supreme Administrative Court 100- Tzai-Tze No. 974 (2011) (hereinafter "the final and binding ruling"). The petitioner claimed that Article 33 of the Teacher's Act, which the court had applied in the final and binding ruling, is unconstitutional and thereby filed a petition for constitutional interpretation.

以駁回。聲請人認確定終局裁定所適用之教師法第 33 條規定有違憲疑義，故聲請解釋。

Petitioner Tsai Yao-quan is a professor at National Cheng-Kung University. As his application for exemption from evaluation was rejected, he filed a complaint to the faculty evaluation committee of the University, but the complaint was deemed groundless. He then filed an appeal and a re-appeal pursuant to the Teacher's Act and both were denied in succession. Afterwards, the petitioner instituted an administrative litigation, but the Kaohsiung High Administrative

二、另一聲請人蔡燿全係國立成功大學教授，因申請免予評量遭否准，遂向該校教師評審委員會申復，惟遭申復無理由之決議，故依法提起申訴、再申訴，仍遭駁回。聲請人不服，提起行政訴訟，經高雄高等行政法院 98 年度訴字第 603 號判決以原告之訴無理由予以駁回；提起上訴，亦經最高行政法院 100 年度判字第 1127 號判決（確定終局判決）以上訴無理由予以駁回。聲請人認確定終局判決所適用之國立成功大學教師評量要點第 2 點第 3 項第 3 款及

Court,in its 98 Su-Tze No. 603 judgment (2009),dismissed his claim because of lack of legal grounds. He filed an appeal to the last resort but again was denied by the judgment of Supreme Administrative Court 100 Pan-Tze No. 1127 (2011) (hereinafter "the final and binding judgment"). The petitioner claimed that Article 2, Paragraph 3, Subparagraph 3 & 6 of the Outlines for Evaluating Teachers of National Cheng Kung University, which were applied by the court in the final and binding judgment, are unconstitutional and thereby filed a petition for constitutional interpretation. In addition, the petitioner filed a petition for modifying or supplementing J.Y. Interpretation No. 382, which was also applied in that judgment.

第 6 款有違憲疑義，聲請解釋；並就所適用之司法院釋字第 382 號解釋聲請變更或補充解釋。

J. Y. Interpretation No.737（April 29, 2016）*

【Access to Dossier Information in the Process of Detention Hearingat Investigatory Stage】

ISSUE: Is it unconstitutional that the criminal suspect and his or her counsel only have access to factual issues cited in the detention motion at investigatory stage according to Article 33 Paragraph 1 and Article 101 Paragraph 3 of the Criminal Procedure Code ?

RELEVANT LAWS:

Articles 8 and 16 of the Constitution of the Republic of China (Taiwan)（憲法第八條、第十六條）；J.Y. Interpretation Nos. 384, 392, 436, 445, 567, 574,588, 653, 654（司法院釋字第三八四號、第三九二號、第四三六號、第四四五號、第五六七號、第五七四號、第五八八號、第六五三號、第六五四號解釋）；Article 33 Paragraph 1 and Article 101 Paragraph 3 of the Criminal Procedure Code（刑事訴訟法第三十三條第一項、第一百零一條第三項）

KEYWORDS:

right to examine the dossier（閱卷）, detention（羈押）, detention hearing at investigatory stage（偵查中羈押審查程序）, due process of law（正當法律程序）, personal freedom（人身自由）, right to institute legal proceedings（訴訟權）, ac-

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* Translated by Ming-Woei CHANG

** Contents within frame, not part of the original text, are added for reference purposes only.

cess to dossier information（卷證資訊獲知）, right of defense（防禦權）, investigatory secrecy（偵查不公開）, the principle of equality of arms（武器平等原則）, mandatory defense（強制辯護）**

HOLDING: Given the intention of Articles 8 and 16 of the Constitution to ensure personal freedom and the right of instituting legal proceedings, a deprivation of personal freedom should comply with the principle of due process of law. The process of detention hearing at investigatory stage should in an adequate way and time let a criminal suspect as well as his or her counsel know the reasonsbased on which the public prosecutor applied for detention; unless there are facts sufficient to justify an apprehension that the suspect might destroy, forge, or alter evidence, or conspire with a co-offender or witness, thereby jeopardizing the purpose of criminal investigations or other people's life or body and hence requiring restriction or prohibition, access must be given to relevant evidence concerning the motion to detain so that the right of

解釋文：本於憲法第八條及第十六條人身自由及訴訟權應予保障之意旨，對人身自由之剝奪尤應遵循正當法律程序原則。偵查中之羈押審查程序，應以適當方式及時使犯罪嫌疑人及其辯護人獲知檢察官據以聲請羈押之理由；除有事實足認有湮滅、偽造、變造證據或勾串共犯或證人等危害偵查目的或危害他人生命、身體之虞，得予限制或禁止者外，並使其獲知聲請羈押之有關證據，俾利其有效行使防禦權，始符憲法正當法律程序原則之要求。其獲知之方式，不以檢閱卷證並抄錄或攝影為必要。刑事訴訟法第三十三條第一項規定：「辯護人於審判中得檢閱卷宗及證物並得抄錄或攝影。」同法第一百零一條第三項規定：「第一項各款所依據之事實，應告知被告及其辯護人，並記載於筆錄。」整體觀察，偵查中之犯罪嫌疑人及其辯護人僅受告知羈押事由所據之事實，與上開意旨不符。有關機關應

defense can be exercised effectively in accordance with the constitutional requirements of legal due process. The method of access to information is not limited to examining the dossier and making copies or photographs thereof. Article 33 Paragraph 1 of the Criminal Procedure Code provides that: "A defense attorney may examine the case file and exhibits and make copies or photographs thereof." Article 101 Paragraph 3 of the Criminal Procedure Code provides that: "The accused and his defense attorney shall be informed of the facts based to support the detention of an accused as specified in section I of this article. The same shall be stated in the record."Seen as a whole, it is against the above-mentioned intention that the criminal suspect under investigation as well as his or her counsel only be informed of detention-causing facts. The authorities concerned shall amend the relevant provisions of the Criminal Procedure Code in accordance with the ruling of this Interpretation within one year from the issuance date of this Interpretation. The court in charge of detention should follow this ruling in the process of detention hearing

於本解釋公布之日起一年內，基於本解釋意旨，修正刑事訴訟法妥為規定。逾期未完成修法，法院之偵查中羈押審查程序，應依本解釋意旨行之。

if the amendment is not timely completed.

REASONING: The current case arose because Lai Su-ru and her appointed counsel at investigatory stage Li Yi-kwang, attorney-at-law, while requesting to examine the detention case file, claimed that the Taiwan High Court criminal ruling from the year 2013 No. 616, hereinafter the final ruling, might be unconstitutional in applying Article 33 Paragraph 1 of the Criminal Procedure Code. Upon application for constitutional interpretation, the Grand Justice Council granted a writ of certiorari and according to Article 13 Paragraph 1 of the Constitutional Court Procedure Act asked petitioners as well as the concerned authorities including the Judicial Yuan (Criminal Division) along with the Ministry of Justice to appoint representatives and attorneys for an oral hearing at the Constitutional Court on March 3, 2016 and also invited expert examiners to attend and deliver their opinions.

解釋理由書：本件係因賴素如及其偵查中選任辯護人李宜光律師為聲請閱覽偵查中聲羈卷案件，認臺灣高等法院一０二年度偵抗字第六一六號刑事裁定（下稱確定終局裁定）所適用之刑事訴訟法第三十三條第一項規定，有違憲疑義，聲請解釋憲法，經大法官議決應予受理，並依司法院大法官審理案件法第十三條第一項通知聲請人及關係機關包括司法院（刑事廳）及法務部指派代表及代理人，於中華民國一０五年三月三日到場，在憲法法庭行言詞辯論，並邀請鑑定人到庭陳述意見。

Petitioner Lai Su-ru and her counsel Li Yi-kwang claimed that Article 33 Para-

聲請人賴素如、李宜光主張刑事訴訟法第三十三條第一項規定牴觸憲法

graph 1 Criminal Procedure Code violated Articles 8, 16 and 23 of the Constitution for following reasons: 1. Allowing the counsel to examine the dossier during the process of detention hearing helps the public prosecutor to comply with his obligation and does not conflict with the principle of investigatory secrecy. 2. The principle of due process of law implied in Articles 8 and 16 of the Constitution should guarantee the accused the right of full defense; since the detention process at the investigatory stage is adversarial, the principle of equality of arms also applies here. 3. Limiting the accused as well as his or her counsel's right of examining the detention dossier concerns the accused's right to institute legal proceedings, personal freedom, and the counsel's right to work as well as its defense function in the judicial sector. Furthermore, while Article 33 Paragraph 1 of the Criminal Procedure Code is not an approach of minimum harm, it violates the intention of Articles 8 and 16 of the Constitution. 4. The reasons for detention listed in Article 101 Paragraph 1 and Article 101-1 Paragraph 1 of the Criminal Procedure Code are neces-

第八條、第十六條及第二十三條規定，其理由略謂：一、允許辯護人於偵查中羈押審查程序閱卷，有利於檢察官遵循義務，與偵查不公開並無矛盾。二、憲法第八條、第十六條所蘊含之正當法律程序原則，應保障被告有充分之防禦權；偵查中聲請羈押程序有對立當事人之訴訟結構，故亦有武器平等原則之適用。三、限制被告及其辯護人檢閱聲請羈押卷宗之權利，涉及被告之訴訟權、人身自由，以及辯護人之工作權與其作為司法一環應具備之辯護權。再者，刑事訴訟法第三十三條第一項並非最小侵害手段，有違憲法第八條、第十六條之意旨。四、刑事訴訟法第一百零一條第一項及第一百零一條之一第一項各款羈押事由，與本件爭點有關聯必要性，應為本件解釋範圍。五、司法院大法官應諭知聲請人賴素如得據以聲請刑事補償或國家賠償等語。

sarily related to the issue in the present caseand should be within the scope of this Interpretation. 5. The Grand Justice Council should hold that petitioner Lai Su-ru is entitled to criminal indemnity or state compensation … etc.

The agency concerned, namely, the Criminal Division of the Judicial Yuan, argued summarily that: 1. Article 16 of the Constitution clearly provides that people have the right to institute legal proceedings, in the course of a prosecutor's application to detain the accused at the investigatory stage, the accused nevertheless enjoys procedural safeguards which enable him to fully and effectively exercise his right of defense. The principle of equality of arms aims at realizing the accused's right of defense. In need of such defense, the state should provide institutional and procedural safeguards which give the accused the same position as the prosecutor representing the state. 2. The right to examine the dossier lies at the heart of the defendant's fundamental right to institute legal proceedings. Given the important meaning of the right to

關係機關司法院（刑事廳）略稱：一、憲法第十六條明定人民有訴訟權，檢察官聲請羈押被告程序，雖處於偵查階段，然被告仍得享有程序保障，使其得充分有效行使防禦權。武器平等原則旨在落實被告之防禦權，基此防禦之需求，國家應提供被告得與代表國家之檢察官，立於平等地位進行攻防之制度性程序保障，故聲請羈押被告程序自有武器平等原則之適用。二、閱卷權乃實現被告基本權訴訟權核心，即防禦權之重要內涵，依據我國憲法，應許可被告之辯護人於聲請羈押程序中有檢閱聲請羈押卷宗之權利；縱囿於偵查不公開之考量，有限制上必要，亦不應全面禁止。刑事訴訟法第三十三條第一項限制辯護人於起訴前完全不得行使閱卷權，與此意旨不符；刑事訴訟法第一百零一條第三項規定亦仍不足以落實被告之防禦權等語。

defend, and in accordance with the Constitution, the defendant's counsel should be allowed to access the dossier in the process of detention hearing. The consideration of investigatory secrecy might limit the above right but should not forbid the right completely. Article 33 Paragraph 1 of the Criminal Procedure Code, which completely prevents the counsel from examining the dossier before indictment, does not comply with this principle. Article 101 Paragraph 3 of the Criminal Procedure Code is not enough to realize the accused's right of defense, etc.

The agency concerned, namely, the Ministry of Justice, argued summarily that: 1. The principle of investigatory secrecy serves to implement the presumption of innocence, to guarantee related human rights, and to maintain the efficacy of investigation etc.; putting limitations on the counsel's right to examine the dossier reflects the emergency and secret nature of preventive proceedings at investigatory stage. Allowing counsel to examine the dossier at investigatory stage would not help the investigation and litigation proce-

關係機關法務部略稱：一、偵查不公開原則係為貫徹無罪推定原則、保障相關人之權利、維護偵查效能等；限制偵查中辯護人之閱卷權，乃偵查中保全程序本質之急迫性及隱密性使然，允許辯護人於偵查程序中閱卷，對偵查及訴訟程序並無助益，且有妨害，甚至與羈押之目的相悖。二、於偵查程序中無武器對等原則適用。三、我國刑事訴訟法已充分保障被告於偵查程序中之防禦權，包括刑事訴訟法第二條、第二十七條、第三十四條、第三十四條之一、第九十五條、第九十六條、第一百六十三

dure but rather harm and even contradict the purpose of detention. 2. The principle of equality of arms does not apply at the pretrial investigatory stage. 3. The Criminal Procedure Code of this country already fully protects the accused's right of defense at the investigatory stage, including Articles 2, 27, 34, 34-1, 95, 96, 163, 219-1, Paragraph 4 of Article 228, Paragraph 3 of Article 101, and 245 etc. of the Criminal Procedure Code. Whether Article 33 Paragraph 1 of the Criminal Procedure Code violates the Constitution depends on the overall respective protection of the defendant's right to counsel during investigation; since the Criminal Procedure Code already provides sufficient protection as mentioned above, including appropriate disclosure to the accused, Article 33 Paragraph 1 of the Criminal Procedure Code does not violate the Constitution.

條、第二百十九條之一、第二百二十八條第四項、第一百零一條第三項、第二百四十五條等。刑事訴訟法第三十三條第一項是否違憲，應綜觀被告於偵查中之相關辯護權保障是否完備，刑事訴訟法就此有以上充分保障，已對被告為適度之資訊揭露，是刑事訴訟法第三十三條第一項並未違憲等語。

The Judicial Yuan has in its deliberation taken into account all arguments made by the parties and made this interpretation with the following reasons:

本院斟酌全辯論意旨，作成本解釋，理由如下：

Article 5 Paragraph 1 Subparagraph 2 of the Constitutional Court Procedure Act provides: “The grounds on which the petitions for interpretation of the Constitution may be made are as follows: ...2. When an individual, a legal entity, or a political party, whose constitutional right has been infringed and remedies provided by law for such infringement have been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment.”Its purpose is to allow those persons, whose fundamental right has been harmed, to petition this Court for interpretation of the Constitution. There are two petitioners in the present case: the accused (who should be called a criminal suspect before indictment, but the current Criminal Procedure Code calls the suspect the accused, hereinafter the suspect), and her counsel.As the suspect is not the person who filed an interlocutory appeal of the final ruling, the counsel was appointed by the suspect to help effectively exercise her constitutionally protected right to institute legal proceedings (*see* J.Y. Grand Justice Interpretation No.

司法院大法官審理案件法第五條第一項第二款規定：「有左列情形之一者，得聲請解釋憲法：……二、人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者。」其目的在使基本權受到侵害之人得聲請本院解釋憲法。本件解釋之聲請人有二，即被告（未起訴前應為犯罪嫌疑人，現行刑事訴訟法稱為被告，以下稱犯罪嫌疑人）及其辯護人。犯罪嫌疑人雖非確定終局裁定之抗告人，惟辯護人係犯罪嫌疑人選任以協助其有效行使憲法保障之訴訟權（本院釋字第六五四號解釋參照）；辯護人為確定終局裁定之抗告人，其受犯罪嫌疑人選任，於羈押審查程序檢閱檢察官聲請羈押之卷證，係為協助犯罪嫌疑人行使防禦權，是二聲請人共同聲請釋憲，核與前揭聲請釋憲要件相符。又本件聲請人主張刑事訴訟法第三十三條第一項有牴觸憲法疑義，而未主張同法第一百零一條第三項違憲，且該條項亦未為確定終局裁定所適用。惟人民聲請憲法解釋之制度，除為保障當事人之基本權利外，亦有闡明憲法真義以維護憲政秩序之目的，故其解釋範圍自得及於該具體事件相關聯且必要之

654)；the counsel is the actual person who filed an interlocutory appeal and was appointed by the suspect to help exercise her right to defense by examining the dossier prepared by the prosecutor during the process of detention hearing. These two petitioners jointly filed for interpretation of the Constitution in accordance with the above-mentioned requirements for constitutional interpretation. The petitioners in this case only question whether Article 33 Paragraph 1 of the Criminal Procedure Code violates the Constitution without claiming that Article 101 Paragraph 3 of the Criminal Procedure Code violates the Constitution, since this clause was not applied in the final ruling. This institution, which allows people to petition for constitutional interpretations, not only protects the fundamental rights of the parties but also aims at clarifying the true meaning of the Constitution to maintain the constitutional order. Hence the scope of interpretation may include any statute necessarily related to the specific case and is not limited to articles cited by the petitioner or applied in the final ruling (*see* J.Y. Grand Justice Interpretation No.

法條內容，而不全以聲請意旨所述或確定終局裁判所適用者為限（本院釋字第四四五號解釋參照）。如非將聲請解釋以外之其他規定納入解釋，無法整體評價聲請意旨者，自應認該其他規定為相關聯且必要，而得將其納為解釋客體。本件聲請人雖主張犯罪嫌疑人及其辯護人之閱卷權，然其憲法疑義之本質為犯罪嫌疑人及其辯護人於偵查中之羈押審查程序是否有權以閱卷或其他方式獲知聲請羈押所依據之具體理由、證據資料，以有效行使防禦權，並避免犯罪嫌疑人人身自由遭不法侵害。故本院除審查刑事訴訟法第三十三條第一項規定外，亦應將同法第一百零一條第三項納入審查，始能整體評價犯罪嫌疑人及其辯護人獲知聲請羈押所依據之具體理由、證據資料是否足以使其有效行使防禦權。本件自應將相關聯且必要之同法第一百零一條第三項一併納入解釋範圍。均先予敘明。

445). If it is impossible to review the petition without incorporating uncited statutes into the petition, the uncited statutes should be viewed as necessarily related to the petition, and fall within the scope of interpretation. Although the petitioners in this case asserted the suspect and his or her counsel have the right to examine the dossier, the essence of this constitutional question is whether the suspect as well as his or her counsel are entitled to know the specific reason and evidence for detention to effectively exercise the right of defense and to prevent the illegal invasion of the suspect's personal freedom by way of examining the dossier in the pretrial detention process or other means. As a result, in addition to reviewing Article 33 Paragraph 1 of the Criminal Procedure Code, also Article 101 Paragraph 3 of the same Code shall be included in the review in order to overall assess whether the suspect as well as his or her counsel are entitled to know the specific reason and evidence for detention to effectively exercise the right of defense. It is noted in advance that the necessarily related Article 101 Paragraph 3 of the same code is within the scope of

this Interpretation.

Personal freedom, which is the necessary premise for people to enjoy each and every type of freedom listed in the Constitution, is an important fundamental right, which deserves full protection. It is clear from Article 8 of the Constitution that a deprivation or limitation of personal freedom must meet the requirements of due process of law in addition to complying with the law (*see* J.Y. Grand Justice Interpretation Nos. 384, 436, 567, 588). Besides, Article 16 of the Constitution, providing that people have the right to institute legal proceedings, enshrines the core idea that people whose rights are infringed may seek remedies from the courtin accordance with due process of law, and the state should provide an effective institution to safeguard the right (*see* J.Y. Grand Justice Interpretation No. 574). Detention is a compulsory measure which restricts the personal freedom of the suspect or the accused by holding him or her in custody before the verdict is final. This preventive proceeding ensures the successful implementation of the in-

人身自由乃人民行使其憲法上各項自由權利所不可或缺之前提，為重要之基本人權，應受充分之保障。剝奪或限制人身自由之處置，除須有法律之依據外，更須踐行必要之正當法律程序，始得為之，憲法第八條規定甚明（本院釋字第三八四號、第四三六號、第五六七號、第五八八號解釋參照）。另憲法第十六條所明定人民有訴訟權，係以人民於其權利遭受侵害時，得依正當法律程序請求法院救濟為其核心內容，國家應提供有效之制度性保障，以謀其具體實現（本院釋字第五七四號解釋參照）。羈押係於裁判確定前拘束犯罪嫌疑人或刑事被告身體自由，並將其收押於一定處所之強制處分。此一保全程序乃在確保偵審程序順利進行，以實現國家刑罰權。惟羈押強制處分限制犯罪嫌疑人或刑事被告之人身自由，將使其與家庭、社會及職業生活隔離，非特予其生理、心理上造成嚴重打擊，對其名譽、信用等人格權之影響亦甚重大，故應以無羈押以外其他替代方法為前提，慎重從事（本院釋字第三九二號、第六五三號解釋參照）。偵查階段之羈押審查程序，係由檢察官提出載明羈押理

vestigatory process and that the state can carry out its power to punish. Since detention deprives the suspect or the accused of personal freedom, isolating the suspect or the accused from family, society, and career not only causes serious physical and psychological harm but also greatly affects his reputation, credibility and personality rights, therefore, detention should be ordered cautiously on the premise that no other alternative method is available (*see* J.Y. Grand Justice Interpretation Nos. 392 and 653). The process of detention hearing at investigatory stage begins with a written motion filed by the public prosecutor specifying the reason for detention and respective evidence. The reason and respective evidence in a detention motion are the bases for a judge to decide whether or not to detain, to deprive a criminal suspect of personal freedom. Based on the constitutional principle of due process of law, it is necessary to timely inform the suspect and his counsel in appropriate manners of the reason and evidence for detention so that the right of defense can be exercised effectively. However, in order to ensure that the state's power to

由之聲請書及有關證據，向法院聲請裁准之程序。此種聲請羈押之理由及有關證據，係法官是否裁准羈押，以剝奪犯罪嫌疑人人身自由之依據，基於憲法正當法律程序原則，自應以適當方式及時使犯罪嫌疑人及其辯護人獲知，俾得有效行使防禦權。惟為確保國家刑罰權得以實現，於有事實足認有湮滅、偽造、變造證據或勾串共犯或證人等危害偵查目的或危害他人生命、身體之虞時，自得限制或禁止其獲知聲請羈押之有關證據。

punish can be implemented, when there are facts sufficient to justify an apprehension that the suspect might destroy, forge, or alter evidence, or conspire with a co-offender or witness, etc., which jeopardizes the purpose of investigation or the life or body of others, the law may limit or forbid the suspect to access evidence relating to the motion for detention.

Whether or not the current process of detention hearing at investigatory stage satisfies the previously mentioned requirements of the constitutional principle of due process of law must be decided based on an overall evaluation of related articles in the Criminal Procedure Code, instead of judging a specific article alone. Article 33 Paragraph 1 of the Criminal Procedure Code, provides that: "A defense attorney may examine the case file and exhibits and make copies or photographs thereof."Article 101 Paragraph 3 of the same code provides that: "The accused and his defense attorney shall be informed of the facts based to support the detention of an accused as specified in

現行偵查階段之羈押審查程序是否滿足前揭憲法正當法律程序原則之要求，應綜合觀察刑事訴訟法相關條文而為判斷，不得逕以個別條文為之。刑事訴訟法第三十三條第一項規定：「辯護人於審判中得檢閱卷宗及證物並得抄錄或攝影。」同法第一百零一條第三項規定：「第一項各款所依據之事實，應告知被告及其辯護人，並記載於筆錄。」致偵查中之犯罪嫌疑人及其辯護人得從而獲知者，僅為聲請羈押事由所依據之事實，並未包括檢察官聲請羈押之各項理由之具體內容及有關證據，與上開憲法所定剝奪人身自由應遵循正當法律程序原則之意旨不符。有關機關應於本解釋公布之日起一年內，基於本解釋意旨，修正刑事訴訟法妥為規定。逾期未

section I of this article. The same shall be stated in the record." These provisions, which allow the suspect and his or her counsel at investigatory stage to know only the facts based on which a detention motion was filed, excluding the specific content of the reason and respective evidence of the public prosecutor's detention motion, do not comply with the above-mentioned constitutional principle of due process of law regarding deprivation of personal freedom. The authorities concerned should revise the related articles of the Criminal Procedure Code in accordance with the ruling of this Interpretation within one year from the issuance date of this Interpretation. The court in charge of detention should follow this ruling in the process of detention hearing if the amendment is not timely completed. The method how the suspect and his or her counsel may know the reason and respective evidence based on which the public prosecutor filed the detention motion, either by granting the counsel the right to examine the dossier or by making copies and photographs thereof, or by the judge pointing out, notifying, handing over the related

完成修法，法院之偵查中羈押審查程序，應依本解釋意旨行之。至於使犯罪嫌疑人及其辯護人獲知檢察官據以聲請羈押之理由及有關證據之方式，究採由辯護人檢閱卷證並抄錄或攝影之方式，或採法官提示、告知、交付閱覽相關卷證之方式，或採其他適當方式，要屬立法裁量之範疇。惟無論採取何種方式，均應滿足前揭憲法正當法律程序原則之要求。

dossier to be read, or by other appropriate ways, falls within the legislature's scope of discretion. No matter what method is adopted, the previously mentioned constitutional requirements of due process of law must be satisfied.

The principle of investigatory secrecy of criminal procedure law is an important institution for the state to exercise its power of criminal punishment properly and effectively, as well as for the constitutional rights protection of the suspect and related persons. Giving the suspect and his or her counsel access to necessary information in the process of detention hearing at investigatory stage is part of the due process of law, which is necessary to protect the suspect's constitutional human rights. As regards the scope of access to information granted to the suspect and his or her counsel, the above-mentioned interpretation has referred to exceptional provisions to balance the constitutional rights protection of the suspect and the relators and the correct exercise of the state's power to punish. Under these circumstances, the principle of investigatory

至偵查不公開為刑事訴訟法之原則，係為使國家正確有效行使刑罰權，並保護犯罪嫌疑人及關係人憲法權益之重要制度。然偵查中之羈押審查程序使犯罪嫌疑人及其辯護人獲知必要資訊，屬正當法律程序之內涵，係保護犯罪嫌疑人憲法權益所必要；且就犯罪嫌疑人及其辯護人獲知資訊之範圍，上開解釋意旨亦已設有除外規定，已能兼顧犯罪嫌疑人及關係人憲法權益之保護及刑罰權之正確行使。在此情形下，偵查不公開原則自不應妨礙正當法律程序之實現。至於羈押審查程序應否採武器平等原則，應視其是否採行對審結構而定，現行刑事訴訟法既未採對審結構，即無武器平等原則之適用問題。

secrecy does not impede the implementation of due process of law. Whether the principle of equality of arms applies in the process of detention hearing, depends on whether the adversarial process applies. Since the current criminal procedure law does not adopt the adversarial process, there is no question arising from the principle of equality of arms.

Given that pretrial detention, which deprives people's personal freedom prior to indictment, is the most serious compulsory measure, the best procedural protection should be granted in the detention hearing. It is concurrently noted that the authorities concerned should, when amending the code, simultaneously consider if it necessary to expand the mandatory defense institution to the process of detention hearing at the investigatory stage.

In addition, petitioners' claim that the reasons for detention listed in Article 101 Paragraph 1 and Article 101-1 Paragraph 1 of the Criminal Procedure Code should be interpreted in this Interpreta-

又因偵查中羈押係起訴前拘束人民人身自由最為嚴重之強制處分，自應予最大之程序保障。相關機關於修法時，允宜併予考量是否將強制辯護制度擴及於偵查中羈押審查程序，併此指明。

另聲請人認刑事訴訟法第一百零一條第一項及第一百零一條之一第一項各款所列羈押事由，應為本件聲請解釋範圍等語，惟查上開條文未經確定終局裁定所適用，且與本件解釋亦難謂有重

tion is denied since there is no final ruling applying those articles and there is no material connection with this case. The petitioners' other remedies claiming state compensation or criminal indemnity etc. go beyond the jurisdiction of the Grand Justice Council. Since those claims do not comply with Article 5 Paragraph 1 Subparagraph 2 of the Constitutional Court Procedure Act, they are dismissed according to Paragraph 3 of the same Article.

要關聯，自不得據以聲請解釋。又聲請人請求國家賠償或刑事補償等救濟之諭知部分，則非屬大法官之職權。均與司法院大法官審理案件法第五條第一項第二款不符，依同條第三項應不受理。

Justice Dennis Te-Chung TANG, filed an opinion concurring in part, in which Justice Jiun-Yi LIN, joined.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Shin-Min CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion, in which Justice Horng-Shya HUANG, joined.

Justice Ming-Cheng TSAI filed a concurring opinion, in which Justice Horng-Shya HUANG, joined.

Justice Jiun-Yi LIN filed a concur-

本號解釋湯大法官德宗提出，林大法官俊益加入之部分協同意見書；蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書；陳大法官新民提出之協同意見書；羅大法官昌發提出，黃大法官虹霞加入之協同意見書；蔡大法官明誠提出，黃大法官虹霞加入之協同意見書；林大法官俊益提出之協同意見書；陳大法官碧玉提出之部分協同部分不同意見書；黃大法官虹霞提出之部分協同部分不同意見書；葉大法官百修提出之部分不同部分協同意見書；吳大法官陳鐶提出之部分不同意見書。

ring opinion.

Justice Beyue SU CHEN filed an opinion concurring in part and dissenting in part.

Justice Horng-Shya HUANG filed an opinion concurring in part and dissenting in part.

Justice Pai-Hsiu YEH filed an opinion dissenting in part and concurring in part.

Justice Chun-Sheng CHEN filed an opinion dissenting in part.

Justice Chen-Huan WU filed an opinion dissenting in part.

EDITOR'S NOTE:

Summary of facts: This case arose because petitioner Lai Su-ru and her appointed counsel, Attorney Li Yi-kwang, while requesting to examine the investigatory case files during the process of detention hearing, claimed the Taiwan High Court ruling of No. 102 Jen Kan 616, hereinafter the final ruling, might be unconstitutional for wrongfully applying Article 33 Paragraph 1 of the Criminal Procedure Code and thus requested a constitutional interpretation. The Grand

編者註：

事實摘要：本案係因賴素如及其選任辯護人李宜光律師為聲請閱覽偵查中聲羈卷案件，認臺灣高等法院 102 年度偵抗字第 616 號刑事裁定（下稱確定終局裁定）所適用之刑事訴訟法第 33 條第 1 項規定，有違憲疑義，聲請解釋憲法，經大法官議決應予受理，並依司法院大法官審理案件法第 13 條第 1 項通知聲請人及關係機關包括司法院（刑事廳）及法務部指派代表及代理人，於 105 年 3 月 3 日到場，在憲法法庭行言詞辯論。

Justice Council granted a writ of certiorari for the petition and according to Article 13 Paragraph 1 of the Constitutional Court Procedure Act asked petitioners as well as the concerned authorities including the Judicial Yuan (Criminal Division) along with the Ministry of Justice to appoint representatives and attorneys for an oral hearing at the Constitutional Court on March 3, 2016.

J. Y. Interpretation No.738（June 24, 2016）*

【Limitation of Distance Involving Electronic Gaming Arcades】

ISSUE: 1. Is it constitutional for Point 2, Section 1, Subsection 1 of the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry to stipulate that the operating facilities of electronic gaming arcades shall be in compliance with the Self-governing Ordinance ?

2. Is it constitutional for Article 5, Paragraph 1, Section 2 of the Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance, Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance (now invalid), and Article 4, Paragraph 1 of the Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (continuously in effect as of December 25, 2014 by promulgation) to respectively regulate that an electronic gaming arcade should maintain a distance of 1,000, 990 or 800 meters away from certain locations ?

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* Translated by Andy Y. SUN

** Contents within frame, not part of the original text, are added for reference purposes only.

RELEVANT LAWS:

Articles 15, 23, 108, 110, 111, 118 of the Constitution（憲法第十五條、第二十三條、第一百零八條、第一百十條、第一百十一條、第一百十八條）；Article 9, Paragraph 1 of the Additional Articles of the Constitution（憲法增修條文第九條第一項）；J.Y. Interpretation Nos. 443, 498, 550, 584, 711, 716, and 719（司法院釋字第四四三號、第四九八號、第五五0號、第五八四號、第七一一號、第七一六號、第七一九號解釋）；Article 18, Section 7, Subsection 3, Article 19, Section 7, Subsection 3, Article 25, Article 28, Section 2 of the Local Government Systems Act（地方制度法第十八條第七款第三目、第十九條七款第三目、第二十五條、第二十八條第二款）；Point 2, Section 1, Subsection 1 of the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry（電子遊戲場業申請核發電子遊戲場業營業級別證作業要點第二點第一款第一目）；Article 5, Paragraph 1, Section 2 of the Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance（臺北市電子遊戲場業設置管理自治條例第五條第一項第二款）；Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance (now invalid)（臺北縣電子遊戲場業設置自治條例（已失效）第四條第一項）；Article 4, Paragraph 1 of the Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (continuously in effect as of December 25, 2014 by promul-

gation)（桃園縣電子遊戲場業設置自治條例於中華民國一０三年十二月二十五日公告自同日起繼續適用）第四條第一項）

KEYWORDS:

electronic gaming arcades（電子遊戲場業）, operation facility（營業場所）, limitation on distance（距離限制）, freedom to operate（營業自由）, right to work （工作權）, property right（財產權）, self-governance（地方自治）, principle of constitutional delineation between the central and local authorities（中央與地方權限劃分原則）, principle of statutory reservation（法律保留原則）, principle of proportionality（比例原則）, principle of balance of powers（均權原則）, advisory and management over industry and commerce（工商輔導及管理）**

HOLDING: Point 2, Section 1, Subsection 1 of the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry, which stipulates that the operating facilities of electronic gaming arcades shall be in compliance with the Self-Governing Ordinance, is not in contradiction with the Principle of Statutory Reservation. Arti-

解釋文：電子遊戲場業申請核發電子遊戲場業營業級別證作業要點第二點第一款第一目規定電子遊戲場業之營業場所應符合自治條例之規定，尚無牴觸法律保留原則。臺北市電子遊戲場業設置管理自治條例第五條第一項第二款規定：「電子遊戲場業之營業場所應符合下列規定：……二 限制級：……應距離幼稚園、國民中、小學、高中、職校、醫院、圖書館一千公尺以上。」

cle 5, Paragraph 1, Section 2 of the Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance, "[t]he operating facility of an electronic gaming arcade shall be in compliance with the following stipulations: … 2. Restrictive Level: … shall maintain a distance of no less than 1,000 meters from kindergartens, public elementary and middle schools, high schools, vocational schools, hospitals or libraries"; Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance, "[t]he operation facilities indicated in the previous section (meaning the operating facilities of electronic gaming arcades, including General and Restrictive Categories) shall maintain a distance of no less than 990 meters from public elementary and middle schools, high schools, vocational schools or hospitals" (now invalid); and Article 4, Paragraph 1 of the Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (continuously in effect as of December 25, 2014 by promulgation), "[t]he operation facilities of electronic gaming arcades shall maintain a distance

臺北縣電子遊戲場業設置自治條例第四條第一項規定：「前條營業場所（按指電子遊戲場業營業場所，包括普通級與限制級），應距離國民中、小學、高中、職校、醫院九百九十公尺以上。」（已失效）及桃園縣電子遊戲場業設置自治條例（於中華民國一〇三年十二月二十五日公告自同日起繼續適用）第四條第一項規定：「電子遊戲場業之營業場所，應距離國民中、小學、高中、職校、醫院八百公尺以上。」皆未違反憲法中央與地方權限劃分原則、法律保留原則及比例原則。惟各地方自治團體就電子遊戲場業營業場所距離限制之規定，允宜配合客觀環境及規範效果之變遷，隨時檢討而為合理之調整，以免產生實質阻絕之效果，併此指明。

of no less than 800 meters from public elementary and middle schools, high schools, vocational schools or hospitals", do not violate the Principle of Constitutional Delineation between the Central and Local Authorities, the Principle of Statutory Reservation and the Principle of Proportionality. However, in order not to effectively create the result of substantive prohibitions, it is also pointed out that it would be appropriate that the restrictions on distance concerning electronic gaming arcades among the respective local self-governing bodies be subject to timely reviews and reasonable adjustments as dictated by the change of objective environment and regulatory effects.

REASONING: The people's freedom to operate is the essence of protection over the Right to Work and Property Rights under Article 15 of the Constitution. The people's pursuit of a certain business operation as an occupation, with the selection of an operating facility, is also under the protection of freedom to operate, and may be regulated only when necessary and in the form of

解釋理由書：人民營業之自由為憲法第十五條工作權及財產權所保障之內涵。人民如以從事一定之營業為其職業，關於營業場所之選定亦受營業自由保障，僅得以法律或法律明確授權之命令，為必要之限制，惟若僅屬執行法律之細節性、技術性次要事項，得由主管機關發布命令為必要之規範，而無違於憲法第二十三條法律保留原則之要求，迭經本院解釋在案（本院釋字第

a law (statute) or a regulation clearly authorized by law, except that the governing authority may issue necessary regulations only on secondary matters concerning the implementing or technical details without violating the Principle of Statutory Reservation under Article 23 of the Constitution, as repeatedly interpreted as such by this Yuan (*see* J.Y. Interpretation Nos. 443, 716 and 719). The Constitution provides that this nation adopts local self-governance. The Local Government Systems Act, promulgated in accordance with Article 118 and Article 9, Paragraph 1 of the Additional Articles of the Constitution (a/k/a Amendments of the Constitution), is the basis of local self-governance. Article 25 and Article 28, Section 2 of the Local Government Systems Act provides, among other things, that local governing bodies may enact self-governing regulations and ordinances to stipulate the rights and obligations of residents on matters of self-governance or authorized by law and superior regulations, although their contents may not contradict the regulations on power delineation between central and local authorities, the Principle of Statu-

四四三號、第七一六號及第七一九號解釋參照）。又憲法規定我國實施地方自治。依憲法第一百十八條及憲法增修條文第九條第一項規定制定公布之地方制度法，為實施地方自治之依據。依地方制度法第二十五條及第二十八條第二款規定，地方自治團體得就其自治事項或依法律及上級法規之授權，以自治條例規範居民之權利義務，惟其內容仍不得牴觸憲法有關中央與地方權限劃分之規定、法律保留原則及比例原則。

tory Reservation and the Principle of Proportionality.

Article 11, Paragraph 1, Section 6 of the Electronic Gaming Arcades Management Statute states: "Prior to being operational, an electronic gaming arcade … shall apply to the special municipality or county (city) governing authority for the issuance of the Electronic Gaming Arcade Classification Identification Certificate and the registration of the following … 6. The address and square footage of the operating area." As the central governing authority over electronic gaming arcades (*see* Article 2 of the same Statute), the Ministry of Economic Affairs revised and implemented the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry. Point 2, Section 1, Subsection 1 stipulates: "Operation procedure for electronic gaming arcade application: … the application for Electronic Gaming Arcade Classification Identification Certificate or alteration registration shall meet the following: (1) Operating facility 1. To comply with …

電子遊戲場業管理條例第十一條第一項第六款規定：「電子遊戲場業……，應……向直轄市、縣（市）主管機關申請核發電子遊戲場業營業級別證及辦理下列事項之登記，始得營業：……六、營業場所之地址及面積。」經濟部為電子遊戲場業管理條例之中央主管機關（同條例第二條參照），本於主管機關權責修正發布之電子遊戲場業申請核發電子遊戲場業營業級別證作業要點第二點第一款第一目規定：「申請作業程序：電子遊戲場業……，申請電子遊戲場業營業級別證或變更登記，應符合下列規定：（一）營業場所1.符合……自治條例……規定。」（下稱系爭規定一）僅指明申請核發上開級別證或變更登記應適用之法令，為細節性、技術性之規定，是系爭規定一尚未牴觸法律保留原則。惟各地方自治團體所訂相關自治條例須不牴觸憲法、法律者，始有適用，自屬當然。

the regulations of … Local Government Systems Act." (hereinafter Disputed Provision 1) It only identifies the applicable law and regulation concerning the application and issuance of the above indicated Classification Identification Certificate or alteration registration, and is deemed a detailed, technical regulation, thus does not contradict the Principle of Statutory Reservation. It follows, naturally, that the related self-governing regulations and ordinances promulgated by the respective local governing bodies may be applicable only if they do not contradict the Constitution and the laws.

Chapter 10 of the Constitution enumerates in detail the powers and delineation of the central and local authorities. Article 108, Paragraph 1, Section 3 states: "For the following matters, the Central Government shall have the power of legislation and administration, but the Central Government may delegate the power of administration to the provincial and county governments: … 3. Forestry, industry, mining and commerce." Article 110, Paragraph 1, Section 11 further

憲法於第十章詳列中央與地方之權限；第一百零八條第一項第三款規定：「左列事項，由中央立法並執行之，或交由省縣執行之：……三 森林、工礦及商業。」第一百十條第一項第十一款復規定：「左列事項，由縣立法並執行之：……十一 其他依國家法律及省自治法賦予之事項。」另於第一百十一條明定如有未列舉事項發生時，其事務有全國一致之性質者屬於中央，有一縣性質者則屬於縣之均權原則，藉以貫徹住民自治、因地制宜之垂直分權理念。

states: "For the following matters, the county shall have the power of legislation and administration: … 11. Other matters delegated to the county in accordance with national laws and provincial Self-Governing Regulations." In addition, Article 111 lays out the Principle of Balance of Powers by expressly providing that any non-enumerated matter which should occur having the nature of nationwide uniformity belongs to central [authority], whereas the one with county-wide nature belongs to the county authority, so that the concept of vertical separation of powers such as residential self-governance and localization (or local adaptation). Given the diverse and complex nature of modern national affairs, it is sometimes not easy to have bright line delineations among individual areas, nor is there any lack of incidents where local [authorities] are mandatorily required to collaborate in light of the need for an integral national implementation of policies (*see* J.Y. Interpretation No. 550). In the event vagueness should occur on the specific division concerning either the local administrative authority by the central's legislative au-

由於現代國家事務多元複雜，有時不易就個別領域為明確劃分，亦不乏基於國家整體施政之需要而立法課予地方協力義務之事項（本院釋字第五五０號解釋參照）。若中央就前開列舉事項立法賦予或課予地方執行權責，或地方就相關自治事項自行制定自治法規，其具體分工如有不明時亦均應本於前開均權原則而為判斷，俾使中央與地方自治團體在垂直分權之基礎上，仍得就特定事務相互合作，形成共同協力之關係，以收因地制宜之效，始符憲法設置地方自治制度之本旨（本院釋字第四九八號解釋參照）。準此，中央為管理電子遊戲場業制定電子遊戲場業管理條例，於該條例第十一條賦予地方主管機關核發、撤銷及廢止電子遊戲場業營業級別證及辦理相關事項登記之權，而地方倘於不牴觸中央法規之範圍內，就相關工商輔導及管理之自治事項（地方制度法第十八條第七款第三目、第十九條第七款第三目參照），以自治條例為因地制宜之規範，均為憲法有關中央與地方權限劃分之規範所許。

thorization or mandate, or a self-governing regulation implemented by the local, the above-stated Principle on the Balance of Powers shall be the basis for consideration so that the cooperation on specific matter between the Central and the locals can be forged into a joint-collaboration to reap the benefit of localization and to comply with the purpose of the self-governing system installed by the Constitution (*see* J.Y. Interpretation No.498). As such, it is permitted by the rules concerning the power delineation between the central and local authorities under the Constitution for both the Central to enact the Electronic Gaming Arcades Management Statute, with Article 11 authorizes the local governing authorities the power to review, issue, cancel and repeal the Electronic Gaming Arcade Classification Identification Certificates and related registration matters, and the local authorities' localized self-governing ordinances on the advisory and management matters over industry and commerce (*see* Article 18, Section 7, Subsection 3, Article 19, Section 7, Subsection 3 of the Local Government Systems Act), as long as the local

[rules] do not encroach upon the scope of the central regulations.

In addition to not violating the separation of powers between the central and local [authorities], the principle of Statutory Reservation under Article 23 of the Constitution must also be complied with in the event the self-governing regulations involve the limitation on the fundamental rights of the people. As such, Article 118 of the Constitution delegates the legislators to enact by law on the self-governance of special municipalities; Article 9 of the Additional Articles of the Constitution subsequently provides that the local institutions of the provinces and counties shall be enacted by law as well. Article 25 of the Local Government Systems Act states: "Special municipalities, counties (cities), and townships (villages, cities) may, in accordance with law or upon authorization from higher government levels, formulate self-governing ordinances and regulations." Article 28, Section 2 states: "The following shall be regulated by the self-governing ordinance: 2. Matters that create, deprive, or restrict the rights and

又自治法規除不得違反中央與地方權限劃分外，若涉人民基本權之限制，仍應符合憲法第二十三條之法律保留原則。就此，憲法第一百十八條就直轄市之自治，委由立法者以法律定之；嗣憲法增修條文第九條亦明定省、縣地方制度以法律定之。地方制度法乃以第二十五條規定：「直轄市、縣(市)、鄉(鎮、市)得就其自治事項或依法律及上級法規之授權，制定自治法規。」第二十八條第二款規定：「下列事項以自治條例定之：……二、創設、剝奪或限制地方自治團體居民之權利義務者。」基此，地方自治團體倘就其自治事項或依法律及上級法規之授權，於合理範圍內以自治條例限制居民之基本權，與憲法第二十三條所規定之法律保留原則亦尚無牴觸。

duties of residents of local self-governing bodies." Accordingly, there is no contradiction with the Principle of Statutory Reservation if the limitations by self-governing bodies on the residents' fundamental rights should be within reasonable scope and based on the self-governing matters, the authorization of law or superior regulations.

Article 5, Paragraph 1, Section 2 of the Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance, "[t]he operating facility of an electronic gaming arcade shall be in compliance with the following stipulations: … 2. Restrictive Level: … shall maintain a distance of no less than 1,000 meters from kindergartens, public elementary and middle schools, high schools, vocational schools, hospitals or libraries" (hereinafter Disputed Provision 2); Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance, "[t]he operation facilities indicated in the previous section (meaning the operating facilities of electronic gaming arcades, including General

臺北市電子遊戲場業設置管理自治條例第五條第一項第二款規定：「電子遊戲場業之營業場所應符合下列規定：……二 限制級：……應距離幼稚園、國民中、小學、高中、職校、醫院、圖書館一千公尺以上。」（下稱系爭規定二）臺北縣電子遊戲場業設置自治條例（一〇一年十二月二十五日臺北縣改制為新北市時繼續適用；後因期限屆滿而失效）第四條第一項規定：「前條營業場所（按指電子遊戲場業營業場所，包括普通級與限制級），應距離國民中、小學、高中、職校、醫院九百九十公尺以上。」（下稱系爭規定三）桃園縣電子遊戲場業設置自治條例（一〇三年十二月二十五日公告自同日起繼續適用）第四條第一項規定：「電子遊戲場業之營業場所，應距離國民中、小學、

and Restrictive Categories) shall maintain a distance of no less than 990 meters from public elementary and middle schools, high schools, vocational schools or hospitals" (still in effective on December 25, 2012 when Taipei County was transformed into New Taipei City; later becomes invalid by expiration, hereinafter Disputed Provision 3); and Article 4, Paragraph 1 of the Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (continuously in effect as of December 25, 2014 by promulgation, hereinafter Disputed Provision 4), "[t]he operation facilities of electronic gaming arcades shall maintain a distance of no less than 800 meters from public elementary and middle schools, high schools, vocational schools or hospitals;" all involve the area of facilities for the operation of electronic gaming arcades, and are advisory and management matters over industry and commerce, as well as fall within the scope of self-governing by special municipalities or counties (cities) and may be subject to localized ordinances not otherwise contradictory to laws and regulations at the central level. Article

高中、職校、醫院八百公尺以上。」（下稱系爭規定四）均涉及電子遊戲場業營業場所之規範，屬工商輔導及管理之事項，係直轄市、縣（市）之自治範圍，自非不得於不牴觸中央法規之範圍內，以自治條例為因地制宜之規範。前揭電子遊戲場業管理條例第九條第一項有關電子遊戲場業營業場所應距離國民中、小學、高中、職校、醫院五十公尺以上之規定，即可認係法律為保留地方因地制宜空間所設之最低標準，並未禁止直轄市、縣（市）以自治條例為應保持更長距離之規範。故系爭規定二、三、四所為電子遊戲場業營業場所應距離國民中、小學、高中、職校、醫院一千公尺、九百九十公尺、八百公尺以上等較嚴格之規定，尚難謂與中央與地方權限劃分原則有違，其對人民營業自由增加之限制，亦未逾越地方制度法概括授權之範圍，從而未牴觸法律保留原則。至系爭規定二另就幼稚園、圖書館，亦規定應保持一千公尺距離部分，原亦屬地方自治團體自治事項之立法權範圍，亦難謂與中央與地方權限劃分原則及法律保留原則有違。

9, Paragraph 1 of the above-indicated Electronic Gaming Arcades Management Statute concerning the regulation that the operating facilities of electronic gaming arcades shall maintain at least a 50 meters distance from public elementary and middle schools, high schools, vocational schools, or hospitals can be deemed to be the minimum standard established under the law to preserve room for localized rules, and does not prohibit specialized municipalities, counties (cities) from mandating [the facilities] to maintain a longer distance. Thus the stricter regulations under the Disputed Provisions 2, 3 and 4 for the distance of 1,000, 990, and 800 meters away from public elementary and middle schools, high schools, vocational schools, or hospitals can hardly be said to have violated the Principle of Constitutional Delineation between the Central and Local Authorities, and the added limitations on the people's freedom to operate have not exceeded the scope of general authorization under the Local Government Systems Act, and, therefore, does not contradict the Principle of Statutory Reservation. As far as the 1,000 meter

distance requirement from kindergartens and libraries is concerned, it is also within the scope of legislative authority under the self-governing matters for local self-governing bodies, and can hardly be said to have violated the Principle of Constitutional Delineation between the Central and Local Authorities.

Since the operation of electronic gaming arcades can create detrimental effects to the peace and quietness, decent morality, public safety and national health of the society, the legislators enacted the Electronic Gaming Arcades Management Statute to serve as the basis for their management (*see* Article 1 of the Electronic Gaming Arcades Management Statute). That Article 9, Paragraph 1 stipulates electronic gaming arcades should keep a distance of at least 50 meters away from public elementary and middle schools, high schools, vocational schools, or hospitals is one of the means to achieve that legislative purpose. The Disputed Provision 2 extends the distance limitation of electronic gaming arcades to 1,000 meters and to include kindergartens and libraries,

因電子遊戲場業之經營，對社會安寧、善良風俗、公共安全及國民身心健康足以產生不利之影響，立法者乃制定電子遊戲場業管理條例以為管理之依據（電子遊戲場業管理條例第一條參照）。該條例第九條第一項規定，電子遊戲場業營業場所應距離國民中、小學、高中、職校、醫院五十公尺以上，為達成上開立法目的之一種手段。系爭規定二將限制級電子遊戲場業營業場所應保持之距離延長為一千公尺，且含幼稚園、圖書館為電子遊戲場業營業場所應與其保持距離之場所；系爭規定三、四則分別將應保持之距離延長為九百九十公尺、八百公尺以上。究其性質，實為對從事工作地點之執行職業自由所為限制，故除其限制產生實質阻絕之結果而涉及職業選擇自由之限制應受較嚴格之審查外，立法者如為追求一般

whereas the Disputed Provision 3 and 4 extends the distance to be maintained to at least 990 and 800 meters, respectively. Since by nature it is a limitation on the work location related to the freedom to choose an occupation, unless its result effectively denies such freedom, in which case is subject to a more stringent review, there is no violation of the Principle of Proportionality as long as the legislators [only] pursue a general public interest, the limitations serve to assist the achieving of the purpose, and there are no other alternatives to accomplish the same purpose with less detrimental means available, provided that it is proportional between the critical nature of the public interests to be maintained and the degree of damages to the public interest from the restricted act (*see* J.Y. Interpretation Nos. 584, 711). The Disputed Provisions 2, 3, and 4 have a proper legislative purpose to achieve peace and quietness, decent morality, public safety as well as national mental and physical health of the society, among other things, and the means adopted to maintain distance between electronic gaming arcades and certain specific locations can-

公共利益，且該限制有助於目的之達成，又別無其他相同有效達成目的而侵害較小之手段可資運用，而與其所欲維護公益之重要性及所限制行為對公益危害之程度亦合乎比例之關係時，即無違於比例原則（本院釋字第五八四號、第七一一號解釋參照）。系爭規定二、三、四所欲達成維護社會安寧、善良風俗、公共安全及國民身心健康等公益之立法目的洵屬正當，所採取電子遊戲場業營業場所應與特定場所保持規定距離之手段，不能謂與該目的之達成無關聯。且各直轄市、縣（市）就其工商輔導及管理之地方自治事項，基於因地制宜之政策考量，對電子遊戲場業營業場所設定較長之距離規定，可無須對接近特定場所周邊之電子遊戲場業，耗用鉅大之人力、物力實施嚴密管理及違規取締，即可有效達成維護公益之立法目的，係屬必要之手段。至該限制與所追求之公共利益間尚屬相當，亦無可疑。尚難謂已違反比例原則而侵害人民之營業自由。惟有鑑於電子遊戲場業之設置，有限制級及普通級之分，對社會安寧、善良風俗、公共安全及國民身心健康所可能構成妨害之原因多端，各項原因在同一直轄市、縣（市）之各區域，所能產生影響之程度亦可能不同。加之各直轄市、

not be viewed as irrelevant to the achieving of the that purpose. Furthermore, it is a necessary measure for the respective special municipalities, counties (cities), based upon the advisory and management [authority] over local industry and commerce self-governing matters, and in light of localized policy considerations to establish a longer distance regulation, so that the legislative purpose of maintaining public interest can be effectively accomplished without the need to devote large amount of manpower and physical resources for intensive control and cracking down on violations against those electronic gaming arcades located near certain locations. There is also no doubt about the comparability between the limitations in question and the public interests they intend to pursue, and can hardly be said to have violated the Principle of Proportionality, thus violated the people's freedom to operate. Given that there is a distinction between Restrictive Level and General Level on the installation of an electronic gaming arcade, that there can be a variety of causes to the detriment of peace and quietness, decent morality, pub-

縣（市）之人口密度、社區分布差異甚大，且常處於變動中。各地方自治團體有關距離限制之規定，如超出法定最低限制較多時，非無可能產生實質阻絕之效果，而須受較嚴格之比例原則之審查。相關地方自治團體允宜配合客觀環境及規範效果之變遷，隨時檢討而為合理之調整，併此指明。

lic safety as well as the national mental and physical health, and that the degree of impact may also be different from those causes even at individual areas within the same special municipality or county (city), provided that there is a significant difference on the population density and community distribution among each special municipality or county (city), and that it is constantly changing, if the restriction on distance by each self-governing body should have exceeded the minimum legal standard to a much higher [level], it is not impossible that an effective denial has been created and should subject to a more stringent review under the Principle of Proportionality. It is also pointed out that it would be appropriate for the related self-governing bodies to make random reviews and reasonable adjustments in accommodation with the change of the objective environment and the scope of effectiveness.

Separately, on the part of one of the Petitioners' claim that the opinions of Taipei High Administrative Court Judgment (102) Su Tze No. 56 and the judgment of

另聲請人之一認臺北高等行政法院一０二年度訴字第五六號及最高行政法院一０二年度判字第七四０號判決，適用中央法規標準法第十八條但書

Supreme Administrative Court (102) Pan Tzu No. 740, which applied the proviso of Article 18 of the Central Standard Regulation Act (Standard Act for the Law and Rules), are different from the opinions of Taichung High Administrative Court (92) Su Tzu No. 877 and the judgment of the Supreme Administrative Court (94) Pan Tzu No. 1005, and requested for a uniformity interpretation, since they do not concern the difference of opinions on the application of the same law or regulation by different adjudication bodies (such as the Supreme Court and the Supreme Administrative Court) in their final judgments, it is not in compliance with Article 7, Paragraph 1, Section 2 of the Constitutional Court Procedure Act and shall be dismissed in accordance with Paragraph 3 of the same provision. So ordered.

所表示之見解，與臺中高等行政法院九十二年度訴字第八七七號及最高行政法院九十四年度判字第一００五號判決所表示之見解有異，聲請統一解釋部分，並非指摘不同審判機關（如最高法院與最高行政法院）之確定終局裁判就適用同一法律或命令所表示見解有異。是此部分聲請，核與司法院大法官審理案件法第七條第一項第二款規定不符，依同條第三項規定，應不受理，併此指明。

Justice Yeong-Chin SU, filed a concurring opinion, in which Justice Chun-Sheng CHEN, joined.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

本號解釋蘇大法官永欽提出，陳大法官春生加入之協同意見書；黃大法官茂榮提出之協同意見書；林大法官俊益提出之協同意見書；葉大法官百修提出之部分不同意見書；羅大法官昌發提出之部分不同意見書；蔡大法官明誠提出，黃大法官虹霞加入之部分不同意見

Justice Pai-Hsiu YEH filed an opinion dissenting in part.

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Ming-Cheng TSAI, filed a dissenting opinion in part, in which Justice Horng-Shya HUANG, joined.

Justice Shin-Min CHEN filed a dissenting opinion.

Justice Dennis Te-Chung TANG, filed a dissenting opinion, in which Justice Horng-Shya HUANG, joined.

Justice Horng-Shya HUANG filed a dissenting opinion.

書；陳大法官新民提出之不同意見書；湯大法官德宗提出，黃大法官虹霞加入之不同意見書；黃大法官虹霞提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: Petitioner Chen __[1] is the [proprietor of] Gin __ Electronic Gaming Arcade, previously approved by the Taipei County Government (now the New Taipei City, same *infra*) to operate the Gin__ Electronic Gaming Arcade

編者註：

事實摘要：聲請人陳OO即金O電子遊戲場業，前經臺北縣政府（現改制為新北市政府，下同）核准於臺北縣三重市（即新北市三重區）經營金O電子遊戲場業（限制級），並領有電子遊戲場業營業級別證。聲請人嗣

[1] Redaction from the original document. It is now the practice to deliberately delete certain part of a party's name for the protection of personal information under the Personal Information Protection Act.

(Restrictive Level) in Sanchong City, Taipei County (now Sanchong District, New Taipei City), and has received the Electronic Gaming Arcade Categorization Identification Certificate. Petitioner later filed a request to the Taipei County Government to alter the area of the Certificate but was denied because the Government considered the area intended to be enlarged within 990 meters of a school, thereby violating Article 4 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance. The Petitioner appealed in sequence and was denied by the Taipei Administrative High Court (99) Su Tzu No. 2377 judgment and the Supreme Administrative Court (100) Tsai Tzu No. 1601 judgment. Petitioner requested the Grand Justices' interpretation on the constitutional question of Article 4, Paragraph 1 of the Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance and Point 2, Section 1, Subsection 1 of the Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry, as applied by the final judgment. This

向臺北縣政府申請變更電子遊戲場業營業級別證之營業場所面積。該府認擬變更作為電子遊戲場業營業場所之部分，因周遭九百九十公尺範圍內有學校，違反臺北縣電子遊戲場業設置自治條例第四條而否准所請。聲請人不服，循序提起救濟，經臺北高等行政法院九十九年度訴字第二三七七號判決及最高行政法院一００年度裁字第一六０一號裁定駁回。聲請人認確定終局判決所適用之臺北縣電子遊戲場業設置自治條例第四條第一項、電子遊戲場業申請核發電子遊戲場業營業級別證作業要點第二點第一款第一目規定有違憲疑義，爰聲請大法官解釋。本解釋案經大法官併案審理之其他聲請人尚有吳 OO 即凱 OO 電子遊戲場業等七人。

Petition is enjoined by the Grand Justices with seven other individuals on a separate petition involving Wu __, also [the proprietor of] Kai __ Electronic Gaming Arcade.

J. Y. Interpretation No.739（July 29, 2016）*

【Review Involving Self-implemented Urban Land Consolidation】

ISSUE: Is therequirement set forth in Article 8, Paragraph1 of the Regulation for Encouraging Landowners to Handle Urban Land Consolidation (hereinafter "the Encouraging Consolidation Regulation") to apply for the approval of organizing a preparatory committee by the initiators constitutional? Are the provisions set forth in Article 9, Subparagraph 3 and Article 20, Paragraph 1 of the Regulation which mandate that the preparatory committee shall apply for the approval of the proposed consolidation range, Article 9, Subparagraph 6 and Article 26, Paragraph 1 of the same Regulation which mandate that the preparatory committee shall apply for the approval of the consolidation project, publicly announce, and notify to the landowners constitutional? Are the procedures under the same Regulation regarding that the competent authorities approve the proposed consolidation rangeand grant a permission to implement the consolidation project constitutional? Is the ratio for reaching an agreement set forth in Article 58, Paragraph 3 of the Equalization of Land Rights Act constitutional ?

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* Translated by Ching P SHIH

** Contents within frame, not part of the original text, are added for reference purposes only.

RELEVANT LAWS:

Articles 7,10, 15 and 23 of the Constitution（憲法第七條、第十條、第十五條、第二十三條）；J.Y. Interpretation Nos. 400, 443, 488, 689 and 709（司法院釋字第四００號、第四四三號、第四八八號、第六八九號、第七0九號解釋）；Article 56, Paragraph 1 and Articles 57 to 60-1 of the Equalization of Land Rights Act（平均地權條例第五十六條第一項、第五十七條至第六十條之一）；Article 2, 4, Article 8, Paragraph 1, Article 9, Subparagraphs 3 and 6, Article 20, 26, Paragraph 1, Article 37, 38 of the Encouraging Consolidation Regulation（獎勵重劃辦法第二條、第四條、第八條第一項、第九條第三款及第六款、第二十條、第二十六條第一項、第三十七條、第三十八條）； Article 22, Paragraph 1 of the Urban Renewal Act（都市更新條例第二十二條第一項）； Article 24 of the Urban Planning Law（都市計畫法第二十四條）；Articles 11 to 13 of the Regulation Governing the Implementation of Urban Land Consolidation（市地重劃實施辦法第十一條至第十三條）

KEYWORDS:

self-implemented urban land consolidation（自辦市地重劃）, significant relevance（重要關聯性）, property right（財產權）, freedom of residence （居住自由）, inhabitable living environment（適足居住環境）, principle of due process of law （正當法律程序原則）, due process of law in the administrative procedure（正當行政程序）, preparatory committee（籌備會）, consoli-

dation committee（重劃會）, consolidation range（重劃範圍）, consolidation project （重劃計畫）, principle of legal reservation（法律保留原則）, hearings（聽證）, principle of proportionality（比例原則）, principle of equality（平等原則）, ratio for reaching an agreement（同意比率）, legislative formation（立法形成）**

HOLDING: The requirement of Article 8, Paragraph1 of the Regulation for Encouraging Landowners to Handle Urban Land Consolidation to apply for the approval of organizing a preparatory committee by the initiators does not include the provision stating the mandated ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range; further the provision that initiators shall be seven or more landowners does not mandate the ratio between the number and the total amount of all landowners within the proposed consolidation range, thus are inconsistent with the due process of law in the

解釋文：獎勵土地所有權人辦理市地重劃辦法第八條第一項發起人申請核定成立籌備會之要件，未就發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積比率為規定；於以土地所有權人七人以上為發起人時，復未就該人數與所有擬辦重劃範圍內土地所有權人總數之比率為規定，與憲法要求之正當行政程序不符。同辦法第九條第三款、第二十條第一項規定由籌備會申請核定擬辦重劃範圍，以及同辦法第九條第六款、第二十六條第一項規定由籌備會為重劃計畫書之申請核定及公告，並通知土地所有權人等，均屬重劃會之職權，卻交由籌備會為之，與平均地權條例第五十八條第一項規定意旨不符，且超出同條第二項規定之授權目的與範圍，違反法律保留原

administrative procedure required under the Constitution. Article 9, Subparagraph 3 and Article 20, Paragraph 1 of the same Regulation provide that the preparatory committee shall apply for the approval of the proposed consolidation range; Article 9, Subparagraph 6 and Article 26, Paragraph 1of the same Regulation provide that the preparatory committee shall apply for the approval of the consolidation project, publicly announce, and notify to the landowners, etc., those should have been under the authority of the consolidation committee but being handed over the preparatory committee, thus inconsistent with the meaning and purpose of Article 58, Paragraph 1 of the Equalization of Land Rights Act, and exceed the purpose and scope of authorization set forth by Paragraph 2 of the same Article, violate the principle of legal reservation.The procedures provided by the Regulation regarding for the competent authorities to approve the proposed consolidation range do not require the competent authorities to set up appropriate organizations to review, offer the interested parties opportunities to be heard, and respectively execute

則。同辦法關於主管機關核定擬辦重劃範圍之程序，未要求主管機關應設置適當組織為審議、於核定前予利害關係人陳述意見之機會，以及分別送達核定處分於重劃範圍內申請人以外之其他土地所有權人；同辦法關於主管機關核准實施重劃計畫之程序，未要求主管機關應設置適當組織為審議、將重劃計畫相關資訊分別送達重劃範圍內申請人以外之其他土地所有權人，及以公開方式舉辦聽證，使利害關係人得到場以言詞為意見之陳述及論辯後，斟酌全部聽證紀錄，說明採納及不採納之理由作成核定，連同已核准之市地重劃計畫，分別送達重劃範圍內各土地所有權人及他項權利人等，均不符憲法要求之正當行政程序。上開規定，均有違憲法保障人民財產權與居住自由之意旨。相關機關應依本解釋意旨就上開違憲部分，於本解釋公布之日起一年內檢討修正，逾期未完成者，該部分規定失其效力。

the service of the approved dispositions to the lando wnerswithin the consolidation range other than the applicants; the procedures regarding for the competent authorities to grant permissions to implement the consolidation project do not require the competent authorities to set up appropriate organizations to review, respectively execute the service of the consolidation project related information to the landowners within the consolidation range other than the applicants, conduct hearings by public manner, so that the interested parties may appear to vocally express and deliberate opinions, consider all hearing records, explicate the reasons for adoption or not adoption and thereafter make the approval, together with the approved urban land consolidation project, respectively execute the service to every landowners and other stake-holders within the consolidation range, etc.,those are inconsistent with the due process of law in the administrative procedure required under the Constitution. All provisions mentioned above violate the meanings and purposes of the right of property and the freedom of residence of the people

protected under the Constitution. The relevant authorities shall, in accordance with the meaning and intention of this Interpretation, with regard to the parts that violate the Constitution mentioned above, consider amending within one year from the date this Interpretation is issued. The said unconstitutional parts of the provisions shall become null and void if they have not been amended within one year from the issuance of this Interpretation.

The provision set forth inArticle 58, Paragraph 3 of the Equalization of Land Rights Act can hardly be deemed to have violated the principle of proportionality or the principle of equality.

REASONING: One of the petitioners, in accordance with the provisions set forth in Article 5, Paragraph 1, Subparagraph 2 of the Judicial Yuan Grand Justice Hear Petition Act, with regard to Article 58, Paragraph 3 of the Equalization of Land Rights Act and Article 8, Paragraph 1 and Article 20 of the Regulation for Encouraging Landowners to Handle Urban Land Consolida-

平均地權條例第五十八條第三項規定，尚難遽謂違反比例原則、平等原則。

解釋理由書：本件聲請人之一依司法院大法官審理案件法第五條第一項第二款規定，就最高行政法院一００年度判字第一七九０號判決（下稱確定終局判決）所適用之平均地權條例第五十八條第三項、獎勵土地所有權人辦理市地重劃辦法（下稱獎勵重劃辦法）第八條第一項、第二十條規定，聲請解釋。另一聲請人臺灣桃園地方法院民事庭，依本院釋字第三七一號、第五七二

tion (hereinafter "the Encouraging Consolidation Regulation") applied in the Supreme Administrative Court 100 Pan 1979 (2011) Judgment (hereinafter "the final judgment"), filed a petition for interpretation. Another petitioner the Civil Division of the Taiwan Taoyuan District Court, in accordance with J.Y. Interpretation Nos. 371, 572, and 590, also with regard to Article 58, Paragraph 3 of the Equalization of Land Rights Act, filed a petition for interpretation.All of the provisions mentioned above are the objects of interpretation. Furthermore, neither Article 26, Paragraph 1 of the Encouraging Consolidation Regulation as applied in the final judgment has been petitioned for interpretation by the petitioners, nor Article 9, Subparagraphs 3 and 6 as not applied in the final judgment have been petitioned for interpretation by the parties. However, Article 26, Paragraph 1of the above Regulation regarding for the preparatory committee to apply for a permission granted by the competent authorities to implement the urban land consolidation is, indeed, the subsequent phase following Article 20 of the same Regulation, one of

號、第五九０號解釋，亦就平均地權條例第五十八條第三項，聲請解釋。上開規定均為解釋之客體。又獎勵重劃辦法第二十六條第一項規定，為確定終局判決所適用，但未經聲請人聲請解釋；同辦法第九條第三款、第六款規定，未為確定終局判決所適用，亦未經當事人聲請解釋。惟查上開辦法第二十六條第一項籌備會申請主管機關核准實施市地重劃規定，核為解釋客體之同辦法第二十條籌備會申請主管機關核定擬辦重劃範圍規定之後續階段，同辦法第九條第三款籌備會申請核定擬辦重劃範圍，暨第六款籌備會為重劃計畫書之申請核定及公告，並通知土地所有權人規定，則為其前提問題，均與同辦法第二十條規定具有重要關聯性，應一併納入審查範圍（本院釋字第七０九號解釋參照），合先敘明。

the objects of interpretation, regarding for the preparatory committee to apply for the approval of the proposed consolidation project; the provisions set forth in Article 9, Subparagraph 3 of the same Regulation regarding for the preparatory committee to apply for the approval of the proposed consolidation range, and Subparagraph 6 of the same Article regarding for the preparatory committee to apply for the approval of the consolidation project and publicly announce, and notify to the landowners are the antecedent questions for that object of interpretation, are of significant relevance to Article 20 of the same Regulation, therefore, should be included in the scope of review (*see* J.Y. Interpretation No. 709), so described first.

Article 15 of the Constitution provides that the property right of the people shall be guaranteed to ensure that an individual may exercise his or her right and capability to freely use, profit, and dispose based on the ongoing state of the property, and prevent any harm from the public powers or third parties, so as to realize the individual freedom, develop the personal

憲法第十五條規定人民財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴（本院釋字第四００號解釋參照）。又憲法第十條規定人民有居住之自由，旨在保障人民有選擇其居住處所，營私人生活不受干預之自由（本院

character, and uphold the dignity. (*see* J.Y. Interpretation No. 400) Article 10 of the Constitution provides that the people shall have the freedom of residence, aiming at ensuring that the people shall have the freedom to choose their residential dwelling, making their privacy livings without any interference. (*see* J.Y. Interpretation No. 443) To advance the public interest, the State, of course, may restrict the property right or the freedom of residence of the people by laws or regulations expressly authorized by laws. However, those regulations made under the authorization of the laws may not still contradict the intent, content, and scope of the authorization, so as to comply with the principle of legal reservation prescribed under Article 23 of the Constitution. Further, the implication of the principle of due process of law prescribed in the Constitution, taking into compound considerations of factors as the kinds of fundamental rights involved, the strength and scope of restrictions, the public interests pursued, the appropriateness of functions of the decision-making authority, exist or lack of the availability of alternative proce-

釋字第四四三號解釋參照）。國家為增進公共利益，固得以法律或法律明確授權之法規命令對於人民之財產權或居住自由予以限制，惟依法律授權訂定之法規命令，仍不得牴觸其授權之目的、內容及範圍，方符憲法第二十三條法律保留原則。又憲法上正當法律程序原則之內涵，應視所涉基本權之種類、限制之強度及範圍、所欲追求之公共利益、決定機關之功能合適性、有無替代程序或各項可能程序之成本等因素綜合考量，由立法者制定相應之法定程序（本院釋字第六八九號、第七０九號解釋參照）。

dures, or the cost of a variety of possible procedures,etc., the legislators shall enact the corresponding legal procedures. (*see* J.Y. Interpretation Nos. 689, 709)

A self-implemented urban land consolidation case is initiated by the preparatory committee which is organized under the approval of the competent authorities applied by some landowners, the initiation would force the landowners within the consolidation range (Named by Articles 56 to 60-1 of the Equalization of Land Rights Act as consolidation area, consolidation district, and by the Encouraging Consolidation Regulation as consolidation area, consolidation range, consolidation area range, etc.) to participate in the self-implemented urban consolidation process,encountering the dangers that the right of property and the freedom of residence of the people have been restricted. In addition, after the approval of the self-implemented urban land consolidation range, for the reason that the competent authorities may publicly announce to prohibit or restrict the transfer of the land and the new building of

自辦市地重劃個案係由部分土地所有權人申請主管機關核定成立之籌備會發動，此發動將使重劃範圍（平均地權條例第五十六條至第六十條之一所稱重劃區、重劃地區，及獎勵重劃辦法所稱重劃區、重劃範圍、重劃區範圍等語，本解釋概稱重劃範圍）內之土地所有權人，被迫參與自辦市地重劃程序，面臨人民財產權與居住自由被限制之危險。又土地所有權人於自辦市地重劃範圍經核定後，因主管機關得公告禁止或限制重劃範圍內土地之移轉及建築改良物之新建等，對其土地及建築改良物之使用、收益、處分權能已造成一定之限制；於執行重劃計畫時，亦應依主管機關核定之重劃計畫內容，負擔公共設施用地、工程費用、重劃費用、貸款利息，並僅於扣除重劃負擔後之其餘土地達最小分配面積標準時才可受土地分配（平均地權條例第五十九條、第六十條、第六十條之一、獎勵重劃辦法第二條、市地重劃實施辦法第十一條至第十三條規定參照），而受有財產權及居住自由之

the construction improvement within the consolidation range,the landowners will result in certain restriction in terms of the rights and capacities of the usage, profit, disposition of their lands and construction improvements; while implementing the consolidation project, they shall also, in accordance with the contents of the consolidation project approved by the competent authorities, undertake the land for the need of public facilities, the expenses of the construction, the fees of the consolidation, and the interest on the loan, and may enjoy the allocation of the land only when the remaining land, after subtracting the burden for consolidation, is up to the criteria for minimum allocation area (Articles 59, 60, and 60-1of the Equalization of Land Rights Act, Article 2 of the Encouraging Consolidation Regulation, Articles 11 to 13 of the Regulation Governing the Implementation of Urban Land Consolidation), and be subject to the restriction of the right of property and the freedom of residence. The requirements of the application to the competent authorities for the approval of organizing a preparatory committee, the procedures

限制。申請主管機關核定成立籌備會之要件、主管機關核定擬辦重劃範圍及核准實施重劃計畫應遵行之程序，暨申請核准實施重劃計畫合法要件之同意比率規定，均為整體行政程序之一環，須符合憲法要求之正當行政程序，以衡平國家、同意參與重劃者與不同意參與重劃者之權益，始為憲法之所許（本院釋字第四八八號、第七０九號解釋參照）。

with which the competent authorities shall comply when they approve proposed consolidation ranges and grant permissions to implement consolidation projects, and the provisions of ratio for reaching an agreement which are the legitimate requirements for the application for the approval of implementing consolidation projects, are part of the totality of administrative procedures, shall be in compliance with the due process of law in the administrative procedure prescribed under the Constitution, so as to balance the rights and interests among the state, those who agree to participate in the consolidation, and those who disagree to participate in the consolidation, and thus, be permitted by the Constitution. (*see* J.Y. Interpretation Nos. 488, 709)

Article 8, Paragraph 1 of the Encouraging Consolidation Regulation stipulates that: ”A self-implemented urban land consolidation shall be initiated by more than half of the landowners or seven or more persons to organize the preparatory committee, and the initiators shall attach the range plots and copies of own-

獎勵重劃辦法第八條第一項規定：「自辦市地重劃應由土地所有權人過半數或七人以上發起成立籌備會，並由發起人檢附範圍圖及發起人所有區內土地所有權狀影本，向直轄市或縣（市）主管機關申請核定……。」如土地所有權人未達十二人時，僅須過半數土地所有權人，即可申請核定成立籌備會，不問

ership certificates of the lands owned by them, to the competent authorities of the municipal or county (city) governments to apply for the approval..."Where there are less than 12 landowners, only more than half of the landowners are needed to apply for the approval of organizing the preparatory committee, regardless of the ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range; where there are 12 or more landowners, only seven of them are needed to apply for the approval of organizing the preparatory committee, regardless of the ratio between the numbers of the initiators and the total amount of the landowners within the proposed consolidation range, or the ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range.As this could have forced most of the landowners or other landowners who own more areas of landsto encounter the dangers that the right of property and the

發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積比率為何；土地所有權人十二人以上時，僅須七人即可申請核定成立籌備會，不問發起人人數所占擬辦重劃範圍內土地所有權人總數之比率為何，亦不問發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積之比率為何，皆可能迫使多數土地所有權人或擁有更多面積之其他土地所有權人，面臨財產權與居住自由被侵害之危險，難謂實質正當，不符憲法要求之正當行政程序，有違憲法保障人民財產權與居住自由之意旨。

freedom of residence have been impaired, can hardly be deemed to be substantial due, do not comply with the due process of law in the administrative procedure required under the Constitution,and violate the meanings and intentions of the right of property and the freedom of residence protected under the Constitution.

Article 58, Paragraph 1 of the Equalization of Land rights Act provides that: “In order to promote land use and accelerate the urban land consolidation, the competent authorities may encourage the landowners to organize a consolidation committee by themselves to handle the urban land consolidation...” Therefore the matter of urban land consolidation shall be managed by the consolidation committee. Paragraph 2 of the same Article provides that: “The regulations governing matters as the organization of the consolidation committee, office authorities, consolidation businesses, encouragement measures, etc., shall be formulated by the competent authorities of the central government.” Although the regulation promulgated based on this authorization may include

平均地權條例第五十八條第一項規定：「為促進土地利用，擴大辦理市地重劃，得獎勵土地所有權人自行組織重劃會辦理之。……」是自辦市地重劃事項應由重劃會辦理。同條第二項規定：「前項重劃會組織、職權、重劃業務、獎勵措施等事項之辦法，由中央主管機關定之。」據此授權訂定之辦法雖非不得就籌備會之設立及組成併為規定，但籌備會之功能應限於處理籌組重劃會之過渡任務，而不包括應由重劃會行使之職權，始無違於法律保留原則。獎勵重劃辦法第九條第三款、第六款規定：「籌備會之任務如下：……三、申請核定擬辦重劃範圍。……六、重劃計畫書之……申請核定及公告，並通知土地所有權人。」第二十條第一項規定：「籌備會成立後，應備具申請書並檢附下列圖冊向直轄市或縣（市）主管機關

the provisions on the mattes of the organization and composition of the preparatory committee, the function of the committee shall be limited to the transitional missionto organize the consolidation committee, and shall not include those authorities fulfilled by the consolidation committee, so as not to violate the principle of legal reservation. Article 9, Subparagraphs 3 and 6 of the Encouraging Consolidation Regulation stipulate that: “Missions of the preparatory committee shall be as follows:…3. Application for the approval of the proposed consolidation range...6. For consolidation project …apply for the approval, publicly announce, and notify to the landowners.”Article 20, Paragraph 1 provides:”Having organized the preparatory committee, it shall submit an application and attach plots and volumes listed below to the competent authorities of the municipal or county (city) governments to apply for the consolidation range...”So does Article 26, Paragraph 1 states: “The preparatory committee shall submit and attach books, figures, plots, and volumes listed below to the competent authorities of the municipal or county (city) gov-

申請核定擬辦重劃範圍：……。」以及第二十六條第一項規定：「籌備會應檢附下列書、表、圖冊，向該管直轄市或縣（市）主管機關申請核准實施市地重劃：……。」均屬重劃會之職權，非屬籌組重劃會之過渡任務，卻交由籌備會為之，除與平均地權條例第五十八條第一項規定意旨不符外，且超出同條第二項規定之授權目的與範圍，違反法律保留原則。

ernments to apply for a permission to implement the urban land consolidation: …"Those are authorities of the consolidation committee, not the kind of transitional mission to organize the consolidation committee, but conferred on the preparatory committee to be fulfilled. This is not only incompliance with the meaning and purpose of Article 58, Paragraph 1 of the Equalization of Land Rights Act, but also beyond the purpose and scope of the authorization prescribed under Paragraph 2 of the same Article, thus contrary to the principle of legal reservation.

The administrative activities of the competent authorities regarding the approval of the proposed consolidation range and granting permissions to implement the consolidation projects are necessary supervisory and reviewing decisions made through public powers with respect to each self-implemented urban land consolidation case, be indeed classified as administrative dispositions in nature, not only restrict the rights of property and freedoms of residence of the landowners within the consolidation range who dis-

主管機關核定擬辦重劃範圍、核准實施重劃計畫之行政行為，係以公權力對於自辦市地重劃個案為必要之監督及審查決定，性質核屬行政處分，不僅限制重劃範圍內不同意參與重劃者之財產權與居住自由，並影響原有土地上之他項權利人權益（獎勵重劃辦法第三十七條、第三十八條規定參照）。相關法令除應規定主管機關應設置適當組織為審議外，並應按審查事項、處分內容與效力、對於權利限制之程度分別規定應踐行之正當行政程序（本院釋字第七０九號解釋參照）。獎勵重劃辦法關

agree to participate in the consolidation, but also impact the rights and interests of holders with other kinds of rights on the original lands (*see* the provisions of Articles 37, 38 of the Encouraging Consolidation Regulation). The related regulations shall require the competent authorities not only to set up appropriate organizations to review, but also in accordance with the reviewed matters and the contents and effects of the dispositions, with respect to the extent of restriction of the right, to provide respectively the due administrative procedures to be satisfied. (*see* J.Y. Interpretation No. 709).The procedures provided by the Encouraging Consolidation Regulation regarding the competent authorities approve the proposed consolidation range do not require the competent authorities either to set up appropriate organizations to review, or to offer the interested parties opportunities to be heard prior to the approval, and do not respectively execute the service of the approved dispositions to the landowners within the consolidation range other than the applicants, neither, thus their opportunities to perceive related information

於主管機關核定擬辦重劃範圍之程序，未要求主管機關應設置適當組織為審議，亦未要求主管機關於核定前給予利害關係人陳述意見之機會，又未將核定處分分別送達於重劃範圍內申請人以外之其他土地所有權人，致未能確保其等知悉相關資訊及適時陳述意見之機會，以主張或維護其權利；同辦法關於主管機關核准實施重劃計畫之程序，未要求主管機關應設置適當組織為審議，又未要求主管機關應將該計畫相關資訊，對重劃範圍內申請人以外之其他土地所有權人分別為送達，且未規定由主管機關以公開方式舉辦聽證，使利害關係人得到場以言詞為意見之陳述及論辯後，斟酌全部聽證紀錄，說明採納及不採納之理由作成核定，連同已核准之市地重劃計畫，分別送達重劃範圍內各土地所有權人及他項權利人等，致未能確保其等知悉相關資訊及適時參與聽證之機會，以主張或維護其權利，均不符憲法要求之正當行政程序。

and to timely be heard so as to assert or uphold their rights cannot be ensured; the procedures provided by the same Regulation regarding for the competent authorities to grant permissions to implement the consolidation projects do not require the competent authorities either to set up appropriate organizations to review, or to respectively execute the service of the consolidation project related information to the landowners within the consolidation range other than the applicants, and do not stipulate the competent authorities to conduct hearings by public manner, so that the interested parties may appear to vocally express and deliberate opinions, consider all hearing records, explicate the reasons for adoption or not adoption and thereafter make the approval, together with the approved urban land consolidation project, respectively execute the service to every landowners and other stakeholders within the consolidation range, etc., thus their opportunities to perceive related information and to timely participate in the hearings so as to assert or uphold their rights cannot be ensured. These are inconsistent with the due process of

law in the administrative procedures required under the Constitution.

With respect to the parts mentioned in prior paragraphs regarding provisions of the Encouraging Consolidation Regulation that violate the Constitution, relevant authorities shall, in accordance with the meaning and purpose of this Interpretation, consider amending within one year from the date this Interpretation is issued. The said unconstitutional parts of the provisions shall become null and void if they have not been amended within one year from the issuance of this Interpretation.

上述各段關於獎勵重劃辦法規定違憲部分，相關機關應依本解釋意旨，於本解釋公布之日起一年內檢討修正，逾期未完成者，該部分規定失其效力。

Article 58, Paragraph 3 of the Equalization of Land Rights Act provides that: “Urban land consolidation handled by the consolidation committee shall be agreed by more than half of the landowners within the consolidation area and the amount of areas of the lands owned by them shall be more than half of the sum of all areas of the lands within the same consolidation area, and implemented after permissions shall be granted by the competent authorities.”An urban land

平均地權條例第五十八條第三項規定：「重劃會辦理市地重劃時，應由重劃區內私有土地所有權人半數以上，而其所有土地面積超過重劃區私有土地總面積半數以上者之同意，並經主管機關核准後實施之。」查市地重劃不僅涉及重劃範圍內不同意參與重劃者之財產權與居住自由，亦涉及重要公益之實現、同意參與重劃者之財產與適足居住環境之權益，以及原有土地上之他項權利人之權益，有關同意之比率如非太低而違反憲法要求之正當行政程序，當屬

consolidation involves not only the property rights and the residence freedoms of those within the consolidation range who disagree to participate in the consolidation, but also the realization of important public interests, the rights and interests of property and inhabitable living environment of those who agree to participate in the consolidation, and the rights and interests of the stake-holders with other kinds of rights on the original lands. A question regarding for the ratio of agreement not be so low as to violate the due process of law in the administrative procedure required under the Constitutionis indeed the free will of legislative formation. (*see* J.Y. Interpretation No.709) Even if the provision mentioned above adopts the same ration of agreement as the one set forth in Article 57 of the same Act, and does not follow Article 22, Paragraph 1 of the Urban Renewal Act which adopts a variety of ratios of agreement classified into different categories, it can hardly be deemed to have reached to the extent of violating the principle of proportionality and the principle of equality. However, the relevant authorities should review

立法形成之自由（本院釋字第七０九號解釋參照）。上開規定縱採同條例第五十七條同一之同意比率，且未如都市更新條例第二十二條第一項區分不同類型，採不同之同意比率，亦難遽謂已達違反比例原則、平等原則之程度。惟有關機關允宜審酌擬辦自辦市地重劃之區域是否已擬定細部計畫或是否屬於平均地權條例第五十六條第一項各款得辦理市地重劃之區域，或重劃範圍是否業經主管機關列入當地分區發展計畫土地，或有進行市地重劃之急迫性等因素（獎勵重劃辦法第四條、都市計畫法第二十四條、都市更新條例第二十二條第一項規定參照），適時檢討申請之同意比率，併此指明。

and concern whether or not the proposed self-implemented urban land consolidation areas have been proposed detail projects,whether or not those areas belong to the ones set forth in Subparagraphs of Article 56, Paragraph 1 of the Equalization of Land Rights Act in which the urban land consolidation may be carried out, or whether or not the consolidation ranges have been enlisted by the competent authorities as the lands for local multi-district development projects, or if there are factors as the imminence of implementing the urban land consolidation, etc. (See the provisions of Article 4 of the Encouraging Consolidation Regulation, Article 24 of the Urban Planning Law, and Article 22, Paragraph 1 of the Urban Renewal Act), and to timely review the ratio for reaching an agreement for the application, as needs to be pointed out.

Justice Dennis Te-Chung TANG, filed an opinion concurring in part, in which Justice Horng-Shya HUANG, Justice Ming-Cheng TSAI and Justice Jiun-Yi LIN, joined.

Justice Mao-Zong HUANG filed a

本號解釋湯大法官德宗提出，黃大法官虹霞、蔡大法官明誠、林大法官俊益加入提出之部分協同意見書；黃大法官茂榮提出之協同意見書；蘇大法官永欽提出之部分協同部分不同意見書；葉大法官百修提出之部分協同部分不同

concurring opinion.

Justice Yeong-Chin SU filed an opinion concurring in part and dissenting in part.

Justice Pai-Hsiu YEH filed an opinion concurring in part and dissenting in part.

Justice Beyue SU CHEN, filed an opinion concurring in part and dissenting in part, in which Justice Chen-Huan WU, joined.

Justice Chang-Fa LO,filed an opinion concurring in part and dissenting in part, in which Justice Horng-Shya HUANG, joined.

Justice Horng-Shya HUANG,filed an opinion concurring in part and dissenting in part, in which Justice Chang-Fa LO joined.

Justice Shin-Min CHEN, filed an opinion dissenting in part, in Justice Horng-Shya HUANG joined.

Justice Hsi-Chun HUANGfiled an opinion dissenting in part.

EDITOR'S NOTE:

Summary of facts: Petitioner Hu, through inheritance, having acquired the

意見書；陳大法官碧玉提出，吳大法官陳鐶加入之部分協同部分不同意見書；羅大法官昌發提出，黃大法官虹霞加入之部分協同部分不同意見書；黃大法官虹霞提出，羅大法官昌發加入之部分協同部分不同意見書；陳大法官新民提出，黃大法官虹霞加入之部分不同意見書；黃大法官璽君提出之部分不同意見書。

編者註：

事實摘要：(一)聲請人胡ＯＯ因繼承而取得之不動產坐落於「台中市鑫

real estate which is located in "the Taichung Municipality Xinxinping self-implemented urban land consolidation area" (later renamed as the Taichung Municipality Zhongke Economic and Trade self-implemented urban land consolidation area)and the land within the consolidation range, and claimed that the procedures the Taichung municipal government applied to approve the organization of the preparatory committee and the proposed consolidation project drawn up by the preparatory committee were illegal. After the administrative appeal had been rejected, the subsequent lawsuit was dismissed by the Taichung High Administrative Court in 99 Su 125 Judgment (2010), and the appeal for the lawsuit was dismissed by the Supreme Administrative Court in 100 Pan 1790 Judgment (2011) and thus finalized. The petitioner considered that Article 58, Paragraph 2 of the Equalization of Land Rights Act, Articles 8 and 20 of the Regulation Governing for Encouraging Landowners to Handle Urban Land Consolidation applied in the finalized judgment were with doubt unconstitutional, hereby filed a petition for interpretation.

新平自辦市地重劃區」（後更名為台中市中科經貿自辦市地重劃區）重劃範圍內土地，主張台中市政府核定重劃籌備會成立及核定籌備會所擬具之重劃計畫書之程序違法，循序訴願遭駁回後，訴經臺中高等行政法院以 99 年度訴字第 125 號判決原告之訴駁回，再上訴經最高行政法院以 100 年度判字第 1790 號判決上訴駁回而告確定。聲請人認確定判決所適用之平均地權條例第 58 條第 2 項、獎勵土地所有權人辦理市地重劃辦法第 8 條 、第 20 條規定，有違憲疑義，聲請解釋。

Petitioner, judge of Taiwan Taoyuan District Court who has heard the case in that district court 103 Su 2184 Judgment (2014) for revocation of the resolutions decided in the urban land consolidation committee members meeting, and believed that Article 58, Paragraph 3 of the Equalization of Land Rights Act applied in that case was with doubt unconstitutional, hereby filed a petition for interpretation.

(二)聲請人臺灣桃園地方法院仁股法官審理該院103年度訴字第2184號撤銷市地重劃區重劃會會員大會決議等事件，認該案所應適用之平均地權條例第58條第3項規定，有違憲疑義，聲請解釋。

J. Y. Interpretation No.740（October 21, 2016）*

【The Nature of Insurance Solicitor's Service Contract】

ISSUE: Whether a service contract for the solicitation of insurance business between an insurance solicitor and the insurance company to which the solicitor belongs is a labor contract under Article 2 Sub-paragraph 6 of the Labor Standards Act ?

RELEVANT LAWS:

Article 2 , Paragraph 6 of Labor Standards Act（勞動基準法第六條第二款）；Article 177 of Insurance Act（保險法第一七七條）；Article 12, Paragraph 1, Article 13, Paragraph 1, Article 14, Article 18, Paragraph 1, Article 19, Paragraph 1 of Regulations Governing the Supervision of Insurance Solicitors（保險業務員管理規則第十二條第一項、第十三條第一項、第十四條、第十八條第一項、第十九條第一項）；Article 3, Article 6, Article 7, Paragraph 1, Sub-paragraph 1, Article 9 of Labor Pension Act（勞工退休金條例第三條、第六條、第七條第一項第一款、第九條）；Article 189, Paragraph 1 of Administrative Procedure Act（行政訴訟法第一八九條第一項）；Precedent of Administrative Court 62-Pan-Tze No. 252（行政法院六十二年判字第二五二號判例）；Letter of

* Translated by Chun-Yih CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

Financial Supervisory Commission: 102.3.22-Gin-Guan-Bao-Shou-Tze No. 1020543170（金融監督管理委員會一〇二年三月二十二日金管保壽字第一〇二〇五四三一七〇號函）

KEYWORDS:

insurance solicitor（保險業務員）, insurance company（保險公司）, soliciting insurance（招攬保險）, labor contract（勞動契約）, Regulations Governing the Supervision of Insurance Solicitors（保險業務員管理規則）, categorical characteristics（類型特徵）, subordination（從屬性）, unified interpretation（統一解釋）, employment（僱傭）, hire of work（承攬）, brokerage（居間）**

HOLDING: Whether a service contract for the solicitation of insurance business between an insurance solicitor and the insurance company to which the solicitor belongs is a labor contract under Article 2 Sub-paragraph 6 of the Labor Standards Act shall depend on whether the service debtor (the insurance solicitor) may freely decide the manner of the provision of service (including working hours), and will bear business risks on own account (for example, the remuneration shall be calculated on the basis of

解釋文：保險業務員與其所屬保險公司所簽訂之保險招攬勞務契約，是否為勞動基準法第二條第六款所稱勞動契約，應視勞務債務人（保險業務員）得否自由決定勞務給付之方式（包含工作時間），並自行負擔業務風險（例如按所招攬之保險收受之保險費為基礎計算其報酬）以為斷，不得逕以保險業務員管理規則為認定依據。

insurance premium received from the solicited insurance). It cannot be determined directly in accordance with the Regulations Governing the Supervision of Insurance Solicitors.

REASONING: Article 2 Subparagraph 6 of the Labor Standards Act provides that "labor contract means an agreement that establishes an employee-employer relationship." (hereinafter "Concerned Provision I"). Regarding the issue whether the legal relationship between an insurance solicitor and an insurance company is a labor contract under Concerned Provision I, the final and conclusive judgment of the Taipei High Administrative Court (103-Chien-Shan-Tze No. 115, hereinafter "Administrative Court Judgment") is of the opinion that according to the provisions of the Regulations Governing the Supervision of Insurance Solicitors, an insurance company has strong powers of supervision, review, management and discipline over the insurance solicitors belonging to it, there exists a subordination between them; as to the manner of remuneration payment,

解釋理由書：勞動基準法第二條第六款規定：「勞動契約：謂約定勞雇關係之契約。」（下稱系爭規定一）就保險業務員與保險公司間之法律關係是否屬系爭規定一之勞動契約關係，臺北高等行政法院一０三年度簡上字第一一五號確定終局判決（下稱行政法院判決）認為，依保險業務員管理規則之規定，保險業對其所屬保險業務員具有強大之監督、考核、管理及懲罰處分之權，二者間具有從屬性；至報酬給付方式究係按計時、計日、計月、計件給付，或有無底薪，均非判斷其是否屬勞工工資之考量因素；故採取純粹按業績多寡核發獎金之佣金制保險業務員，如與領有底薪之業務員一般，均受公司之管理、監督，並從事一定種類之勞務給付者，仍屬勞動契約關係之勞工；勞動契約不以民法所規定之僱傭契約為限，凡勞務給付之契約，具有從屬性勞動之性質者，縱兼有承攬、委任等性質，仍應認屬勞動契約；又契約類型之判斷區

be it paid by hour, by day, by month, by piece or whether there is base salary, it is not a factor to be considered to decide whether it belongs to a labor's wage; therefore, if a commission insurance solicitor whose bonus is solely based on the amount of performance is subject to the same management and supervision of the company as is a solicitor with base salary, and is engaged in the provision of service of specific category, the insurance solicitor is still a labor under a labor contract; a labor contract is not limited to the employment contract under the Civil Code. Any contract for the provision of service which bears the characteristics of subordinate laboring shall still be considered a labor contract even though contemporaneously bearing the characteristics of hire of work or mandate; in addition, where there is difficulty in distinguishing the types of contracts, in light of the position of labor protection and the consideration that an employer is more able to adapt to the risk of disadvantage incurred from the ambiguous classification of service, it is in principle to be considered a labor contract to govern the issues. On the contrary, the

分上有困難時，基於勞工保護之立場以及資方對於勞務屬性不明之不利益風險較有能力予以調整之考量，原則上應認定係屬勞動契約關係，以資解決。反之，臺灣高等法院九十四年度勞上字第四五號、九十九年度勞上字第五八號、一０一年度勞上字第二一號等民事確定終局判決（下併稱為民事法院判決）則認為，保險業務員得自由決定招攬保險之時間、地點及方式，其提供勞務之過程並未受業者之指揮、監督及控制，認定保險業務員與保險業間之人格從屬及指揮監督關係甚為薄弱，尚難認屬勞動契約關係；又以保險業務員並未受最低薪資之保障，須待其招攬保險客戶促成保險契約之締結進而收取保險費後，始有按其實收保險費之比例支領報酬之權利，認保險業務員需負擔與保險業相同之風險，其勞務給付行為係為自己事業之經營，而非僅依附於保險公司為其貢獻勞力，故難謂其間有經濟上從屬性；再者，保險業務員管理規則係主管機關為健全保險業務員之管理及保障保戶權益等行政管理之要求而定頒，令保險公司遵守，不得因保險業務員管理規則之規定，即認為保險業務員與其所屬保險公司間具有人格從屬性。是民事法院與行政法院就保險業務員與其所屬保險公

final and conclusive judgments of Taiwan High Court (94-Lao-Shan-Tze No. 45, 99-Lao-Shan-Tze 58, 101-Lao-Shan-Tze No. 21, hereinafter collectively "Civil Court Judgments") are of the opinion that an insurance solicitor may freely decide the time, location and method of soliciting insurance business, and the process of provision of service is not subject to an insurance company's direction, supervision and control, it is very weak to confirm the existence of personal subordination as well as direction and supervision relationship between an insurance solicitor and an insurance company, and therefore it is hard to support the relationship of labor contract; and, an insurance solicitor is not afforded with the protection of minimum wage, only after the solicited customer signs an insurance contract and the insurance premium is collected, can the insurance solicitor be entitled to payment of remuneration calculated in proportion to the collected insurance premium. The insurance solicitor bears the same risks as the insurance company does. The provision of service is for the operation of own business, and not dependent on an

司間之保險招攬勞務契約是否屬系爭規定一所示之勞動契約，發生見解歧異，符合司法院大法官審理案件法第七條第一項第二款統一解釋之要件。

insurance company to contribute labor. Therefore, it is hard to conclude that there exists an economic subordination between them; in addition, the Regulations Governing the Supervision of Insurance Solicitors are promulgated by the competent authority for the purpose of administrative regulation to strengthen the management of insurance solicitors and to protect the insured's rights and interests, and to be complied with by insurance companies. It cannot be concluded that there is personal character subordination between an insurance solicitor and the insurance company to which the insurance solicitor belongs simply because of the provisions of the Regulations Governing the Supervision of Insurance Solicitors. Given the above, there is different opinion between Civil Court and Administrative Court regarding whether a service contract for the solicitation of insurance business between an insurance solicitor and the insurance company to which the solicitor belongs is a labor contract under Concerned Provision I, which difference qualifies the requirement for Unified Interpretation under Article 7 Paragraph 1 Sub-paragraph 2 of the Con-

stitutional Interpretation Procedure Act.

Article 2 Sub-paragraph 6 of the Labor Standards Act, which provision is "labor contract means an agreement that establishes an employee-employer relationship", does not set forth the delineating standards for labor contract and employee-employer relationship. The main performance under a labor contract is the provision of service and the payment of remuneration. But not all contracts under the Civil Code which provide labor service non-gratuitously belong to labor contract. Therefore, to determine whether it is a labor contract under Concerned Provision I, the nature of the provision of service, which shall be defined according to the categorical characteristics of the respective service contract objectively on a case by case basis, such as a direction and supervision relationship with regard to the time, location or specialty of the provision of service, which is related to personal subordination (or called personal character subordination), and the bearing of business risk shall be taken into account.

勞基法第二條第六款:「勞動契約:謂約定勞雇關係之契約。」並未規定勞動契約及勞雇關係之界定標準。勞動契約之主要給付,在於勞務提供與報酬給付。惟民法上以有償方式提供勞務之契約,未必皆屬勞動契約。是應就勞務給付之性質,按個案事實客觀探求各該勞務契約之類型特徵,諸如與人的從屬性(或稱人格從屬性)有關勞務給付時間、地點或專業之指揮監督關係,及是否負擔業務風險,以判斷是否為系爭規定一所稱勞動契約。

Regarding the service contract which an insurance solicitor signs to solicit insurance business for the insurance company to which the insurance solicitor belongs, based on the principle of party autonomy, there is freedom of choice for formality and contents; whose type may be employment, mandate, hire of work or brokerage. Whether the chosen type is a labor contract under Concerned Provision I shall be determined by the individual facts and the whole contents of a contract, according to the categorical characteristics of the service contract and in light of the high or low degree of subordination between a service debtor and a service creditor, that is, it shall be determined dependent on whether an insurance solicitor may freely decide the manner of the provision of service (including working hours), and bear business risks on own account (for example, the remuneration shall be calculated on the basis of insurance premium received from the solicited insurance). An insurance solicitor, under the insurance solicitation service contract concluded with the insurance company to which the insurance solicitor belongs,

關於保險業務員為其所屬保險公司從事保險招攬業務而訂立之勞務契約，基於私法自治原則，有契約形式及內容之選擇自由，其類型可能為僱傭、委任、承攬或居間，其選擇之契約類型是否為系爭規定一所稱勞動契約，仍應就個案事實及整體契約內容，按勞務契約之類型特徵，依勞務債務人與勞務債權人間之從屬性程度之高低判斷之，即應視保險業務員得否自由決定勞務給付之方式（包含工作時間），並自行負擔業務風險（例如按所招攬之保險收受之保險費為基礎計算其報酬）以為斷。保險業務員與其所屬保險公司所簽訂之保險招攬勞務契約，雖僅能販售該保險公司之保險契約，惟如保險業務員就其實質上從事招攬保險之勞務活動及工作時間得以自由決定，其報酬給付方式並無底薪及一定業績之要求，係自行負擔業務之風險，則其與所屬保險公司間之從屬性程度不高，尚難認屬系爭規定一所稱勞動契約。再者，保險業務員管理規則係依保險法第一百七十七條規定訂定，目的在於強化對保險業務員從事招攬保險行為之行政管理，並非限定保險公司與其所屬業務員之勞務給付型態應為僱傭關係(金融監督管理委員會一０二年三月二十二日金管保壽字第

may only sell the insurance policy of that insurance company, but if the insurance solicitor may freely decide the actual service activities of insurance solicitation and the working hours, and there is no base salary or minimum performance requirement for the remuneration, and the insurance solicitor bears the business risk on own account, then the degree of subordination between the insurance solicitor and the insurance company is not high, it cannot be concluded that it is a labor contract under Concerned Provision I. In addition, the Regulations Governing the Supervision of Insurance Solicitors are promulgated according to Article 177 of the Insurance Act, of which the purpose is to strengthen the administrative regulation of insurance solicitor's solicitation of insurance business. It is not to restrict that the type of provision of service between insurance company and its belonging solicitor shall be employment relationship (cf. Financial Supervisory Commission letter: 102.3.22-Gin-Guan-Bao-Shou-Tze No. 1020543170). These Regulations are statutory instrument promulgated by the competent authority in charge of Insur-

一０二０五四三一七０號函參照)。該規則既係保險法主管機關為盡其管理、規範保險業務員職責所訂定之法規命令，與保險業務員與其所屬保險公司間所簽訂之保險招攬勞務契約之定性無必然關係，是故不得逕以上開管理規則作為保險業務員與其所屬保險公司間是否構成勞動契約之認定依據。

ance Act to perform its duties in managing and regulating insurance solicitors; there is no necessary connection with the classification of the insurance solicitation service contract between the insurance solicitor and the insurance company to which the insurance solicitor belongs. Therefore, it cannot be determined directly in accordance with the said Regulations whether there constitutes a labor contract between the insurance solicitor and the insurance company to which the insurance solicitor belongs.

On the other hand, the petitioner argued that Articles 3, 6, 7 Paragraph 1 Sub-paragraph 1, 9 of the Labor Pension Act (hereinafter collectively "Concerned Provision II"), Article 189 Paragraph 1 of the Administrative Procedure Act (hereinafter "Concerned Provision III"), Articles 12 Paragraph 1, 13, 14 Paragraph 1, 18 Paragraph 1 and 19 Paragraph 1 of the Regulations Governing the Supervision of Insurance Solicitors (hereinafter collectively "Concerned Provision IV") and the Precedent of Administrative Court (62-Pan-Tze No. 252, hereinafter

另聲請人認首開行政法院判決、最高行政法院一００年度判字第二一一七號、第二二二六號、第二二三０號判決（下併稱確定終局判決）所適用之勞工退休金條例第三條、第六條、第七條第一項第一款、第九條（下併稱系爭規定二）、行政訴訟法第一百八十九條第一項（下稱系爭規定三）、保險業務員管理規則第十二條第一項、第十三條、第十四條第一項、第十八條第一項、第十九條第一項（下併稱系爭規定四）及行政法院六十二年判字第二五二號判例（下稱系爭判例）有違憲之疑義，聲請解釋憲法。經查，系爭規定三及系爭判

"Concerned Precedent") as applied by the aforementioned Administrative Court Judgment, the judgments of Administrative Supreme Court (100-Pan-Tze Nos. 2117, 2226 and 2230) (hereinafter collectively "Final and Conclusive Judgments") are liable for violation of the Constitution and applied for Constitutional Interpretation. However, because the Concerned Provision III and the Concerned Precedent were not been applied by the Final and Conclusive Judgments, the petitioner cannot apply for Interpretation based on them. Petitioner's other arguments presented did not objectively and concretely point out the breach of the Constitution by the Concerned Provision II and IV. The above petition for Constitutional Interpretation is incompliant with Article 5 Paragraph 1 Sub-paragraph 2 of the Constitutional Court Procedure Act, and shall be procedurally rejected. It is so noted.

例並未為確定終局判決所適用，聲請人自不得據之聲請解釋。其餘所陳，均尚難謂已客觀具體指摘系爭規定二、四究有何牴觸憲法之處。是上開聲請憲法解釋部分，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併予敘明。

Justice Mao-Zong HUANG filed concurring opinion.

Justice Beyue SU CHEN filed concurring opinion.

Justice Chang-Fa LO filed concur-

本號解釋黃大法官茂榮提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出，黃大法官虹霞加入之協同意見書；湯大法官德宗提出，陳大法官碧玉、林大法官俊益加入

ring opinion, in which Justice Horng-Shya HUANG, joined.

Justice Dennis Te-Chung TANG filed concurring opinion, in which Justice Beyue SU CHEN, Jiun-Yi LIN, joined.

Justice Horng-Shya HUANG filed concurring opinion.

Justice Ming-Cheng TSAI filed concurring opinion, in which Justice Horng-Shya HUANG, joined.

Justice Jiun-Yi LIN filed concurring opinion.

Justice Hsi-Chun HUANG filed dissenting opinion in part.

Justice Shin-Min CHEN filed dissenting opinion.

之協同意見書；黃大法官虹霞提出之協同意見書；蔡大法官明誠提出，陳大法官春生、黃大法官虹霞加入之協同意見書；林大法官俊益提出之協同意見書；黃大法官璽君提出之部分不同意見書；陳大法官新民提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: (1) Several petitioner's insurance solicitors respectively brought suits against the petitioner for the payment of retirement pay in accordance with the Labor Standards Act. The cases were finalized by the civil judgments of Taiwan High Court (99-Lao-Shan-Tze No. 58 and 101-Lao-Shan-Tze No. 21). Another suit was brought against the petitioner by another insurance solici-

編者註：

事實摘要：(一)聲請人之保險業務員多人，先後向聲請人起訴請求依勞動基準法（下稱勞基法）規定給付退休金，分別經臺灣高等法院九十九年度勞上字第五八號、一０一年度勞上字第二一號等民事判決確定；另一陳姓保險員以雙方具有勞基法第二條第六款（下稱系爭法規）所稱勞動契約為由，向聲請人請求損害賠償，經臺灣高等法院九十四年度勞上字第四五號判決確定。

tor surnamed Chen for compensation of damage on the basis that there exists a labor contract under Article 2 Paragraph 6 of the Labor Standards Act (hereinafter "Concerned Law") between the parties. The case was finalized by the judgment of Taiwan High Court (94-Lao-Shan-Tze No. 45). All the above civil judgments opined that the contractual relationship between the petitioner and its belonging insurance solicitors is not a labor contract under the Concerned Law.

各該民事判決就認為，聲請人與所屬保險業務員間之契約關係非屬系爭法規所定之勞動契約。

(2) In addition, after the publication and coming into force of the Labor Pension Act, the petitioner's insurance solicitors severally applied for the shift to the new labor pension mechanism and asked the petitioner to allocate pension funds for them in accordance with the said Act. Accordingly, the Labor Insurance Bureau, Ministry of Labor issued letter to the petitioner for the report and allocation of pension funds for its belonging insurance solicitors within specified period. The petitioner did not comply with the request within the time limit and was fined. The petitioner objected to the disposition of

(二)另外，聲請人之保險業務員於勞工退休金條例公布實施後，陸續申請更改選擇勞工退休新制，並要求聲請人依上開條例之規定，為其提繳退休金。案經勞動部勞工保險局（下稱勞保局）發函限期聲請人為其所屬保險業務員申報並提繳勞工退休金，聲請人逾限未辦理，故遭處罰鍰。聲請人不服，對勞保局提起行政訴訟，分別經最高行政法院一００年度判字第二一一七號、第二二二六號、第二二三０號，及臺北高等行政法院一０三年度簡上字第一一五號等判決聲請人敗訴確定，其理由認為聲請人與所屬保險業務員間之契約關係屬系爭法規所定之勞動契約，聲請人應

fine, and brought an administrative suit against the Labor Insurance Bureau. The petitioner was defeated in the final and conclusive judgments of Administrative Supreme Court (100-Pan-Tze Nos. 2117, 2226 and 2230) and of Taipei Administrative High Court (103-Chien-Shan-Tze No. 115), which reasoned that the contractual relationship between the petitioner and its belonging insurance solicitors is a labor contract under the Labor Standards Act, and the petitioner shall allocate pension funds for its belonging insurance solicitors.

(3) Given the above, the petitioner argued that Articles 3, 6, 7 Paragraph 1 Sub-paragraph 1, 9 of the Labor Pension Act, Article 189 Paragraph 1 of the Administrative Procedure Act, Articles 12 Paragraph 1, 13, 14 Paragraph 1, 18 Paragraph 1 and 19 Paragraph 1 of the Regulations Governing the Supervision of Insurance Solicitors and the Precedent of Administrative Court (62-Pan-Tze No. 252) as applied by the judgments of Administrative Supreme Court (100-Pan-Tze Nos. 2117, 2226 and 2230) and the

為其所屬保險業務員提繳退休金。

(三)為此，聲請人認最高行政法院一００年度判字第二一一七號、第二二二六號、第二二三０號判決、臺北高等行政法院一０三年度簡上字第一一五號判決所適用之勞工退休金條例第三條、第七條第一項第一款、第九條、行政訴訟法第一百八十九條第一項、保險業務員管理規則第十二條第一項、第十三條、第十四條第一項、第十八條第一項、第十九條第一項及行政法院六十二年度判字第二五二號判例，有違憲之疑義，聲請解釋憲法；另認臺北高等行政法院一０三年度簡上字第

judgment of Taipei High Administrative Court (103-Chien-Shan-Tze No. 115) are liable for the violation of the Constitution, and applied for Constitutional Interpretation. In addition, the petitioner argued that there exists different opinion between the judgment of Taipei High Administrative Court (103-Chien-Shan-Tze No. 115) and the above-mentioned civil judgments of Taiwan High Court, and applied for Unified Interpretation.

一一五號判決與前揭臺灣高等法院民事庭之各該判決見解歧異，聲請統一解釋。

J. Y. Interpretation No.741（November 11, 2016）*

【Scope of original cases eligible for extraordinary remedies under Interpretations declaring laws unconstitutional but valid for a prescribed period of time】

ISSUE: When an individual applies to this Court for an Interpretation of the Constitution and this Court declares a statute or regulation that has been applied by the court of last instance in its final judgment or ruling to be unconstitutional but invalid only after expiry of a prescribed period of time, may the applicant rely on the Interpretation rendered by this Court to seek a retrial of the case or other redress? May the Prosecutor General rely on the Interpretation rendered by this Court to make an extraordinary appeal ?

RELEVANT LAWS:

J.Y. Interpretations Nos. 177, 185, 503, 709, and 725（司法院釋字第一七七號、第一八五號、第五 0 三號、第七 0 九號、第七二五號解釋）；Article 5, Paragraph 1, Subparagraph 2, and Article 5, Paragraph 3 of the Constitutional Court Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）

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* Translated by Chi CHUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

KEYWORDS:

court of last instance in its final judgment or ruling（確定終局裁判）, application for retrial（請求再審）, extraordinary appeal（非常上訴）, Judicial Interpretation (Constitutional Interpretation) declaring a statute or regulation unconstitutional but invalid only after expiry of a prescribed period of time（定期失效解釋）, Judicial Interpretations that supplement previous Interpretations（補充解釋）, the case for which the applicant sought a Constitutional Interpretation（Judicial Interpretation）（原因案件）**

HOLDING: When this Court, upon a person's petition for an Interpretation of the Constitution, declares a statute or regulation that has been applied by a court of last instancein its final judgment or ruling unconstitutional but invalid only after expiry of a prescribed period of time, the applicant may rely on the Interpretation rendered by this Court to seek a retrial of the case or other redress. The Prosecutor General may rely on the Interpretation rendered by this Court to make an extraordinary appeal. The purpose is to protect the rights and interests of the applicant for a Constitutional Interpreta-

解釋文：凡本院曾就人民聲請解釋憲法，宣告聲請人據以聲請之確定終局裁判所適用之法令，於一定期限後失效者，各該解釋之聲請人均得就其原因案件據以請求再審或其他救濟，檢察總長亦得據以提起非常上訴，以保障釋憲聲請人之權益。本院釋字第七二五號解釋前所為定期失效解釋之原因案件亦有其適用。本院釋字第七二五號解釋應予補充。

tion.The same also applies to cases that have been the cause of Constitutional Interpretations that were made before Interpretation No. 725. Interpretation No. 725 should, therefore, be supplemented.

REASONING: When the litigating parties are uncertain about a Judicial Interpretation rendered by the Constitutional Court as applied by a court of last instance in its final judgment or ruling and petition for supplementary Interpretation, the Constitutional Court should consider whether there are legitimate grounds, and, if there are legitimate grounds, it should consider the case on its merits rather than dismiss the application as a mater of procedure (*see* Judicial Interpretation No. 503). The applicant in this case concerning urban renewal appealed to the Supreme Administrative Court, which as the court of last instance in its final ruling applied Judicial Interpretation No. 725 (hereinafter referred to as the disputed Interpretation). The disputed Interpretation does not explicitly define the phrase "applicant's case for which he or she requesting an Interpretation of the Constitu-

解釋理由書：按當事人對於確定終局裁判所適用之本院解釋，發生疑義，聲請補充解釋，經核確有正當理由者，應予受理（本院釋字第五０三號解釋參照）。本件聲請人因都市更新事件，經最高行政法院確定終局裁定引用本院釋字第七二五號解釋（下稱系爭解釋）作為裁定之依據，惟系爭解釋未明定「聲請人就聲請釋憲之原因案件」之適用範圍，其聲請補充解釋，即有正當理由，合先敘明。

tion ". Therefore, this Court granted the applicant's petition for a supplementary Interpretation.

Judicial Interpretations No. 177 and No. 185 allow applicants for Judicial Interpretations to rely on the Judicial Interpretations that rule in their favor to seek retrial or extraordinary appeal. As Judicial Interpretations No. 177 and No. 185 did not clearly set out whether a Constitutional Interpretation declaring that a statute or regulation unconstitutional but invalid only after a prescribed time period affects the disposition of the case for which the applicant sought a Constitutional Interpretation, the disputed Interpretation supplements Judicial Interpretations No. 177 and No. 185 as follows: "When this Court upon a person's petition for a Constitutional Interpretation declares a statute or regulation that has been applied by a court of last instance in its final judgment or ruling unconstitutional but invalid only after expiry of a prescribed period of time, the applicant may rely on the interpretation rendered by this Court to seek a retrial of the case or other re-

本院釋字第一七七號及第一八五號解釋在使有利於聲請人之解釋，得作為據以聲請釋憲之原因案件（下稱原因案件）再審或非常上訴之理由。惟因該等解釋並未明示於本院宣告違憲之法令定期失效者，對聲請人之原因案件是否亦有效力，故系爭解釋補充謂：「本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令於一定期限後失效者，聲請人就聲請釋憲之原因案件即得據以請求再審或其他救濟，檢察總長亦得據以提起非常上訴；法院不得以該法令於該期限內仍屬有效為理由駁回。如本院解釋諭知原因案件具體之救濟方法者，依其諭知；如未諭知，則俟新法令公布、發布生效後依新法令裁判。本院釋字第一七七號及第一八五號解釋應予補充。……」

dresses. The Prosecutor General may rely on the Judicial Interpretation to make an extraordinary appeal. The relevant courts may not dismiss such a retrial or extraordinary appeal for reason that the disputed statute or regulation is still in effect. If a specific remedy is announced in the Judicial Interpretation for the case for which the applicant sought a Constitutional Interpretation, such announcement should be followed. If no such announcement is made, then the relevant courts should wait for the promulgation of a new statute or regulation and make the judgment or ruling in accordance with the new statute or regulation after it takes effect. Judicial Interpretations No. 177 and No. 185 are thereby supplemented."

When this Court declares a statute or regulation unconstitutional, the applicantmay rely on the Constitutional Interpretation rendered by this Court to seek a retrial of the case for which the applicant sought a Constitutional Interpretation or the Prosecutor General may file an extraordinary appeal or take other legal actions. The purpose of granting remedies

本院解釋憲法宣告法令違憲並應失效者，使聲請人得依據該解釋請求再審或由檢察總長提起非常上訴等法定程序，以對其原因案件循求個案救濟，係在保障聲請人之權益，並肯定其對維護憲法之貢獻（系爭解釋理由書參照），原不因本院宣告違憲之法令立即失效或定期失效，而有不同。系爭解釋本於此旨，宣示確定終局裁判所適用之法令定

in the case for which the applicant sought a Constitutional Interpretation is to protect the rights and interests of applicants and to recognize their contributions to upholding the Constitution (*see* the Reasoning part of the disputed Interpretation). This purpose does not differ whether the unconstitutional statute or regulation becomes invalid immediately or after expiry of a prescribed period of time. The disputed Interpretation, therefore, announced that when a statute or regulation applied by a court of last instance in its final judgment or ruling becomes invalid after expiry of the prescribed period of time, the applicant may seek retrial and other redresses for the case for which the applicant sought a Constitutional Interpretation. Although the disputed Interpretation did not explicitly define the phrase " the case for which the applicant sought a Constitutional Interpretation", the Holding part of the disputed Interpretation stated that "this Court, at the request of an individual applying for a Constitutional Interpretation, declares that the statute or regulation applied by a court of last instance in its final judgment

期失效者，聲請人即得據以就聲請釋憲之原因案件請求再審等救濟。該解釋雖未就「聲請人就聲請釋憲之原因案件」等語，明定其適用範圍，然由系爭解釋文所稱「本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令於一定期限後失效者」等語可知：凡本院曾宣告確定終局裁判所適用之法令於一定期限後失效之解釋原因案件，均應予再審等個案救濟之機會。且系爭解釋係針對本院為法令定期失效宣告之解釋，應係制度性之通案規範，其適用範圍自應包括凡本院曾宣告違憲法令定期失效之解釋（含本院釋字第七二五號前之宣告違憲法令定期失效之解釋），各該解釋之聲請人均得就其原因案件循求個案救濟，以保障釋憲聲請人之權益，而非僅限於系爭解釋之聲請人始得就其據以聲請該號解釋之原因案件請求救濟，俾使系爭解釋以外其他聲請本院解釋之聲請人，於本院宣告確定終局裁判所適用之法令違憲並定期失效後，皆能獲得應有之救濟，以符合憲法保障人民訴訟權之意旨，並肯定其維護憲法之貢獻。本院釋字第七二五號解釋應予補充。至各該原因案件之聲請人就其個案是否符合提起再審等救濟期限與其他程序之規範，及有無理由，法院仍應依相關規定予以審

or ruling becomes invalid after expiry of the prescribed period of time." Therefore, all cases giving rise to Judicial Interpretations that declare a statute or regulation applied by a court of last instance in its final judgment or ruling invalid after expiry of a prescribed period of time should be givena retrial or other remedies. In addition, the disputed Interpretationsets out a systematic rule that applies to all Judicial Interpretations made by this Court that declare a statute or regulation invalid after expiry of a prescribed period of time, including Judicial Interpretations that were made prior to Judicial Interpretation No. 725. All these applicants for these Judicial Interpretations may seek redress in the cases for which the applicant sought a Constitutional Interpretation so that the rights and interests of the applicants for Judicial Interpretations are protected. The disputed Interpretation does not limit itself to the applicant for the disputed Interpretation; rather, it enables all applicants for Judicial Interpretations to obtain the redresses that they deserve after the statute or regulation was declared unconstitutional and invalid following

查，自屬當然。

expiry of the prescribed period of time. The aforementioned understanding is consistent with the right to litigate protected by the Constitution, and it recognizes the applicants' contribution to upholding the Constitution. Judicial Interpretation No. 725 is, hereby, supplemented. Of course, courts still have to review whether the applicants satisfy the filing deadlines and other procedural requirements for retrial and to judge whether the applicants' cases have merit.

The applicant also applies for supplementary interpretation of Judicial Interpretation No. 709, but the applicant fails to point out specifically which part of Interpretation No. 709 is unclear or unsound in reasoning. Therefore, the application for supplementary interpretation of Interpretation No. 709 is inconsistent with Article 5, Section 1, Paragraph 2 of the Constitutional Court Procedure Act and, therefore, it should be dismissed in accordance with Article 5, Section 3 of the same Act.

有關聲請人聲請補充解釋本院釋字第七０九號解釋部分，聲請人並未具體指明上開解釋有何文字晦澀或論證不周之情形，其聲請補充解釋難謂有正當理由。是其聲請核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此敘明。

Justice Ming-Cheng TSAI, filed a concurring opinion in part, in which Justice Chen-Huan WU, joined.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG, filed a concurring opinion, in which Justice Beyue SU CHEN and Justice Jiun-Yi LIN, joined.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Hsi-Chun HUANG filed a dissenting opinion.

本號解釋蔡大法官明誠提出，吳大法官陳鐶加入之部分協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出，陳大法官碧玉、林大法官俊益加入之協同意見書；黃大法官虹霞提出之協同意見書；林大法官俊益提出之協同意見書；黃大法官璽君提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1. Mr. Peng and three other applicants appealed their case to the Supreme Administrative Court, but it was dismissed by Pan Zi Judgment No. 2092 (2011). One of the four applicants applied to this Court for Judicial Interpretation. This Court, on April 26, 2013, rendered Judicial Interpretation No. 709, declaring Article 10, Section 1, Article 10, Section 2 and the first half of Article 19, Section 3 of the Law on Urban Renewal

編者註：

事實摘要：一、聲請人彭氏等四人以最高行政法院 100 年度判字第 2092 號判決駁回其上訴而敗訴確定。嗣其中一人向本院聲請解釋，經本院於 102 年 4 月 26 日作成釋字第 709 號解釋行為時都市更新條例第 10 條第 1 項、第 2 項及第 19 條第 3 項前段為違憲，相關機關應自該解釋公布之日起 1 年內檢討修正。聲請人遂提起再審之訴，經最高行政法院於 102 年 9 月 12 日 102 年度判字第 580 號判決以上開被宣告違

unconstitutional. Interpretation No. 709 required the relevant government agencies to review and revise such provisions within one year of the announcement of Interpretation No. 709. The applicants instituted an action for retrial. The Supreme Administrative Court dismissed the action for retrial by Pan Zi Judgment No. 580 (2013) on September 12, 2013 on the grounds that the unconstitutional provisions remained valid within the one-year period prescribed by Interpretation No. 709. This Court announced Judicial Interpretation No. 725 on October 24, 2014, and the applicants relied on Interpretation No. 725 to institute an action for retrial. The action for retrial was dismissed by the Supreme Administrative Court by Cai Zi, Ruling No. 470 (2015).

憲之規定於該解釋所定期限（1 年內）屆滿前仍屬有效，予以駁回確定。嗣本院又於 103 年 10 月 24 日公布釋字第 725 號解釋，聲請人乃再基於該號解釋，對原確定判決提起再審之訴，仍遭最高行政法院以 104 年裁字第 470 號駁回確定。

2. Mr. Chen and two other applicants appealed to the Supreme Administrative Court, but the case was dismissed by Pan Zi Judgment No. 2004 (2011). One of the three applicants applied to this Court for Judicial Interpretation. This Court, on April 26, 2013, made Judicial Interpretation No. 709, declaring unconstitutional

二、聲請人陳氏等三人因都市更新案件，經最高行政法院 100 年度判字第 2004 號判決駁回其上訴而敗訴確定。嗣其中一人向本院聲請解釋，經本院於 102 年 4 月 26 日作成釋字第 709 號解釋，宣告行為時都市更新條例第 10 條第 1 項、第 2 項及第 19 條第 3 項前段規定違憲，相關機關應自該解釋

Article 10, Section 1, Article 10, Section 2, and the first half of Article 19, Section 3 of the Law on Urban Renewal. Interpretation No. 709 required the relevant government agencies to review and revise such provisions within one year of the announcement of Interpretation No. 709. The applicants instituted an action for retrial. The Supreme Administrative Court dismissed the action for retrial by Pan Zi Judgment No. 538 (2013) on August 23, 2013 on the grounds that the unconstitutional provisions remain valid within the one-year period prescribed by Interpretation No. 709. This Court announced Judicial Interpretation No. 725 on October 24, 2014, and the applicants relied on Interpretation No. 725 to institute an action for retrial. The action for retrial was dismissed by the Supreme Administrative Court by Cai Zi Ruling No. 546 (2015).

公布之日起1年內檢討修正。聲請人遂提起再審之訴，經最高行政法院102年8月23日102年度判字第538號判決以上開被宣告違憲之規定於該解釋所定期限（1年內）屆滿前仍屬有效，無從對於聲請人據以聲請之案件發生溯及失其效力為由，駁回其再審之訴確定。嗣本院又於103年10月24日公布釋字第725號解釋，聲請人乃再基於該號解釋，對原確定判決提起再審之訴，仍遭同一法院以104年裁字第546號駁回確定。

J. Y. Interpretation No.742（December 9, 2016）*

【Challenging Urban Plan Modifications Based on Periodic Comprehensive Review】

ISSUE: Is it permitted to challenge by filing an administrative appeal or initiating court proceedings in an administrative court a specific part of an urban plan modification based on a periodic Comprehensive Review of the urban plan, if that specific part either directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals ?

RELEVANT LAWS:

Articles 15 and 16 of the Constitution（憲法第 15 條、第 16 條 ）；J.Y. Interpretations Nos. 156, 396, 400, 503, 574, 653, 739 and 741 （司法院釋字第一五六號、第三九六號、第四00號、第五0三號、第五七四號、第六五三號、第七三九號、第七四一號解釋）；Article 26 of the Urban Planning Act（都市計畫法第 26 條）；Article 4 of the Implementing Regulation of Periodic Comprehensive Review of Urban Plans（都市計畫定期通盤檢討實施辦法第 4 條）；Paragraph 1, Article 4 of the Administrative Litigation Act（行政訴訟法第四條第

* Translated by Hsiu-Yu FAN

** Contents within frame, not part of the original text, are added for reference purposes only.

一項）；Fu-Gong-Second-Zi Announcement No. 81086893 of Taipei City Government on December 14, 1992（臺北市政府 81 年 12 月 14 日府工二字第 81086893 號公告）

KEYWORDS:

urban plan（都市計畫）, periodic comprehensive review（定期通盤檢討）, modifications based on periodic comprehensive review（定期通盤檢討之變更）, supplementary interpretation（補充解釋）, right to litigate（訴訟權）, timely and effective remedy（及時有效救濟）, Interpretation with a judicial deadline/ Interpretation with a sunset provision（定期失效解釋）**

HOLDING: The necessary modification to an original urban plan based on a periodic Comprehensive Review of the urban plan conducted by competent urban plan formulating authorities is a regulation in nature, not an administrative act. Nonetheless, when a specific part thereof either directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, based on the constitutional principle

解釋文：都市計畫擬定計畫機關依規定所為定期通盤檢討，對原都市計畫作必要之變更，屬法規性質，並非行政處分。惟如其中具體項目有直接限制一定區域內特定人或可得確定多數人之權益或增加其負擔者，基於有權利即有救濟之憲法原則，應許其就該部分提起訴願或行政訴訟以資救濟，始符憲法第十六條保障人民訴願權與訴訟權之意旨。本院釋字第一五六號解釋應予補充。

of *ubi jus ibi remedium* ("where there is a right, there must be a remedy",) the said individuals should be allowed to seek redress for the infringement imposed by that specific part by filing an administrative appeal or initiating court proceedings in an administrative court, in compliance with the protection of the people's right to appeal and the right to litigate offered by Article 16 of the Constitution. The preceding should be deemed supplementary to our Interpretation No. 156.

The formulation of urban plans (including modifications based on a periodic Comprehensive Review) has considerable influence on the people's rights and privileges. The legislative organs should amend relevant laws and regulations within two years from the publication of this Interpretation, so as to enable the people to seek redress for the infringement by initiating court proceedings against unlawful urban plans that they deem an infringement of their rights or lawful interests. Should [the legislative organs] fail to amend [the laws and regulations] in time, the remedial action procedures against

都市計畫之訂定（含定期通盤檢討之變更），影響人民權益甚鉅。立法機關應於本解釋公布之日起二年內增訂相關規定，使人民得就違法之都市計畫，認為損害其權利或法律上利益者，提起訴訟以資救濟。如逾期未增訂，自本解釋公布之日起二年後發布之都市計畫（含定期通盤檢討之變更），其救濟應準用訴願法及行政訴訟法有關違法行政處分之救濟規定。

unlawful administrative acts set forth in the Administrative Appeal Act and the Administrative Litigation Act are to be applied *mutatis mutandis* to any redress against urban plans (including modification based on a periodic Comprehensive Review) announced after two years from the publication of this Interpretation.

REASONING: A petition filed by an interested party who has questions on the application of our past Interpretations to a final judgment of the court of last resort, requesting a supplementary interpretation, shall be heard if it has been approved as a petition with legitimate reasons. (*see* our Interpretations Nos. 503 and 741.) The Petitioners of the two Petitions respectively filed administrative appeals and initiated court proceedings and each has received a final judgment from the Supreme Administrative Court, which referred to our No. 156 Interpretation (hereafter the "Interpretation at issue") as the basis of the judgment. The holding of the Interpretation at issue explained that: "the modification to urban plans by the competent authorities is a unilateral

解釋理由書：當事人對於確定終局裁判所適用之本院解釋，發生疑義，聲請補充解釋，經核確有正當理由者，應予受理（本院釋字第五０三號、第七四一號解釋參照）。本件二聲請案之聲請人各因都市計畫事件提起行政爭訟，分別經最高行政法院確定終局裁判引用本院釋字第一五六號解釋（下稱系爭解釋）作為裁判依據。系爭解釋之解釋文釋示：「主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其因而致特定人或可得確定之多數人之權益遭受不當或違法之損害者，自應許其提起訴願或行政訴訟以資救濟，本院釋字第一四八號解釋應予補充釋明。」且於理由書附論：「都市計畫之個別變更，與都市計畫之擬定、發布及擬定計畫機關

administrative action under public law, which, if directly restricting the rights or interests of the people within a certain region, or imposing additional obligations on such people, possesses the characteristics of an administrative act; if [such a modification] therefore causes improper or unlawful infringement on the rights and privileges of specific individuals or an identifiable group of individuals, they should be allowed to file administrative appeals or to initiate court proceedings in administrative court to seek redress for such an infringement. Our Interpretation No. 148 should be hereby supplemented and clarified [by the preceding].” It further stated in its reasoning: “the case-by-case modification of urban plans is different from the formulation of urban plans, the publication of urban plans, or the necessary modification based on the five-year periodic Comprehensive Review conducted by the competent formulating authorities (*see* Article 26 of the Urban Planning Act), [none of] which directly restricts the rights and privileges of the people within a certain region, nor imposes additional obligation on such people.”The Petition-

依規定五年定期通盤檢討所作必要之變更（都市計畫法第二十六條參照），並非直接限制一定區域內人民之權益或增加其負擔者，有所不同。」聲請人就都市計畫定期通盤檢討所作變更是否為行政處分，及得否提起行政爭訟部分，聲請補充解釋，經核有正當理由，合先敘明。

ers filed Petitions requesting supplementary interpretation regarding whether a modification based on the periodic Comprehensive Review of urban plans is an administrative act, and whether they can file administrative appeals and initiate court proceedings, which Petitions have been approved as petitions with legitimate reasons—as set out above.

Article 15 of the Constitution provides that the people's right to property shall be guaranteed. This is to ensure an individual may exercise her or his right and capacity to freely use, profit from, or dispose of the property according to its current status, and to further prevent the incursions from state authorities or third parties, so as to realize individual freedom, to develop [her or his own] personality and to preserve [her or his] dignity. (*see* our Interpretations Nos. 400 and 739.) Furthermore, the people's right to litigate, as protected by Article 16 of the Constitution, refers to the people's right to ask the courts for remedies when their rights or lawful interests are violated. (*see* our Interpretation No. 736.) Based

憲法第十五條規定人民財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴（本院釋字第四００號、第七三九號解釋參照）。又憲法第十六條保障人民訴訟權，係指人民於其權利或法律上利益遭受侵害時，有請求法院救濟之權利（本院釋字第七三六號解釋參照）。基於有權利即有救濟之憲法原則，人民權利或法律上利益遭受侵害時，必須給予向法院提起訴訟，請求依正當法律程序公平審判，以獲及時有效救濟之機會。此乃訴訟權保障之核心內容（本院釋字第三九六號、第五七四號、第六五三號解釋參照）。

on the constitutional principle of *ubi jus ibi remedium* ("where there is a right, there must be a remedy",) whenever the people's rights or lawful interests are violated, they must be offered an opportunity to initiate court proceedings requesting a fair trial with due process of law, so as to receive a timely and effective remedy. This is the core value of the right to litigate. (*see* our Interpretations Nos. 396, 574 and 653.)

As applied in one of the initial cases, Article 26 of the Urban Planning Act (as amended and promulgated on September 6, 1973) provides: "No *ad hoc* changes shall be made to any urban plan that has been announced and implemented. However, the agency formulating the plan shall review the plan comprehensively at least once every five years and make necessary modifications according to developments while also taking the people's suggestions into consideration. Land reserved for public facilities that are deemed unnecessary shall be de-reserved and used for other purposes. "As applied in the other initial case, Article 26 of the Urban

原因案件之一所適用之中華民國六十二年九月六日修正公布之都市計畫法第二十六條規定：「都市計畫經發布實施後，不得隨時任意變更。但擬定計畫之機關每五年至少應通盤檢討一次，依據發展情況並參考人民建議作必要之變更。對於非必要之公共設施用地，應予撤銷並變更其使用。」另一原因案件所適用之現行都市計畫法第二十六條規定：「（第一項）都市計畫經發布實施後，不得隨時任意變更。但擬定計畫之機關每三年內或五年內至少應通盤檢討一次，依據發展情況，並參考人民建議作必要之變更。對於非必要之公共設施用地，應變更其使用。（第二項）前項都市計畫定期通盤檢討之辦理機關、作

Planning Act, currently in force, provides: " (Paragraph 1) No *ad hoc* changes shall be made to any urban plan that has been announced and implemented. However, the agency formulating the plan shall review the plan comprehensively at least once every three or five years and make necessary modifications according to the developments while also taking the people's suggestions into consideration. Land reserved for public facilities that are deemed unnecessary shall be de-reserved and used for other purposes. (Paragraph 2) The Ministry of the Interior shall stipulate the implementing regulations regarding the competent authorities, the operating procedures, and the criteria for review in the periodic Comprehensive Review of urban plans, as described in the preceding paragraph." None of the above specifically regulates the scope of modifications or any possible content thereof. Article 4 of the Implementing Regulation of Periodic Comprehensive Review of Urban Plans, however, provides that necessary modifications can be made by the periodic Comprehensive Review to both the Master Plan and the Detail Plan; hence the

業方法及檢討基準等事項之實施辦法，由內政部定之。」均未具體規範定期通盤檢討之變更範圍及可能之內容。都市計畫定期通盤檢討實施辦法第四條則規定，定期通盤檢討得對主要計畫及細部計畫為必要之修正，是其所得修正之範圍及內容甚廣。按定期通盤檢討對原都市計畫之主要計畫或細部計畫所作必要變更，屬法規性質，並非行政處分。然由於定期通盤檢討所可能納入都市計畫內容之範圍並無明確限制，其個別項目之內容有無直接限制一定區域內特定人或可得確定多數人之權益或增加負擔，不能一概而論。訴願機關及行政法院自應就個案審查定期通盤檢討公告內個別項目之具體內容，判斷其有無個案變更之性質，亦即是否直接限制一定區域內特定人或可得確定多數人之權益或增加負擔，以決定是否屬行政處分之性質及得否提起行政爭訟。如經認定為個案變更而有行政處分之性質者，基於有權利即有救濟之憲法原則，應許其就該部分提起訴願或行政訴訟以資救濟，始符憲法第十六條保障人民訴願權及訴訟權之意旨。系爭解釋應予補充。

scope and content of what may be modified is very broad. The necessary modifications to an original urban plan based on the periodic Comprehensive Reviews of the urban plan are regulations in nature, not administrative acts; however, as there is no clear limit on the scope of urban plan that may be included in the periodic Comprehensive Review, it is not possible to categorically conclude whether or not the content of an individual item directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals. The agencies[with jurisdiction] over administrative appeals and the administrative courts should review the specific content of each individual item case by case in the announcement of a periodic Comprehensive Review to decide whether or not it possesses the characteristics of a case-by-case modification and whether or not it directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, so as to decide

whether or not it possesses the characteristics of an administrative act and whether or not administrative appeals and court proceedings are available. If [an individual item is] considered as a case-by-case modification and hence possessing the characteristics of an administrative act, based on the constitutional principle of *ubi jus ibi remedium*, the persons affected should be allowed to seek redress for the infringement imposed by that specific part by filing an administrative appeal or initiate court proceedings in an administrative court, in compliance with the protection of the people's right to appeal and the right to litigate offered by Article 16 of the Constitution. The preceding should be deemed supplementary to the Interpretation at issue.

Additionally, an urban plan (including any modifications based on the periodic Comprehensive Review; the same shall apply hereinafter) is a regulation in nature, not an administrative act. Under current law, even if the people consider the plan to be unlawful and to have violated their rights or lawful interests, they

又都市計畫（含定期通盤檢討之變更；下同），因屬法規性質，並非行政處分，依現行法制，人民縱認其違法且損害其權利或法律上利益，仍須俟後續行政處分作成後，始得依行政訴訟法提起撤銷訴訟（行政訴訟法第四條第一項參照）。然都市計畫核定發布後，都市計畫範圍內土地之使用將受限制（都

still have to wait until a subsequent administrative act is made to file an action of revocation (*see* Paragraph 1, Article 4 of the Administrative Litigation Act.) Nonetheless, the land use within the scope of an Urban Plan will be restricted right after the approval and announcement of the urban plan (*see* the related restrictive regulations in Article 6 and from Chapter 3 to Chapter 6 of the Urban Planning Act.) The influence of this on the rights and privileges of the people within the region is tremendous and the content of this is hardly distinguishable from that of an administrative act. In order to ensure timely, effective and complete protection for the people's right to property and right to litigate, to allow them to immediately seek remedies by initiating court proceedings when their right to property is violated due to an urban plan, and to urge the competent authorities to comply with laws and regulations when contemplating, approving, and announcing urban plans, the legislative organs should amend related laws and regulations within two years after the publication of this Interpretation, so as to enable the people to seek

市計畫法第六條及第三章至第六章等相關限制規定參照），影響區內人民權益甚鉅，且其內容與行政處分往往難以明確區隔。為使人民財產權及訴訟權受及時、有效、完整之保障，於其財產權因都市計畫而受有侵害時，得及時提起訴訟請求救濟，並藉以督促主管機關擬定、核定與發布都市計畫時，遵守法律規範，立法機關應於本解釋公布之日起二年內增訂相關規定，使人民得就違法之都市計畫，認為損害其權利或法律上利益者，提起訴訟以資救濟。如逾期未增訂，自本解釋公布之日起二年後發布之都市計畫之救濟，應準用訴願法及行政訴訟法有關違法行政處分之救濟規定。

redress for the infringement by initiating court proceedings against unlawful urban plans that they deem an infringement of their rights or lawful interests. Should [the legislative organs] fail to amend [the laws and regulations] in time, the remedial action procedures against unlawful administrative acts set forth in the Administrative Appeal Act and the Administrative Litigation Act are to be applied *mutatis mutandis* to the redress against any urban plan announced after two years from the publication of this Interpretation.

Regarding the request made by the Petitioner of one of the Petitions to interpret the unconstitutional part of Postscript 2 of Item No. 5 under section "3(1) Modification" in the detailed specification column, which provides that "……should provide 30% of land for public facilities (land reserved for parks), and should also concentrate the reservations of mandatory vacant lots accordingly" in the Fu-Gong-Second-Zi Announcement No. 81086893 of Taipei City Government on December 14, 1992 "Case of Public Facilities Reservation in Taipei City (Comprehensive

有關聲請案之一之聲請人聲請解釋臺北市政府八十一年十二月十四日府工二字第八一０八六八九三號公告「臺北市都市計畫公共設施保留地（通盤檢討）案」詳細說明欄三、（一）變更計畫部分編號 5. 備註 2.「……應提供 30% 之土地作公共設施（公園用地），同時法定空地亦應配合集中留設」違憲部分，因該備註規定是否直接限制一定區域內特定人或可得確定多數人之權益或增加其負擔，而具有行政處分之性質，並因而許其提起行政爭訟，應由行政法院依本解釋意旨認定；其既屬行政法院認事用法之職權範圍，自不得據以

Review),"the question whether or not this Post Script directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, and therefore possesses the characteristics of an administrative act and hence makes administrative appeals and court proceedings available[to the Petitioner] should be decided by the administrative courts according to this Interpretation. As it is within the administrative courts' authority to review the facts and apply the laws, [the Petitioner] should not request us for an interpretation. In sum, this part of the Petition of the Petitioner is at odds with Subparagraph 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act and should not be heard according to Paragraph 3 of the same Article.

聲請本院解釋。是該聲請人此部分之聲請，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Ming-Cheng TSAI, filed an opinion concurring in part, in which Justice Beyue SU CHEN and Justice Chong-Wen CHANG, joined.

本號解釋湯大法官德宗提出之部分協同意見書；蔡大法官明誠提出，陳大法官碧玉、張大法官瓊文加入之部分協同意見書；許大法官宗力提出之協同意見書；羅大法官昌發提出之協同意見書；林大法官俊益提出之協同意見書；

Justice Tzong-Li HSU filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion, in which Justice Sheng-Lin JAN, joined.

Justice Hsi-Chun HUANG filed an opinion dissenting in part.

Justice Chen-Huan WU filed a dissenting opinion.

許大法官志雄提出之協同意見書；黃大法官瑞明提出，詹大法官森林加入之協同意見書；黃大法官璽君提出之部分不同意見書；吳大法官陳鐶提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1. The Petitioner (Que,Yong-Huang et al.) representing 6 persons co-owned 27 titles of land in Nangang District, Taipei City (hereafter the "Land at issue,") which were designated as Land Reserved for the Academia Sinica in 1972. On December 14, 1992, the Taipei City Government announced and implemented the "Case of Public Facilities Reservation in Taipei City (Comprehensive Review)," which made partial

編者註：

事實摘要：一、聲請人闕永煌等6人共有坐落臺北市南港區的27筆土地（下稱系爭土地），61年間經規劃為中央研究院機關用地，81年12月14日臺北市政府公告發布實施「臺北市都市計畫公共設施保留地（通盤檢討）案」，關於系爭土地部分，以中央研究院放棄保留而作部分變更：「將北半部機關用地變更為第三種住宅區，惟應提供30%之土地作公共設施（公園用地），同時法定空地亦應配合集中

modifications to the Land at issue because the Academia Sinica had relinquished the land reservation: “the northern half of the reserved land is to be changed into the Third Category Residential Area, but yet [the land owner] should provide 30% of land for public facilities (land reserved for parks), and should also concentrate the reservations of mandatory vacant lots accordingly.” (Hereafter the“Announcement at issue.”) The Petitioner disagreed with the Announcement at issue and filed an administrative appeal in 2013, which was later rejected by the Ministry of Interior for the reason that the Announcement at issue was not an administrative act. The Petitioner then brought an action before the administrative court to revoke it, which action was later dismissed by the Taipei High Administrative Court in its 2014 Su-Zi Decision No. 424. One of the grounds for dismissal was that, based on J.Y. Interpretation No. 156, the Announcement at issue was a regulation in nature, not an administrative act and therefore could not be challenged by initiating court proceedings in an administrative court. This decision was later affirmed by the

留設。」(下稱系爭公告)。聲請人不服系爭公告，在 102 年提起訴願，內政部以系爭公告不是行政處分而不受理，聲請人續提行政訴訟請求撤銷，經臺北高等行政法院以 103 年度訴字第 424 號判決駁回，理由之一是依司法院釋字第 156 號解釋意旨，系爭公告屬法規性質，並不是行政處分，不得提起行政訴訟，這個見解被最高行政法院 104 年度判字第 680 號判決所維持。聲請人於是向本院聲請補充解釋釋字第 156 號解釋。

Supreme Administrative Court with its 2015 Pan-Zi Decision No.680. The Petitioner therefore filed the Petition requesting a supplementary interpretation to our Interpretation No. 156.

2. The Petitioner Zhao Heng Corporation, due to urban planning, owned 3 titles of land in the Shilin District, Taipei City, of which the designated land use was Gas Station Land Use (hereafter the"Gas Station Land at issue.") In May 2013, Taipei City Government, after receiving an approval from the Ministry of the Interior, announced and implemented a"Comprehensive Review of the Urban Plan for Waishuangxi in Shilin District, Taipei City (Master Plan)" (hereafter the "Announcement at issue,") which changed the status of the Gas Station Land at issue into "Transportation Land Use (Tourist Center)." The Petitioner disagreed with the Ministry of Interior's approval and the Announcement at issue and filed an administrative appeal. Having been rejected by the agencies with jurisdiction over administrative appeals, the Petitioner then brought an action before the administra-

二、聲請人兆亨公司因都市計畫事件，所有坐落臺北市士林區的 3 筆土地，原來的土地使用分區是加油站用地（下稱系爭加油站用地），臺北市政府在報經內政部核定後，於 102 年 5 月發布實施「臺北市士林區外雙溪地區都市計畫通盤檢討（主要計畫）案」(下稱系爭公告)，將系爭加油站用地變更為「交通用地（遊客中心）」。聲請人不服內政部的核定及系爭公告，提起訴願，遭訴願機關不受理，聲請人續提行政訴訟請求撤銷，經臺北高等行政法院以 102 年度訴字第 2024 號裁定駁回，理由之一是依司法院釋字第 156 號解釋意旨，都市計畫通盤檢討屬法規性質，並不是行政處分，不得提起行政訴訟，這個見解被最高行政法院 103 年度裁字第 1505 號裁定所維持。聲請人於是向本院聲請補充解釋釋字第 156 號解釋。

tive court to revoke the change of status. This action was later dismissed by Taipei High Administrative Court in its 2013 Su-Zi Ruling No.2024. One of the grounds for dismissal was that, based on J.Y. Interpretation No. 156, the Announcement at issue was a regulation in nature, not an administrative act and therefore could not be challenged by initiating court proceedings in an administrative court. This decision was later affirmed by the Supreme Administrative Court in its 2014 Cai-Zi Ruling No.1505. The Petitioner therefore filed the Petition requesting supplementary interpretation to our Interpretation No. 156.

J. Y. Interpretation No.743（December 30, 2016）*

【Whether Lands Expropriated for the Mass Rapid Transit System May Be Used for Joint Development Plan】

ISSUE: Whether lands expropriated for the mass rapid transit system may be used for joint development plan ?

RELEVANT LAWS:

Arrticles 15 and 23 of the Constitution（憲法第十五條、第二十三條）；J.Y. Interpretations Nos. 443, 614, 658, and 707（司法院釋字第四四三號、第六一四號、第六五八號、第七０七號）；Article 6, and Paragraphs 1 and 3 of Article 7 of the Mass Rapid Transit Act (July 1, 1988)（大眾捷運法第六條（77.7.1）、第七條第一項、第三項）；Article 48 of the Urban Planning Law（都市計畫法第四十八條）；Article 208, Sub-paragraph 2, of the Land Act（土地法第二百零八條第二款）；Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act（司法院大法官審理案件法第七條第一項第一款）；Ministry of the Interior Tai 部八十年一月二十四日台（八０）內地字第八九一六三０號）；Tai（80）Nei-Di-Zi No. 8007241 dated December 18, 1991（八十年十二月十八日台（八０）內地字第八００七二四一號）；Tai（81）Nei-Di-Zi No. 8104860 dated April 21, 1992（八十一

* Translated by Yen-Chia CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

年四月二十一日台（八一）內地字第八一0四八六0號函）；Tai-Nei-Di-Zi No. 1020246881 dated July 10, 2013（一0二年七月十日台內地字第一0二0二四六八八一號函）；Ministry of Transportation and Communications Jiao-Lu-Zi No. 1025005474 dated May 20, 2013（交通部一0二年五月二十日交路字第一0二五00五四七四號函）；Control Yuan Yuan-Tai-Diao-Yi-Zi No. 1030800021 dated January 21, 2014（監察院一0三年一月二十一日院台調壹字第一0三0八000二一號函）；Executive Yuan Yuan-Tai-Jiao-Zi No. 1030133300 dated May 5, 2014（行政院一0三年五月五日院臺交字第一0三0一三三三00號函）；Yuan-Tai-Jiao-Zi No. 1040050323 dated September 21, 2015（一0四年九月二十一日院臺交字第一0四00五0三二三號函）；Judicial Yuan Yuan-Tai-Da-Er-Zi No. 1040024712 dated September 11, 2015（司法院一0四年九月十一日院台大二字第一0四00二四七一二號函）

KEYWORDS:

expropriation（徵收）, joint development（聯合開發）, lands required for the mass rapid transit system（大眾捷運系統需用土地）, property rights（財產權）, uniform interpretation（統一解釋）, the principle of legal reservation （the principle of statutory reservation）（法律保留）**

HOLDING: Under Article 6 of the Mass Rapid Transit Act, promulgated on July 1, 1988, any land expropriated by the competent authority in accordance with relevant regulations and for the need of the mass rapid transit system shall not be used for the joint development plan in the same project being approved and implemented under Article 7, Paragraph 1, of the same Act.

解釋文：主管機關依中華民國七十七年七月一日制定公布之大眾捷運法第六條，按相關法律所徵收大眾捷運系統需用之土地，不得用於同一計畫中依同法第七條第一項規定核定辦理之聯合開發。

For the land being expropriated under Article 6 of the Mass Rapid Transit Act, there must have explicit regulations by law on the transfer of such land's title to a third party before the competent authority may act as such and thus in compliance with the meaning and purpose of the protection of people's property rights under the Constitution.

依大眾捷運法第六條徵收之土地，應有法律明確規定得將之移轉予第三人所有，主管機關始得為之，以符憲法保障人民財產權之意旨。

REASONING: Article 6 of the Mass Rapid Transit Act, promulgated on July 1, 1988 (hereinafterthe "MRTA" or the "Act") provides: "Any land required for the mass rapid transit system may be expropriated . . . in accordance with the law." (This provision has not been

解釋理由書：七十七年七月一日制定公布之大眾捷運法（下稱七十七年捷運法）第六條規定：「大眾捷運系統需用之土地，得依法徵收……之。」（該規定迄未修正，下稱系爭規定一）同法第七條第一項規定：「為有效利用土地資源，促進地區發展，地方主管

amended since the promulgation of the MRTA; hereinafter "Disputed Provision 1".) Article 7, Paragraph 1, of the same Act provides: "In order to effectively utilize land resources and promote regional development, a local competent authority may, at its own initiative or incollaboration with private parties or groups, develop lands for fields, stations, and routes as well as lands adjacent to the mass rapid transit system." (hereinafter "Disputed Provision 2"; the language of this Provision was revised on May 28, 1997, with the sameme aning and purpose.) These are the applicable laws for the Joint Development Project of the Xindian Line Machine Plant of the Taipei Metropolitan Area Mass Rapid Transit System, under the auspices of the Taipei City Government (hereinafter the "Joint Development Project"). To address the need for lands under the said Project, the Taipei City Government (the petitioner for land acquisition) submitted to the Ministry of Interior for land expropriation on January 17, 1991, December 11, 1991, and April 15, 1992, respectively. The Ministry of Interior, in turn, approved the land expro-

機關得自行開發或與私人、團體 聯合開發大眾捷運系統場、站與路線之土地及毗鄰地區之土地。」（下 稱系爭規定二，八十六年五月二十八日僅作文字修正，意旨相同）此為 臺北市政府興辦臺北都會區大眾捷運系統新店線新店機廠聯合開發案 （下稱系爭聯合開發案）適用之法律。臺北市政府（需用土地人）為興 辦系爭聯合開發案用地之需要，分別於八十年一月十七日、八十年十二 月十一日及八十一年四月十五日向內政部申請徵收。內政部以八十年一 月二十四日台（八０）內地字第八九一六三０號、八十年十二月十八日台（八０）內地字第八００七二四一號及八十一年四月二十一日台（八 一）內地字第八一０四八六０號函准予徵收。前揭內政部第八九一六三 ０號及第八００七二四一號函所附徵收土地計畫書固援引土地法第二百零八條第二款、都市計畫法第四十八條、系爭規定一與七十七年捷運法第七條作為法令依據。惟查系爭聯合開發案用地之都市計畫細部計畫係 於八十八年三月二十五日始發布實施；臺北市政府於同年四月九日核定 聯合開發計畫書。在此之前系爭聯合開發案之內容無從確定，自難認臺北市政府已依七十七年捷運法第七

priation by issuing memoranda *Tai* (80) Nei Di Zi No. 891630, dated January 24, 1991, *Tai* (80) Nei Di Zi No. 8007241, dated December 18, 1991, and Tai (80) Nei Di Zi No. 8104860, dated April 21, 1992. The plans for land expropriation in the abovementioned Nei Di Zi No. 891630 and Nei Di Zi No. 8007241 cited Article 208, Sub-paragraph 2, of the Land Act, Article 48 of the Urban Planning Law, Disputed Provision 1, and Article 7 of the MRTA as the legal basis. However, the detailed specifications for the Joint Development Project were announced and implemented on March 25, 1999; whereas the Taipei City Government approved the Joint Development Project on April 4 of the same year. The content of the Joint Development Project was not ascertained prior to those dates. Therefore, the Taipei City Government can hardly be deemed to have expropriated the lands at issue in accordance with Article 7, Paragraph 3, of the MRTA, which provides that ". . . (land) may be expropriated . . . if negotiations fail." As for the plans for land expropriation in the abovementioned Nei Di Zi No. 8104860, Article 208, Sub-paragraph 2,

條第三項「……協議不成者，得徵收之」之規定辦理徵收。至前揭內政部第八一0四八六0號函所附徵收土地計畫書則引土地法第二百零八條第二款、都市計畫法第四十八條及系爭規定一作為法令依據。

of the Land Act, Article 48 of the Urban Planning Law, and Disputed Provision 1 were cited as the legal basis.

The Control Yuan found that (1) the competent authority's combined application of Disputed Provisions 1 and2, as well as the sale of expropriated lands, which have residential, commercial, and office buildings constructed thereon through joint development model,to private individuals are against the legislative design, where Disputed Provisions 1 and 2 are not supposed to be applied in tandem, and fail to be in conformity with the principle of the rule of law; and that (2) the MRTA does not specifically stipulate that the expropriated lands of the people may be converted to privately owned by way of "general expropriation" and joint development, and thus the Taipei City Government's conversion of this type of lands to private individuals runs afoul with the principle that significant matters must be expressly stipulated by statutes. Accordingly, the Control Yuan proposed corrective measures against the Taipei City Government and requested

監察院認為：一、就主管機關併行適用系爭規定一、二，及將徵收之土地以聯合開發模式興建住、商、辦大樓，並出售私人所有，係違背系爭規定一、二不得併行之立法設計，未落實依法行政原則；二、大眾捷運法並未明文規定得以「一般徵收」方式徵收人民土地後，以聯合開發方式將土地移轉為私有，臺北市政府將此種土地移轉為私有，有違重要事項應由法律明定之原則，提案糾正臺北市政府，並要求行政院轉飭 所屬確實檢討改善（見監察院一０一年交正字第００一七號糾正案文）。大眾捷運法之中央主管機關交通部引臺北高等行政法院九十九年訴字第一五八七號判決，認為臺北市政府依系爭規定一、二以雙軌併行辦理徵收及聯合開發，並無不法。該部又認為，法務部並未具體認定「以徵收方式取得之聯合開發土地如擬移轉私人，須以法律明文規定，始得為之」（交通部一０二年五月二十日交路字第一０二五００五四七四號函參照）。核准土地徵收之機關

the Executive Yuan to order its subordinate agencies to review and implement improvements (*see* Control Yuan 101 Jiao Zheng Zi No. 0017 Corrective Measures). The Ministry of Transportation and Communications, which is the central competent authority specified in the MRTA, citing the 99 Su Zi No. 1587 judgment of the Taipei High Administrative Court, found that it is not against the law for the Taipei City Government to combine the expropriation and joint development process in tandem. That Ministry further found that the Ministry of Justice did not specifically hold that "joint development lands taken through expropriation may be transferred to private persons only when the law specifically stipulated as such" (*see* Ministry of Transportation and Communications Memorandum Jiao Lu Zi No. 1025005474, dated May 20, 2013). The Ministry of Interior, which is the agency that approved the expropriation of lands, found that there is no controversy over the transfer of jointly developed lands taken through expropriation to private individuals (*see* Ministry of Interior Tai Nei Di Zi No. 1020246881, dated July 10,

內政部認為，以徵收取得之聯合開發土地移轉予私人所有，並無疑義（內政部一〇二年七月十日台內地字第一〇二〇二四六八八一號函參照）。嗣經監察院以一〇三年一月二十一日院台調壹字第一〇三〇八〇〇〇二一號函立案調查後，行政院對交通部及內政部之前述意見，表示「尊重相關權責機關研處情形」（見行政院一〇三年五月五日院臺交字第一〇三〇一三三三〇〇號函說明三及所附「監察院一〇三年四月十八日就捷運新店機廠聯合開發案詢問事項研處情形彙復表」項次壹、四〔有關交通部意見部分〕；項次壹、五項次貳、一）。本院嗣函詢行政院，其所稱「尊重」，是否意指其與交通部及內政部之意見一致，而與監察院持不同之見解（見本院一〇四年九月十一日院台大二字第一〇四〇〇二四七一二號函）；該院表示，其與交通部及內政部分別按其權責之研處，「並無不同意見」（見行政院一〇四年九月二十一日院臺交字第一〇四〇〇五〇三二三號函說明二）。綜上，可見監察院與行政院各就屬其職權行使相關事項之系爭規定一、二是否得併用，及於依系爭規定一徵收人民之土地，是否得將之以聯合開發方式移轉為私人所有，就適用

2013). After the Control Yuan initiated an investigation with Memorandum *Yuan Tai* Diao Yi Zi No. 1030800021 on January 21, 2014, the Executive Yuan commented on the aforementioned opinion of the Ministry of Transportation and Communications and the Ministry of Interior that the Executive Yuan "respects the inquisition by the relevant agencies in charges" (*see* item 3 of the Illustration in Executive Yuan Memorandum Yuan Tai Jiao Zi No. 1030133300, dated May 5, 2014, and ItemsI.4 (Regarding the Opinion of the Ministry of Transportation and Communications), I.5 and II.1 of the attached "Summarization Table in Response to Control Yuan's April 18, 2014 Inquisition into the Joint Development of the Xindian Line Machine Plant of the Mass Rapid Transit System". This Yuan subsequently issued a letter to the Executive Yuan inquiring whether the said "respect" mentioned by Executive Yuan in its aforementioned comment means that the opinion held by the Executive Yuan is consistent with the opinion of the Ministry of Transportation and Communications and that of the Ministry of Interior, but different

同一法律，顯然發生見解歧異。本件監察院聲請統一解釋，核與司法院大法官審理案件法第七條第 一項第一款規定之要件相符，應予受理，先予敘明。

from the opinion of the Control Yuan (*see* Judicial Yuan Memorandum Yuan Tai Da Er Zi No. 1040024712). In response, the Executive Yuan indicated that it "does not hold a different opinion" from the opinion concluded and held by the Ministry of Transportation and Communications and the Ministry of Interior based upon each agency's respective authority (*see* Item 2 of the Illustration of the Executive Yuan Memorandum Yuan Tai Jiao *Zi* No. 1040050323). In sum, it is apparent that the Control Yuan and the Executive Yuan, while exercising their authorities on relevant matters, disagreed on the combined application of Disputed Provisions 1 and 2, and whether lands expropriated in accordance with Disputed Provision 1 may be transferred to private individuals through joint development. This petition for a uniform interpretation by the Control Yuan is accepted as it has met the requirements prescribed under Article 7, Paragraph 1, Sub-paragraph 1 of the Constitutional Court Procedure Act.

Disputed Provision 1, which requires the competent authority's expro-

系爭規定一要求主管機關就大眾捷運系統需用之土地，依相關法律 徵

priation of needed lands for the construction of the mass rapid transit system be conducted in accordance with the relevant laws, is designed for the particular purpose of the construction of the mass rapid transit system rather than for the seeking of commercial interests. The objectives of Disputed Provision 2 are for the effective use of land resources, promotion of regional development, and the facilitationof acquiring construction budget for the mass rapid transit system (*see* Volume 77, No. 46, page 43 of the Legislative Yuan Gazette). Accordingly, the joint development is for the effective use of land resources and, therefore, involves the sharing of commercial interests and risk-taking. While the competent authority assumes the ownership of the lands expropriated under Disputed Provision 1 in accordance with the relevant laws, the competent authority is not in the same position as an ordinary title owner, who may freely use, profit from, dispose of or exercise other rights over the land. Since the expropriation was for the particular purpose of the construction of the mass rapid transit system, the competent

收，作興建捷運系統之特定目的使用，非以追求商業利益為考量。系爭規定二之目的，則在有效利用土地資源，促進地區發展並利大眾捷運系統建設經費之取得（立法院公報第七十七卷第四十六期第四十三頁參 照），故聯合開發係為有效利用土地資源，並因此涉及商業利益之分享及風險之分擔。主管機關依系爭規定一，按相關法律徵收人民土地，雖因而取得土地所有權人之地位，然其與一般土地所有權人得自由使用、收益、處分及行使其他土地權利者並不全然相同。其徵收既係基於興建 捷運系統之特定目的，主管機關自不得於同一計畫，持該徵收之土地，依系爭規定二辦理聯合開發，而為經濟利用，故自亦無由主管機關將該徵收之土地所有權移轉予第三人之餘地。如因情事變更，主管機關擬依後續計畫辦理聯合開發，應依其時相關法律辦理。

authority may not, under the same plan, process joint development on the said expropriated lands for economic utility in accordance with Disputed Provision 2. Nor is there any ground for the competent authority to transfer title of the expropriated lands to a third party. If there should be any change of circumstances so that the competent authority proposes to implement a subsequent joint development project, the competent authority shall do so in accordance with the relevant laws at such time.

Separately, the scope of the principle of statutory reservation is never limited to the limitations of fundamental rights of the people under Article 23 of the Constitution. While a government's administrative measure does not directly limit the people's freedom and rights, that government's administrative measure should nevertheless be regulated by statutes if it involves significant matters such as public interest or fulfillment of people's fundamental rights. In case the statute authorizes the competent authorities to promulgate supplemental regula-

另按法律保留之範圍，原不以憲法第二十三條所規定限制人民權利之事項為限。政府之行政措施雖未直接限制人民之自由權利，但如涉及公共利益或實現人民基本權利之保障等重大事項，應由法律加以規定，如以法律授權主管機關發布命令為補充規定時，其授權應符合具體明確之原則（本院釋字第四四三號、第六一四號、第六五八號、第七０七號解釋參照）。主管機關為公用或公益之目的而以徵收方式剝奪人民財產權後，如續將原屬人民之財產移轉為第三人所有，易使徵收權力遭濫用及使人民產生圖利特定第三人之疑慮。

tions, such authorization shall be specific and precise (*see* J.Y. Interpretations Nos. 443, 614, 658, and 707).Having deprived the property right of the peoplefor the purpose of public use or public interest, the competent authority, if subsequently being permitted to transfer title from what originally belonged to the people to a third party, is likely to cause the abuse of the expropriation power and concerns among the people over the profiteering of a particular third party. As such, in case of any change of circumstances, whereby the competent authority, by way of applying the relevant statutory provision at thetime, should process and incorporate the needed lands being expropriated in accordance with Disputed Regulation 1 in the subsequent plan for joint development, the competent authority may carry out such action only if there have explicit regulations by laws pecifying that the competent authority may transfer [title] to the third party, so as to conform with the meaning and purpose of the protection on people's property right under the Constitution.

是如因情事變更，主管機關有依其時相關法律規定，將循系爭規定一所徵收大眾捷運系統需用之土地，納入後續計畫，辦理聯合開發之情形，仍應有法律明確規定主管機關得將之移轉予第三人所有，始得為之，以符憲法保障人民財產權之意旨。

Justice Jeong-Duen TSAI filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion, in which Justice Sheng-Lin JAN, joined.

Justice Chen-Huan WU,filed an opinion concurring in part and dissenting in part.

Justice Jiun-Yi LIN filed an opinion dissenting in part and concurring in part.

Justice Ming-Cheng TSAI, filed an opinion dissenting in part, in which Justice Jiun-Yi LIN and Justice Chong-Wen CHANG, joined.

Justice Beyue SU CHEN filed a dissenting opinion.

Justice Hsi-Chun HUANG filed a dissenting opinion.

本號解釋蔡大法官烱燉提出之協同意見書；羅大法官昌發提出之協同意見書；黃大法官虹霞提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出，詹大法官森林加入之協同意見書；吳大法官陳鐶提出之部分協同部分不同意見書；林大法官俊益提出之部分不同部分協同意見書；蔡大法官明誠提出，林大法官俊益、張大法官瓊文加入之部分不同意見書；陳大法官碧玉提出之不同意見書；黃大法官璽君提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: In its investigation of the "Joint Development of Xindian

編者註：

事實摘要：監察院於調查「臺北都會區大眾捷運系統新店線新店機廠聯

Line Machine Plant of the Mass Rapid Transit System of the Taipei Metropolitan Area" (the Mehas case), the Control Yuan, while exercising its power, was in disagreement with the Executive Yuan regarding the application of the law, and on July 11, 2014, filed a petition for interpretation.

合開發(美河市)案」過程中，就其職權上適用法令所持見解，與行政院的見解不同，於103年7月11日聲請解釋。

J. Y. Interpretation No.744（January 06, 2017）*

【Prior Restraint on Commercial Speech Case】

ISSUE: Are Article 24, Paragraph 2 of the Statute for Control of Hygiene and Safety of Cosmetics and its punishment as provided in Article 30, Paragraph 1 of the same Statuteunconstitutional ?

RELEVANT LAWS:

Articles 11 and 23 of the Constitution（憲法第 11 條、第 23 條）； J.Y. Interpretation Nos. 414, 577 and 623（司法院釋字第 414 號、第 577 號、第 623 號解釋）；Article 5, Paragraph 1, Section 2 of the Constitutional Court Procedure Act（司法院大法官審理案件法第 5 條第 1 項第 2 款）； Articles 7, Paragraph 1 & 2, Articles 16, Paragraph 1 & 2, Article 24, Paragraph 2 and Article 30, Paragraph 1 of the Statute for Control of Hygiene and Safety of Cosmetic（化粧品衛生管理條例第 7 條第 1 及 2 項、第 16 條第 1 及 2 項、第 24 條第 2 項、第 30 條第 1 項）**

KEYWORDS:

commercial speech（商業性言論）, prior censorship（事前審查）, freedom of speech（言論自由）, principle of proportionality（比例原則）, compelling public interests（特別重要之公共利益）, prompt judicial remedy（立即司法救濟）

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* Translated by Yen-Tu SU

** Contents within frame, not part of the original text, are added for reference purposes only.

HOLDING: Article 24, Paragraph 2 of the Statute for Control of Hygiene and Safety of Cosmetics reads, "Before publishing or broadcasting any advertisement, the cosmetic firm shall first submit [the content of the advertisement] to the health authority of the central government or that of a special municipality for approval ...." Article 30, Paragraph 1 of the same Statute reads, "Any person who violates ... Article 24, Paragraph 2 is punishable by a fine of up to TWD 50,000." These two provisions constitute a prior censorship of cosmetic advertisements and go beyond what is necessary in restricting the cosmetic firms' freedom of speech. As such, they are not in accordance with the proportionality principle as required by Article 23 of the Constitution and violate the people's freedom of speech under Article 11 of the Constitution. These two provisions shall be null and void immediately from the date of announcement of this Interpretation.

解釋文：化粧品衛生管理條例第二十四條第二項規定：「化粧品之廠商登載或宣播廣告時，應於事前……申請中央或直轄市衛生主管機關核准……。」同條例第三十條第一項規定：「違反第二十四條……第二項規定者，處新臺幣五萬元以下罰鍰……。」係就化粧品廣告所為之事前審查，限制化粧品廠商之言論自由，已逾越必要程度，不符憲法第二十三條之比例原則，與憲法第十一條保障人民言論自由之意旨有違，應自本解釋公布之日起失其效力。

REASONING: This case was petitioned for by DHC Taiwan, Inc., whose representative is Yoshiaki Yoshida.

解釋理由書：聲請人台灣蝶翠詩化粧品股份有限公司代表人吉田嘉明，未先向主管機關申請核准，即於購

The petitioner advertised its sunscreen lotion products on an online shopping website without first applying for and obtaining approval from the competent authority. Pursuant to Article 30, Paragraph 1 of the Statute for Control of Hygiene and Safety of Cosmetics (hereinafter "Statute"), the Department of Health of the Taipei City Government fined the petitioner TWD 30,000 for violating Article 24, Paragraph 2 of the Statute. To contest the fine, the petitioner filed an administrative suit after its administrative appeal was denied.The Taipei High Administrative Court ruled against the petitioner in its Judgment 99-Chien-850(2010). In its Judgment100-Tsai-2198(2011), the Supreme Administrative Court dismissed the petitioner's appeal on the grounds that the appeal was legally impermissible for lack of importance in terms of legal principles. Therefore, for the purpose of this petition, the judgment of The Taipei High Administrative Court is deemed the final judgment. In this petition, the petitioner challenges the constitutionality of the laws applied in the final judgment. The laws being challenged include three

物中心網站刊登防曬乳之化粧品廣告，經臺北市政府衛生局以其違反化粧品衛生管理條例（下稱系爭條例）第二十四條第二項規定，依系爭條例第三十條第一項規定，處新臺幣三萬元罰鍰。聲請人不服，提起訴願遭駁回後提起行政訴訟，經臺北高等行政法院九十九年度簡字第八五０號判決駁回。上訴後，經最高行政法院一００年度裁字第二一九八號裁定，以其所陳上訴理由並無所涉及之法律見解具有原則性之情事，上訴不合法為由予以駁回，是本件聲請應以上開臺北高等行政法院判決為確定終局判決。聲請人認確定終局判決所適用之系爭條例第二十四條第一項、第二項、第三十條第一項關於違反同條例第二十四條第二項為處罰部分及系爭條例施行細則第二十條規定，有牴觸憲法之疑義，向本院聲請解釋憲法。有關聲請人主張系爭條例第二十四條第二項及第三十條第一項就違反同條例第二十四條第二項為處罰違憲部分，核與司法院大法官審理案件法第五條第一項第二款所定要件相符，爰予受理，作成本解釋，理由如下：

provisions of the Statute: Article 24, Paragraphs 1 and 2 and Article 30, Paragraph 1 regarding the punishment for violation of Article 24, Paragraph 2. The petitioner also challenges the constitutionality of Article 20 of the Enforcement Rules for the Statute. On two provisions of the Statute, Article 24, Paragraph 2 and Article 30, Paragraph 1 regarding the punishment for violation of Article 24, Paragraph 2, we granted review of the said petition, which was duly filed under Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. This Court made this Interpretation on the basis of the following grounds:

The purpose of freedom of speech is to ensure the free flow of information to provide people with opportunities to obtain ample information and to pursue self-realization. Cosmetic advertisements promote the use of cosmetic products through media communications for marketing purposes. They are a form of commercial speech. To the extent that commercial speech is producing information for lawful business, which is neither false

言論自由在於保障資訊之自由流通，使人民有取得充分資訊及自我實現之機會。化粧品廣告係利用傳播方法，宣傳化粧品效能，以達招徠銷售為目的，具商業上意見表達之性質。商業言論所提供之訊息，內容非虛偽不實或不致產生誤導作用，以合法交易為目的而有助於消費大眾作出經濟上之合理抉擇者，應受憲法第十一條言論自由之保障（本院釋字第五七七號、第六二三號解釋參照）。

nor misleading and can help consumers make economically rational choices, it is protected by Article 11 of the Constitution as a form of free speech (*see* J.Y. Interpretations Nos. 577 and 623).

Article 24, Paragraph 2 of the Statute stipulates, "Before publishing or broadcasting any advertisement, the cosmetic firm shall first submit all the texts, pictures, and/or oral statements of the advertisement to the health authority of the central government or that of a special municipality for approval; for the record, the cosmetic firm shall also present the approval letter or certificate to the press or media." Article 30, Paragraph 1 of the Statute stipulates, "Any person who violates ... Article 24 Paragraph 2 is punishable by a fine of up to TWD 50,000; if the violation is a serious or a recurring one, the violator's business license or factory permit may be annulled by the issuing authority." Taken together, these two provisions (hereinafter "provisions at issue") constitute a prior censorship of cosmetic advertisements that restricts cosmetic firms' freedom of speech and the oppor-

系爭條例第二十四條第二項規定：「化粧品之廠商登載或宣播廣告時，應於事前將所有文字、畫面或言詞，申請中央或直轄市衛生主管機關核准，並向傳播機構繳驗核准之證明文件。」同條例第三十條第一項規定：「違反第二十四條……第二項規定者，處新臺幣五萬元以下罰鍰；情節重大或再次違反者，並得由原發證照機關廢止其有關營業或設廠之許可證照。」（下併稱系爭規定）係就化粧品廣告採取事前審查制，已涉及對化粧品廠商言論自由及人民取得充分資訊機會之限制。按化粧品廣告之事前審查乃對言論自由之重大干預，原則上應為違憲。系爭規定之立法資料須足以支持對化粧品廣告之事前審查，係為防免人民生命、身體、健康遭受直接、立即及難以回復危害之特別重要之公共利益目的，其與目的之達成間具直接及絕對必要關聯，且賦予人民獲立即司法救濟之機會，始符合憲法比例原則及保障言論自由之意旨。

tunities for the people to obtain ample information. Being a severe interference with the freedom of speech, such prior censorship of cosmetic advertisements shall be presumed unconstitutional. The provisions at issue can be otherwise regarded as permissible under the constitutional principle of proportionality and the constitutional guarantee to the freedom of speech if and only if their legislative records are sufficient enough to support the findings that the prior censorship of cosmetic advertisements is directly connected to and absolutely necessary for the achievement of compelling public interests in preventing direct, immediate, and irreparable harms to people's lives, bodily integrity, and/or health, and the people are afforded with the opportunity to seek prompt judicial remedy.

Cosmetics are defined as substances to be applied externally on the human body for the purpose of freshening hair or skin, stimulating the sense of smell, covering body odor, promoting attractiveness, or altering the appearance. The national health authority is further authorized to

查化粧品係指施於人體外部，以潤澤髮膚，刺激嗅覺，掩飾體臭或修飾容貌之物品；其範圍及種類，由中央衛生主管機關公告之（系爭條例第三條參照），非供口服或食用。另依中央主管機關公告之化粧品範圍及種類表，所稱化粧品俱屬一般日常生活用品。系爭規

make public the scope and categories of cosmetics (*see* Article 3 of the Statute). In other words, cosmetics are not for oral digestion. In addition, all of the cosmetics listed in the Table on the Scope and Categories of Cosmetics as announced by the national health authority are ordinary products for daily use. The most likely legislative purpose of the provisions at issue, therefore, is to prevent obscene, immoral, false, or exaggerated advertisements from being published or broadcasted (*see* Article 24, Paragraph 1 of the Statute) so as to maintain *boni mores* and to protect consumers' health as well as other lawful interests that are deemed relevant. These have to do with the protection of public interests, to be sure. But since cosmetic advertisements are aimed at attracting consumers to purchase the advertised products and do not pose direct or immediate threats to people's lives, bodily integrity, and/or health, it is difficult to argue that the purpose of censoring such advertisements in advance is to prevent direct, immediate, and irreparable harms to people's lives, bodily integrity, and/or health. And since the provisions at issue

定之立法目的應係為防免廣告登載或宣播猥褻、有傷風化或虛偽誇大（系爭條例第二十四條第一項參照），以維護善良風俗、消費者健康及其他相關權益，固均涉及公益之維護，然廣告之功能在誘引消費者購買化粧品，尚未對人民生命、身體、健康發生直接、立即之威脅，則就此等廣告，予以事前審查，難謂其目的係在防免人民生命、身體、健康遭受直接、立即及難以回復之危害。系爭規定既難認係為保護特別重要之公共利益目的，自亦無從認為該規定所採事前審查方式以限制化粧品廠商之言論自由及消費者取得充分資訊機會，與特別重要之公共利益之間，具備直接及絕對必要之關聯。

cannot be said to be aimed at protecting any compelling public interest, there exist no direct and absolutely necessary connections between the restrictions imposed by the prior censorship of the provisions at issue on cosmetic firms' freedom of speech and consumers' access to full information on the one hand and any compelling public interest on the other hand.

According to the existing law, cosmetics are divided into two major categories: ordinary cosmetics and cosmetics containing drug ingredients (*see* Article 7, Paragraphs 1 and 2 as well as Article 16, Paragraphs 1 and 2 of the Statute). Cosmetics containing drug ingredients are for such uses as sun screening, hair dyeing, hair perming, minimizing sweating and odor, skin whitening, acne prevention, skin moisturizing, preventing bacterial infections, teeth whitening, etc. (*see* the Criteria for Cosmetics Containing Medical, Poisonous, or Potent Drugs). Although they could produce greater impacts than ordinary cosmetics on people's lives, bodily integrity, and/or health, it is inconceivable that their advertisements would

依現行法規定，化粧品可分為含藥及一般化粧品兩大類（系爭條例第七條第一項、第二項及第十六條第一項、第二項參照）。所謂含藥化粧品係指具防曬、染髮、燙髮、止汗制臭、美白、面皰預防、潤膚、抗菌、美白牙齒等用途之化粧品（化粧品含有醫療或毒劇藥品基準參照）。其對人民生命、身體、健康造成之影響雖較一般化粧品為高，但就此等化粧品之廣告，性質上仍非屬對人民生命、身體、健康構成直接威脅。況含藥化粧品，不論係自外國輸入或本國製造，均須先提出申請書、由主管機關查驗並經核准、發給許可證後，始得輸入或製造（系爭條例第七條第一項及第十六條第一項參照）。含藥化粧品，除其標籤、仿單或包裝與一般化粧品同，須記載中央衛生主管機關規定之

pose direct threats to people's lives, bodily integrity, and/or health. Besides, regardless of whether it is imported or produced domestically, a cosmetic containing drug ingredients could be imported or produced only if it has first applied for and then obtained approval from the authorities, after examination and testing (*see* Article 7, Paragraph 1 and Article 16, Paragraph 1 of the Statute). Any cosmetic containing drug ingredients must list the ingredients, usage, dose, and other information as required by the national health authority on its label leaflet and/or package, in the same manner as what is required for any ordinary cosmetic. Also, it is required to disclose the name and content of the drug ingredients contained, the precautions for use, and the serial number of its license (*see* Article 6 of the Statute). As far as the prevention of health hazards is concerned, Chapter IV (beginning with Article 23) of the Statute authorizes the health authorities to conduct such inspection measures as spot checks and sampling and to enforce the law by revoking the licenses and/or prohibiting the importation, manufacture, and/or sale [of any given harmful

事項包括成分、用途、用量等外，另須標示藥品名稱、含量、許可證字號及使用時注意事項等（系爭條例第六條規定參照）。就有害人體健康之預防而言，系爭條例第四章第二十三條以下訂有禁止輸入、製造、販賣、註銷許可證等暨抽檢及抽樣等抽查取締規定；第五章就相關違反情形，亦訂有罰則。又系爭條例第二十四條第一項已另有不實廣告等禁止之明文，對可能妨礙人體健康之不實化粧品廣告，主管機關本得依系爭條例第三十條第一項規定為處罰。是系爭規定適用於含藥化粧品廣告，仍難認係為保護特別重要之公共利益目的，且與目的達成間具直接及絕對必要之關聯。

cosmetic]. Chapter V, in turn, provides for the penalties for violations. Furthermore, Article 24, Paragraph 1 of the Statutebans false advertisements and the like, and the authorities may also invoke Article 30, Paragraph 1 of the Statute to punish those false cosmetic advertisements that are likely to be harmful to human health. Given the above regulations and subsequent punishments, the provisions at issue, even when applied to the advertisements for cosmetics containing drug ingredients, can neither be justified as pursuing any compelling public interest nor be directly connected to and considered absolutely necessary for protecting any such interest.

In sum, the provisions at issue violate the proportionality principle under Article 23 of the Constitution and freedom of speech as guaranteed by Article 11 of the Constitution. Both provisions shall be null and void immediately from the date of announcement of this Interpretation.

綜上，系爭規定不符憲法第二十三條之比例原則，與憲法第十一條保障人民言論自由之意旨有違，應自本解釋公布之日起失其效力。

The petitioner also contends that Article 24, Paragraph 1 of the Statute

另聲請人認系爭條例第二十四條第一項及系爭條例施行細則第二十條規

and Article 20 of the Enforcement Rules forthe Statute were unconstitutional as well by virtue of violating Articles 11, 15, and 23 of the Constitution. Judging from the petitioner's arguments in this regard, however, it is difficult to sustain that the petitioner has made sufficiently-grounded challenges to the constitutionality of these aforementioned provisions. According to Article 5, Paragraph 3 of the Constitutional Court Procedure Act, this part of the petition shall be dismissed for failing to meet the requirements set forth in Article 5, Paragraph 1, Subparagraph 2 of the same Act. It is noted here.

定牴觸憲法第十一條、第十五條、第二十三條部分，核其所陳，尚難謂客觀上已具體指摘上開規定有何牴觸憲法之處。故此部分之聲請，不符司法院大法官審理案件法第五條第一項第二款規定，依同條第三項規定應不受理，併此敘明。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Tzong-Li HSU filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Ming-Cheng TSAI filed a concurring opinion.

本號解釋湯大法官德宗提出之部分協同意見書；林大法官俊益提出之部分協同意見書；許大法官宗力提出之協同意見書；羅大法官昌發提出之協同意見書；黃大法官虹霞提出之協同意見書；蔡大法官明誠提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出之協同意見書；黃大法官昭元提出之協同意見書；吳大法官陳鐶提出，陳大法官碧玉加入之部分不同意見書。

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion.

Justice Jau-Yuan HWANG filed a concurring opinion.

Justice Chen-Huan WU filed an opinion dissenting in part, in which Justice Beyue SU CHEN, joined.

J. Y. Interpretation No.745（February 8, 2017）*

【Is It Unconstitutional to Disallow Earners of Salary Income to Deduct the Full Amount of Their Expenses】

ISSUE: 1. Is it unconstitutional to disallow earners of salary income to deduct the full amount of their expenses?

2. The letter ruling issued by the Ministry of Finance characterizes the hourly pay earned by adjunct university teachers as salary income rather than as income earned by a practitioner. Is this letter ruling a violation of the constitutional principle of taxation in accordance with the law ?

RELEVANT LAWS:

Arrticles 7, 19, and 23 of the Constitution（憲法第七條、第十九條、第二十三條）; J.Y. Interpretations Nos. 317, 572, 590, 607, 615, 625, 635, 660, 674, 682, 685, 693 and 722（司法院釋字第三七一號、第五七二號、第五九0號、第六0七號、第六一五號、第六二五號、第六三五號、第六六0號、第六七四號、第六八二號、第六八五號、第六九三號、第七二二號）; Article 4, Article 11, Paragraph 1, Article 13, Article 14, Paragraph 1, Category 2, Article 14 Paragraph 1, Category 3, Subparagraphs 1 and 2, and Article 17, Paragraph 1, Subparagraph 2, Section 3-2 of the Income Tax

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* Translated by Chi CHUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

Act（所得稅法第四條、第十一條第一項、第十三條、第十四條第一項第二類、第十四第一項第三類第一款及第二款、第十七條第一項第二款第三目之二），Chapter 4 of the Regulation Governing the Assessment of Income Earned by a Practitioner（執行業務所得查核辦法第四章），Practitioner Cost Standard （執行業務者費用標準），The Letter Ruling Tai Cai Shui Zi No. 14917 issued by Ministry of Finance on April 23, 1985 （執行業務者費用標準），The Letter Ruling Tai Cai Shui Zi No. 1020014746 issued by the Ministry of Finance on November 4, 2013（財政部（74.4.23）台財稅第14917號函、財政部（102.11.4）台財稅第1020014746號函

KEYWORDS:

comprehensive income tax（綜合所得稅）, salary income（薪資所得）, salary income special deduction amount（薪資所得特別扣除額）, necessary expenses（必要費用）, income earned by a practitioner（執行業務所得）, self-sustainability（自力營生）, hourly pay for teaching（授課鐘點費）, right to equal treatment（平等權）, principle of taxation in accordance with law（租稅法律主義）, ability-to-pay principle（量能課稅）, principle of objective net value（客觀淨值）**

HOLDING: Concerning the calculation of salary income under three provisions of the Income Tax Act–– (1) Article 14, Paragraph 1, Category 3, Subparagraph1,(2) Article 14, Paragraph

解釋文：所得稅法第14條第1項第3類第1款及第2款、同法第17條第1項第2款第3目之2關於薪資所得之計算，僅許薪資所得者就個人薪資收入，減除定額之薪資所

1, Category 3, Subparagraph2, and (3) Article 17, Paragraph 1, Subparagraph 2, Section 3-2—salary earnersare allowed to deduct from their personal incomes only a fixed amountof the Special Deduction Amount for Salary Income.When the necessary expenses exceed the statutory Deduction Amount per year, salary earners are not allowed to deduct necessary expenses either by enumeration or other methods, which is inconsistent with the right to equal treatment under of Article 7 of the Constitution. Accordingly, the relevant authorities should review and amend the Income Tax Actand relevant regulations in accordance with this Interpretation within two years from the announcement of this Interpretation.

得特別扣除額，而不許薪資所得者於該年度之必要費用超過法定扣除額時，得以列舉或其他方式減除必要費用，於此範圍內，與憲法第7條平等權保障之意旨不符，相關機關應自本解釋公布之日起二年內，依本解釋之意旨，檢討修正所得稅法相關規定。

The Letter Ruling Tai CaiShuiZi No. 14917, issued by Ministry of Finance on April 23, 1985 stating that the hourly pay for adjunct teachers at universities and colleges also belongs to the category of salary income, is consistent with Article 19, which requires taxation in accordance with the law, and Article 23 of the Constitution.

財政部中華民國74年4月23日台財稅第14917號函釋關於大專院校兼任教師授課鐘點費亦屬薪資所得部分，與憲法第19條租稅法律主義及第23條規定尚無牴觸。

REASONING: Petitioner Chen Ching-Shiou asserted that the compensation for his teaching at a university in 2008 should be categorized as income earned by a practitioner, and he objected to the administrative assessment made by Taipei City Tax Bureau, Ministry of Finance that categorized his earnings as salary income. The petitioner, therefore, filed a petition for review. After losing the case, he filed an administrative appeal. After the appeal was also dismissed, he initiated administrative court proceedings. When his case was dismissed by judgment Jian Zi No. 236 (2011) of the Taipei High Administrative Court, the petitioner appealed, but the appeal was dismissed by ruling Cai Zi No.196 (2012) of the Supreme Administrative Court for failing to specify how the appeal judgement was inconsistent with the law. Accordingly, judgment Jian Zi No. 236, rendered by the Taipei High Administrative Court in 2011, should be the final court judgment that brought about this constitutional interpretation. The petitioner asserted that disallowing salary earners to deduct the full amount of their expenses under

解釋理由書：聲請人陳清秀認其於中華民國 97 年度在大學任教所得應屬執行業務所得，不服財政部臺北市國稅局核定為薪資所得之處分，申請復查、提起訴願均遭駁回後，提起行政訴訟，經臺北高等行政法院以 100 年度簡字第 236 號判決駁回。嗣聲請人提起上訴，經最高行政法院 101 年度裁字第 196 號裁定，以其未具體指摘原判決違背法令，上訴不合法為由予以駁回，是本件聲請應以上開臺北高等行政法院判決為確定終局判決。聲請人認確定終局判決所適用之所得稅法第 14 條第 1 項第 3 類第 1 款及第 2 款（下併稱系爭規定一）關於薪資所得未採實額減除成本費用之計算規定，及財政部 74 年 4 月 23 日台財稅第 14917 號函釋（下稱系爭函釋）將大專院校兼任教師所支領授課鐘點費一律列為薪資所得之規定，有牴觸憲法第 7 條、第 19 條、第 23 條及第 165 條等規定之疑義，向本院聲請解釋憲法，核與司法院大法官審理案件法第 5 條第 1 項第 2 款所定要件相符，爰予受理。另聲請人臺灣桃園地方法院行政訴訟庭語股法官為審理 101 年度簡字第 49 號綜合所得稅事件，認該案應適用之 90 年 1 月 3 日修正公布所得稅法第 17 條第 1 項第 2 款第 3 目之 2 規定（與

Article 14, Paragraph 1, Category 3, Subparagraph 1 and Subparagraph 2 of the Income Tax Act (hereafter referred to as First Disputed Rule) as applied in the final judgment, and the rule that the hourly pay for adjunct teachers at universities and colleges are uniformly listed as salary income under the Letter Ruling Tai Cai Shui Zi No. 14917 issued by the Ministry of Finance on April 23, 1985 (hereafter referred to as Disputed Letter Ruling) may violate Articles 7, 19, 23 and 165 of the Constitution, and, therefore, he applied for a constitutional interpretation. As the petition satisfied the requirements set out in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act, this Court considered its merits. In addition, the Judge for the Yu Division of the Administrative Litigation Panel, Taiwan Taoyuan District Court, when adjudicating case Chien Tze No. 49 in 2012, a case on comprehensive income tax, considered the fixed amount special deductions set out by Article 17, Paragraph 1, Subparagraph 2, Section 3-2 of the Income Tax Act, which was amended and promulgated on January 3, 2001 (with subsequent

其後修正公布之各年版，下併稱系爭規定二），採取定額特別扣除，欠缺實額減除成本費用之計算方式，有牴觸憲法第 7 條、第 15 條及第 23 條等規定之疑義，裁定停止訴訟程序後，向本院聲請解釋憲法，核與本院釋字第 371 號、第 572 號及第 590 號解釋所示法官聲請釋憲之要件相符，爰予受理。查上述兩件聲請所聲請解釋之系爭規定一及二，均涉所得稅法有關薪資所得計算規定是否有牴觸憲法之疑義，爰併案審理，作成本解釋，理由如下：

editions, hereafter referred to as Second Disputed Rule) unconstitutional because it fails to allow the deduction of the full amount of expense sincurred by income earners, possibly in violation of Articles 7, 15,and 23 of the Constitution. After suspending the litigation procedure, the Judge for the Yu Division of the Administrative Litigation Panel, Taiwan Taoyuan District Court, applied for a constitutional interpretation pursuant to Judicial Yuan interpretation No. 371, No. 572 and No. 590. As both the First Disputed Rule and the Second Disputed Rule concerned the question of whether the calculation of salary income under the Income Tax Actis constitutional, the Judicial Yuan considered the two applications and rendered this interpretation for the following reasons:

1. The First Disputed Rule and the Second Disputed Rule are inconsistent with the right to equal treatment, protected by Article 7 of the Constitution.

一、系爭規定一及二與憲法第 7 條平等權保障之意旨不符

Article 7 of the Constitution stipulates that every individual's right to equal

憲法第 7 條規定人民之平等權應予保障。法規範是否符合平等權保障之

treatment should be protected. The question of whether a particular legal norm satisfies the requirement of the right to equal treatment depends on whether the purpose for which the legal norm affords differential treatment is constitutional and whether there exists a certain degree of connection between the differential treatment and the fulfillment of the purpose of the particular legal norm. (See Judicial Yuan Interpretation No. 682 and No. 722). Article 13 of the Income Tax Act states that the comprehensive income tax of an individual shall be levied on the net amount of his comprehensive income, which shall be the gross amount of comprehensive income minus the exemption amount and deductions. In order to calculate the net amount of comprehensive income, the legislature considered the sources and nature of various types of income, and set out different rules for costs, deduction of necessary expenses, exemption amount, deductions, etc. (see Articles 4, 14, and 17 of the Income Tax Act). This kind of categorization and differential treatment involves the overall planning and estimation of a state's fiscal

要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，及其所採取之分類與規範目的之達成間，是否存有一定程度之關聯性而定（本院釋字第 682 號、第 722 號解釋參照）。所得稅法第 13 條規定：「個人之綜合所得稅，就個人綜合所得總額，減除免稅額及扣除額後之綜合所得淨額計徵之。」為計算個人綜合所得淨額，立法者斟酌各類所得來源及性質之不同，分別定有成本及必要費用之減除、免稅額、扣除額等不同規定（所得稅法第 4 條、第 14 條及第 17 條等規定參照）。此等分類及差別待遇，涉及國家財政收入之整體規畫及預估，固較適合由代表民意之立法機關及擁有財政專業能力之相關行政機關決定。惟其決定仍應有正當目的，且其分類與目的之達成間應具有合理關聯，始符合量能課稅要求之客觀淨值原則，從而不違反憲法第 7 條平等權保障之意旨。

revenue, and, therefore, is better decided by the legislative branch, representing the people, and the executive branch, which is equipped with expertise in fiscal affairs. Such distinctions, however, should be designed to pursue legitimate purposes and should be reasonably connected with their purposes so that they are consistent with the principle of objective net value, as required by the ability-to-pay principle. In this sense, such taxation is consistent with the right to equal treatment under Article 7 of the Constitution.

Among the types of individual income stipulated in Article 14 of the Income Tax Act, income earned by a practitioner and salary income are both income earned through the provision of personal services, and, therefore, are similar in nature. Concerning income earned by a practitioner, Article 14, Paragraph 1, Category 2 of the Income Tax Act states that income earned by a practitioner includes any income of a practitioner from a professional practice or performance after the deduction of the rental for or depreciation in the value ofthe place of business, the

所得稅法第 14 條所定各類個人所得中，執行業務所得與薪資所得同屬個人提供勞務所得，性質相近。關於執行業務所得，現行所得稅法第 14 條第 1 項第 2 類規定：「執行業務所得：凡執行業務者之業務或演技收入，減除業務所房租或折舊、業務上使用器材設備之折舊及修理費，或收取代價提供顧客使用之藥品、材料等之成本、業務上雇用人員之薪資、執行業務之旅費及其他直接必要費用後之餘額為所得額……。」關於薪資所得，系爭規定一規定：「薪資所得：凡公、教、軍、警、公私事業職工薪資及提供勞務者之所得：一、薪

depreciation of and repairexpenses for facilities and equipment, or the costs of medications, supplies, etc. sold to clients, salaries and wages for employees, travel expenses for practicing the profession, and other direct and necessary expenses. Regarding salary income, the First Disputed Rule states that such income includes the salaries and wages of public servants, teachers, military personnel, policemen, employees, and workers of public and private enterprises, in addition to any income earned by persons rendering services. It also specifies that salary income is calculated as the sum of all salaries and wages earned for performing duties or doing work, and that the phrase "salaries and wages" as referred to in the preceding subparagraph shall include salaries, stipends, wages, allowances, annuities, cash awards, bonuses, and all kinds of subsidies.

資所得之計算，以在職務上或工作上取得之各種薪資收入為所得額。

The Second Disputed Rule, as amended and promulgated on January 3, 2001, stated that each taxpayer can claim a Salary Income Special Deduction in the amount of NT$ 70,000 per year for each

二、前項薪資包括：薪金、俸給、工資、津貼、歲費、獎金、紅利及各種補助費……。」90 年 1 月 3 日修正公布之系爭規定二規定：「薪資所得特別扣除：納稅義務人及與納稅義務人合

salary earner. Article 5-1 of the Income Tax Act, amended and promulgated on February 5, 1993, adjuststhe Salary Income Special Deduction in accordance with increases in the consumer price index.The deductible amount became NT$ 100,000 on December 26, 2008 and NT$ 128,000 on June 4, 2014.It is clear that, under the Income Tax Act, the calculation of income earned by a practitioner allows for the deduction of the full amount of costs and necessary expenses (hereafter referred to as full-amount deduction), while the calculation of salary income does not allow enumerated deductions for expenses exceeding the statutory deduction amount. The calculation of salary income adopts a specific amount of Special Deduction for all salary earners (hereafter referred to as the specific amount deduction). Such a distinction constitutes not only differential treatment between income earned by a practitioner and salary earners, but also differential treatment between salary earners.

併計算稅額報繳之個人有薪資所得者，每人每年扣除 7 萬 5 千元……。」（82 年 2 月 5 日修正公布所得稅法第 5 條之 1 定有依消費者物價指數上漲幅度調整薪資所得特別扣除額之規定；97 年 12 月 26 日修正為 10 萬元；103 年 6 月 4 日修正為 12 萬 8 千元。）顯見所得稅法對於執行業務所得之計算，採實額減除成本及必要費用方式（下稱實額減除）；就薪資所得之計算，則未容許列舉減除超過法定扣除額之必要費用，且以單一額度特別扣除額方式，一體適用於全部薪資所得者（下稱定額扣除），不僅形成執行業務所得者與薪資所得者間之差別待遇，亦形成薪資所得者間之差別待遇。

Over 5 million families report salary incomes in our country each year,

查我國每年薪資所得申報戶數已達 500 萬戶以上，遠多於執行業務所得

far more than the number of families that report income earned by a practitioner. Therefore, if competent authorities had to examine each case in which salary income is reported, the administrative costs would be overwhelming. On the other hand, if competent authorities adopt specific deductions in the amount that is almost equal to that of necessary expenses, salary earners do not need to prepare individual books or keep relevant records, and they can claim the specific amount deduction directly for their necessary expenses. Such a Specific Amount Deduction can simplify compliance costs for salary earners as well as auditing costs for the state. (*see* the explanation part of the Annex of Letter Ruling Tai Cai Shui Zi No. 1020014746 issued by Ministry of Finance on November 4, 2013.) Hence, the First Disputed Rule and the Second Disputed Rule adopted specific deduction amounts not only to reduce salary earners' tax burdens (*see* the Legislative Yuan Gazette, volume 63, No. 95, page 27) but also to reduce auditing costs. The purpose of the First Disputed Rule and the Second Disputed Rule is, therefore, reasonable.

申報戶數，如主管機關對個案之薪資所得均須逐一認定，其行政成本將過於龐大。若採與必要費用額度相當之定額扣除法，使薪資所得者無須設置個人帳簿或保存相關憑證，即得直接定額扣除其必要費用，主管機關亦無須付出審查之勞費，當可簡化薪資所得者之依從成本及國家之稽徵成本（財政部 102 年 11 月 4 日台財稅字第 10200147460 號函附件說明參照）。是以系爭規定一及二只採定額扣除，除有減輕薪資所得者稅負之考量外（立法院公報第 63 卷第 95 期院會紀錄第 27 頁參照），係為求降低稅捐稽徵成本，其目的尚屬正當。

As required by the ability-to-pay principle, the tax base for the taxation of income should be the objective net value—the amount of revenue minus costs and necessary expenses––and not the gross amount of income. This requirement applies to the calculation of all types of income. The statutory deduction amount is an estimate of total necessary expenses, and, therefore, should also satisfy the requirement. Considering the different degrees of self-sustainability between salary earners and practitioners (see Article 11, Paragraph 1 of the Income Tax Act), competent authorities may reasonably provide different categories and ceilings for the necessary expenses that are deductible. However, to balance consideration of both the reduction of auditing expenses and the ability-to-pay principle, the current law allows a practitioner to subtract necessary expenses in accordance with their category and amounts when calculating the income earned by a practitioner. See Article 14, Paragraph 1, Category 2 of the Income Tax Act, Chapter 4 of the Regulation Governing the Assessment of Income Earned by a Practitioner, Practi-

本於量能課稅原則，所得課稅應以收入減除成本及必要費用後的客觀淨值，而非所得毛額，作為稅基。此項要求，於各類所得之計算均應有其適用。定額扣除額為必要費用之總額推估，亦應符合上開要求。主管機關考量薪資所得者與執行業務所得者是否為自力營生之不同（所得稅法第 11 條第 1 項參照），固得就各自得減除之必要費用項目及最高額度等為合理之不同規範。然現行法令為兼顧稅捐稽徵成本之降低與量能課稅原則，准許執行業務所得者得按必要支出項目及額度減除必要費用，以計算執行業務所得（所得稅法第 14 條第 1 項第 2 類、執行業務所得查核辦法第 4 章、財政部發布之各年度執行業務者費用標準參照）。兩相對照，系爭規定一及二關於薪資所得之計算，僅許定額扣除，而不許薪資所得者於該年度之必要費用超過法定扣除額時，得以列舉或其他方式減除必要費用，形成顯然之差別待遇。此項差別待遇，與薪資所得者之是否為自力營生並無必然關聯。又現行單一定額之薪資所得特別扣除額規定，未考量不同薪資所得者間之必要費用差異，過於簡化，對於因工作必要，須支出顯然較高之必要費用者，確會產生適用上之不利差別待遇結果，致

tioner Cost Standard issued by the Ministry of Finance each year. In contrast, the First Disputed Rule and Second Disputed Ruleonly allow the deduction of a fixed amountfor the calculation of salary income.They do not allow salary earners to itemize or deduct necessary expenses in any other manner when the necessary expenses exceed the statutory deduction amount in the taxable year, which creates obvious differential treatment. Such differential treatment is not necessarily connected with the question of whether salary earners are able to sustain themselves. In addition, the current Special Deduction Amount for Salary Income is too simple as it fails to account for differences in the necessary expenses incurred by different salary earners, and, therefore, disadvantageous differential treatment may indeed occur for the salary earners that have to incur obviously higher necessary expenses when required by the nature of their work. This result violates the principle of objective net value required by the ability-to-pay principle. Hence, there is no rational connection between the differential treatment of the First Disputed Rule and the

有違量能課稅所要求的客觀淨值原則。在此範圍內，系爭規定一及二之差別待遇手段與其目的之達成間欠缺合理關聯，而與憲法第 7 條平等權保障之意旨不符。相關機關應自本解釋公布之日起二年內，依本解釋之意旨，檢討修正所得稅法相關規定。

Second Disputed Rule, on the one hand, and the purpose it aims to achieve, on the other. It is, therefore, inconsistent with the right to equal treatment under Article 7 of the Constitution, and the relevant authorities should review and amend the Income Tax Act and relevant regulations in accordance with this Interpretation within two years of its announcement.

2. The Disputed Letter Ruling is consistent with Article 19 and Article 23 of the Constitution.

Competent authorities apply tax laws within the sphere of their competence and clarify the meanings of such laws on the basis of their statutory competence. If their applications and clarifications are consistent with constitutional principles and the relevant legislative intent and made with widely used methods of legal interpretation, then such applications and clarifications are consistent with the constitutional requirement that taxation be done in accordance with law. (*see* Judicial Yuan Interpretations No. 607, No. 615, No. 625, No. 635, No. 660, No. 674,

二、系爭函釋與憲法第 19 條及第 23 條規定尚無牴觸

主管機關於職權範圍內適用各該租稅法律規定，本於法定職權予以闡釋，如係秉持憲法原則及相關之立法意旨，遵守一般法律解釋方法為之，即與租稅法律主義無違（本院釋字第 607 號、第 615 號、第 625 號、第 635 號、第 660 號、第 674 號、第 685 號及第 693 號解釋參照）。系爭函釋稱：「三、公私機關、團體、事業及各級學校，開課或舉辦各項訓練班、講習會，及其他類似性質之活動，聘請授課人員講授課程，所發給之鐘點費，屬同法第 14 條第 1 項第 3 類所稱之薪資所得。該授課人員並不以具備教授（包括副教授、講

No. 685, and No. 693). The Disputed Letter Ruling states:“ (3) When public and private organizations, associations, enterprises, and schools of various levels invite lecturers to plan the curriculum or deliver training classes, speeches, and other similar activities, the hourly pay earned by such lecturers is characterized as salary income under Article 14, Paragraph 1, Category 3 of the Income Tax Act. Such lecturers are not required to be professors (including associate professors, lecturers, teaching assistants) or teachers.” The rule that the hourly pay for adjunct teachers at universities and colleges also belongs to the category of salary income was made by the Ministry of Finance as the competent authority to clarify the meaning of the phrase “salary income” through common methods of legal interpretation and within the sphere of its competence. Such clarification is consistent with the legislative intent of the First Disputed Rule, helps resolve possible problems in its application, and guides the offices that are legally obliged to withhold taxes as well as tax authorities. This clarification simplifies auditing costs but does not add any

師、助教等）或教員身分者為限。」其中關於大專院校兼任教師授課鐘點費亦屬薪資所得部分，係財政部基於主管機關地位，於其法定職權範圍內，依一般法律解釋方法，闡釋薪資所得之涵蓋範圍，符合系爭規定一之立法意旨；且有助於釐清適用上可能疑義，供扣繳義務機關及稅捐稽徵機關有所遵循，從而簡化稽徵成本，亦無增加法律所未規定之租稅義務，與憲法第 19 條租稅法律主義及第 23 條規定尚無牴觸。

tax obligations not provided for by law. Therefore, itis consistent with Article 19 of the Constitution, which requires taxation in accordance with law, and Article 23 of the Constitution.

In order to realize the principle of fair taxation and reasonably allocate the tax burden of our nation, relevant government offices should thoroughly review whether the current categorization of income types is reasonable, whether the methods of calculating the various types of incomes are reasonable, whether the costs and direct, necessary expenses (including types and amount) that are deductible are too broad, whether there should exist a ceiling for the various expense benchmarks applicable to different types of professions, and, in particular, whether the tax incentives are cost-effective.

Justice Dennis Te-Chung TANG, filed an opinion concurring in part, in which Justice Jeong-Duen TSAI, Justice Beyue SU CHEN and Justice Jiun-Yi LIN, joined.

為貫徹租稅公平原則，合理分配國家稅賦負擔，相關機關應併通盤檢討現行法令有關不同所得之歸類及各類所得之計算方式是否合理、得減除之成本及直接必要費用（含項目及額度）是否過於寬泛、各職業別適用之不同費用標準是否應有最高總額限制，尤其各項租稅優惠措施是否過於浮濫，併此指明。

本號解釋湯大法官德宗提出，蔡大法官炯燉、陳大法官碧玉、林大法官俊益加入之部分協同意見書；張大法官瓊文提出之部分協同意見書；羅大法官昌發提出之協同意見書；許大法官志雄

Justice Chong-Wen CHANG filed an opinion concurring in part.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Jau-Yuan HWANG, filed a concurring opinion, in which Justice Chen-Huan WU, joined.

Justice Hsi-Chun HUANG filed an opinion dissenting in part.

Justice Horng-Shya HUANG filed a dissenting opinion.

提出之協同意見書；黃大法官瑞明提出之協同意見書；黃大法官昭元提出，吳大法官陳鐶加入之協同意見書；黃大法官璽君提出之部分不同意見書；黃大法官虹霞提出之不同意見書。

J. Y. Interpretation No.746（February 24, 2017）*

【Constitutionality of Imposing Failure-to-pay Surcharge and of Imposing Interests on Both Unpaid Tax and Said Surcharge】

ISSUE: 1. Both Article 20 of the Tax Collection Act and Article 51, Section 1 of the Estate and Gift Tax Act impose a failure-to-pay surcharge on the taxes payable but not paid on time. Are these provisions unconstitutional ?

2. Ministry of Finance Letter of Tai-Tsai-Shui No.790445422 (April 8, 1991) and Letter of Tai-Tsai-Shui No. 811680291 (October 9, 1992) hold that, if a taxpayer files an administrative appeal against the amount of additional taxes payable as determined by the petition decision but does not pay one-half of such taxes until after the payment deadline, a failure-to-pay surcharge shall be imposed for that half of the taxes. Are these two Letters unconstitutional ?

3. Article 51, Paragraph 2 of the Estate and Gift Tax Act provides that the interests on the taxes payable and the failure-to-pay surcharges shall accrue from the next day of the payment deadline. Is it unconstitutional ?

RELEVANT LAWS:

Article 15, Article 19, and Article 23 of the Constitution（ 憲

* Translated by Chi CHUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

法第十五條、第十九條及第二十三條）；J.Y. Interpretation Nos. 311, 472, 588, 616, 660, 693, and 745（司法院釋字第三一一號、第四七二號、第五八八號、第六一六號、第六六0號、第六九三號及第七四五號）；Article 20, Article 26, Article 39, Section 1, and Article 39, Section 2, Paragraph 1 of the Tax Collection Act（稅捐稽徵法第二十條、第二十六條、第三十九條第一項及第二項第一款）；Article 30, Section 2 and Section 4, and Article 51 of the Estate and Gift Tax Act（遺產稅及贈與稅法第三十條第二項、第四項、第五十一條）；Article 30 of the Deed Tax Act（契稅條例第三十條）；Article 79, Section 2, Paragraph 2, Article 79, Section 2, Paragraph 3, and Article 79, Section 2, Paragraph 4 of the Customs Act（關稅法第七十九條第二項第二款至第四款）; Article 93, Section 1 of the Administrative Appeal Act（訴願法第九十三條第一項）；Article 116, Section 1 of the Administrative Litigation Act（行政訴訟法第一一六條一項）；and Article 233, Section 1 of the Civil Code（民法第二三三條第一項）；Ministry of Finance Letter of Tai-Tsai-Shui No. 790445422（April 8, 1991）（財政部 80 年 4 月 8 日台財稅第 790445422 號函）；Ministry of Finance Letter of Tai-Tsai-Shui No. 811680291（October 9, 1992）（ 81 年 10 月 9 日台財稅第 811680291 號函）；Ministry of Finance Letter of Tai-Tsai-Shui No. 811688010（January 5, 1993）（ 82 年 1 月 5 日台財稅第 811688010 號函）；Regulation Governing the Taxpayer's Application for Deferred or Installment Payment of Tax（納稅義務人申請延期或分期繳納稅捐辦法）

KEYWORDS:

failure-to-pay surcharge（滞納金）, prescribed deadline（法定期限）, principle of proportionality（比例原則）, right to property（財產權）, principle of taxation in accordance with the law（租稅法律主義）, interests for late payment（滯納利息）, rational basis（合理關聯）, default penalty（怠金）, late performance（給付遲延）, obviously excessive（顯然過苛）, adjustment mechanism（調整機制）, urging the performance（督促履行）, the benefit of not paying on time（消極利益）**

HOLDING: Article 20 of the Tax Collection Act provides "In the event that a taxpayer is subject to a surcharge for his/her/its failure to pay taxes by the deadline specified by the applicable tax law, a failure-to-pay surcharge in the amount equal to one percent of the amount of the overdue taxes shall be charged for every two days of delay. Where the period of delay exceeds thirty days …." Further, Article 51, Section 1 of the Estate and Gift Tax Act provides "A failure-to-pay surcharge in the amount equal to one percent of estate or gift taxes payable for every two days of delay shall

解釋文：稅捐稽徵法第 20 條規定：「依稅法規定逾期繳納稅捐應加徵滯納金者，每逾 2 日按滯納數額加徵百分之一滯納金；逾 30 日仍未繳納者……。」及遺產及贈與稅法第 51 條第 1 項規定：「納稅義務人，對於核定之遺產稅或贈與稅應納稅額，逾第 30 條規定期限繳納者，每逾 2 日加徵應納稅額百分之一滯納金；逾期 30 日仍未繳納者……。」係督促人民於法定期限內履行繳納稅捐義務之手段，尚難認違反憲法第 23 條之比例原則而侵害人民受憲法第 15 條保障之財產權。

be imposed on taxpayers who fail to pay the estate tax or gift taxes payable as determined by the tax authorities before the deadline prescribed by Article 30; Where the period of delay exceeds thirty (30) days ….” The aforesaid surcharges are the means employed to urge taxpayers to fulfill their tax-paying obligations within the payment deadline. As such, they do not violate the principle of proportionality under Article 23 of the Constitution; nor do they infringe upon the people’s right to property as protected under Article 15 of the Constitution.

Ministry of Finance Letter of Tai-Tsai-Shui No.790445422 (April 8, 1991) and Letter of Tai-Tsai-Shui No. 811680291 (October 9, 1992) mandate a failure-to-pay surcharge be imposed if one-half of additional taxes payable as determined by the petition decision is not paid until after the payment deadline. Such mandate is consistent with Article 20, Article 39, Section 1, Article 39, Section 2, Paragraph 1 of the Tax Collection Act. They are also consistent with Article 51, Section 1 of the Estate Tax and Gift

財政部中華民國 80 年 4 月 8 日台財稅第 790445422 號函及 81 年 10 月 9 日台財稅第 811680291 號函，就復查決定補徵之應納稅額逾繳納期限始繳納半數者應加徵滯納金部分所為釋示，符合稅捐稽徵法第 20 條、第 39 條第 1 項、第 2 項第 1 款及遺產及贈與稅法第 51 條第 1 項規定之立法意旨，與憲法第 19 條之租稅法律主義尚無牴觸。

Tax Act. They do not violate the principle of taxation in accordance with the law as required by Article 19 of the Constitution.

Article 51, Section 2 of the Estate and Gift Tax Act provides "Interests for the taxes payable and failure-to-pay surcharge stipulated in Section 1 shall accrue daily at the interest rate for one-year term deposit quoted by the Postal Savings and Remittances Office from the next day of the payment deadline to the date of full payment by the taxpayer, and be collected together with the taxes payable and failure-to-pay surcharge stipulated in Section 1." Imposing interests for the taxes payable but not yet paid does not infringe upon the right to property protected by the Constitution. However, imposing interests for the failure-to-pay surcharge has no rational basis, and, therefore, it is inconsistent with the principle of proportionality, violates the people's right to property protected by the Constitution, and shall lose its effects from the date on which this Interpretation is announced.

遺產及贈與稅法第 51 條第 2 項規定：「前項應納稅款及滯納金，應自滯納期限屆滿之次日起，至納稅義務人繳納之日止，依郵政儲金匯業局一年期定期存款利率，按日加計利息，一併徵收。」就應納稅款部分加徵利息，與憲法財產權之保障尚無牴觸；惟就滯納金部分加徵利息，欠缺合理性，不符憲法比例原則，與憲法保障人民財產權之意旨有違，應自本解釋公布之日起失其效力。

REASONING: The petitioners, Hsia-Sang CHIANG LIN and five others, failed to pay their estate taxes and gift taxes before the payment deadlines as prescribed by the law. The tax authorities imposed failure-to-pay surcharges on one-half of additional taxes payable as determined by the petition (*fucha*) decisions in accordance with the following laws and regulations: Article 20 of Tax Collection Act provides "In the event that a taxpayer is subject to a surcharge for his/her/its failure to pay the tax by the deadline set out by the applicable tax law, a failure-to-pay surcharge in an amount equal to one percent of the amount of said defaulted tax shall be charged for every two days of delay. Where the period of delay exceeds thirty days…" (hereinafter referred to as "First Disputed Provision"). Article 51, Section 1 of the Estate and Gift Tax Act provides "A failure-to-pay surcharge in the amount equal to one percent of estate taxes or gift taxes payable for every two days of delay shall be imposed on taxpayers who fail to pay the estate tax or gift taxes payable as assessed by the tax authorities before the deadline prescribed by

解釋理由書：聲請人江林夏桑等 6 人，因未依法於繳納期限內繳納遺產稅及贈與稅，經稅捐稽徵機關依稅捐稽徵法第 20 條規定：「依稅法規定逾期繳納稅捐應加徵滯納金者，每逾 2 日按滯納數額加徵百分之一滯納金；逾 30 日仍未繳納者……。」（下稱系爭規定一）遺產及贈與稅法第 51 條第 1 項規定：「納稅義務人，對於核定之遺產稅或贈與稅應納稅額，逾第 30 條規定期限繳納者，每逾 2 日加徵應納稅額百分之一滯納金；逾期 30 日仍未繳納者……。」（下稱系爭規定二）財政部中華民國 80 年 4 月 8 日台財稅第 790445422 號函示：「……納稅義務人對稽徵機關復查決定補徵之應納稅額，逾限繳期限始繳納半數，雖已依法提起訴願，惟有關稅法既無提起行政救濟而逾限繳納稅款案件得免加徵滯納金之例外規定，自應依稅捐稽徵法第 20 條規定加徵滯納金。」（下稱系爭函一）及 81 年 10 月 9 日台財稅第 811680291 號函示：「納稅義務人對稽徵機關復查決定補徵之應納稅額，逾繳納期限始繳納半數，如其係依法提起訴願者，應就該補徵稅額之半數依法加徵滯納金……。」（下稱系爭函二）以復查決定補徵之應納稅額半數計算加徵滯納

Article 30; Where the period of delay exceeds thirty days …" (hereinafter referred to as "Second Disputed Provision"). Ministry of Finance Letter of Tai-Tsai-Shui No.790445422 (April 8, 1991) states "if a taxpayer files an administrative appeal against the petition decision but does not pay one-half of additional taxes payable until after the payment deadline, a failure-to-pay surcharge shall be imposed pursuant to Article 20 of the Tax Collection Act because the relevant tax laws do not provide for an exemption from such surcharge for filing an administrative appeal." (hereinafter referred to as "First Disputed Letter"). Ministry of Finance Letter of Tai-Tsai-Shui No. 811680291 (October 9, 1992) states, "if a taxpayer does not pay one-half of the additional taxes payable as determined by the petition decision until after the payment deadline, and he/she/it has filed an administrative appeal in accordance with the law, he/she/it shall be imposed a failure-to-pay surcharge for one-half of such additional taxes payable" (hereinafter referred to as "Second Disputed Letter"). Furthermore, the tax authorities imposed interests on

金，後再依遺產及贈與稅法第 51 條第 2 項規定：「前項應納稅款及滯納金，應自滯納期限屆滿之次日起，至納稅義務人繳納之日止，依郵政儲金匯業局一年期定期存款利率，按日加計利息，一併徵收。」（下稱系爭規定三）就應納稅款半數及滯納金加徵滯納利息。聲請人不服，先後請求稽徵機關退還前開已繳納之滯納金及加徵之滯納利息，均遭否准，提起訴願亦均遭駁回。嗣先後提起行政訴訟，遺產稅部分經最高行政法院 104 年度判字第 455 號判決（下稱確定終局判決一）以上訴為無理由駁回上訴而告確定，贈與稅部分經臺中高等行政法院 104 年度簡上字第 10 號判決（下稱確定終局判決二）以上訴為無理由駁回上訴而告確定。聲請人認確定終局判決一所適用之系爭規定一至三、系爭函一及二，及確定終局判決二所適用之系爭函一及二，有違反憲法第 7 條、第 15 條、第 19 條及第 23 條之疑義，先後向本院聲請解釋憲法，經核均與司法院大法官審理案件法第 5 條第 1 項第 2 款所定要件相符，爰予受理，經併案審理作成本解釋，理由如下：

both one-half of the taxes payable and the failure-to-pay surcharge in accordance with Article 51, Section 2 of Estate and Gift Tax Act, which provides "Interests on the taxes payable and the failure-to-pay surcharge stipulated in Section 1 calculated at the interest rate for one-year term deposit quoted by the Postal Savings and Remittances Bank shall accrue daily from the next day of the payment deadline to the date of full payment by the taxpayer, and be collected together with the taxes payable and failure-to-pay surcharge stipulated in Section 1." (hereinafter referred to as "Third Disputed Provision") After their requests for the refund of failure-to-pay surcharges and accrued interests were denied by the tax authorities, the petitioners filed administrative appeals. Their appeals were rejected. The petitioners then initiated administrative litigations. The litigation on the part of estate tax was dismissed on the merits by the Supreme Administrative Court in its Judgement of Pan Tzi No. 455 (2015) (hereinafter referred to as "Final Judgment No. 1"). Their appeal on the part of gift tax was dismissed on the merits by the Taichung High Ad-

ministrative Court in its Judgment of Chien Shang Tzi No. 10 (2015) (hereinafter referred to as "Final Judgment No. 2"). The petitioners claimed that the First, Second, and Third Disputed Provisions, as well as the First and Second Disputed Letters, as applied by the "Final Judgment No. 1", and the First and Second Disputed Letters, as applied by the "Final Judgment No. 2" violated Article 7, Article 15, Article 19, and Article 23 of the Constitution, and they brought these two petitions to this Court for constitutional interpretations. We opined that their petitions meet the requirements set out in Article 5, Section 1, Paragraph 2 of the Constitutional Interpretation Procedure Act, and, therefore, agreed to review both petitions together in one procedure. The reasons for this Interpretation are set out as follows:

1. The imposition of failure-to-pay surcharges for the taxes payable but not yet paid after the payment deadline stipulated by both First and Second Disputed Provisions do not violate the principle of proportionality.

一、系爭規定一及二關於逾期未繳納稅捐應加徵滯納金之規定，尚難認違反比例原則

According to Article 15 of the Constitution, an individual's right to property shall be protected. In order to make people pay their taxes within the payment deadline and to urge those who fail to do so fulfill their obligations as soon as possible, the State may, through enacting statutes, create additional financial burdens on such taxpayer to compensate for the damages caused by late payment to the fiscal revenue. Since such burdens restricts people's right to property, they need to be compatible with the principle of proportionality under Article 23 of the Constitution. As tax law involves the overall planning and estimation of the fiscal revenue of the state, it is better decided by the legislative branch, representing the will of the people, and the executive branch, with fiscal expertise. (*see* J.Y. Interpretation No. 745). If a tax statute has a legitimate purpose and its means is rationally related to the achievement of that purpose, then the statute is considered compatible with the principle of proportionality under Article 23 of the Constitution.

人民之財產權應予保障，憲法第15條定有明文。國家課人民以繳納稅捐之義務，為使其於法定納稅期限內履行，並於逾期時督促其儘速履行，以及填補國家財政稅收因逾期所受損害，以法律規定增加納稅義務人財產上負擔之方式為之，既於繳納稅捐之義務外，限制人民之財產權，自仍應符合憲法第23條之比例原則。租稅規定涉及國家財政收入之整體規畫及預估，較適合由代表民意之立法機關及擁有財政專業能力之相關行政機關決定（本院釋字第745號解釋參照）。是其決定如有正當目的，且手段與目的之達成間具有合理關聯，即與憲法比例原則無違。

The purpose of raising tax revenue is to meet the needs of public finance and to serve public functions. Article 19 of the Constitution provides "People shall bear the obligation of paying taxes in accordance with the law." Whether or not taxpayers fulfill their tax-paying obligation within the statutorily prescribed deadline is related to the timely realization of the fiscal revenue of the state, which further affects the implementation of national policy measures, the maintenance of social order, and the advancement of public interests. The stakes are high. (J.Y. Interpretation No. 588) The payment deadlines have to be implemented strictly. The First and Second Disputed Provisions provide that a failure-to-pay surcharge in the amount equal to one percent of estate taxes or gift taxes payable shall be imposed on taxpayers who default on the payment for every two days of delay. The maximum amount of such surcharge shall be fifteen percent of the taxes payable, for a period of thirty days. (Ministry of Finance Letter of Tai-Tsai-Shui No. 811688010 (January 5, 1993)). The purposes of failure-to-pay surcharge are to urge taxpayers

稅捐收入係為滿足公共財政，實現公共任務所需之用。憲法第 19 條規定人民有依法律納稅之義務，人民是否於法定期限內依法繳納稅捐，攸關國家財政稅收能否如期實現，進而影響國家施政措施之完善與否，社會秩序非僅據以維護，公共利益且賴以增進，所關極為重大（本院釋字第 588 號解釋參照），課徵期限實有貫徹執行之必要。系爭規定一及二規定，逾期繳納核定之遺產稅或贈與稅應納稅額者，每逾 2 日加徵應納稅額 1%滯納金，最高 30 日，計 15%（財政部 82 年 1 月 5 日台財稅第 811688010 號函參照）。滯納金係為督促人民如期繳納稅捐，並填補國家財政稅收因人民逾期納稅所造成之公益損害，與怠金相類，兼具遲延利息之性質，與滯報金為行為罰之性質（本院釋字第 616 號解釋參照）不同，目的尚屬正當，與憲法並無牴觸。

to fulfill their taxpaying obligation in a timely manner, and to compensate for the loss of national fiscal revenue caused by the late payment of taxes. Similar to default penalty, the failure-to-pay surcharge is in a sense also a default interest, and different from the failure-to-file surcharge. (J.Y. Interpretation No. 616). The failure-to-pay surcharge has a legitimate purpose and does not violate the Constitution.

For people capable of paying taxes, such failure-to-pay surcharge increases their public-law obligation to pay the government, which does result in economic and psychological burdens. In order to avoid such burdens, taxpayers will have to pay their taxes within the prescribed deadline, or, in the case of default, pay as early as possible. The failure-to-pay surcharge, therefore, does help achieve the aforementioned purposes. Further, if a taxpayer is unable to pay the taxes in full within the prescribed deadline due to a natural disaster, a serious incident, force majeure, or economic disadvantages, or if a taxpayer is unable to pay in cash the full amount of the estate taxes or gift taxes which is

人民如有納稅能力，加徵滯納金使其公法上金錢給付義務增加，因而產生經濟上與心理上之負擔，為避免之，須於法定期限內納稅，或須於逾期後儘速繳納，是加徵滯納金有助於上開目的之達成。且納稅義務人倘已不能於法定期限內繳清稅捐，例如因天災、事變、不可抗力之事由或為經濟弱勢者，或遺產稅或贈與稅應納稅額在新臺幣 30 萬元以上，納稅義務人一次繳納現金確有困難，依現行法制，仍得申請延期或分期繳納（稅捐稽徵法第 26 條、納稅義務人申請延期或分期繳納稅捐辦法及遺產及贈與稅法第 30 條第 2 項規定參照），或申請實物抵繳（遺產及贈與稅法第 30 條第 4 項規定參照），而免於加徵滯納金。足見系爭規定一及二規

three hundred thousand New Taiwan Dollars or more, the taxpayer may apply for permission to make deferred payments or installment payments. (Article 26 of the Tax Collection Act, the Regulation Governing the Taxpayers' Application for Deferred Payments or Installment Payments, and Article 30, Section 2 of the Estate and Gift Tax Act). Such taxpayers may also apply for substitute payment in kind (Article 30, Section 4 of the Estate and Gift Tax Act). In both scenarios, taxpayers will be exempted from the failure-to-pay surcharge. Therefore, it is evident that the imposition of the failure-to-pay surcharge under the First and Second Disputed Provisions is not too excessive, and is rationally related to the achievement of the purposes. Therefore, the First and Second Disputed Provisions do not violate the principle of proportionality under Article 23 of the Constitution. Nor do they infringe upon people's right to property protected by Article 15 of the Constitution (*see* J.Y. Interpretation No. 472).

定加徵之滯納金尚非顯然過苛，與目的之達成間具有合理關聯，尚難認違反憲法第 23 條之比例原則而侵害人民受憲法第 15 條保障之財產權（本院釋字第 472 號解釋參照）。

However, with regard to the imposition of failure-to-pay surcharge at

惟有關機關就滯納金之加徵方式，仍應隨時視稽徵成本、逾期繳納情形、

one percent every two days, the authorities concerned shall, in due time, review whether the as-applied outcome in a particular case is too harsh as a result of the two-day interval being too short or the interest rate being too high, taking into account the cost of tax collection, the number of people who default on payment, consumer price index, and the economic standard of our people. In addition to the aforementioned adjustment mechanisms, the authorities concerned should also consider whether to amend the law to expressly authorize the tax authorities to weigh the facts and circumstances of particular cases, and, then, to reduce or waive the failure-to-pay surcharge." (*see* Article 30 of the Deed Tax Act and Article 79, Section 2, Paragraphs 2 to 4 of the Customs Act).

物價及國民經濟水準，每2日加徵1%，是否間隔日數過短、比率過高，致個案適用結果可能過苛，上開調整機制外，是否應於法律明文規定，滯納金得由稽徵機關依法視個案情形予以減免（契稅條例第 30 條及關稅法第 79 條第 2 項第 2 款至第 4 款規定參照）等，檢討修正，併此指明。

2. The imposition of the failure-to-pay surcharge on one-half of the taxes payable set out by a petition decision as provided for in the First and Second Disputed Letters does not violate the principle of taxation in accordance with the law.

二、系爭函一及二就復查決定應納稅額半數加徵滯納金部分，並未違反租稅法律主義

Article 19 of the Constitution provides "People shall bear the obligation to pay taxes in accordance with the law," which means that, whenever imposing a tax-paying obligation on, or offering a preferential tax treatment to, a taxpayer, the state shall set out by a statute the elements of tax, such as the taxpayer, the subject matter of taxation, the attribution of the subject matter to the taxpayer, the tax base, the tax rate, the taxing method, and the date on which the tax becomes payable. However, when applying statutory provisions within their competence, the competent authorities may construe the relevant provisions based on their legal powers. If their construction of law is made in conformity with the principles of the Constitution and the relevant legislative purposes, as well as the general approaches of legal interpretation, such construction is consistent with the principle of taxation in accordance with the law. (J.Y. Interpretation Nos. 660, 693, and 745).

憲法第 19 條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、租稅客體對租稅主體之歸屬、稅基、稅率、納稅方法及納稅期間等租稅構成要件，以法律定之。惟主管機關於職權範圍內適用之法律條文，本於法定職權就相關規定予以闡釋，如係秉持憲法原則及相關之立法意旨，遵守一般法律解釋方法為之，即與租稅法律主義無違（本院釋字第 660 號、第 693 號及第 745 號解釋參照）。

The First and Second Disputed Letters hold that, if a taxpayer files an

爭函一及二釋示，納稅義務人對稽徵機關復查決定補徵之應納稅額，逾

administrative appeal against the petition decision but does not pay one-half of the additional taxes payable until after payment deadline, a failure-to-pay surcharge shall be imposed for one-half of additional taxes payable according to the law. The phrase "payment deadline" as stated in the First and Second Disputed Letters does not limit itself to the payment deadline set out by the tax statute or the initial tax assessment. As a matter of interpretation, the phrase "payment deadline" also refers to the payment deadline set out by the petition decisions that require additional taxes to be paid. Further, according to Article 39, Section 1, and Article 39, Section 2, Paragraph 1 of the Tax Collection Act, if a taxpayer applies for petition in accordance with the law, or files an administrative appeal in accordance with the law against the petition decision within the payment deadline set out by the petition decision while paying one-half of the additional taxes required by the petition decision, such taxpayer may be temporarily exempted from compulsory execution. Such exemption is an exception to the general rule that the compulsory execu-

繳納期限始繳納半數，如其係依法提起訴願者，應就該補徵稅額之半數依法加徵滯納金。按系爭規定一及二所規定之逾限繳納稅捐，並未限定於逾法定或原核定應納稅額之繳納期限，解釋上亦包括逾復查決定補徵應納稅額之補繳期限。又依稅捐稽徵法第 39 條第 1 項及第 2 項第 1 款規定，納稅義務人如合法申請復查，或對復查決定補徵之應納稅額於補繳期限內繳納半數並依法提起訴願，暫緩移送強制執行，係我國對行政處分之執行不因提起行政爭訟而停止（訴願法第 93 條第 1 項及行政訴訟法第 116 條第 1 項規定參照）之例外規定。因此，稽徵機關就合法申請復查者，暫緩移送強制執行，無督促履行之必要，納稅義務人就復查決定如未提起訴願致案件確定，其逾復查決定另定之補繳期限而仍未繳納者，有督促履行之必要，應依法加徵滯納金。納稅義務人就復查決定如依法提起訴願，且如期繳納該應納稅額半數者，暫緩移送強制執行，無督促履行之必要；如逾期始繳納該應納稅額半數者，即不暫緩移送強制執行，故應就該半數依法加徵滯納金。系爭函一及二乃關於復查決定補徵之應納稅額逾繳納期限始繳納半數者應加徵滯納金部分所為函釋，並未涉及租稅主體、租

tion of an administrative act will not be put on hold simply because of disputing the validity or appropriateness of the administrative act. (Article 93, Section 1 of the Administrative Appeal Act and Article 116, Section 1 of the Administrative Litigation Act). Therefore, when a taxpayer applies for petition, the compulsory execution will be put on hold and, therefore, the State needs not urge the taxpayer to pay. When a taxpayer does not file an administrative appeal against the petition decision, the petition decision would become final. Since the taxpayer does not pay taxes before the payment deadline set out by the petition decision, there is a need to urge him or her to pay their taxes and, therefore, a failure-to-pay surcharge should be imposed. When a taxpayer files an administrative appeal against the petition decision in accordance with the law, and pay one-half of taxes within the payment deadline, the compulsory execution will be put on hold and, therefore, there is no need to urge him or her to pay. If a taxpayer does not pay one-half of the taxes payable until after the payment deadline, the compulsory execution will not be put

稅客體、租稅客體對租稅主體之歸屬、稅基、稅率等租稅構成要件，且符合系爭規定一及二、稅捐稽徵法第 39 條第 1 項及第 2 項第 1 款規定之立法意旨，與憲法第 19 條之租稅法律主義尚無牴觸。

on hold and, therefore, a failure-to-pay surcharge shall be imposed for the one-half of the taxes payable. The ruling set out in First and Second Disputed Letters, regarding the imposition of a failure-to-pay surcharge on those not paying one half of the additional taxes payable as determined by the petition decision until after the payment deadline, does not involve the essential terms of taxation, such as the taxpayer, the subject matter of the taxation, the attribution between the subject matter and the taxpayer, the tax base, the tax rate, the taxing method, and the date on which the tax becomes payable. Therefore, the First and Second Disputed Letters are consistent with the legislative purposes of the First and Second Disputed Provisions, and those of Article 39, Section 1 and Article 39, Section 2, Paragraph 1 of the Tax Collection Act. As a result, both First and Second Disputed Letters do not violate the principle of taxation in accordance with the law under Article 19 of the Constitution.

3. The imposition of interests on taxes payable but not yet paid as provided

三、系爭規定三就應納稅款加徵利息部分，與憲法保障財產權之意旨尚無

in the Third Disputed Provision does not infringe on the right to property as protected by the Constitution. In contrast, the imposition of interests on the failure-to-pay surcharge does violate the principle of proportionality.

The Third Disputed Provision provides that the interests calculated at the interest rate for one-year term deposit quoted by the Postal Savings and Remittances Bank shall accrue daily from the next day following the prescribed payment deadline to the day of payment for both the taxes payable but not yet paid and the failure-to-pay surcharge. The nature of such interests is a kind of compensation for the loss caused by late payment (*see* Article 233, Section 1 of the Civil Code). If a taxpayer files an administrative appeal against the amount of the taxes as determined by the petition decision and pays one-half of such taxes, the compulsory execution will be put on hold pursuant to Article 39, Section 2, Paragraph 1 of the Tax Collection Act. In other words, the taxpayer enjoys the benefit of not paying the other half of the taxes on

牴觸；就滯納金加徵利息部分，違反比例原則

系爭規定三規定，應納稅款及滯納金，應自滯納金之滯納期限屆滿之次日起，至納稅義務人繳納之日止，依郵政儲金匯業局一年期定期存款利率，按日加計利息，性質屬填補給付遲延之法定損害賠償（民法第 233 條第 1 項規定參照）。就復查決定之應納稅額，如納稅義務人依法提起訴願，且繳納應納稅額半數者，依稅捐稽徵法第 39 條第 2 項第 1 款規定，暫緩移送強制執行，如未繳納，就該應納稅額半數獲有消極利益，系爭規定三就此部分規定應加計利息，一併徵收，與憲法保障人民財產權之意旨尚無牴觸（本院釋字第 311 號解釋參照）。至於系爭規定三就滯納金加徵利息部分，滯納金既係為督促人民如期繳納稅捐而設，依其性質並無加徵利息之餘地；且滯納金兼具遲延利息之性質，如再加徵利息，係對應納稅額遲延損害之重複計算，欠缺合理性，不符憲法比例原則，與憲法保障人民財產權之

time. The imposition of interests for that other half of the taxes, and the rule that, as stipulated in the Third Disputed Provision, such interests shall become payable when the tax assessment becomes final are consistent with the right to property protected by the Constitution. (*see* J.Y. Interpretation No. 311). With regard to the imposition of interests for the failure-to-pay surcharge as provided for in the Third Disputed Provision, as the purpose and nature of the failure-to-pay surcharge is to urge taxpayers to pay taxes on time, no "interest" may accrue for such surcharge. In addition, as the nature of the failure-to-pay surcharge includes that of interests accruing for late payment, incurring interests for the failure-to-pay surcharge would account to doubling the amount of the damages arising from the late payment of taxes, for which there exists no rational basis between the means and the end. Such imposition is therefore inconsistent with the principle of proportionality as required by the Constitution, and violates the right to property as protected by the Constitution. This part of the Third Disputed Provision shall, therefore, cease

意旨有違，應自本解釋公布之日起失其效力。

to be effective immediately from the day this Interpretation is announced.

Justice Ming-Cheng TSAI filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion, in which Justice Jiun-Yi LIN, Justice Chong-Wen CHANG and Justice Jau-Yuan HWANG, joined.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Sheng-Lin JAN filed an opinion concurring in part and dissenting in part.

Justice Horng-Shya HUANG filed an opinion dissenting in part and concurring in part.

Justice Beyue SU CHEN, filed an opinion dissenting in part, in which Justice Dennis Te-Chung TANG and Justice Sheng-Lin JAN, joined.

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Jui-Ming HUANG filed an opinion dissenting in part.

本號解釋蔡大法官明誠提出之協同意見書；林大法官俊益提出之協同意見書；許大法官志雄提出，林大法官俊益、張大法官瓊文、黃大法官昭元加入之協同意見書；湯大法官德宗提出之部分協同部分不同意見書；詹大法官森林提出之部分協同部分不同意見書；黃大法官虹霞提出之部分不同部分協同意見書；陳大法官碧玉提出，湯大法官德宗、詹大法官森林加入部分不同意見書；羅大法官昌發提出之部分不同意見書；黃大法官瑞明提出之部分不同意見書。

J. Y. Interpretation No.747（March 17, 2017）*

【The landowner's right to demand expropriation of the land surface right case】

ISSUE: Does the landowner have the right to request the user of his or her land to apply for expropriation of the land surface right to the competent authority, if that party carries out road construction by tunneling under or passing over the land to the extent that goes beyond the scope of social responsibility that the owner may be expected to bear, resulting in special sacrifice on the landowner ?

RELEVANT LAWS:

Articles 7 and 15 of the Constitution（憲法第 7 條、第 15 條）；J.Y. Interpretations Nos. 400, 440, 445, 503, 709, 732, 737, 741, 742（司法院釋字第 400 號、第 440 號、第 445 號、第 503 號、第 709 號、第 732 號、第 737 號、第 741 號、第 742 號）；Article 3, Article 11, and Article 57, Paragraphs 1 & 2 of the Land Expropriation Act（土地徵收條例第 3 條、第 11 條、第 57 條第 1、2 項）；Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act（司法院大法官審理案件法第 5 條第 1 項第 2 款）；and the Explanation of the Taipei City Urban Plan No. 373130 issued on

* Translated by Edmund Ryden SJ

** Contents within frame, not part of the original text, are added for reference purposes only.

November 6, 1989 by the Taipei City Government（臺北市政府 78 年 11 月 6 日府工二字第 373130 號臺北市都市計畫說明書二）

KEYWORDS:

expropriation（徵收）, expropriation of land surface rights（徵收地上權）, compensation for expropriation （徵收補償）, special sacrifice（特別犧牲）, the right to property（財產權）, complete assessment （整體評價）, statute of limitation （時效期間）**

HOLDING: Article 15 of the Constitution states clearly that the people's right to property should be protected. According to Article 3 of the Land Expropriation Act, if a party intending to use a piece of privately-held land by tunneling under or passing over it to the extent that goes beyond the scope of social responsibility that the owner may be expected to bear, resulting in special sacrifice on the landowner, the landowner may request the user to apply for expropriation of the land surface rights, if the user has not followed the provisions for expropriation in applying to the competent body for expropriation of the land. However, Article 11 of the said Act promulgated on February

解釋文：人民之財產權應予保障，憲法第 15 條定有明文。需用土地人因興辦土地徵收條例第 3 條規定之事業，穿越私有土地之上空或地下，致逾越所有權人社會責任所應忍受範圍，形成個人之特別犧牲，而不依徵收規定向主管機關申請徵收地上權者，土地所有權人得請求需用土地人向主管機關申請徵收地上權。中華民國 89 年 2 月 2 日制定公布之同條例第 11 條規定：「需用土地人申請徵收土地……前，應先與所有人協議價購或以其他方式取得；所有人拒絕參與協議或經開會未能達成協議者，始得依本條例申請徵收。」（101 年 1 月 4 日修正公布之同條第 1 項主要意旨相同）第 57 條第 1 項規定：「需用土地人因興辦第 3 條規定之事業，需

2, 2000 provides that "[b]efore… a user applies for expropriation of the land, he or she shall first negotiate with the landowner for an agreement on the purchase price or employ other means to attain it. Should the landowner refuse to take part in negotiations or be unable to reach an agreement therein, then an application for expropriation is to be made according to this Act." (Section 1 of the same Article amended on January 4, 2012, with the same contents). Article 57, Paragraph 1 of the said Act provides that "[t]he party who plans to use a piece of land as set out in Article 3, by tunneling under or passing over the privately-held land, shall negotiate to acquire the land surface rights covering the area used. Should negotiations fail, the provisions for expropriation shall apply mutatis mutandis to the expropriation of the land surface right…." The latter two Articles (Article 11 and Article 57, Paragraph 1 of the Land Expropriation Act) fail to provide that the landowner is entitled to requesting the user to apply to the competent body for expropriation of the land surface rights. These two Articles are incompatible with Article 15 of the

穿越私有土地之上空或地下，得就需用之空間範圍協議取得地上權，協議不成時，準用徵收規定取得地上權。……」未就土地所有權人得請求需用土地人向主管機關申請徵收地上權有所規定，與上開意旨不符。有關機關應自本解釋公布之日起一年內，基於本解釋意旨，修正土地徵收條例妥為規定。逾期未完成修法，土地所有權人得依本解釋意旨，請求需用土地人向主管機關申請徵收地上權。

Constitution and Article 3 of the Land Expropriation Act. Within one year after the publication of this Interpretation, the competent authority shall amend the Land Expropriation Act in accordance with the meaning and spirit of this Interpretation. Should the said Act not be amended within the above period, the landowner may request the user to apply to the competent authority for expropriation of the land surface rights in accordance with the meaning and spirit of this Interpretation.

REASONING: The Petitioners, Chih-Nan Temple and the representative of Chih-Nan Temple Construction & Development Corporation Ltd, Kao Chaowen (whose original name was Kao Chonghsing, subsequently changed to Kao Chaowen), claimed that the Taiwan Area National Highway Bureau under the Ministry of Transportation and Communications (hereafter Highway Bureau), in constructing the Muzha Tunnel on the northern section of the Second Highway, tunneled under the site of a proposed columbarium and carpark attached to the Ksitigarbha Hall, which they had designed

解釋理由書：聲請人指南宮及南宮建設開發股份有限公司代表人高超文（原為高忠信，嗣後變更為高超文）以交通部臺灣區國道高速公路局（下稱高公局）興建北部第二高速公路木柵隧道，未經其同意，穿越其投資興建之指南宮地藏王寶殿附設靈灰堂暨停車場空間新設工程所在土地之地下，影響其土地開發安全及利用，向高公局請求協議價購及辦理徵收遭拒，聲請人不服，提起行政訴訟。嗣經最高行政法院 101 年度判字第 465 號判決（下稱確定終局判決）以上訴為無理由而駁回上訴確定。聲請人認公路法及確定終局判決所適用之 89 年 2 月 2 日制定公布之土地徵收

and in which they had invested, without their consent. The said tunnel affected the safe development and use of the petitioners' land. Their proposals to the Highway Bureau for an agreement on the purchase price and for expropriation were rejected. The petitioners filed an administrative litigation. In Judgment No. 465 (hereafter the Final Judgment) of 2012, the Supreme Administrative Court rules against the petitioners on the merit and rejected their appeal. The petitioners claim that the Highway Law and Article 11 of the Land Expropriation Act promulgated on February 2, 2000 as applied by Final Judgment violate the constitution. The said Article reads, "[b]efore… a user applies for expropriation of the land, he or she shall first negotiate with the landowner for an agreement on the purchase price or employ other means to attain it. Should the landowner refuse to take part in negotiations or be unable to reach an agreement therein, then an application for expropriation is to be made according to this Act." (Section 1 of the same Article amended on January 4, 2012 with the same contents) (hereafter Disputed Regulation 1).

條例第 11 條規定：「需用土地人申請徵收土地……前，應先與所有人協議價購或以其他方式取得；所有人拒絕參與協議或經開會未能達成協議者，始得依本條例申請徵收」（101 年 1 月 4 日修正公布之同條第 1 項主要意旨相同；下稱系爭規定一）等規定，對人民所有之土地因公路穿越致不能為相當之使用，遭受特別犧牲者，既不徵收又未設補償規定，有牴觸憲法疑義，向本院聲請解釋憲法並聲請變更本院釋字第 400 號解釋。聲請人並請求解釋臺北市政府 78 年 11 月 6 日府工二字第 373130 號臺北市都市計畫說明書：參、二所載：「北部第二高速公路變更計畫圖內虛線為高速公路隧道通過路段，因隧道頂端之覆蓋原土石層超過卅五公尺，無礙土地所有權人之行使其權利，不予征購，故不辦理都市計畫變更，如土地關係權人提出異議，高速公路局應依協議方式取得土地使用權。」（下稱系爭都計說明）逾越母法之限度，並對人民財產權增加法律所無之限制，有違授權明確性。

It is evident that there are no regulations mandating expropriation or compensation for those people obliged to make a special sacrifice on their land as they are unable to make adequate use of their land due to the public road tunneling under it or passing over it. Holding this to touch on a constitutional quandary, the petitioners requested this Court for constitutional interpretation and also requested modification of J. Y. Interpretation No. 400. The petitioners also requested an interpretation of the Explanation of the Taipei City Urban Renewal Plan Section 3 No. 2, which reads, "The dotted lines on the diagram of the Second Highway Northern Office Renewal Plan indicate the section traversed by the highway tunnel. Since the depth of original soil and rock covering the top of the tunnel exceeds 35 meters, there is no obstacle to the landowners' exercise of their rights and so no need to request purchase of the land. The Urban Renewal Plan needs not be changed. Should any persons with rights to the land raise contrary views, the Highway Bureau should acquire land use rights by means of negotiation" (hereafter Disputed Explanation).

The petitioners claim that the Disputed Explanation exceeds the perimeter of its enabling law and, unrestricted by any law, imposes additional obligations on the people's right to property which contravene the principle of legal clarity.

The people may apply for constitutional interpretation, both to protect their own fundamental rights and to show forth the real meaning of the Constitution so as to uphold the constitutional order itself. Therefore, the scope of interpretation should include the laws and regulations necessarily connected to the concrete case. But it is not limited to only the petitioner's intent or what is relevant to the Final Decision (*see* J.Y. Interpretation No. 445). Should it be impossible to provide a complete assessment of the petitioner's intent unless other regulations not mentioned in the petitioner's request for interpretation are considered, then consideration of these other regulations is both relevant and essential, which should be accepted as objects for the interpretation (*see* J. Y. Interpretation No. 737). Although the petitioners in this case only

按人民聲請憲法解釋之制度，除為保障當事人之基本權利外，亦有闡明憲法真義以維護憲政秩序之目的，故其解釋範圍自得及於該具體事件相關聯且必要之法條內容，而不全以聲請意旨所述或確定終局裁判所適用者為限（本院釋字第 445 號解釋參照）。如非將聲請解釋以外之其他規定納入解釋，無法整體評價聲請意旨者，自應認該其他規定為相關聯且必要，而得將其納為解釋客體（本院釋字第 737 號解釋參照）。本件聲請人雖僅主張系爭規定一有牴觸憲法疑義，然因土地徵收條例第 57 條第 1 項規定：「需用土地人因興辦第 3 條規定之事業，需穿越私有土地之上空或地下，得就需用之空間範圍協議取得地上權，協議不成時，準用徵收規定取得地上權。……」（下稱系爭規定二）對需用土地人因興辦該條例第 3 條規定之事業而有穿越私有土地之上空或地下之情形，設有徵收地上權之相關規定，故

held that Disputed Regulation 1 gave rise to a constitutional quandary, Disputed Regulation 2 should also be reviewed for there to be a complete assessment. Article 57, Paragraph 1 of the Land Expropriation Act provides "[t]he party who plans to use a piece of land as set out in Article 3, by tunneling under or passing over the privately-held land, shall negotiate to acquire the land surface rights covering the area used. Should negotiations fail, the provisions for expropriation shall apply *mutatis mutandis* to the expropriation of the land surface right…." (hereafter Disputed Regulation 2). It refers to persons employing the provisions set out in Article 3 and needing to use a piece of land by tunneling under or passing over it. It also sets out related regulations for expropriation of land rights, The petitioners in this case held that Disputed Regulation 1 is contrary to the Constitution. Yet, Disputed Regulation 2, which is related to it and necessarily so, shall also be reviewed by this Interpretation in compliance with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. The reasoning is as follows:

應將系爭規定二納為整體評價之對象。是本件聲請人就系爭規定一有違憲疑義所為之聲請，及與之相關聯且必要之系爭規定二，核與司法院大法官審理案件法第5條第1項第2款所規定要件相符，爰予受理，作成本解釋，理由如下：

Article 15 of the Constitution states that the people's right to property should be protected. Its purpose is to guarantee that individuals may exercise their competence in the free use, profit from and disposal of their property as long as it is theirs. The owner shall be free from infringement by public powers or third persons, so that they may realize personal freedom, develop their personality and maintain their dignity (*see* J.Y. Interpretations Nos. 400, 709 and 732). The scope of the right to property protected by the Constitution is not limited to situations wherein the state deprives people of their right to ownership of property. When state institutions exercise their public powers according to law such as to damage the people's property (such as incurring loss of ownership rights, or diminution in value or effective use and the like) to the extent that goes beyond the scope of social responsibility that the owner may be expected to bear, resulting in special sacrifice on the landowner, the state should provide reasonable compensation to conform to the intent of protecting the people's right to property guaranteed by

憲法第 15 條規定人民財產權應予保障，旨在確保個人依財產之存續狀態，行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴（本院釋字第 400 號、第 709 號及第 732 號解釋參照）。憲法上財產權保障之範圍，不限於人民對財產之所有權遭國家剝奪之情形。國家機關依法行使公權力致人民之財產遭受損失（諸如所有權喪失、價值或使用效益減損等），若逾其社會責任所應忍受之範圍，形成個人之特別犧牲者，國家應予以合理補償，方符憲法第 15 條規定人民財產權應予保障之意旨（本院釋字第 440 號解釋參照）。國家如徵收土地所有權，人民自得請求合理補償因喪失所有權所遭受之損失；如徵收地上權，人民亦得請求合理補償所減損之經濟利益。

Article 15 of the Constitution (*see* J. Y. Interpretation 440). Should the state expropriate the right to land ownership, the people may on this basis request reasonable compensation for the harm caused to the loss of their right to ownership. Should the state expropriate land surface rights, the people may also request reasonable compensation for the diminution of any economic interest.

When application according to the principles of expropriation is made to the competent body by the person needing to use the land, and when for a public interest the state must undertake a task that does in fact require tunneling under or passing over a land held by private persons to the extent that goes beyond the scope of social responsibility that the owner may be expected to bear, resulting in special sacrifice on the landowner without compensation, this amounts to an invasion of the people's right to property and automatically should grant the people the right to actively *see*k expropriation so as to acquire the right to compensation. Article 57 Paragraph 2 of the Land Expro-

按徵收原則上固由需用土地人向主管機關申請，然國家因公益必要所興辦事業之設施如已實際穿越私人土地之上空或地下，致逾越所有權人社會責任所應忍受範圍，形成個人之特別犧牲，卻未予補償，屬對人民財產權之既成侵害，自應賦予人民主動請求徵收以獲補償之權利。土地徵收條例第 57 條第 2 項爰規定：「前項土地因事業之興辦，致不能為相當之使用時，土地所有權人得自施工之日起至完工後一年內，請求需用土地人徵收土地所有權，需用土地人不得拒絕。」以實現憲法第 15 條保障人民財產權之意旨。

priation Act provides, "the person holding ownership rights over land mentioned in the preceding Paragraph and cannot use the land appropriately due to construction work, may request the person needing to use the land to expropriate land surface rights from the day the work began until one year after the work ends. The person using the land may not refuse." This is so as to implement the purpose of the people's right to property set out in Article 15 of the Constitution.

Disputed Regulation 1 provides that, before a land is expropriated, there should be a sequence of negotiation to reach an agreement on the price or the use of other means to attain the same. But it does not provide whether the landowner has the right to request the person needing to use his or her land to apply to the competent authority for expropriation of the land or for expropriation of the land surface rights, for the sake of the construction of a public road either by passing over tunneling under the land to the extent that goes beyond the required social responsibility, resulting in special sacrifice on

系爭規定一係規範土地徵收前所應踐行之協議價購或以其他方式取得之程序，並未規定土地所有權人因公路等設施穿越其土地上方或地下，致逾越其社會責任所應忍受範圍，形成個人之特別犧牲，是否有權請求需用土地人申請主管機關徵收其土地或徵收地上權。是單就系爭規定一而言，尚不足以判斷公路等設施穿越土地之情形，國家是否已提供符合憲法意旨之保障。另前揭土地徵收條例第 57 條第 2 項雖賦予土地所有權人請求徵收之權，然該條項係就公路等設施穿越土地上空或地下致該土地不能為相當使用所設。倘土地僅有價值減損，但未達於不能為相當使用之程

the landowner. When a public road, or the like, tunnels under or crosses over a piece of land, Disputed Regulation 1, taken alone, is insufficient for determining whether the state has provided protection in conformity with the meaning and spirit of the Constitution. Although Article 57 Paragraph 2 of the Land Expropriation Act mentioned above grants to the landowner the right to request expropriation, it is meant to apply to the situation that a construction, such as a public road crossing over or tunneling under the said piece of land, causes the land cannot be adequately used. If there is only a diminution in value not to the extent that the land can no longer be adequately used, this Paragraph is not applicable. Moreover, according to this Paragraph, the landowner may request the expropriation of his or her land, but not for the land surface rights. Therefore, when land is affected by the tunneling under or crossing over by a public road or the like, and not to the extent that the land can no longer be adequately used, the landowner may not use this Paragraph to request expropriation of the land surface rights. Also, although

度，則無該條項之適用。且土地所有權人依該條項規定得請求徵收者，係土地所有權，而非地上權。故於土地遭公路等設施穿越但尚未達於不能為相當使用之程度者，其所有權人尚無從依該條項請求徵收地上權。又系爭規定二雖規定需用土地人得就需用之空間範圍，以協議方式或準用徵收之規定取得地上權，但並未規定土地所有權人得主動請求需用土地人向主管機關申請徵收地上權。整體觀察系爭規定一及二，尚與前開土地所有權人得請求需用土地人向主管機關申請徵收地上權之憲法意旨有所不符。有關機關應自本解釋公布之日起一年內，基於本解釋意旨，修正土地徵收條例妥為規定。逾期未完成修法，有關前述請求徵收地上權之部分，應依本解釋意旨行之。

Disputed Regulation 2 provides that the person needing to use the land should, in accordance with the required scope of land to be used and by means of negotiation or following the provisions for expropriation, to acquire land surface rights, yet it does not provide that the landowner may actively request the person needing to use the land to apply for expropriation of land surface rights from the competent authority. Both Disputed Regulations 1 and 2 taken together, they do not conform to the constitutional principle that the landowner shall be able to request the user to apply to the competent authority for expropriation land surface rights. The competent authority must, according to the tenor of this Interpretation, within one year from the date of publication, amend the Land Expropriation Act as decreed. Should the law not be amended in time, the part stated above about expropriation of land surface rights must be implemented according to the tenor of this Interpretation.

To uphold the stability of law, the landowner's constitutional right to request

惟為維護法之安定性，土地所有權人依本解釋意旨請求徵收地上權之

for expropriation of land surface rights according to the tenor of this Interpretation must still be carried out within a fixed period of time. Upon amending the Disputed Regulation 2, the competent authority shall mandate the landowner exercise their right as mentioned above within a fixed period of time after he or she learns of the infringement of his or her right. Moreover, the amended law shall provide that the right to request expropriation is to expire at the end of a longer period of time after the completion of crossing or tunneling construction. As to the length of a fixed period of time, it shall be left for the legislative discretion to determine its reasonable scope. The competent authority shall also review and amend the one-year period of statute of limitations provided in Article 57, Paragraph 2 of the Land Expropriation Act in accordance with the tenor of this interpretation. It is pointed out here.

憲法上權利，仍應於一定期限內行使。有關機關於修正系爭規定二時，除應規定土地所有權人得自知悉其權利受侵害時起一定期間內，行使上開請求權外，並應規定至遲自穿越工程完工之日起，經過一定較長期間後，其請求權消滅。至於前揭所謂一定期間，於合理範圍內，屬立法裁量之事項。土地徵收條例第 57 條第 2 項一年時效期間之規定，有關機關應依本解釋意旨檢討修正，併此指明。

The petitioners have three months to request the user of their land to apply for expropriation of land surface rights. As to whether the petitioners' land was tunneled

又本件聲請人就聲請釋憲原因案件之土地，得自本解釋送達之日起三個月內，依本解釋意旨請求需用土地人向主管機關申請徵收地上權。至原因案件

under for a public road and whether there was any going beyond the scope of social responsibility to be borne resulting in special sacrifice on the landowner, these are matters of fact that lie outside the scope of this Interpretation. It is pointed out here as well.

中，聲請人之土地是否確遭公路穿越地下，及其是否有逾社會責任所應忍受範圍，形成個人之特別犧牲，係屬事實認定問題，不在本解釋範圍，亦併此指明。

The petitioners further claim that the Highway Act is contrary to the provisions set out in Articles 7 and 15 of the Constitution. Yet the provisions of the Highway Act were not applied in the Final Judgment. Moreover the petition merely refers in general to the Act as being unconstitutional without illustrating which articles are unconstitutional and how they are so. Furthermore, when a petitioner raises a query about the Final Decision's application of this Court's Interpretations and calls for additions or revisions to be made, such petition is to be granted review if this Court finds there are legitimate grounds (*see* J. Y. Interpretations Nos. 503, 741 and 742). However, the Final Judgment in this case did not apply J.Y. Interpretation No. 400. The petitioners may not ask for it to be added to

有關聲請人另主張公路法違反憲法第 7 條及第 15 條等規定部分，經查公路法規定並未為確定終局判決所適用；且聲請書亦僅泛稱該部法律違憲，而未具體指摘究竟該法何條規定如何發生違憲疑義。另當事人對於確定終局裁判所適用之本院解釋發生疑義，聲請補充或變更解釋，經核確有正當理由者，應予受理（本院釋字第 503 號、第 741 號、第 742 號解釋參照）。然查本件確定終局判決並未適用本院釋字第 400 號解釋，聲請人自不得就該解釋聲請補充或變更解釋。又聲請人雖聲請解釋系爭都計說明，然該說明係針對具體項目直接限制其權利或增加其負擔，屬行政處分之性質，自非解釋憲法之客體。此三部分均與司法院大法官審理案件法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定均應不受理，併予敘明。

or revised. Although the petitioners also ask that this Court to review the Disputed Explanation, this Explanation is still not an object for constitutional interpretation, as it directly limits the rights or increases the burdens on the specific items and is an administrative disposition in nature. These three parts do not conform to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and shall be dismissed in accordance with Paragraph 3 of the same Article. It is also noted here.

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Ming-Cheng TSAI filed an opinion concurring in part.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Chang-Fa LO filed an opinion concurring in part.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

本號解釋湯大法官德宗提出之部分協同意見書；蔡大法官明誠提出之部分協同意見書；

林大法官俊益提出之部分協同意見書；羅大法官昌發提出之協同意見書；黃大法官虹霞提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出之協同意見書；黃大法官璽君提出之不同意見書。

Justice Sheng-Lin JAN filed an opinion concurring in part.

Justice Hsi-Chun HUANG filed a dissenting opinion.

J. Y. Interpretation No.748（May 24, 2017）*

【Same-Sex Marriage Case】

ISSUE: Do the provisions of Chapter 2 on Marriage of Part IV on Family of the Civil Code, which do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life, violate constitution's guarantees of freedom of marriage under Article 22 and right to equality under Article 7 ?

RELEVANT LAWS:

Article 7, Article 22 and Article 23 of the Constitution（憲法第七條、第二十二條、第二十三條）；Additional Article 10, Paragraph 6 of the Constitution（憲法增修條文第十條第六項）；J.Y. Interpretations Nos. 242, 362, 365, 552, 554, 585, 601and 647（司法院釋字第二四二號、第三六二號、第三六五號、第五五二號、第五五四號、第五八五號、第六０一號、第六四七號）；Part IV, Chapter 2 of the Civil Code（民法第四編第二章）；Article 5, Paragraph 1, Subparagraph 1 & Subparagraph 2; Article 9; Article 13, Paragraph 1 of the Constitutional Court Procedure Act（大法官審理案件法第五條第一項第一款、第二款、第九條、第十三條第一項）；Ministry of the Interior Letter of Tai-Nei-Hu-1010195153 of May 21, 2012（內政部一０一年五

* Translated by Szu-Chen KUO

** Contents within frame, not part of the original text, are added for reference purposes only.

月二十一日台內戶字第一０一０一九五一五三號函）；Ministry of Justice Letter of 1994-Fa-Lu-Jue-17359 of August 11, 1994（法務部八十三年八月十一日（八三）法律決字第一七三五九號函）；Ministry of Justice Letter of Fa-Lu-10000043630 of January 2, 2012（法務部一０一年一月二日法律字第一０００００四三六三０號函）；Ministry of Justice Letter of Fa-Lu-10103103830 of May 14, 2012（法務部一０一年五月十四日法律字第一０一０三一０三八三０號函）；Ministry of Justice Letter of Fa-Lu-10203506180 of May 31, 2013（法務部一０二年五月三十一日法律字第一０二０三五０六一八０號函）；Article 2 of the Household Registration Act（戶籍法第二條）

KEYWORDS:

living a common life（經營共同生活）, intimacy（親密性）, exclusiveness（排他性）, permanent union（永久結合關係）, freedom of marriage（婚姻自由）, right to equality（平等權）, right to same-sex marriage（同性婚姻權）, autonomy to choose a spouse（自主選擇結婚對象）, fundamental right（重要基本權）, husband and wife（一夫一妻）, a man and a woman（一男一女）, sound development of personality（人格健全發展）, human dignity（人性尊嚴）, opposite-sex marriage（異性婚姻）, gross legislative flaw（立法上之重大瑕疵）, sexual orientation（性傾向）, different treatment（差別待遇）, immutable characteristics（難以改變之個人特徵）, standard of review（審查標準）, important public interests（重要公共利益）, substantial relationship（實質關聯）, reproduction（繁衍後代）, basic ethical orders（基本倫理秩序）, underinclusive（規範不足）**

HOLDING: The provisions of Chapter 2 on Marriage of Part IV on Family of the Civil Code do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life. The said provisions, to the extent of such failure, are in violation of constitution's guarantees of both the people's freedom of marriage under Article 22 and the people's right to equality under Article 7. The authorities concerned shall amend or enact the laws as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation. It is within the discretion of the authorities concerned to determine the formality for achieving the equal protection of the freedom of marriage. If the authorities concerned fail to amend or enact the laws as appropriate within the said two years, two persons of the same sex who intend to create the said permanent union shall be allowed to have their marriage registration effectuated at the authorities in charge of household registration, by submitting a written document signed by two or more witnesses in

解釋文：民法第 4 編親屬第 2 章婚姻規定，未使相同性別二人，得為經營共同生活之目的，成立具有親密性及排他性之永久結合關係，於此範圍內，與憲法第 22 條保障人民婚姻自由及第 7 條保障人民平等權之意旨有違。有關機關應於本解釋公布之日起 2 年內，依本解釋意旨完成相關法律之修正或制定。至於以何種形式達成婚姻自由之平等保護，屬立法形成之範圍。逾期未完成相關法律之修正或制定者，相同性別二人為成立上開永久結合關係，得依上開婚姻章規定，持二人以上證人簽名之書面，向戶政機關辦理結婚登記。

accordance with the said Marriage Chapter.

REASONING: One of the petitioners, the Taipei City Government, is the competent authority of household registration prescribed by Article 2 of the Household Registration Act. The household registration offices within its jurisdiction, in processing the marriage registrations applied for by two persons of the same sex, believed unconstitutional the applicable provisions under Chapter 2 on Marriage of Part IV on Family of the Civil Code (hereinafter "Marriage Chapter") as well as Ministry of the Interior (hereinafter "MOI") Letter of Tai-Nei-Hu-1010195153 of May 21, 2012 (hereinafter "2012 MOI Letter"), which refers to Ministry of Justice (hereinafter "MOJ") Letter of Fa-Lu-10103103830 of May 14, 2012. Therefore, the Taipei City Government, through referral by its supervising authorities, the MOI and the Executive Yuan, filed a petition to this Court, claiming that the Marriage Chapter and the 2012 MOI Letter are in violation of Articles 7, 22, and 23 of the Constitu-

解釋理由書：本案聲請人之一臺北市政府為戶籍登記業務主管機關（戶籍法第 2 條參照），因所轄戶政事務所於辦理相同性別二人民申請之結婚登記業務，適用民法第 4 編親屬第 2 章婚姻（下稱婚姻章）規定及內政部中華民國 101 年 5 月 21 日台內戶字第 1010195153 號函（下稱系爭函，函轉法務部 101 年 5 月 14 日法律字第 10103103830 號函），發生有牴觸憲法第 7 條、第 22 條及第 23 條規定之疑義，經由上級機關內政部層轉行政院，再由行政院轉請本院解釋。就婚姻章規定聲請解釋部分，核與司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 1 款及第 9 條規定相符，應予受理。另一聲請人祁家威因戶政事件，認最高行政法院 103 年度判字第 521 號判決（確定終局判決）所適用之民法第 972 條、第 973 條、第 980 條及第 982 條規定，侵害憲法保障之人格權、人性尊嚴、組織家庭之自由權，有牴觸憲法第 7 條、第 22 條、第 23 條及憲法增修條文第 10 條第 6 項規定之疑義，聲請解釋，核與大審法第 5 條第 1 項第 2 款規定相符，

tion. Regarding the challenge against the Marriage Chapter, this Court considered that this part of petition had satisfied the requirements of Article 5, Paragraph 1, Subparagraph 1 and Article 9 of the Constitutional Court Procedure Act (hereinafter "Act") and accordingly granted review. The other petition filed by Chia-Wei Chi arose from a case involving household registration. Petitioner Chi filed a petition to this Court, claiming that Articles 972, 973, 980, and 982 of the Civil Code as applied in the Supreme Administrative Court 2014-Pan-521 Judgment (hereinafter "Final Judgment") violate Articles 7, 22, and 23 as well as Additional Article 10 of the Constitution. This Court considered that his petition had satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Act and accordingly granted review as well. This Court further decided that both petitions are concerned with the constitutionality of the Marriage Chapter and were consolidated. On March 24, 2017, this Court heard oral arguments, pursuant to Article 13, Paragraph 1 of the Act.

亦應受理。查上述兩件聲請案所聲請之解釋均涉及婚姻章規定有無牴觸憲法之疑義，爰併案審理。本院並依大審法第13條第1項規定，於106年3月24日行言詞辯論。

Petitioner the Taipei City Govern-

聲請人臺北市政府主張婚姻章規

ment claims that the Marriage Chapter is in violation of Articles 7, 22, and 23 of the Constitution. Its arguments are summarized as follows. Prohibiting two persons of the same sex from entering into a marriage restricts their freedom to choose whom to marry as protected by the freedom of marriage. Neither the importance of its ends nor the relationship between the means and the ends justifies such prohibition. The prohibition fails the review under the proportionality principle as required by Article 23 of the Constitution. Furthermore, different treatment based on sexual orientation should be subject to heightened scrutiny. Excluding same-sex couples from marriage is not substantially related to the furthering of important public interests. As a result, the Marriage Chapter infringes both the people's freedom of marriage under Article 22 and the right to equality under Article 7 of the Constitution.

聲請人祁家威主張民法第 972 條、第 973 條、第 980 條及第 982 條規定牴觸憲法第 7 條、第 22 條、第 23 條及憲法增修條文第 10 條第 6 項規定，其理定牴觸憲法第 7 條、第 22 條及第 23 條規定部分，其理由略稱：禁止相同性別人民結婚，限制人民婚姻自由所含之結婚對象選擇自由。然其目的重要性、手段與目的之關聯性，均不足以正當化上開限制，與憲法第 23 條比例原則不符；又以性傾向為差別待遇，應採取較嚴格之審查標準，禁止相同性別人民結婚非為達成重要公益之實質關聯手段，是婚姻章相關規定侵害人民受憲法第 22 條所保障之婚姻自由及第 7 條所保障之平等權等語。

Petitioner Chia-Wei Chi claims that Articles 972, 973, 980, and 982 of the Civil Code violate Articles 7, 22, and 23 as well as Additional Article 10,

Paragraph 6 of the Constitution. His arguments are summarized as follows. 1. The freedom of marriage guaranteed by Article 22 of the Constitution is an inherent right in personality development and human dignity, the essence of which is the freedom to choose one's own spouse. Restrictions on such freedom can only be allowed to the extent compatible with the requirements of Article 23 of the Constitution. Prohibiting a person from marrying another person of the same sex, however, does not serve any important public interest. Nor are such prohibitive means substantially related to the ends, if at all. The prohibition, consequently, contravenes Articles 22 and 23 of the Constitution. 2. The term "sex" as referred to in Article 7 and Additional Article 10, Paragraph 6 of the Constitution shall include sex, gender identity, and sexual orientation. Classifications based on sexual orientation, accordingly, shall be reviewed with heightened scrutiny. The means that prohibit same-sex couples from entering marriages are ostensibly not related to the alleged end of encouraging procreation, and hence in violation of equal protection.

由略稱：一、婚姻自由是人民發展人格與實現人性尊嚴之基本權利，而選擇配偶之自由乃婚姻自由之核心，受憲法第22條之保障，其限制應符憲法第23條之要件。然限制同性結婚既不能達成重要公益目的，目的與手段間亦欠缺實質正當，違反憲法第22條及第23條規定。二、憲法第7條所稱「男女」或憲法增修條文第10條第6項所稱「性別」，涵蓋性別、性別認同及性傾向，是以性傾向作為分類基礎之差別待遇，應採較為嚴格之審查基準；以限制同性結婚作為鼓勵生育之手段，其手段與目的間亦欠缺實質關聯，應認違反平等權之意旨。三、憲法增修條文第10條第6項課予國家消除性別歧視，積極促進兩性地位實質平等之義務，立法者本應積極立法保障同性結婚權，卻長期消極不作為，已構成立法怠惰等語。

3. Additional Article 10, Paragraph 6 of the Constitution imposes on the State the obligation to eliminate sex discrimination and actively promote substantive gender equality. The legislature is obliged to enact laws to protect same-sex couples' right to marriage. The legislature's long-time failure to pass such laws thus amounts to legislative inaction violative of its constitutional obligation.

The arguments of Agency Concerned, the MOJ, are summarized as follows. 1. The precedents of the Constitutional Court have long held "marriage" as a union between husband and wife, a man and a woman. Therefore, it is rather difficult to argue that the freedom of marriage under Article 22 of the Constitution necessarily guarantees "the freedom to marry a person of the same sex". Proper protection of the rights and benefits of same-sex couples is a task better left to legislation. 2. The Civil Code, which regulates people's interactions in the private sphere, is an "enacted statute based on social autonomy". Statutory legislation on family should defer to the fact that the in-

關係機關法務部略稱：一、司法院大法官歷來解釋所承認之「婚姻」，均係指一夫一妻、一男一女之結合。「選擇與同性別者締結婚姻之自由」尚難謂為憲法第 22 條所保障婚姻自由之範疇。有關同性伴侶之權益，宜循立法程序，採取適當之法制化途徑加以保障。二、民法係規範私人間社會交往之「社會自主立法」，親屬法制應尊重其事實先在之特色，對於「婚姻上之私法自治」，立法機關自有充分之形成自由。有關婚姻之規定，係立法者考量「一夫一妻婚姻制度之社會秩序」，基於對婚姻制度之保護所制定，具有維護人倫秩序、男女平等及養育子女等社會性功能，並延伸為家庭與社會之基礎，目的洵屬正當，與維護婚姻制度目的之

stitution of family has existed since long before the enactment of the Civil Code. It follows that the legislature has ample discretion in shaping "private autonomy in marriage". Having considered "the social order rooted in the marriage institution of husband and wife", the legislature enacted the Marriage Chapter to protect the marriage institution. The marriage institution provided for in the Marriage Chapter is meant to serve social functions such as maintenance of human ethical orders and sex equality, as well as child raising; it is also a building block of family and society. All of the above are certainly legitimate ends. Restricting marriage to opposite-sex couples only, as a means, is not arbitrary, but rationally related to the ends of the marriage institution. The provisions of the Marriage Chapter, therefore, are not violative of the Constitution.

達成有合理關聯，並非立法者之恣意。是婚姻章規定並未違憲等語。

The arguments of Agency Concerned, the MOI, are summarized as follows. As the competent authority of household registration, the MOI, upon certifying marriages, has followed the positions taken in those letters issued by the

關係機關內政部略稱：該部為戶籍登記業務主管機關。結婚要件之審查係依據民法主管機關法務部之函釋意旨辦理。至婚姻章規定是否違憲，尊重法務部之意見等語。

MOJ, which is the competent authority of the Civil Code. The MOI defers to the MOJ's opinions on the constitutionality of the Marriage Chapter.

The arguments of Agency Concerned, the Household Registration Office at Wan-Hua District of Taipei City, are summarized as follows. According to the letters issued by the MOJ, the competent authority of the Civil Code, marriage as referred to in the Marriage Chapter shall be limited to the union between a man and a woman. As to the constitutionality of the Marriage Chapter, it is within the competence of the Constitutional Court to have the final word.

This Court, taking all arguments into consideration, makes this Interpretation on the constitutional challenges to the Marriage Chapter raised by the petitioners. The reasoning is as follows:

In 1986, Petitioner Chia-Wei Chi petitioned to the Legislative Yuan (hereinafter "LY") for "prompt legislative actions to legalize same-sex marriages." The Ju-

關係機關臺北市萬華區戶政事務所略稱：依據民法主管機關法務部之函釋，婚姻章規定之婚姻，限於一男一女之結合關係。至此等規定是否違憲，似由大法官解釋為宜等語。

本院斟酌全辯論意旨，就聲請人聲請解釋婚姻章相關規定部分，作成本解釋，理由如下：

查聲請人祁家威於 75 年間以「請速立法使同性婚姻合法化」為由，向立法院提出請願，經該院司法委員會全體委員會議討論，並參酌司法院代表意見

dicial Committee of the LY, after discussions among its full members, proposed to dismiss Chi's petition by a resolution stating that "there is no need to initiate a bill on the subject matter of this petition." The LY adopted a floor resolution to confirm the said committee proposal in its 37th Meeting of the 77th Term in 1986 (see Citizen Petition Bills No. 201-330, LY Bill-Related Documents Yuan-Tzung-527 of June 28, 1986). In the committee deliberation, the Judicial Committee referred to the statements made by the representative of the Judicial Yuan at that time:

The union of marriage is not merely for sexual satisfaction. It too serves to produce new human resources for both State and society. It is related to the existence and development of State and society. Therefore it is distinguishable from pure sexual satisfaction between homosexuals….

and the statement made by the representative of the MOJ at that time:

Same-sex marriage is incompatible with the provisions of our nation's Civil Code, which provides for one-man-and-one-woman marriage. It is not only in

（略稱：「……婚姻之結合關係，非單純為情慾之滿足，此制度，常另有為國家、社會提供新人力資源之作用，關係國家社會之生存與發展，此與性共同戀之純為滿足情慾者有別……。」）及法務部代表意見（略稱：「同性婚姻與我國民法一男一女結婚之規定相違，其不僅有背於社會善良風俗，亦與我國情、傳統文化不合，似不宜使之合法化。」）作成審查決議：「本案請願事項，無成為議案之必要……。」並經立法院 75 年第 77 會期第 37 次會議通過在案（立法院 75 年 6 月 28 日議案關係文書院總第 527 號、人民請願案第 201 號之 330 參照）。嗣祁家威向法務部及內政部請願未果。法務部於 83 年 8 月 11 日發布（83）法律決字第 17359 號函：「查我國民法對結婚之當事人必須為一男一女，雖無直接明文規定，惟我國學者對結婚之定義，均認為係『以終生共同生活為目的之一男一女適法結合關係』，更有明言同性之結合，並非我國民法所謂之婚姻者……。而我國民法親屬編之諸多規定，亦係建構在此等以兩性結合關係為基礎之概念上……。從而，我國現行民法所謂之『結婚』，必為一男一女結合關係，同性之結合則非屬之。」（並參見該部 101 年 1 月 2 日法律字第

conflict with good morals of the society, but also incompatible with our national conditions and traditional culture. It seems inappropriate to legalize such marriage.

Then Chia-Wei Chi proceeded to petition both the MOJ and the MOI, but to no avail. On August 11, 1994, the MOJ issued Letter of 1994-Fa-Lu-Jue-17359, which stated:

In our Civil Code, there is no provision expressly mandating the two parties of a marriage be one male and one female. However, scholars in our country agree that the definition of marriage must be "a lawful union between a man and a woman for the purpose of living together for life." Some further expressly maintain that the same-sex union is not the so-called marriage under our Civil Code…. Many provisions of Part IV on Family in our Civil Code are also based on the concept of such opposite-sex union….Therefore, the so-called "marriage" under our current Civil Code must be a union between a man and a woman, and does not include any same-sex union.

(For similar statements, *see* 10000043630 號函、101 年 5 月 14 日法律字第 10103103830 號函、102 年 5 月 31 日法律字第 10203506180 號函，意旨相同）祁家威於 87 年間向臺灣臺北地方法院請求辦理公證結婚被拒，未提起司法救濟；於 89 年間再度向該院請求辦理公證結婚遭拒，經用盡審級救濟程序，向本院聲請解釋。本院於 90 年 5 月以其聲請並未具體指明法院裁判所適用之法律或命令有何牴觸憲法之處，議決不受理。祁家威再於 102 年間至臺北市萬華區戶政事務所申請辦理結婚登記被拒後，提起行政爭訟，於 103 年 9 月經最高行政法院判決駁回確定後，於 104 年 8 月向本院聲請解釋。核祁家威向立法、行政、司法權責機關爭取同性婚姻權，已逾 30 年。

MOJ Letter of Fa-Lu-10000043630 of January 2, 2012, MOJ Letter of Fa-Lu-10103103830 of May 14, 2012, and MOJ Letter of Fa-Lu-10203506180 of May 31, 2013.) In 1998, Chia-Wei Chi applied to the Taiwan Taipei District Court for its approval to have a marriage ceremony performed by the notary public. His application was denied, but he did not seek any judicial remedy for the denial. In 2000, he applied to the same court for the same approval and was rejected again. After exhaustion of ordinary judicial remedies, Chi brought his case to this Court for constitutional interpretation. In May 2001, this Court dismissed his petition on the grounds that his petition did not specifically explain how the laws or regulations applied in the court decisions violated the Constitution. In 2013, Chi applied for marriage registration at the Household Registration Office at Wan-Hua District of Taipei City, and failed again. He then brought his case for administrative appeal and litigation. In September 2014, the Supreme Administrative Court ruled against him, ending his quest for ordinary judicial remedies. In August 2015, Chi once again

petitioned to this Court for constitutional interpretation. For more than three decades, Chia-Wei Chi has been appealing to the legislative, executive, and judicial departments for the right to same-sex marriage.

In addition, Legislator Bi-Khim Hsiao and her colleagues introduced a bill on the Same-sex Marriage Act in the LY for the first time in 2006. This bill fell short of committee deliberation owing to lack of majority support among legislators. Later, in 2012 and 2013, some non-governmental organizations in the movement for marriage equality proposed legislative bills to amend the relevant laws. Echoing such calls, Legislator Mei-Nu Yu and her colleagues introduced a bill on partial amendment of Part IV on Family of the Civil Code. Then, Legislator Li-Chiun Cheng and her colleagues further introduced another bill on partial amendment of Part IV on Family and Part V on Succession of the Civil Code. For the first time ever, both bills advanced to the Judiciary and Organic Laws and Statutes Committee for committee deliberation.

次查，95 年間立法委員蕭美琴等首度於立法院提出「同性婚姻法」草案，因未獲多數立法委員支持，而未交付審查。嗣 101 年及 102 年間由婚姻平權運動團體研議之相關法律修正建議，獲得立法委員尤美女等及鄭麗君等支持，分別提出民法親屬編部分條文修正草案，及民法親屬、繼承編部分條文修正草案，首度交付司法及法制委員會審查，並召開公聽會聽取各方意見，終因立法委員任期屆滿而未能完成審議。105 年間，立法委員尤美女等提出民法親屬編部分條文修正草案，時代力量黨黨團、立法委員許毓仁、蔡易餘等亦分別提出不同版本法案，於同年 12 月 26 日經司法及法制委員會初審通過多個版本提案。惟何時得以進入院會審查程序，猶未可知。核立法院歷經 10 餘年，尚未能完成與同性婚姻相關法案之立法程序。

tion. The Committee held several public hearings to seek out various opinions. Both bills were deemed dead when the term of the members of the Eighth LY came to an end in January 2016. Later in 2016, Legislator Mei-Nu Yu and her colleagues once again introduced a bill on partial amendment of Part IV on Family of the Civil Code. The caucus of the New Power Party, Legislator Yu-Jen Hsu, and Legislator Yi-Yu Tsai also introduced several other amendment bills. On December 26, 2016, all of the above bills cleared the first reading after deliberation by the Judiciary and Organic Laws and Statutes Committee. However, it is still uncertain when these bills will be reviewed on the floor of the LY. Evidently, after more than a decade, the LY is still unable to pass the legislation regarding same-sex marriage.

This case concerns the very controversial social and political issues of whether homosexuals shall have the autonomy to choose whom to marry, and of whether they shall enjoy the equal protection of the same freedom of marriage as heterosexuals. The representa-

本件聲請涉及同性性傾向者是否具有自主選擇結婚對象之自由，並與異性性傾向者同受婚姻自由之平等保護，為極具爭議性之社會暨政治議題，民意機關本應體察民情，盱衡全局，折衝協調，適時妥為立（修）法因應。茲以立（修）法解決時程未可預料，而本件聲

tive body is to conduct negotiations and reach compromise, and then to enact or amend the legislation concerned in due time, based upon its understandings of the people's opinions and taking into account all circumstances. Nevertheless, the timetable for such legislative solution is hardly predictable now and yet these petitions concern the protection of people's fundamental rights. It is the constitutional duty of this Court to render a binding judicial decision, in time, on issues concerning the safeguarding of constitutional basic values such as the protection of people's constitutional rights and the free democratic constitutional order (*see* J.Y. Interpretations No. 585 and No. 601). For these reasons, this Court, in accordance with the principle of mutual respect among governmental powers, has made its best efforts in granting review of these petitions and, after holding oral hearing on the designated date, has made this Interpretation to address the above constitutional issues.

請事關人民重要基本權之保障，本院懍於憲法職責，參照本院釋字第 585 號及第 601 號解釋意旨，應就人民基本權利保障及自由民主憲政秩序等憲法基本價值之維護，及時作成有拘束力之司法判斷。爰本於權力相互尊重之原則，勉力決議受理，並定期行言詞辯論，就上開憲法爭點作成本解釋。

Those prior J.Y. Interpretations mentioning "husband and wife" or "a

按本院歷來提及「一夫一妻」、「一男一女」之相關解釋，就其原因事

man and a woman" were made within the context of opposite-sex marriage, in terms of the factual backgrounds of the original cases from which they arose. For instance, J.Y. Interpretations No. 242, No. 362, and No. 552 addressed the exceptional circumstances that would tolerate the validity of bigamy under the Civil Code. J.Y. Interpretation No. 554 ruled on the constitutionality of punishing adultery as a crime. J.Y. Interpretation No. 647 adjudicated upon the issue of excluding opposite-sex unmarried partners from the tax exemption available to married couples. J.Y. Interpretation No. 365 considered the constitutionality of a patriarchal clause. Thus far, this Court has not made any Interpretation on the issue of whether two persons of the same sex are allowed to marry each other.

實觀之，均係於異性婚姻脈絡下所為之解釋。例如釋字第 242 號、第 362 號及第 552 號解釋係就民法重婚效力規定之例外情形，釋字第 554 號解釋係就通姦罪合憲性，釋字第 647 號解釋係就未成立法律上婚姻關係之異性伴侶未能享有配偶得享有之稅捐優惠，釋字第 365 號解釋則係就父權優先條款所為之解釋。本院迄未就相同性別二人得否結婚作成解釋。

Section 1 on Betrothal of the Marriage Chapter provides, in Article 972, "A betrothal agreement shall be made by the male and the female parties in their own concord." It expressly stipulates a betrothal agreement ought to be concluded between two parties of one male and one

婚姻章第 1 節婚約，於第 972 條規定：「婚約，應由男女當事人自行訂定。」明定婚約必須基於男女當事人二人有於將來成立婚姻關係之自主性合意。第 2 節結婚，於第 980 條至第 985 條規定結婚之實質與形式要件，雖未重申婚姻應由男女當事人自行締

female, based on their autonomous concord to create a marriage in the future. Articles 980 to 985 of Section 2 on Marriage provide for the formal and substantive requirements for concluding a marriage. Though Section 2 on Marriage does not stipulate again that a marriage ought to be concluded between parties of one male and one female out of their own wills, the same construction of one-male-and-one-female-marriage can be inferred from Article 972, which mandates a betrothal agreement to marry in the future be concluded only between a man and a woman. If we further refer to the naming of "husband and wife" as the appellations for both parties of marriage as well as their respective rights and obligations in those corresponding provisions of the Marriage Chapter, it is obvious that marriage shall mean a union between a man and a woman, i.e., two persons of the opposite sex. The MOJ, being the competent authority of the Civil Code, has issued the following four Letters (1994-Fa-Lu-Jue-17359 of August 11, 1994, Fa-Lu-10000043630 of January 2, 2012, Fa-Lu-10103103830 of May 14, 2012, and Fa-Lu-10203506180

結，然第 972 條既規定以當事人將來結婚為內容之婚約，限於一男一女始得訂定，則結婚當事人亦應作相同之解釋。再參酌婚姻章關於婚姻當事人稱謂、權利、義務所為「夫妻」之相對應規定，顯見該章規定認結婚限於不同性別之一男一女之結合關係。結婚登記業務中央主管機關內政部依民法主管機關法務部有關「婚姻係以終生共同生活為目的之一男一女適法結合關係」之函釋（法務部 83 年 8 月 11 日（83）法律決字第 17359 號函、101 年 1 月 2 日法律字第 10000043630 號 函、101 年 5 月 14 日法律字第 10103103830 號函、102 年 5 月 31 日法律字第 10203506180 號函參照），函示地方戶政主管機關，就申請結婚登記之個案為形式審查。地方戶政主管機關因而否准相同性別二人結婚登記之申請，致相同性別二人迄未能成立法律上之婚姻關係。

of May 31, 2013), stating "marriage is a lawful union between a man and a woman for the purpose of living together for life." Based upon the above MOJ Letters, the MOI, being the competent authority for marriage registration, ordered the local authorities in charge of household administration to exercise mere formalistic review on applications for marriage registration. Therefore, the local authorities in charge of household administration have been denying all applications for marriage registration filed by two persons of the same sex. As a result, two persons of the same sex have been unable to conclude a legally-recognized marriage so far.

Unspoused persons eligible to marry shall have their freedom of marriage, which includes the freedom to decide "whether to marry" and "whom to marry" (*see* J.Y. Interpretation No. 362). Such decisional autonomy is vital to the sound development of personality and safeguarding of human dignity, and therefore is a fundamental right to be protected by Article 22 of the Constitution. Creation of a permanent union of intimate

適婚人民而無配偶者，本有結婚自由，包含「是否結婚」暨「與何人結婚」之自由（本院釋字第 362 號解釋參照）。該項自主決定攸關人格健全發展與人性尊嚴之維護，為重要之基本權（a fundamental right），應受憲法第 22 條之保障。按相同性別二人為經營共同生活之目的，成立具有親密性及排他性之永久結合關係，既不影響不同性別二人適用婚姻章第 1 節至第 5 節有關訂婚、結婚、婚姻普通效力、財產制及離

and exclusive nature for the purpose of living a common life by two persons of the same sex will not affect the application of those provisions on betrothal, conclusion of marriage, general effects of marriage, matrimonial property regimes, and divorce as provided for in Sections 1 through 5 of the Marriage Chapter, to the union of two persons of the opposite sex. Nor will it alter the social order established upon the existing opposite-sex marriage. Furthermore, the freedom of marriage for two persons of the same sex, once legally recognized, will constitute the bedrock of a stable society, together with opposite-sex marriage. The need, capability, willingness and longing, in both physical and psychological senses, for creating such permanent unions of intimate and exclusive nature are equally essential to homosexuals and heterosexuals, given the importance of the freedom of marriage to the sound development of personality and safeguarding of human dignity. Both types of union shall be protected by the freedom of marriage under Article 22 of the Constitution. The current provisions of the Marriage Chapter

婚等規定，亦未改變既有異性婚姻所建構之社會秩序；且相同性別二人之婚姻自由，經法律正式承認後，更可與異性婚姻共同成為穩定社會之磐石。復鑑於婚姻自由，攸關人格健全發展與人性尊嚴之維護，就成立上述親密、排他之永久結合之需求、能力、意願、渴望等生理與心理因素而言，其不可或缺性，於同性性傾向者與異性性傾向者間並無二致，均應受憲法第 22 條婚姻自由之保障。現行婚姻章規定，未使相同性別二人，得為經營共同生活之目的，成立具有親密性及排他性之永久結合關係，顯屬立法上之重大瑕疵。於此範圍內，與憲法第 22 條保障人民婚姻自由之意旨有違。

do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life. This is obviously a gross legislative flaw. To such extent, the provisions of the Marriage Chapter are incompatible with the spirit and meaning of the freedom of marriage as protected by Article 22 of the Constitution.

Article 7 of the Constitution provides, "All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law." The five classifications of impermissible discrimination set forth in the said Article are only illustrative, rather than exhaustive. Therefore, different treatment based on other classifications, such as disability or sexual orientation, shall also be governed by the right to equality under the said Article.

The current Marriage Chapter only provides for the permanent union between a man and a woman, without providing that two persons of the same sex may also create an identical permanent union. This

憲法第 7 條規定：「中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。」本條明文揭示之 5 種禁止歧視事由，僅係例示，而非窮盡列舉。是如以其他事由，如身心障礙、性傾向等為分類標準，所為之差別待遇，亦屬本條平等權規範之範圍。

現行婚姻章僅規定一男一女之永久結合關係，而未使相同性別二人亦得成立相同之永久結合關係，係以性傾向為分類標準，而使同性性傾向者之婚姻自由受有相對不利之差別待遇。按憲法

constitutes a classification on the basis of sexual orientation, which gives homosexuals relatively unfavorable treatment in their freedom of marriage. Given its close relation to the freedom of personality and human dignity, the freedom of marriage promised by Article 22 of the Constitution is a fundamental right. Moreover, sexual orientation is an immutable characteristic that is resistant to change. The contributing factors to sexual orientation may include physical and psychological causes, life experience, and the social environment.[Note 1] The World Health Organization, the Pan American Health Organization (the WHO Regional Office in the Americas),[Note 2] and other major medical organizations, both domestic and abroad [Note 3], have stated that homosexuality is not a disease. In our country, homosexuals were once denied by social tradition and custom in the past. As a result, they have long been locked in the closet and suffered various forms of *de facto or de jure* exclusion or discrimination. Besides, homosexuals, because of the population structure, have been a discrete and insular minority in the society. Impacted by

第 22 條保障之婚姻自由與人格自由、人性尊嚴密切相關，屬重要之基本權。且性傾向屬難以改變之個人特徵（immutable characteristics），其成因可能包括生理與心理因素、生活經驗及社會環境等（註 1）。目前世界衛生組織、汎美衛生組織（即世界衛生組織美洲區辦事處）（註 2）與國內外重要醫學組織（註 3）均已認為同性性傾向本身並非疾病。在我國，同性性傾向者過去因未能見容於社會傳統及習俗，致長期受禁錮於暗櫃內，受有各種事實上或法律上之排斥或歧視；又同性性傾向者因人口結構因素，為社會上孤立隔絕之少數，並因受刻板印象之影響，久為政治上之弱勢，難期經由一般民主程序扭轉其法律上劣勢地位。是以性傾向作為分類標準所為之差別待遇，應適用較為嚴格之審查標準，以判斷其合憲性，除其目的須為追求重要公共利益外，其手段與目的之達成間並須具有實質關聯，始符合憲法第 7 條保障平等權之意旨。

stereotypes, they have been among those lacking political power for a long time, unable to overturn their legally disadvantaged status through ordinary democratic process. Accordingly, to determine the constitutionality of different treatment based on sexual orientation, a heightened standard shall be applied. Such different treatment must be aimed at furthering an important public interest by means that is substantially related to that interest, in order for it to meet the requirements of the right to equality as protected by Article 7 of the Constitution.

The reasons that the State has made laws to govern the factual existence of opposite-sex marriage and to establish the institution of marriage are multifold. The argument that protecting reproduction is among many functions of marriage is not groundless. The Marriage Chapter, nonetheless, does not set forth the capability to procreate as a requirement for concluding an opposite-sex marriage. Nor does it provide that a marriage shall be void or voidable, or a divorce decree may be issued, if either party is unable or unwilling

究國家立法規範異性婚姻之事實，而形成婚姻制度，其考量因素或有多端。如認婚姻係以保障繁衍後代之功能為考量，其著眼固非無據。然查婚姻章並未規定異性二人結婚須以具有生育能力為要件；亦未規定結婚後不能生育或未生育為婚姻無效、得撤銷或裁判離婚之事由，是繁衍後代顯非婚姻不可或缺之要素。相同性別二人間不能自然生育子女之事實，與不同性別二人間客觀上不能生育或主觀上不為生育之結果相同。故以不能繁衍後代為由，未使相同性別二人得以結婚，顯非合理之差別待

to procreate after marriage. Accordingly, reproduction is obviously not an essential element to marriage. The fact that two persons of the same sex are incapable of natural procreation is the same as the result of two opposite-sex persons' inability, in an objective sense, or unwillingness, in a subjective sense, to procreate. Disallowing the marriage of two persons of the same sex, because of their inability to reproduce, is a different treatment having no apparent rational basis. Assuming that marriage is expected to safeguard the basic ethical orders, such concerns as the minimum age of marriage, monogamy, prohibition of marriage between close relatives, obligation of fidelity, and mutual obligation to maintain each other are fairly legitimate. Nevertheless, the basic ethical orders built upon the existing institution of opposite-sex marriage will remain unaffected, even if two persons of the same sex are allowed to enter into a legally-recognized marriage pursuant to the formal and substantive requirements of the Marriage Chapter, inasmuch as they are subject to the rights and obligations of both parties during the marriage and after

遇。倘以婚姻係為維護基本倫理秩序，如結婚年齡、單一配偶、近親禁婚、忠貞義務及扶養義務等為考量，其計慮固屬正當。惟若容許相同性別二人得依婚姻章實質與形式要件規定，成立法律上婚姻關係，且要求其亦應遵守婚姻關係存續中及終止後之雙方權利義務規定，並不影響現行異性婚姻制度所建構之基本倫理秩序。是以維護基本倫理秩序為由，未使相同性別二人得以結婚，顯亦非合理之差別待遇。凡此均與憲法第 7 條保障平等權之意旨不符。

the marriage ends. Disallowing the marriage of two persons of the same sex, for the sake of safeguarding basic ethical orders, is a different treatment, also having no apparent rational basis. Such different treatment is incompatible with the spirit and meaning of the right to equality as protected by Article 7 of the Constitution.

Given the complexity and controversy surrounding this case, longer deliberation time for further legislation might be needed. On the other hand, overdue legislation will indefinitely prolong the unconstitutionality of such underinclusiveness, which should be prevented. This Court thus orders that the authorities concerned shall amend or enact the laws as appropriate in accordance with the ruling of this Interpretation, within two years after the announcement of this Interpretation. It is within the discretion of the authorities concerned to determine the formality (for example, amendment of the Marriage Chapter, enactment of a special Chapter in Part IV on Family of the Civil Code, enactment of a special law, or other formality) for achieving the equal protec-

慮及本案之複雜性及爭議性，或需較長之立法審議期間；又為避免立法延宕，導致規範不足之違憲狀態無限期持續，有關機關應自本解釋公布之日起 2 年內，依本解釋意旨完成相關法律之修正或制定。至以何種形式（例如修正婚姻章、於民法親屬編另立專章、制定特別法或其他形式），使相同性別二人，得為經營共同生活之目的，成立具有親密性及排他性之永久結合關係，達成婚姻自由之平等保護，屬立法形成之範圍。逾期未完成法律之修正或制定者，相同性別二人為成立以經營共同生活為目的，具有親密性及排他性之永久結合關係，得依婚姻章規定，持二人以上證人簽名之書面，向戶政機關辦理結婚登記，並於登記二人間發生法律上配偶關係之效力，行使配偶之權利及負擔配偶之義務。

tion of the freedom of marriage for two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life. If the amendment or enactment of relevant laws is not completed within the said two-year timeframe, two persons of the same sex who intend to create a permanent union of intimate and exclusive nature for the purpose of living a common life may, pursuant to the provisions of the Marriage Chapter, apply for marriage registration to the authorities in charge of household registration, by submitting a document signed by two or more witnesses. Any such two persons, once registered, shall be accorded the status of a legally-recognized couple, and then enjoy the rights and bear the obligations arising on couples.

This Interpretation leaves unchanged the party status as well as the related rights and obligations for the institution of opposite-sex marriage under the current Marriage Chapter. This Interpretation only addresses the issues of whether the provisions of the Marriage

現行婚姻章有關異性婚姻制度之當事人身分及相關權利、義務關係，不因本解釋而改變。又本案僅就婚姻章規定，未使相同性別二人，得為經營共同生活之目的，成立具有親密性及排他性之永久結合關係，是否違反憲法第 22 條保障之婚姻自由及第 7 條保障之平等

Chapter, which do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life together, violate the freedom of marriage protected by Article 22 and the right to equality guaranteed by Article 7 of the Constitution. This Interpretation does not deal with any other issues. It is also noted here.

權，作成解釋，不及於其他，併此指明。

Petitioner the Taipei City Government also challenged the constitutionality of the 2012 MOI Letter. This Court holds that this Letter was a reply by the MOI to the Taipei City Government on a specific case regarding the issue of whether the latter should accept an application by two same-sex persons for marriage registration. This Court finds the Letter is not a regulation of general application and therefore not eligible for constitutional review. In accordance with Article 5, Paragraph 2 of the Act, this part of petition is dismissed. It is so ordered.

聲請人臺北市政府另以系爭函有違憲疑義聲請解釋部分，經查該函為內政部對於臺北市政府就所受理相同性別二人申請結婚登記應否准許所為之個案函復，非屬命令，依法不得為聲請憲法解釋之客體。依大審法第 5 條第 2 項規定，應不受理，併予敘明。

Notes:

Note 1: For example, the World Psychiatric Association (WPA), released in 2016 a *WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction, and Behaviours,* indicating that sexual orientation is "innate and determined by biological, psychological, developmental, and social factors." (This position statement is available at http://www.wpanet.org/detail.php?section_id=7&content_id=1807, last visited May 24, 2017.) The Supreme Court of the United States, in *Obergefell v. Hodges,* 576 U.S. __ (2015), 135 S. Ct. 2584, 2596 (2015), also states that "[o]nly in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable." (This decision is available at https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf, last visited May 24, 2017.)

附註：

註 1：例如世界精神醫學會（World Psychiatric Association; 簡稱 WPA）於 2016 年發布之「性別認同與同性性傾向、吸引與行為立場聲明」（WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction, and Behaviours）認性傾向係與生俱來，並由生物、心理、發展與社會因素等所決定（innate and determined by biological, psychological, developmental, and social factors）（該文件見 http://www.wpanet.org/detail.php?section_id=7&content_id=1807，最後瀏覽日 2017/5/24）。美國聯邦最高法院於 Obergefell v. Hodges, 576 U.S. __ (2015), 135 S. Ct. 2584, 2596 (2015) 一案中亦肯認近年來精神科醫師及其他專家已承認性傾向為人類的正常性表現，且難以改變（Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable.）（該判決全文見 https://www.supremecourt.gov/

Note 2: The World Health Organization (WHO), in Chapter 5 of *The Tenth Revision of the International Statistical Classification of Diseases and Related Health Problems, ICD-10, Version 2016,* of which the first version was released in 1992, retains, under classification of diseases, the Category F66 "psychological and behavioural disorders associated with sexual development and orientation". Nevertheless, it clearly points out, "Sexual orientation by itself is not to be regarded as a disorder." (*See* http://apps.who.int/classifications/icd10/browse/2016/en#/F66, last visited May 24, 2017.) The Pan American Health Organization, the WHO Regional Office in the Americas, also expressly mentions in its paper, "*CURES" FOR AN ILLNESS THAT DOES NOT EXIST*, that "there is a professional consensus that homosexuality represents a natural

opinions/14pdf/14-556_3204.pdf，最後瀏覽日 2017/5/24）。

註 2：世界衛生組織於 1992 年出版之「疾病和有關健康問題的國際統計分類」第 10 版（The Tenth Revision of the International Statistical Classification of Diseases and Related Health Problems, ICD-10）2016 年修正版第 5 章雖仍保留「F66 與性發展和性傾向相關聯之心理和行為異常」（Psychological and behavioural disorders associated with sexual development and orientation） 疾病分類，然明確指出「性傾向本身不應被認為異常」（Sexual orientation by itself is not to be regarded as a disorder.）（見 http://apps.who.int/classifications/icd10/browse/2016/en#/F66，最後瀏覽日 2017/5/24）。汎美衛生組織即世界衛生組織美洲辦事處（Pan American Health Organization, Regional Office of the WHO）所發布之「對不存在之疾病給予治療」（"CURES" FOR AN ILLNESS THAT DOES NOT EXIST）文件亦明載：「目前專業上共識認

variation of human sexuality . . . ." Furthermore, "[i]n none of its individual manifestations does homosexuality constitute a disorder or an illness, and therefore it requires no cure." (This paper is available at http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703&Itemid=2057, last visited May 24, 2017.)

為，同性戀是人類性行為的一種自然的不同型態表現……」（There is a professional consensus that homosexuality represents a natural variation of human sexuality…），且同性戀之任何個別表徵均不構成異常或疾病，故無治療之必要（In none of its individual manifestations does homosexuality constitute a disorder or an illness, and therefore it requires no cure.）（該文件見 http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703&Itemid=2057，最後瀏覽日 2017/5/24）。

Note 3: As to the positions of medical organizations abroad, the WPA has clearly expressed its position in *WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction, and Behaviors* as explained in Note 1. In *Sexual Orientation and Marriage,* first published in 2004 and later confirmed in 2010, the American Psychological Association also

註 3：國外醫學組織部分，除前揭註 1 所列世界精神醫學會發布之「性別認同與同性性傾向、吸引與行為立場聲明」外，美國心理學會（American Psychological Association）於 2004 年發布，並於 2010 年再確認之「性傾向與婚姻」（Sexual Orientation and Marriage），亦表示自 1975 年以來心理學家、精神醫學專家均認為同性性傾向非精神疾病，亦非精

specifies that since 1975 psychologists and psychiatrists have held homosexuality is "neither a form of mental illness nor a symptom of mental illness." (This document is available at http://www.apa.org/about/policy/marriage.aspx, last visited May 24, 2017.) As to the positions of medical organizations at home, in December 2016, the Taiwanese Society of Psychiatry (TSP) released *Position Statement in Support of the Equal Rights for Groups of Diverse Genders/Sexual Orientations and for Same-Sex Marriage.* In this position statement, the TSP asserts that sexual orientation, sexual behavior, gender identity, and partnership of non-heterosexuality are neither mental disorders nor defects of personality development. Rather, they are normal expressions of the diversity in human development. Moreover, homosexuality by itself will not cause any disorder in mental health, and therefore requires no cure. (This position

神疾病之徵狀（該文件見 http://www.apa.org/about/policy/marriage.aspx，最後瀏覽日 2017/5/24）。國內醫學組織部分，台灣精神醫學會於 2016 年 12 月發表「支持多元性別／性傾向族群權益平等和同性婚姻平權之立場聲明」，認為非異性戀之性傾向、性行為、性別認同以及伴侶關係，既非精神疾病亦非人格發展缺陷，而是人類發展多樣性之正常展現，且同性性傾向本身並不會造成心理功能的障礙，無治療的必要（該文件見 http://www.sop.org.tw/Official/official_27.asp，最後瀏覽日 2017/5/24）。台灣兒童青少年精神醫學會於 2017 年 1 月發表「性別平權立場聲明」，認為任何性傾向都是正常的，不是病態或偏差（該文件見 http://www.tscap.org.tw/TW/News2/ugC_News_Detail.asp?hidNewsCatID=8&hidNewsID=131，最後瀏覽日 2017/5/24）。

statement is available at http://www.sop.org.tw/Official/official_27.asp, last visited May 24, 2017.) The Taiwanese Society of Child and Adolescent Psychiatry released its *Position Statement on Gender Equality* in January 2017, which maintains that all sexual orientations are normal, and none of them is an illness or a deviation. (This position statement is available at http://www.tscap.org.tw/TW/News2/ugC_News_Detail.asp?hidNewsCatID=8&hidNewsID=131, last visited May 24, 2017.)

Justice Jui-Ming HUANG recused himself and took no part in the deliberation, oral hearing or the decision of this case.

Justice Horng-Shya HUANG filed a dissenting opinion in part.

Justice Chen-Huan WU filed a dissenting opinion.

黃大法官瑞明迴避審理本案。

本號解釋黃大法官虹霞提出之部分不同意見書；吳大法官陳鐶提出之不同意見書。

J. Y. Interpretation No.749（June 2, 2017）*

【Disqualification of Taxi Drivers from Professional Practice for a Fixed Period of Time and Revocation of Their Driving Licenses】

ISSUE: Are the provisions in the Road Traffic Management and Penalty Act that disqualify a taxi driver who was convicted of certain crimes during the time period for professional practice for a fixed period of three years and that revoke all categories of driving license held unconstitutional ?

RELEVANT LAWS:

Articles 15, 22 & 23 of the Constitution of the Republic of China (Taiwan) (January 1, 1947)（憲法第十五條、第二十二條、第二十三條）；J.Y. Interpretation Nos. 371,572, 590, 404, 510, 584（司法院釋字第三七一號、第五七二號、第五九0號、第四0四號、第五一0號、第五八四號）；Articles 37（3）, 67（2） & 68 of the Road Traffic Management and Penalty Act （November 16, 2016）（道路交通管理處罰條例第三十七條第三項、第六十七條第二項、第六十八條）；Articles 230-236, 296-308, 320-324, 339-341, and 349-351 of the Criminal Code（November 30, 2016）（刑法第二三0條至第二三六條，刑法第二九六條至第三0八條，刑法第三二0條至第三二四條，刑法第三三九條至第三四一

* Translated by Chen-En SUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

條，刑法第三四九條至第三五一條）；Articles 2 & 3 of the Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers（October 19, 2006）（計程車駕駛人執業登記管理辦法第二條、第三條）

KEYWORDS:

Road Traffic Management and Penalty Act（道路交通管理處罰條例）, taxi（計程車）, taxi driver（計程車駕駛人）, disqualification from professional practice for a fixed period of time（定期禁業）, during the time period for professional practice（執業期中）, imprisonment（有期徒刑）, punishment of imprisonment or a more severe punishment（有期徒刑以上之刑）, suspension of professional practice registration certificate（吊扣執業登記證）, nullification of professional practice registration （廢止執業登記）, revocation of driver's license（吊銷駕駛執照）, safety of the passengers（乘客安全）, substantial risk （實質風險）, principle of proportionality（比例原則）, right to work （工作權）, general freedoms of action（一般行為自由）, freedom of occupation（職業自由）, important public interest（重要公共利益）, substantially related （實質關聯）, criminal record（犯罪紀錄）, larceny（竊盜）, fraud（詐欺）, receiving stolen property（贓物）, offenses against freedoms（妨害自由）, offenses against morality（妨害風化）, regardless（不問）, at any event（一律）, Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers（計程車駕駛人執業登記管理辦法）**

HOLDING: The Road Traffic Management and Penalty Act (hereinafter "the Act") in Article 37, Paragraph 3 provides: "Where a taxi driver, during the time period for professional practice, is sentenced by the judgment of a court of first instance to punishment of imprisonment or a more severe punishment for committing a crime involving larceny, fraud, receiving stolen property, offenses against freedoms, or any of the crimes specified in Articles 230 to 236 of the Criminal Code, his/her professional practice registration certificate shall be suspended. Where the said sentencing judgment of punishment of imprisonment or a more severe punishment is finalized, the said professional practice registration of the taxi driver in question shall be nullified and his/her driver's license shall be revoked." (hereinafter "Disputed Provision 1") This provision imposes consequences of suspension of a taxi driver's professional practice registration certificate or nullification of his/her professional practice registration by citing the conviction for certain crimes and a court-imposed sentence of punishment more

解釋文：道路交通管理處罰條例第 37 條第 3 項規定：「計程車駕駛人，在執業期中，犯竊盜、詐欺、贓物、妨害自由或刑法第 230 條至第 236 條各罪之一，經第一審法院判決有期徒刑以上之刑後，吊扣其執業登記證。其經法院判決有期徒刑以上之刑確定者，廢止其執業登記，並吊銷其駕駛執照。」僅以計程車駕駛人所觸犯之罪及經法院判決有期徒刑以上之刑為要件，而不問其犯行是否足以顯示對乘客安全具有實質風險，均吊扣其執業登記證、廢止其執業登記，就此而言，已逾越必要程度，不符憲法第 23 條比例原則，與憲法第 15 條保障人民工作權之意旨有違。有關機關應於本解釋公布之日起二年內，依本解釋意旨妥為修正；逾期未修正者，上開規定有關吊扣執業登記證、廢止執業登記部分失其效力。於上開規定修正前，為貫徹原定期禁業之目的，計程車駕駛人經廢止執業登記者，三年內不得再行辦理執業登記。

severe than imprisonment as the sole criteria for disqualification, without taking into account whether the committal of crimes by the taxi driver is such as to sufficiently indicate that the continuation of his/her professional practice constitutes a substantial risk to the safety of the passengers. For the above reason, the said provision's restriction on a taxi driver's right to work exceeds the extent of necessity, and thus is not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and is also in violation of the right to work protected by Article 15 of the Constitution. The authorities concerned shall amend the said provision as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation. Where the authorities concerned fail to amend the provision within the said two years, the parts of the provision in relation to the suspension of professional practice registration certificate and to the nullification of professional practice registration shall become null and void. Before the amendment of the said provision is made, a taxi driver whose professional

practice registration is nullified may not re-apply for such registration within three years from the day of the nullification, so that the legislative purpose to deprive offending taxi drivers of their professional practice for a fixed period of time may be maintained.

That part of Article 37, Paragraph 3 of the Act in relation to the revocation of the driver's license, which clearly exceeds extent that is necessary for achieving the purpose to deprive offending taxi drivers of their professional practice for a fixed period of time, is not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and is also in violation of the right to work protected by Article 15 and the general freedoms protected by Article 22 of the Constitution, and thus shall become null and void from the day of the announcement of this Interpretation. As a result, that part of Article 37, Paragraph 3 of the Act in question shall not be applied as a ground in support of the application of Article 68, Paragraph 1 of the Act (prior to amendment of May 5, 2000, Article 68 of the

上開條例第 37 條第 3 項有關吊銷駕駛執照部分，顯逾達成定期禁業目的之必要程度，不符憲法第 23 條比例原則，與憲法第 15 條保障人民工作權及第 22 條保障人民一般行為自由之意旨有違，應自本解釋公布之日起失其效力。從而，自不得再以違反同條例第 37 條第 3 項為由，適用同條例第 68 條第 1 項（即中華民國 99 年 5 月 5 日修正公布前之第 68 條）之規定，吊銷計程車駕駛人執有之各級車類駕駛執照。

Act) in revoking the various classes of driver's licenses held by a taxi driver.

Article 67, Paragraph 2 of the Act, which reads in relevant parts: "A driver whose … driver's license has been revoked in accordance with … Article 37, Paragraph 3 of the Act … may not apply to attend tests for acquiring a driver's license" shall become null and void along with Article 37, Paragraph 3, for reasons that that part of Article 37, Paragraph 3 of the Act in relation to the revocation of the driver's license is declared null and void by this Interpretation, as seen above,.

上開條例第 67 條第 2 項規定：「汽車駕駛人，曾依……第 37 條第 3 項……規定吊銷駕駛執照者，三年內不得考領駕駛執照……。」因同條例第 37 條第 3 項有關吊銷駕駛執照部分既經本解釋宣告失其效力，應即併同失效。

REASONING: Petitioners Wan-Jin WANG, Yao-Hua LI, Rong-Yao LI, Chih-Chien CHEN (original name: Te-Hao CHEN), Ching-You YEH, and Hua-Tsung HSU are all taxi drivers who have been respectively sentenced by final court judgments to punishments of imprisonment or a more severe punishment for committing crimes specified in Article 37, Paragraph 3 of the Road Traffic Management and Penalty Act (hereinafter "the Act"), and subsequently have had their

解釋理由書：本件聲請人王萬金、李耀華、李榮耀、陳志傑（原名陳特豪）、葉清友及許華宗等人均為計程車駕駛人，因觸犯道路交通管理處罰條例（下稱道交條例）第 37 條第 3 項所列之罪，經法院判決有期徒刑以上之刑確定，分別被主管機關廢止其執業登記並吊銷駕駛執照，經分別提起訴訟，認確定終局裁判所適用之道交條例第 37 條第 3 項、第 67 條第 2 項及第 68 條規定（其各別聲請釋憲之原因案件之確定終局裁判及其聲請釋憲之客體如附

respective professional practice registration nullified and their respective driver's licenses revoked by the competent authorities. The petitioners separately initiated complaints against the said nullification and revocation, which were maintained by final court judgments. The Petitioners filed petitions to this Court, claiming that Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of the Act as variously applied in their respective Final Judgments (whose judgment numbers, subject matter, as well as target provisions of the petitions for constitutional interpretation are seen in the Table annexed to this Interpretation below) are not consistent with Articles 7, 15, 22, and 23 of the Constitution. This Court considered that the petitions in question satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and accordingly granted review.

表），有牴觸憲法第 7 條、第 15 條、第 22 條及第 23 條之疑義，向本院聲請解釋憲法。核與司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款所定要件相符，爰予受理。

Other Petitioners in this case include judges in Subdivision Ching, Administrative Litigation Division, Taiwan Taipei District Court while reviewing

另聲請人臺灣臺北地方法院行政訴訟庭晴股法官，為審理同院 102 年度交字第 202 號、103 年度交字第 11 號交通裁決事件；臺灣桃園地方法院行政

Traffic Case No. 202 (2013) and Traffic Case No. 11 (2014) therein, and judges in Subdivision Jou, Administrative Litigation Division, Taiwan Taoyuan District Court while reviewing Traffic Case No. 349 (2015) therein, who came to the conviction that Article 37, Paragraph 3 of the Act applicable in the cases before them may contravene the Constitution, and thus suspended the proceedings by ruling and petitioned this Court for a constitutional interpretation. This Court considered that the petitions satisfied the requirements of petition for constitutional interpretation by judges laid down in Interpretation Nos. 371, 572, and 590 of this Court and accordingly granted review.

訴訟庭柔股法官，為審理同院 104 年度交字第 349 號交通裁決事件，就應適用之道交條例第 37 條第 3 項規定，認有牴觸憲法疑義，裁定停止訴訟程序，向本院聲請解釋憲法，均核與本院釋字第 371 號、第 572 號及第 590 號解釋所示法官聲請釋憲之要件相符，亦予受理。

Given that the above petitions raised common issues concerning the constitutionality of Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of the Act, the Court joined the above petitions and makes this Interpretation. The reasoning is as follows:

按上述聲請案聲請道交條例第 37 條第 3 項、第 67 條第 2 項、第 68 條規定是否牴觸憲法之疑義，有其共通性，爰併案審理，作成本解釋，理由如下：

1. Issues relating to suspension of professional practice registration certificate

一、道交條例第 37 條第 3 項有關吊扣執業登記證及廢止執業登記部分

and nullification of professional practice registration in Article 37, Paragraph 3 of the Act

Article 37, Paragraph 3 of the Act reads: "Where a taxi driver, during the time period for professional practice, is sentenced by the judgment of a court of first instance to punishment of imprisonment or a more severe punishment for committing a crime involving larceny, fraud, receiving stolen property, offenses against freedoms, or any of the crimes specified in Articles 230 to 236 of the Criminal Code, his/her professional practice registration certificate shall be suspended. Where the said sentencing judgment of punishment of imprisonment or a more severe punishment is finalized, the said professional practice registration of the taxi driver in question shall be nullified and his/her driver's license shall be revoked." The legal consequences of suspension of professional practice registration certificate and nullification of professional practice registration so provided may constitute a restriction on a taxi driver's freedom in selecting his/her

道交條例第37條第3項規定：「計程車駕駛人，在執業期中，犯竊盜、詐欺、贓物、妨害自由或刑法第230條至第236條各罪之一，經第一審法院判決有期徒刑以上之刑後，吊扣其執業登記證。其經法院判決有期徒刑以上之刑確定者，廢止其執業登記，並吊銷其駕駛執照。」（下稱系爭規定一）有關吊扣執業登記證及廢止執業登記部分，限制計程車駕駛人選擇職業之自由。

occupation.

Article 15 of the Constitution protects the right to work, which incorporates the freedom in selecting one's occupation. Where the right to work incorporating the freedom in selecting one's occupation bears close relation with public interest, the state may impose restrictions on those rights and freedoms by stipulating qualifications and other requirements necessary for practicing certain occupations in legislation or ordinances specifically authorized by legislation in a manner that is consistent with Article 23 of the Constitution, as the Court has delineated in Interpretation Nos. 404, 510, and 584. As a matter of constitutional law, the restrictions on occupational freedom may well be of a variety of degrees of stringency, depending on the nature of the subject-matter concerned. When it comes to the subjective conditions required of a person in choosing his/her occupation, such as those relating to one's intellect, physical capacity, or record of previous convictions, the legislative restrictions, if imposed, must aim at furthering an im-

按憲法第 15 條規定，人民之工作權應予保障，其內涵包括人民選擇職業之自由。惟人民之職業與公共利益有密切關係者，國家對於從事一定職業應具備之資格或其他要件，於符合憲法第 23 條規定之限度內，得以法律或法律明確授權之命令加以限制（本院釋字第 404 號、第 510 號及第 584 號解釋參照）。然對職業自由之限制，因其內容之差異，在憲法上有寬嚴不同之容許標準。關於人民選擇職業應具備之主觀條件，例如知識能力、體能、犯罪紀錄等，立法者若欲加以規範，其目的須為追求重要之公共利益，且其手段與目的之達成具有實質關聯，始符比例原則之要求。

portant public interest by means that are substantially related to that interest, in order for them to meet the requirements of the principle of proportionality.

Taxis are an important means of transport for the general public. As such, the occupation of taxi-driving bears a close relation to passengers' safety and the maintenance of good order. Whereas cases involving crimes conducted by taxi drivers while providing their service have happened from time to time, surveys show that those who were involved include persons who had been previously convicted, primarily of crimes such as larceny, fraud, receiving stolen property, and offenses against freedoms. Some of the cases, for being viewed as having the potential to impose serious threat to passengers' safety and social order, aroused grave social concerns while becoming the focal point of public outcry. Further, the mobility of taxi-driving was considered an inherent feature that carried the potential of facilitating the committal of crimes using the taxi as a vehicle, considering in particular the more frequent exposure a taxi driver

計程車為社會大眾之重要交通工具，其駕駛人工作與乘客安全、社會治安具有密切關聯。鑑於以計程車作為犯罪工具之案件層出不窮，經調查有犯罪紀錄之計程車駕駛人以曾犯竊盜、詐欺、贓物、妨害自由等罪較多，部分案件並成為輿論指責焦點，對乘客安全、社會治安構成重大威脅，且其工作富流動性，接觸獨自乘車女性及攜帶財物旅客之機會甚多，並易於控制乘客行動，故為遏止歹徒利用計程車犯案，確保乘客安全，系爭規定一前於 70 年 7 月 29 日增訂之初，爰明定計程車駕駛人於執業期中犯上述之罪者，吊銷其營業小客車執業登記證（現修正為吊扣其執業登記證及廢止其執業登記）並吊銷駕駛執照，以維護乘客安全（見立法院公報第 70 卷第 55 期院會紀錄第 43 頁及第 44 頁）。

had to female passengers travelling alone or to passengers carrying large sums of money or property, and the possibility of controlling the passenger's movement within the taxi. For all these reasons, upon the amendment of Article 37, Paragraph 3 on July 29, 1981, the legal consequence of revocation of professional practice registration certificate of a taxi was specifically provided (subsequently modified to be suspension of professional practice registration certificate and nullification of professional practice registration) so as to prevent the committal of crimes using taxis as vehicles, as well as to safeguard passengers' safety (*see* Legislative Yuan: Official Gazette Volume 70, Proceedings of the 55th Session, p. 43-44).

The operating pattern of taxis in Taiwan is primarily "roaming and picking", in which a passenger hails a taxi randomly on the roadside and often does not have the chance to screen the driver or acquire information about the standard of service each driver provides beforehand. Further, once in the taxi, the passenger will find himself/herself in a confined and small

按我國計程車營業方式係以「巡迴攬客」為大宗，乘客採隨機搭乘，多無法於上車前適時篩選駕駛人或得知其服務品質；又乘客處於狹小密閉空間內，相對易受制於駕駛人。是系爭規定一就計程車駕駛人主觀資格，設一定之限制，以保護乘客安全及維護社會治安，係為追求重要公共利益，其目的洵屬合憲。

space, in which the driver has a relatively dominant place. Based on the above considerations, Disputed Provision 1 imposes certain restrictions as to the subjective qualifications of a person who intends to serve as a taxi driver, in order to protect the safety of passengers and to maintain good order, which are important public interest and thus legitimate purposes the protection of which is constitutional.

Notwithstanding the above finding that Disputed Provision 1, by imposing restrictions on the subjective qualifications of a taxi driver which deprives him/her of the qualification from exercising his/her profession based on a court conviction for a certain category of crimes and sentencing according to a certain category of punishment, may be considered conducive to the achievement of the above-mentioned purposes, the said qualification restriction shall be limited to an extent excluding only those drivers whose continuing exercise of profession constitutes a substantial risk to the safety of passengers. Only when limited to that extent can such a restriction be said to have chosen

系爭規定一對計程車駕駛人曾犯一定之罪，並受一定刑之宣告者，限制其執業之資格，固有助於達成前揭目的，然其資格限制應以對乘客安全具有實質風險者為限，其手段始得謂與前揭目的之達成間具有實質關聯。

a means that is substantially related to the achievement of the said purposes.

In light that the crimes committed by taxi drivers were primarily those involving larceny, fraud, receiving stolen property, and offenses against freedoms, on July 29, 1981, the competent authorities proposed the addition of Draft Article 37-1, Paragraph 3, as an amendment to the Act (the amended article was renumbered Article 37 along with other amendments of the Act as a whole on May 21, 1986, see Proceedings of the 55th Session, Volume 70 of the Official Gazette of the Legislative Yuan, at pages 43-44), which added crimes involving larceny, fraud, receiving stolen property, and offenses against freedoms to the grounds for depriving drivers of their qualification to drive a taxi. Further, to enhance protection of female passengers, crimes specified in Articles 230 to 236 of the Criminal Code -- i.e. those involving offenses against morality -- were added to Article 37, Paragraph 3 of the Act, and this amendment was promulgated on January 22, 1997 and came into effect on March 1,

鑑於有犯罪紀錄之計程車駕駛人以曾犯竊盜、詐欺、贓物及妨害自由罪較多，有關機關於 70 年 7 月 29 日修正公布道交條例，增訂第 37 條之 1 第 3 項，將犯竊盜、詐欺、贓物及妨害自由各罪列入定期禁業之範圍（見立法院公報第 70 卷第 55 期院會紀錄第 43 頁及第 44 頁，75 年 5 月 21 日全文修正時改列為第 37 條）；另為強化婦女乘客安全之保障，於 86 年 1 月 22 日修正公布、自同年 3 月 1 日施行之同法第 37 條第 3 項，增列第 230 條至第 236 條妨害風化罪（見立法院公報第 86 卷第 2 期院會紀錄第 142 頁至第 144 頁，嗣 94 年 12 月 28 日修正公布為系爭規定一，禁業範圍不變），固有其當時之立法考量。惟系爭規定一所列罪名，包括侵害財產法益之類型者（竊盜、詐欺、贓物），妨害自由之類型者（刑法第 296 條至第 308 條）與妨害風化之類型者（刑法第 230 條至第 236 條），主要係以罪章作為禁業規定之依據，而刑法同一罪章內所列各罪之危險性與侵害法益之程度有所差異，其罪名甚至有與乘客安全無直接關聯者（諸如刑法第

1997 (which was later incorporated into Disputed Provision 1 in its present form with the same grounds for restriction on December 28, 2005, see Proceedings of the 2nd Session, Volume 86 of the Official Gazette of the Legislative Yuan, at pages 142-144). These amendments could not be said to be without reason given the circumstances when they were made. However, while the grounds of disqualification listed in Disputed Provision 1 are criminal offenses clustered in chapters of the Criminal Code, for example those relating to property crimes (e.g., larceny, fraud, and receiving stolen property), those against freedom (e.g., offenses covered in Articles 296 to 308 of the Criminal Code), and those against morality (e.g., offenses covered in Articles 230 to 236 of the Criminal Code), offenses in the same chapter differ in the nature of danger they impose and in the degree of their infringement of legal interest. Further, some of the offenses listed as grounds of disqualification cannot be said to bear a direct relation to the safety of passengers, (such as unlawful occupation of real estate in Article 320, Paragraph 2 of the Crimi-

320 條第 2 項之竊佔不動產罪、第 339 條之 1 之由收費設備取得他人之物罪、第 307 條不依法令搜索罪等）。況立法資料及有關機關迄今所提出之統計或研究，仍不足以推論曾經觸犯系爭規定一所定之罪者，在一定期間內均有利用業務上之便利，再觸犯上開之罪，致有危害乘客安全之實質風險。

nal Code, taking the property of another from a fee-collecting apparatus in Article 339-1 of the Criminal Code, and unlawful search in Article 307 of the Criminal Code). Still further, according to statistics or research, both in the preparatory work before the Legislative Yuan at the time of the relevant amendments and supplied by the competent authorities up to the present time, there are not sufficient grounds to conclude that persons who were convicted of crimes listed in Disputed Provision 1 are highly likely to commit those crimes again relying on the convenience offered by practicing taxi-driving, thus imposing substantial risks to the safety of passengers.

Moreover, even though a taxi driver is convicted of the crimes listed and is sentenced to punishment of imprisonment or a more sever punishment, the actual sentence he/she receives might be limited to a short period, or sometimes he/she is even put on probation, following the court's consideration of the intention for the commission of the crime, the driver's attitude after the commission of crime,

又計程車駕駛人縱觸犯上開之罪，並經法院宣告有期徒刑以上之刑，然倘法院斟酌其犯意、犯罪後態度及犯罪情節等各項因素後，僅宣告短期有期徒刑，甚或宣告緩刑，則此等計程車駕駛人是否均具有危害乘客安全之實質風險，而均需予相同之禁業限制，亦有檢討之必要。是系爭規定一僅以計程車駕駛人所觸犯之罪及經法院判決有期徒刑以上之刑為要件，而不問其犯行是否足

and other relevant circumstances. In those cases, whether the taxi driver concerned indeed imposes a substantial risk to the safety of passengers so as to be subject to disqualification from his/her professional practice to the same degree of severity is a question worth close scrutiny. In this connection, Disputed Provision 1 imposes consequences of suspension of a taxi driver's professional practice registration certificate or nullification of his/her professional practice registration by listing the conviction for certain crimes and a court-imposed sentence being more severe than imprisonment as the sole criteria for disqualification, without taking into account whether the committal of crimes by the taxi driver is such as to sufficiently indicate that the continuation of his/her professional practice constitutes a substantial risk to the safety of passengers. For the above reason, the restriction in Disputed Provision 1 of a taxi driver's right to work exceeds the extent of necessity.

以顯示對乘客安全具有實質風險，均吊扣其執業登記證、廢止其執業登記。就此而言，對計程車駕駛人工作權之限制，已逾越必要程度。

In sum, the parts of Disputed Provision 1 concerning the suspension of a taxi

綜上，系爭規定一有關吊扣執業登記證及廢止執業登記部分，不符憲法

driver's professional practice registration certificate and the nullification of his/her professional practice registration are not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and are also in violation of the right to work protected by Article 15 of the Constitution. The authorities concerned shall amend the said provision as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation. Where the authorities concerned fail to amend the provision within the said two years, the parts of Disputed Provision 1 in relation to the suspension of professional practice registration certificate and to the nullification of professional practice registration shall become null and void.

第 23 條比例原則，與憲法第 15 條保障人民工作權之意旨有違。有關機關應於本解釋公布之日起二年內，依本解釋意旨妥為修正；逾期未修正者，系爭規定一有關吊扣執業登記證、廢止執業登記部分失其效力。

2. Issues relating to revocation of driver's license in Disputed Provision 1 and in Article 67, Paragraph 2 and Article 68 of the Act in Disputed Provision 1

二、系爭規定一吊銷駕駛執照部分及道交條例第 67 條第 2 項、第 68 條涉及系爭規定一部分

Pursuant to Article 2 of the Regulations Governing the Management of the Professional Practice Registration of Taxi

依計程車駕駛人執業登記管理辦法第 2 條規定，汽車駕駛人以從事計程車駕駛為業者，應於執業前向執業地直

Drivers, a driver who drives a taxi for his/her profession-driving as the business practice shall, prior to conducting the practice, apply for professional practice registration from the police authorities in the municipalities, counties, or cities where he/she intends to conduct professional practice. Only after acquiring the certificate and its copies of the said professional practice registration may the said person carries out the professional practice of taxi-driving. In this light, nullification of professional practice registration, which will deprive a taxi driver of his/her professional practice, is thus sufficient for fulfilling the legislative purpose of protecting the safety of passengers. The parts in Disputed Provision 1 in relation to revocation of driver's license, apart from depriving a driver of his/her right to work, further deprive a person of the freedom to drive a car, and as such, manifestly exceed the extent necessary for achieving the legislative purposes, and thus are not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and are also in violation of the right to work protected by

轄市、縣（市）警察局申請辦理執業登記，領有計程車駕駛人執業登記證及其副證，始得執業。故廢止執業登記，使其不得以駕駛計程車為業，已足以達成維護乘客安全之立法目的。系爭規定一有關吊銷駕駛執照部分，除限制工作權外，進一步剝奪人民駕駛汽車之自由，顯逾達成目的之必要程度，不符憲法第23條比例原則，與憲法第15條保障人民工作權及第22條保障人民一般行為自由之意旨有違，應自本解釋公布之日起失其效力。從而，自不得再以違反系爭規定一為由，適用道交條例第68條第1項（即中華民國99年5月5日修正公布前之第68條）規定：「汽車駕駛人，因違反本條例及道路交通安全規則之規定，受吊銷駕駛執照處分時，吊銷其執有各級車類之駕駛執照。」吊銷計程車駕駛人執有之各級車類駕駛執照。

Article 15 and the general freedoms protected by Article 22 of the Constitution, and thus shall become null and void from the day of the announcement of this Interpretation. As a result, the relevant part in Disputed Provision 1 shall not be applied as a ground in support of the application of Article 68, Paragraph 1 of the Act (prior to amendment on May 5, 2000, Article 68 of the Act), which provides: "Where a driver is subject to revocation of his/her driver's license as a result of violating provisions of this Act or of the Road Traffic Safety Regulations, all classes of his/her driver's licenses shall be revoked as well", in revoking the various classes of driver's licenses held by a taxi driver.

Article 67, Paragraph 2 of the Act, which reads in relevant parts: "A driver whose … driver's license has been revoked in accordance with … Article 37, Paragraph 3 of the Act … may not apply to attend tests for acquiring a driver's license." (hereinafter, "Disputed Provision 2"), for reasons that the part in Disputed Provision 1 in relation to the revocation of driver's license is declared null and void

至道交條例第 67 條第 2 項規定：「汽車駕駛人，曾依……第 37 條第 3 項……規定吊銷駕駛執照者，三年內不得考領駕駛執照……。」（下稱系爭規定二）因系爭規定一有關吊銷駕駛執照部分既經本解釋宣告失其效力，應即併同失效。

by this Interpretation as seen above, and shall become null and void along with Disputed Provision 1.

In accordance with this Interpretation, a taxi driver whose professional practice registration has been nullified in accordance with Disputed Provision 1, may, from the day of the announcement of this Interpretation until the authorities concerned amend Disputed Provision 1 in accordance with the ruling of this Interpretation, continue to hold his/her professional driver's license. A taxi driver whose driver's license has been revoked in accordance with Disputed Provision 1 even prior to the announcement of this Interpretation, may immediately apply to attend tests for acquiring a driver's license. However, Article 3 of the Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers reads in relevant parts: "A driver may apply for professional practice registration only when he/she holds a professional driver's license and when there are no prohibitive circumstances provided in Article 36, Paragraph 4 or Article 37,

依本解釋意旨，計程車駕駛人自本解釋公布之日起至有關機關依本解釋意旨修正系爭規定一之前，經依系爭規定一廢止執業登記者，仍得繼續持有職業駕駛執照。即令本解釋公布之日前，經依系爭規定一吊銷駕駛執照者，亦得立即重新考領職業駕駛執照。而依計程車駕駛人執業登記管理辦法第 3 條規定：「汽車駕駛人須領有職業駕駛執照，且無本條例第 36 條第 4 項或第 37 條第 1 項情事者，始得申請辦理執業登記。」上開計程車駕駛人得持原有或新考領取得之職業駕駛執照，申請執業登記，故無法達到原系爭規定二禁業三年之效果。茲為貫徹原定期禁業之目的，於相關法令修正前，計程車駕駛人經廢止執業登記者，三年內不得再行辦理執業登記。

Paragraph 1 of the Act against him/her." If the aforesaid taxi driver may hold his/her professional driver's license, either already held or newly issued, and be allowed to apply for professional practice registration, the purpose of Disputed Provision 2 which is to prevent the taxi driver from conducting his/her professional practice for a fixed period of three years will be defeated. In this light, to uphold the intent of depriving a taxi driver from conducting his/her professional practice for a fixed period, a taxi driver whose professional practice registration has been nullified prior to the amendment to the relevant law and regulations may not apply for practice registration within three years from the day of the said nullification.

3. Issues on which petitions for constitutional interpretation are not granted

Whereas the petition made by Rong-Yao LI in relation to uniform interpretation does not concern itself with alleging that, in relation to identical applicable laws or ordinances, different opinions

三、不受理部分

聲請人李榮耀聲請統一解釋部分，查聲請意旨並非指摘不同審判系統法院（如最高法院與最高行政法院）之確定終局裁判適用同一法令所表示見解有何歧異，核與大審法第 7 條第 1 項第

are adopted by the final decisions of the courts in different systems (e.g., between decisions of the Supreme Court and decisions of the Supreme Administrative Court), the petition is not made in accordance with Article 7, Paragraphs 1 and 2 of Constitutional Court Procedure Act, and thus shall be dismissed in accordance with Article 7, Paragraph 3 of the Constitutional Court Procedure Act.

2 款規定不合，依同條第 3 項規定，應不受理。

Whereas in the petition made by Hua-Tsung HSU against provisions of the Regulations on Adding Addresses of Residence or Work Place to Vehicle Registration in the Computer Database of the Highway Supervisory Agency applied in Rulings in Traffic-Appeal Case No. 3 (2014) and Traffic-Appeal-Retrial Case No. 3 (2014) of the Taipei High Administrative Court, alleging infringements of his constitutional rights resulting from relevant administrative documents being sent to his household registration address instead of the address of his habitual residence such that the persons to whom the administrative disposition was made did not have the opportunity to be informed

另聲請人許華宗就臺北高等行政法院 103 年度交抗字第 3 號裁定、同院 103 年度交抗再字第 3 號裁定，所適用之公路監理電腦系統車輛車籍及駕駛人駕籍增設住居所或就業處所地址作業注意事項聲請解釋部分，僅係主張相關行政文書以戶籍地址為寄送處所，而未送達實際居住處所，使行政處分之相對人難以知悉行政處分內容並加以爭執，致無法行使其受憲法所保障之訴訟權等語，尚難謂已具體指摘系爭注意事項究有何牴觸憲法之處，核與大審法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定，亦應不受理。

of the content of the administrative disposition concerned nor did they have an opportunity to object to it, the petitioner did not specify the grounds of unconstitutionality in the disputed provisions in the said Regulations. As such, the petition is not made in accordance with Article 5, Paragraphs 1 and 2 of the Constitutional Interpretation Procedure Act, and thus shall be also dismissed in accordance with Article 5, Paragraph 3 of the Constitutional Court Procedure Act.

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Chang-Fa LO filed a concurring opinion.

Justice Horng-Shya HUANG filed a concurring opinion, in which Justice Ming-Cheng TSAI, joined.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Sheng-Lin JAN filed an opinion dissenting in part and concurring in part.

本號解釋湯大法官德宗提出之部分協同意見書；羅大法官昌發提出之協同意見書；黃大法官虹霞提出，蔡大法官明誠加入之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出之部分不同暨部分協同意見書。

Table

Petitioner	Final Judgment of the Court of the Last Resort	Objects of Petition
Wan-Jin WANG	Traffic-Appeal Case No. 95 Ruling on Criminal Matters (2008), Taiwan High Court	Articles 37 (3) of the Road Traffic Management and Penalty Act
Yao-Hua LI	Traffic-Appeal Case No. 1156 Ruling on Traffic Matters (2010), Taiwan High Court	Articles 37 (3), 67 (2) & 68 of the Road Traffic Management and Penalty Act
Rong-Yao LI	Traffic-Appeal Cases Nos. 2006 & 2060 Ruling on Traffic Matters (2010), Taiwan High Court	Articles 37 (3), 67 (2) & 68 of the Road Traffic Management and Penalty Act
Chih-Chien CHEN (original name: Te-Hao CHEN)	Traffic-Appeal Case No. 203 Ruling on Traffic Matters (2011), Taiwan High Court	Articles 37 (3) & 67 (2) of the Road Traffic Management and Penalty Act
Ching-You YEH	Traffic Case No. 379 Judgment on Administrative Law Matters (2013), Taiwan New Taipei District Court	Articles 37 (3) & 67 (2) of the Road Traffic Management and Penalty Act
Hua-Tsung HSU	Traffic-Appeal Case No. 24 (2014) and Traffic-Appeal-Retrial Case No. 10 Judgments (2014), Taipei High Administrative Court	Regulations on Adding Addresses of Residence or Work Place to Vehicle Registration in the Computer Database of the Highway Supervisory Agency
	Traffic-Appeal Case No. 3 (2014) and Traffic-Appeal-Retrial Case No. 3 Rulings (2014), Taipei High Administrative Court	Regulations on Adding Addresses of Residence or Work Place to Vehicle Registration in the Computer Database of the Highway Supervisory Agency

附表

聲請人	確定終局裁判	聲請釋憲客體
王萬金	臺灣高等法院 97 年度交抗字第 95 號刑事裁定	道交條例第 37 條第 3 項
李耀華	臺灣高等法院 99 年度交 抗字第 1156 號交通事件裁定	道交條例第 37 條第 3 項、第 67 條第 2 項、 第 68 條
李榮耀	臺灣高等法院 99 年度交抗字第 2006 號、第 2060 號交通事件裁定	道交條例第 37 條第 3 項、第 67 條第 2 項、 第 68 條
陳志傑（原名陳特豪）	臺灣高等法院 100 年度交抗字第 203 號交通事件裁定	道交條例第 37 條第 3項、第 67 條第 2 項
葉清友	臺灣新北地方法院 102 年度交字第 379 號行政 訴訟判決	道交條例第 37 條第 3項、第 67 條第 2 項
許華宗	臺北高等行政法院103年度交上字第 24 號判 決、同院 103 年度交上再字第 10 號判決	道交條例第 37 條第 3 項
	臺北高等行政法院 103 年度交抗字第 3 號裁定、同院 103 年度交抗再字第 3 號裁定	公路監理電腦系統車輛車籍及駕駛人駕籍增設住居所或就業處 所地址作業注意事項

J. Y. Interpretation No.750（July 7, 2017）*

【Eligibility of Holder of an Overseas Degree for Taking Part in a Dentist Examination】

ISSUE: Are the provisions that require a graduate from an overseas department of dentistry to successfully complete training in clinical practice at a medical institution accredited by the competent authorities so as to be eligible to take part in a dentist examination unconstitutional ?

RELEVANT LAWS:

Articles 7, 15, 18, 23 & 86 (2) of the Constitution of the Republic of China (Taiwan) (January 1, 1947)（憲法第七條、第十五條、第十八條、第二十三條、第八十六條第二款）；J.Y. Interpretation Nos. 443, 584, 612, 634, 637, 649, 682, 694, 701, 719, 722, 727, 745 & 749（司法院釋字第四四三號、第五八四號、第六一二號、第六三四號、第六三七號、第六四九號、第六八二號、第六九四號、第七０一號、第七一九號、第七二二號、第七二七號、第七四五號及第七四九號）; Articles 1, 2, 3, 4 & 42 of the Physicians Act（November 30, 2016）（醫師法第一條、第二條、第三條、第四條、第四十二條）；Articles 1-1, 1-2, 1-3 & 1-4 of the Enforcement Rules of the Physicians Act （as amended and promulgated on September 16, 2009）（九十八年九月十六日

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* Translated by Chen-En SUNG

** Contents within frame, not part of the original text, are added for reference purposes only.

修正發布之醫師法施行細則第一條之一、第一條之二、第一條之三、第一條之四）；Subparagraph 1 of the Dentists' Category in "Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist" annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan)（九十八年十月四日修正發布之專門職業及技術人員高等考試醫師牙醫師考試分試考試規則「附表一：專門職業及技術人員高等考試醫師牙醫師考試分試考試應考資格表」牙醫師類科第一款）；Articles 5, 9, 10, 11, 12, 13 & 14 of the Professional and Technical Personnel Examinations Act（as amended and promulgated on December 29, 2009）（八十八年十二月二十九日修正公布之專門職業及技術人員考試法第五條、第九條、第十條、第十一條、第十二條、第十三條、第十四條）

KEYWORDS:

Gesetzesvorbehaltprinzip (the principle of legislative reserve)（法律保留原則）, the principle of proportionality（比例原則）, the right to work（工作權）, the right of taking examinations（應考試權）, the right to equal protection（平等權）, dentists examinations（牙醫師考試）, eligibility for taking an examination（應考資格）, a graduate from an overseas department of dentistry（國外牙醫學畢業生）, training in clinical practice（臨床實作訓練）, successful completion of a full internship（實習期滿成績及格）**

HOLDING: Article 1-1 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Executive Yuan (subsequently restructured and renamed the Ministry of Health and Welfare)) and Subparagraph 1 of the Dentists' Category in "Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist" annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan), concerning eligibility of a graduate from an overseas department of dentistry, do not violate *Gesetzesvorbehaltprinzip* (the principle of legislative reserve) or the principle of proportionality enshrined in Article 23 of the Constitution, and are in conformity with the intent of the protection of the right to work and the right to take examinations respectively provided in Articles 15 and 18 of the Constitution, nor do they violate the right to equal pro-

解釋文：行政院衛生署（改制後為衛生福利部）中華民國 98 年 9 月 16 日修正發布之醫師法施行細則第 1 條之 1，及考試院 98 年 10 月 14 日修正發布之專門職業及技術人員高等考試醫師牙醫師考試分試考試規則「附表一：專門職業及技術人員高等考試醫師牙醫師考試分試考試應考資格表」牙醫師類科第 1 款，關於國外牙醫學畢業生參加牙醫師考試之應考資格部分之規定，尚未牴觸憲法第 23 條法律保留原則、比例原則，與憲法第 15 條工作權及第 18 條應考試權之保障意旨無違，亦不違反憲法第 7 條平等權之保障。

tection enshrined in Article 7 of the Constitution.

REASONING: The Petitioner applied to participate in the first senior professional and technical personnel examination in the category of dentists in 2010, listing the degree he acquired from an overseas university to satisfy the eligibility requirement thereof. The Ministry of Examination, taking the view that the Petitioner failed to submit the required certificate proving the successful completion of a full internship accompanied by the records showing the grades therein, both issued by an accredited medical institution in Taiwan, by Letter No. Exam-Pro 0983302554 of December 7, 2009 (hereinafter "Original Disposition"), notified the Petitioner that he should apply to participate in the examination-in-stages at the preliminary stage level for the category of dentists instead. It further notified him that, after passing the said examination at the preliminary stage, he must satisfy the requirement of clinical practice in accordance with the Enforcement Rules of the Physicians Act, -- more specifically,

解釋理由書：聲請人於 98 年 10 月間，持外國學歷報考 99 年第 1 次專門職業及技術人員高等考試牙醫師考試，考選部認其未依規定繳驗國內醫療機構開立之實習期滿成績及格證明，以 98 年 12 月 7 日選專字第 0983302554 號函（下稱原處分）通知聲請人，應更改報考類科為牙醫師考試分試考試第一試，第一試及格後，依醫師法施行細則規定，在得提供臨床實作訓練之醫療機構，於醫師指導下完成同施行細則第 1 條之 4 所定之科別及週數或時數之臨床實作，並持有該醫療機構開立之實習期滿成績及格證明後，始得再應牙醫師考試分試第二試。聲請人對原處分不服，先後提起訴願及行政訴訟。經最高行政法院 101 年度判字第 590 號判決（下稱確定終局判決）以上訴為無理由而駁回確定。

clinical practice carried out under the supervision of a physician at an accredited medical institution in providing training in such clinical practice and in fulfilment of the required number of weeks/hours in the required specialization as provided in Article 1-4 of the Enforcement Rules of the Physicians Act. Still further, by the Original Disposition the Examination Ministry notified the Petitioner that only after the successful completion of the required clinical practice would he be eligible to participate in the second stage of the said examination-in-stages, for which he should submit the certificate acquired upon the completion of internship, accompanied by the records showing the grades attained. The Petitioner did not accept the Original Disposition, and filed an administrative appeal. That being rejected, the Petitioner initiated administrative litigation, which was dismissed on the merits by the Supreme Administrative Court in its Judgment No. J-590 of 2012 (hereinafter "Final Judgment") and his case was finalized.

The Petitioner filed a petition to this Court, claiming that Article 1-1 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Executive Yuan) (hereinafter "Disputed Provision 1") and Subparagraph 1 of the Dentists' Category in "Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist" (hereinafter "Disputed Provision 2") annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan) (hereinafter "Exam-in-Stages Regulations") applied in the Final Judgment were not consistent with Articles 7, 15, 18, and 23 of the Constitution. This Court considered that the petition in question satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act and accordingly granted review. Further, on June 5, 2017 the Petitioner applied to

聲請人認確定終局判決所適用改制前之行政院衛生署98年9月16日修正發布之醫師法施行細則第1條之1（下稱系爭規定一），以及考試院98年10月14日修正發布之專門職業及技術人員高等考試醫師牙醫師考試分試考試規則（下稱分試規則）「附表一：專門職業及技術人員高等考試醫師牙醫師考試分試考試應考資格表」牙醫師類科第1款（下稱系爭規定二），有牴觸憲法第7條、第15條、第18條及第23條之疑義，向本院聲請解釋憲法，核與司法院大法官審理案件法第5條第1項第2款所定要件相符，予以受理。嗣聲請人於106年6月5日以「考量已無應國內牙醫師考試之需求，認為現已無繼續聲請釋憲之必要」為由，撤回解釋憲法之聲請。惟本案業經受理，且人民聲請解釋憲法，除為保障其憲法上之權利外，並涉及法規違憲與否，攸關憲法秩序之維護，具公益性，核有作成憲法解釋之價值，應不予准許撤回。本院爰作成本解釋，理由如下：

the Court for his original petition to be withdrawn, on ground that he himself did no longer intend to apply to participate in a dentist examination, hence his petition for constitutional interpretation losing its purpose. Considering that the Court had already granted review to the petition in question, that a petition for constitutional interpretation concerns not only the protection of individual rights under the Constitution but also the constitutionality of the disputed provisions, hence having a bearing on the maintenance of the constitutional order and thus a matter of public interest, and that passing an Interpretation on the subject-matter in this case has constitutional significance, the Court did not allow the petition in question to be withdrawn. The Court hereby makes this Interpretation and the reasoning is as follows:

Article 15 of the Constitution provides that the right to work shall be protected; accordingly, people have the freedom to work, as well as the freedom to pursue the occupation of their own choosing (*see* J.Y. Interpretations Nos. 584,

憲法第 15 條規定人民之工作權應予保障，故人民有從事工作及選擇職業之自由（本院釋字第 584 號、第 612 號、第 634 號、第 637 號、第 649 號及第 749 號解釋參照）。惟憲法第 86 條第 2 款規定，專門職業人員執業資格，應經

612, 634, 637, 649 and 749 for further reference). On the other hand, Article 86, Paragraph 2 of the Constitution stipulates that the qualification for practicing in a specialized profession shall be determined and registered through examination by the Examination Yuan in accordance with the law. In this light, in relation to a specialized profession, people's freedom to pursue the occupation of their own choosing has its inherent limits. Further, in accordance with Article 18 of the Constitution, the people shall have the right of taking public examinations. This, in addition to protecting the right to acquire eligibility to serve as a public functionary through participating in examinations, protects the right to acquire eligibility to practice as a professional or a technologist through participating in examinations. Statutory provisions on the eligibility to take an examination or on the manner to participate in an examination, if by their nature might constitute a limit on the right to take examinations and the right to work, must be in consistence with constitutional principles such as *Gesetzesvorbehaltprinzip* (the principle of legislative reserve) and

考試院依法考選之。是人民選擇從事專門職業之自由，根據憲法規定，即受限制。又憲法第 18 條規定人民有應考試權，除保障人民參加考試取得公務人員任用資格之權利外，亦包含人民參加考試取得專門職業及技術人員執業資格之權利。對於參加考試資格或考試方法之規定，性質上如屬應考試權及工作權之限制，自應符合憲法第 23 條法律保留原則及比例原則等憲法原則（本院釋字第 682 號解釋參照）。

the principle of proportionality enshrined in Article 23 of the Constitution (*see* J.Y. Interpretation No. 682 for further reference).

1. Disputed Provisions 1 and 2 do not violate *Gesetzesvorbehaltprinzip* (the principle of legislative reserve) enshrined in Article 23 of the Constitution

Statutory provisions that might constitute a limit on the right to work or on the right to take examinations shall be laid down in the law. Where, in the law, the competent authorities are authorized to lay down ordinances as supplementary provisions, the legislative authorization to that effect has to be specific and precise. Where the provisions concern detailed or technical aspects of implementation of the law which are considered to be of secondary significance, the competent authorities may lay down ordinances so as to exercise necessary regulation. Even though the exercise of administrative regulation in this manner might bring about inconvenience to the people or might affect their rights to a minor extent, such an exercise of ad-

一、系爭規定一及二無違憲法第23條法律保留原則

涉及人民工作權或應考試權之限制者，應由法律加以規定，如以法律授權主管機關發布命令為補充規定時，其授權應符合具體明確之原則；若僅屬於執行法律之細節性、技術性次要事項，則得由主管機關發布命令為必要之規範，雖因而對人民產生不便或輕微影響，尚非憲法所不許（本院釋字第443號解釋參照）。查醫師（含牙醫師，下同）屬專門職業人員，其執業應依專門職業及技術人員考試法規定，以考試定其資格。醫師法第1條規定：「中華民國人民經醫師考試及格並依本法領有醫師證書者，得充醫師。」第4條規定：「公立或立案之私立大學、獨立學院或符合教育部採認規定之國外大學、獨立學院牙醫學系、科畢業，並經實習期滿成績及格，領有畢業證書者，得應牙醫

ministrative regulation is not prohibited by the Constitution (see J.Y. Interpretation No. 443 for further reference). Physicians (dentists included; in the same meaning hereinafter) are professionals. The qualification for professional practice as a physician shall be granted through passing examinations in accordance with the provisions of the Professional and Technical Personnel Examinations Act. Article 1 of the Physicians Act provides: "A citizen of the Republic of China who has passed a physician examination and holds a physician license in accordance with the Act may work as a physician." Article 4 of the same Act provides: "[A] graduate from the department of dentistry in a public or registered private university or an independent college or from the department of dentistry in an overseas university or independent college that conform to the accreditation rules promulgated by the Ministry of Education, who holds a graduate diploma proving the successful completion of a full internship, may participate in the examination to be qualified to practice as a dentist." The above legislative provisions have laid down rules governing mat-

師考試。」已就應考資格等重要事項予以規定；則其他屬於執行法律之細節性與技術性次要事項，主管機關自得發布命令為必要之規範。

ters of significance such as eligibility to participate in the examinations concerned. In relation to remaining matters in the detailed or technical aspects of implementation of the law which are considered to be of secondary significance, the competent authorities may lay down ordinances so as to exercise necessary regulation.

Paragraph 1 of Disputed Provision 1 provides: "'[S]uccessful completion of a full internship' referred to in Articles 2 to 4 of this Act means the completion of clinical practice that is carried out under the supervision of a physician at an accredited medical institution in providing training in such clinical practice and in fulfilment of the required number of weeks/hours in the required specialization as provided in Articles 1-2 to 1-4 of this Act in which the trainee, through passing examinations and assessments in all specialized subjects, acquires a certificate issued by the said accredited medical institution." Paragraph 2 of Disputed Provision 1 provides: "As regard to the internship referred to in the foregoing paragraph, the competent authorities in the

系爭規定一規定：「（第 1 項）本法第 2 條至第 4 條所稱實習期滿成績及格，指在經教學醫院評鑑通過，得提供臨床實作訓練之醫療機構，於醫師指導下完成第 1 條之 2 至第 1 條之 4 所定之科別及週數或時數之臨床實作，各科別考評成績均及格，且持有該醫療機構開立之證明。（第 2 項）中央主管機關得就前項實習，辦理臨床實作訓練申請人與醫療機構間之選配分發，並得就該業務委託民間專業機構或團體辦理。」乃中央衛生主管機關基於醫師法第 42 條授權訂定之施行細則，而就同法第 2 條至第 4 條所稱「實習期滿成績及格」所為之規定，內容包括臨床實作訓練之醫療機構、臨床實作之科別及週數或時數之要求，以及考評成績之處理等，皆屬執行法律之細節性、技術性次要事項，其由中央衛生主管機關以命令為必

Central Government may conduct selection, conferment, and distribution among the medical institutions which apply to be accredited, as well as among persons who apply to serve as a supervisor therein, and may delegate the carrying out of the internship to professional institutions or associations in the private sector." Those provisions are rules made by the competent authority for public health in the Central Government in accordance with the authorization under Article 42 of the Physicians Act in relation to 'successful completion of a full internship' referred to in Articles 2 to 4 of the same Act, which can cover matters relating to the accredited medical institution, the specialized subjects, the required number of weeks/hours, and the handling of examination and assessment results, etc. These matters can be considered to be detailed or technical aspects of implementation of the law which are of secondary significance. The making of necessary regulation by ordinances by the competent authority for public health in the Central Government does not violate the requirement of *Gesetzesvorbehaltprinzip* (the principle

要之規範，無違憲法第 23 條法律保留原則之要求。

of legislative reserve) enshrined in Article 23 of the Constitution.

Paragraph 1 of Article 5 of the Professional and Technical Personnel Examinations Act, as amended and promulgated on December 29, 2009, provides: "[T]he various types of professional and technical personnel examinations may be held jointly or separately. They may also be held in stages…." Paragraph 3 of the said Article provides: "[S]ubjects of examinations which are to be held in stages and their examination rules shall be prescribed by the Ministry of Examination and submitted to the Examination Yuan for approval." Articles 9 to 13 of the same Act lays down the general provisions on the eligibility requirements of the range of personnel categories covered therein, and Article 14 of the same Act authorizes the Ministry of Examination to determine eligibility for taking the examinations in various categories and subjects by prescribing the examination rules, which shall be submitted to the Examination Yuan for approval. In this light, the Examination Yuan, in determining the eligibility

88 年 12 月 29 日修正公布之專門職業及技術人員考試法第 5 條規定：「（第 1 項）各種考試，得單獨或合併舉行，並得分試……。（第 3 項）分試考試之類科及其考試規則，由考選部報請考試院定之。」同法第 9 條至第 13 條就全部類科人員之應考資格為一般規定，並於第 14 條授權考選部報請考試院於考試規則中訂定各分類、分科考試之應考資格，則考試院於訂定分試、分類、分科應考資格時，自得採酌各執業管理法規所定特殊資格。系爭規定二規定，得應專門職業及技術人員高等考試牙醫師考試分試考試者為：「公立或立案之私立大學、獨立學院或符合教育部採認規定之國外大學、獨立學院牙醫學系、科畢業，並經實習期滿成績及格，領有畢業證書者。但國外大學、獨立學院牙醫學系、科畢業者，其實習期滿成績及格之認定標準，依行政院衛生署中華民國 98 年 9 月 16 日修正發布之醫師法施行細則規定辦理。」此乃考試院依授權所訂定，其本文內容與醫師法第 4 條規定同，且其但書規定依系爭規定一辦理，並未逾越法律授權之範圍或增加

requirements for taking the examinations in various categories, subjects and stages, is in a position to take into consideration the eligibility requirements specific to the various professions, which are provided in the laws and regulations governing the professions concerned. According to Disputed Provision 2, the qualification required for taking the examination-in-stages in senior professional and technical personnel examinations is: "a graduate from the department or division of dentistry in a public or registered private university or an independent college, or from the department or division of dentistry in an overseas university or independent college that conforms to the accreditation rules promulgated by the Ministry of Education, who holds a graduate diploma to prove the successful completion of a full internship; for a graduate from the department or division of dentistry in an overseas university or independent college, the standard for certifying the successful completion of a full internship concerned shall be determined in accordance with the relevant provisions of the Enforcement Rules of the Physicians Act (as

母法所無之限制，不違反法律保留原則。

amended and promulgated on September 16, 2009 by the Department of Health, Executive Yuan).” The above qualification requirement in Disputed Provision 2 was prescribed by the Examination Yuan in accordance with legislative authorization: in large part it was essentially identical with the relevant provision of Article 4 of the Physicians Act, and the part relating to the certification of the successful completion of a full internship on the part of the graduates from an overseas institution was done in accordance with Disputed Provision 1. It does not exceed the scope of authorization provided in the law, nor does it impose an additional restriction that does not exist under the authorizing legislation. As such, it does not violate the requirement of *Gesetzesvorbehaltprinzip* (the principle of legislative reserve).

二、系爭規定一及二關於實習期滿成績及格之規定與憲法第 23 條比例原則無違

2. The parts of Disputed Provisions 1 and 2 in relation to the successful completion of a full internship do not violate the principle of proportionality enshrined in Article 23 of the Constitution

As far as the professional personnel examination is concerned, rules prescribed by the Examination Yuan in relation to the examination methods and eligibility for taking examinations bear a close relationship to the professional judgment that is integral to the process of making selection through examination. As such, those rules should be duly respected. Further, as an eligibility requirement for participating in the professional examination, "the successful completion of a full internship", together with the standard of its certification, is intimately related to the professional capability of the physicians to be selected, as well as to the quality of medical care they provide. In these matters, decisions of the competent authority for public health in the Central Government should be respected, so that the constitutional spirit of "separation and coordination of five powers" may be observed. (*see* J.Y. Interpretation No. 682 for further reference). As long as Disputed Provisions 1 and 2 set out to pursue a legitimate objective, and the means employed therein are reasonably related to the objective, they do not violate the

就專門職業人員考試而言，考試院有關考試方法及資格之規定，涉及考試之專業判斷，應予適度之尊重，且「實習期滿成績及格」為應醫師考試資格之要件，其認定標準攸關醫師之專業能力及醫療品質，理應尊重中央衛生主管機關之決定，以符憲法五權分治彼此相維之精神（本院釋字第 682 號解釋參照）。系爭規定一及二之目的如屬正當，且其所採取之手段與目的之達成間具合理關聯，即與憲法第 23 條比例原則無違。

principle of proportionality enshrined in Article 23 of the Constitution.

Disputed Provisions 1 and 2, in requiring the successful completion of a full internship, set out to ensure the professional capability of the physicians and the quality of medical care they provide, so as to safeguard patients' rights and interests and to promote the health of the people. The objectives those provisions set out to pursue should be considered legitimate. The substance of Disputed Provisions 1 and 2, in regulating matters such as the accredited medical institution where the training in clinical practice may be provided, the specialization and the number of weeks/hours that is required of in the clinical practice, and the handling of examination and assessment results, etc. are all conducive to the achievement of the above objectives, as well as are all reasonable means to be used. As such, Disputed Provisions 1 and 2 do not violate the principle of proportionality enshrined in Article 23 of the Constitution so as to infringe the right to work in Article 15 of the Constitution and the right of taking

系爭規定一及二關於實習期滿成績及格之規定，係為確保醫師之專業能力及醫療品質，以維護病患權益，增進國民健康，其目的應屬正當。其規定之內容，包括臨床實作訓練之醫療機構、臨床實作科別及週數或時數之要求，以及考評成績之處理等，皆有助於上開目的之達成，且無顯不合理之處。是系爭規定一及二尚難認違反憲法第 23 條比例原則而侵害人民受憲法第 15 條保障之工作權及第 18 條保障之應考試權。

examinations in Article 18 of the Constitution.

3. The parts of Disputed Provisions 1 and 2 in relation to the eligibility of a graduate from an overseas department of dentistry do not violate the intent of the right to equal protection enshrined in Article 7 of the Constitution

三、系爭規定一及二有關國外牙醫學畢業生應考試之規定，與憲法第 7 條平等權保障意旨無違

The right to equal protection enshrined in Article 7 of the Constitution does not lead to an absolute prohibition of differential treatment. The legislature and the relevant authorities, based on the value system of the Constitution and the legislative intent, may make reasonable differential treatment, taking into consideration the inherent differences in the subject-matter concerned. Whether a legal norm complies with the requirement of the principle of equality shall be determined by whether the purpose served by the differential treatment is constitutional, and whether there is a certain level of relations between the classification in question and the achievement of the purpose the legal norm sets out to pursue (*see* J.Y.

憲法第 7 條保障之平等權，並不當然禁止任何差別待遇，立法與相關機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理差別待遇。法規範是否符合平等原則之要求，應視該法規範所以為差別待遇之目的是否合憲，及其所採取之分類與規範目的之達成間，是否存有一定程度之關聯性而定（本院釋字第 682 號、第 694 號、第 701 號、第 719 號、第 722 號、第 727 號及第 745 號解釋參照）。

Interpretation Nos. 682, 694, 701, 719, 722 and 745 for further reference).

Disputed Provision 1, for its being applied to a graduate from a domestic department of dentistry as well as to a graduate from an overseas department of dentistry, does not make any differential treatment in form. However, the requirement of the successful completion of a full internship, one that is carried out in compliance with Disputed Provision 1 – i.e. "at an accredited medical institution in providing training in such clinical practice in which the trainee, through passing examinations and assessments in all specialized subjects, acquires a certificate issued by the said accredited medical institution" – has been incorporated in the qualification requirement for acquiring a graduate diploma for a graduate from a domestic department of dentistry. For a graduate from an overseas department of dentistry, clinical practice to the same standard is not necessarily part of the qualification requirement in getting the degree, so an overseas graduate is often not in a position to submit the certificate required. In

系爭規定一對於國內牙醫學畢業生及國外牙醫學畢業生一體適用，形式上固無差別待遇，惟國內牙醫學畢業生於取得畢業證書前，已可符合系爭規定一有關於「經教學醫院評鑑通過，得提供臨床實作訓練之醫療機構」臨床實作考評成績及格，且取得證明之要求，而國外牙醫學畢業生則無法取得該證明，故實際上仍存有差別待遇。又系爭規定二但書規定，國外大學、獨立學院牙醫學系、科畢業者，其實習期滿成績及格之認定標準，依醫師法施行細則（含系爭規定一）辦理，則對國外牙醫學畢業生而言，系爭規定二自亦存有差別待遇。此等差別待遇涉及牙醫師技能及醫療服務品質，故較適合由擁有醫療或考試專業能力之機關決定。其決定若目的正當，且其差別待遇與目的之達成間具有合理關聯，即不違反憲法第 7 條平等權保障之意旨。

this sense, Disputed Provision 1 makes a differential treatment in substance. Further, the proviso of Disputed Provision 2 stipulates that, for a graduate from the department or division of dentistry in an overseas university or independent college, the standard for certifying the successful completion of a full internship concerned shall be determined in accordance with the relevant provisions of the Enforcement Rules of the Physicians Act (which include Disputed Provision 1). In this sense, Disputed Provision 2 also makes a differential treatment in respect of a graduate from overseas. The above differential treatment concerns dentists' level of technical skill and capability and the quality of medical care they provide. As such, the decision is more suitably left for an authority that has professional capability in matters of medical care and examinations to make. As long as the decision sets out to pursue a legitimate objective, and the means employed are reasonably related to the objective, it does not violate the intent of the right to equal protection enshrined in Article 7 of the Constitution.

Medical care intimately concerns the health of the people and the protection of the life of the people. A physician who is qualified in carrying out the professional practice of medical care, in addition to professional knowledge at a certain level, should be equipped with adequate training in clinical practice, accumulated by actual practice carried out in medical institutions that are accredited by the competent authority, so that he/she is familiar with the environment, including the culture and the types and causes of diseases, in the place where the medical care is provided, so as to successfully carry out the tasks required. The objective set out by Disputed Provisions 1 and 2 to pursue is to ensure the realization of the above aims. As such, the objective is a legitimate one.

醫療業務攸關國民身體健康及生命之安全，以醫師作為職業者，除應具備相當之專業知識外，理應於主管機關認可之醫療機構累積足夠之臨床實作訓練，以實地參與醫療業務，熟悉國內醫療環境、文化與疾病之態樣，始克勝任。系爭規定一及二係為確保此一要求之實現，目的應屬正當。

A graduate from an overseas department of dentistry is not necessarily equipped with the training in clinical practice at an adequate level. Even if he/she has received training in clinical practice, for reasons that there are differences in terms of language, medical culture, and diseases a physician encounters between

國外牙醫學畢業生未必受有足夠臨床實作訓練，且縱使受有臨床實作訓練，但於國外使用之語言、醫療文化及接觸之疾病型態，與國內情形並不相同，故仍欠缺前揭臨床實作經驗。系爭規定一及二規定，國外牙醫學畢業生須於主管機關認可之醫療機構完成一定之臨床實作訓練，可彌補臨床實作經驗之

where the training was carried out and in the domestic setting, the experience in clinical practice an overseas graduate has accumulated can still be considered inadequate. Disputed Provisions 1 and 2, by requiring a graduate from an overseas department of dentistry to complete a certain level of clinical practice at a medical institution that is accredited by the competent authority, serve to address and remedy the above inadequacy. As such, Disputed Provisions 1 and 2 are conducive to the achievement of the objective they set out to pursue, and the means employed therein are not manifestly unreasonable. For these reasons, the differential treatment made in the Disputed Provisions, being reasonably related to the achievement of the objective it sets out to pursue, does not violate the intent of the right to equal protection enshrined in Article 7 of the Constitution.

不足，皆有助於上開目的之達成，且無顯不合理之處。是此等差別待遇與其目的之達成間具有合理關聯，尚無違背憲法第 7 條平等權保障之意旨。

The Petitioner also argued that Articles 1-2 to 1-5 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Execu-

另聲請人認行政院衛生署 98 年 9 月 16 日修正發布之醫師法施行細則第 1 條之 2 至第 1 條之 5 及行政院衛生署 99 年 3 月 12 日訂定發布之國外醫學及牙醫學畢業生臨床實作訓練選配分發作

tive Yuan) and the Guidelines for Selection and Assignment of Graduates from an Overseas Department of Dentistry in Clinical Practice Training (as issued and announced on March 12, 2010 by the then Department of Health, Executive Yuan) are not consistent with Articles 7, 15, 18, and 23 of the Constitution. For this part, the petitioner did not objectively specify the grounds of unconstitutionality in the above provisions. As such, the petition is not made in accordance with Article 5, Paragraphs 1 and 2 of the Constitutional Court Procedure Act, and thus shall be dismissed in accordance with Article 5, Paragraph 3 of the Constitutional Court Procedure Act.

業要點，牴觸憲法第 7 條、第 15 條、第 18 條及第 23 條部分，均尚難謂客觀上已具體指摘上開規定有何牴觸憲法之處，核與司法院大法官審理案件法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定均應不受理，併予敘明。

Justice Horng-Shya HUANG filed an opinion concurring in part.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion.

Justice Dennis Te-Chung TANG recused himself and took no part in the

本號解釋黃大法官虹霞提出之部分協同意見書；羅大法官昌發提出之協同意見書；許大法官志雄提出之協同意見書；詹大法官森林提出之協同意見書。湯大法官德宗迴避審理本案。

deliberation or decision of this case.

J. Y. Interpretation No.751（July 21, 2017）*

【Imposition of Administrative Penalty on Top of a Final Disposition of Conditional Deferred Prosecution】

ISSUE: 1. Article 26, Paragraph 2 of the Administrative Penalty Act stipulates that an administrative penalty may be imposed on top of a final disposition of conditional deferred prosecution. Is it a violation of the Constitution? Article 45, Paragraph 3 of the same Act provides that a payment made [for a conditional deferred prosecution] may be deducted from the penalty on an offense committed before the 2011 Amendment of the same Act but yet to be punished. Is it a violation of the Ex Post Facto principle or the doctrine of legitimate expectation?

2. Does [the old version of] Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, apply to a final disposition of conditional deferred prosecution ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第 15 條、第 23 條）；J.Y. Interpretations Nos. 574, 596, 629 and 672（司法院釋字第五七四號、第五九六號、第六二九號、第六七二號解釋）；Article 26, Paragraph 2 and Article 45, Paragraph

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* Translated by Hsiu-Yu FAN

** Contents within frame, not part of the original text, are added for reference purposes only.

3 of the Administrative Penalty Act（行政罰法第二十六條第二項、第四十五條第三項）；The Ministry of Finance Letter Tai-Tsai-Shui-09600090440 of March 6, 2007（財政部中華民國九十六年三月六日台財稅字第０九六０００九０四四０號函）；Article 26, Paragraph 2 of the Administrative Penalty Act, entering into force on February 5, 2006（九十五年二月五日施行之行政罰法第二十六條第二項）；Article 253-2, Paragraph 1, Subparagraph 4 or 5 of the Criminal Procedure Code（刑事訴訟法第二五三條之二第一項第四款或第五款）

KEYWORDS:

principle of proportionality（比例原則）, right to property（財產權）, breach of the administrative law obligations（違反行政法上義務）, disposition of deferred prosecution（緩起訴處分）, expedient disposition of conditional non-prosecution（附條件之便宜不起訴處分）, burden to be performed（應履行之負擔）, administrative penalty（行政罰）, criminal punishment（刑罰）, administrative monetary penalty（罰鍰）, unfavorable effects similar to punishments（類似處罰之不利益效果）, rational relationship（合理關聯性）, *bis in idem*（一行為二罰）, *non bis in idem*（行為不二罰）, ex *post facto principle*（法律不溯及既往原則）, doctrine of Legitimate Expectation（信賴保護原則）, principle of *Gesetzesvorbehalt* (statutory reservation)（法律保留原則）**

HOLDING: Article 26, Paragraph 2 of the Administrative Penalty Act prescribes that "If a final disposition of deferred prosecution is imposed on an offense listed in the preceding paragraph, such offense may be still punished for breach of administrative law obligations". The Ministry of Finance Letter Tai-Tsai-Shui 09600090440 of March 6, 2007 also provides that an offense subject to a final deferred prosecution may still be punished for breach of administrative law obligations. The part regarding the disposition of deferred prosecution where a prosecutor orders a defendant to perform the duties specified in Article 253-2, Paragraph 1, Subparagraphs 4 and 5 of the Code of Criminal Procedure does not violate Article 23 of the Constitution. Nor does it contradict the spirit of people's right to property, as protected by Article 15 of the Constitution.

解釋文：行政罰法第 26 條第 2 項規定：「前項行為如經……緩起訴處分確定……者，得依違反行政法上義務規定裁處之。」及財政部中華民國 96 年 3 月 6 日台財稅字第 09600090440 號函，就緩起訴處分確定後，仍得依違反行政法上義務規定裁處之釋示，其中關於經檢察官命被告履行刑事訴訟法第 253 條之 2 第 1 項第 4 款及第 5 款所定事項之緩起訴處分部分，尚未牴觸憲法第 23 條，與憲法第 15 條保障人民財產權之意旨無違。

Article 45, Paragraph 3 of the same Act prescribes "the provisions of Article 26, Paragraphs 3 to 5 of this Act, as amended on November 8, 2011, also apply to an action taking place before the

同法第 45 條第 3 項規定：「本法中華民國 100 年 11 月 8 日修正之第 26 條第 3 項至第 5 項規定，於修正施行前違反行政法上義務之行為同時觸犯刑事法律，經緩起訴處分確定，應

amendment which violated the administrative law obligations and was subject to an administrative penalty, but yet to be punished, even if such an action also violated the criminal law and was granted a final disposition of Paragraphs 3 and 4 does not violate the *Ex Post Facto* principle or the doctrine of legitimate expectation under the *Rechtsstaat* (rule of law). Nor does it contradict the spirit of people's right to property as protected by Article 15 of the Constitution.

受行政罰之處罰而未經裁處者，亦適用之……。」其中關於適用行政罰法第 26 條第 3 項及第 4 項部分，未牴觸法治國之法律不溯及既往及信賴保護原則，與憲法第 15 條保障人民財產權之意旨無違。

On the petition for uniform interpretation of law: Although Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, does not explicitly include "a final disposition of deferred prosecution" therein, a disposition of deferred prosecution is in fact an expedient disposition of conditional non-prosecution. Therefore, Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, may apply to an offense for which a final disposition of deferred prosecution is granted. By interpretation, such an offense is still punishable for its breach of

統一解釋部分，95 年 2 月 5 日施行之行政罰法第 26 條第 2 項雖未將「緩起訴處分確定」明列其中，惟緩起訴處分實屬附條件之便宜不起訴處分，故經緩起訴處分確定者，解釋上自得適用 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項規定，依違反行政法上義務規定裁處之

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the administrative law obligations.

REASONING: Petitioners of Appendixes 1 to 7 were judges hearing cases of administrative complaints or traffic adjudications against punishments for violations of the Road Traffic Management and Penalty Act (hereafter the "Road Traffic Act"), and of violations of the Employment Service Act in their respective courts. For the original cases, final court decisions and provisions to be interpreted of each Petitioner's application for constitutional interpretation or uniform interpretation, please refer to the attached table, which also includes such information regarding other petitioners mentioned below. In all of these cases, each offender was granted a disposition of deferred prosecution by the prosecutor, and ordered to perform a duty specified in Article 253-2, Paragraph 1, Subparagraph 4 or 5 of the Code of Criminal Procedure (hereafter "the Burden to be Performed"). On top of such obligations, they were further ordered to pay the penalties, after deducting the amount of Burden to be Performed, by the competent authorities

解釋理由書：附表編號 1 至 7 聲請人承審各該法院違反道路交通管理處罰條例（下稱道交條例）聲明異議案件、交通裁決事件及違反就業服務法事件（聲請人聲請解釋憲法及統一解釋之原因案件、確定終局裁判及聲請釋憲客體，詳如附表；下同），因各案件之行為人均經檢察官為緩起訴處分並命履行刑事訴訟法第 253 條之 2 第 1 項第 4 款或第 5 款所定事項（下稱應履行之負擔）後，復遭主管機關依行政罰法第 26 條第 2 項關於經檢察官命被告（犯罪嫌疑人，下同）為應履行之負擔之緩起訴處分部分（下稱系爭規定一）及同法第 45 條第 3 項規定，就關於適用行政罰法第 26 條第 3 項及第 4 項部分（下稱系爭規定二），於扣抵應履行之負擔後，命補繳罰鍰。前開聲請人認系爭規定一及二，牴觸一行為不二罰原則及違反信賴保護原則，依其合理確信有違憲疑義，於裁定停止訴訟程序後，向本院聲請解釋憲法，均核與本院釋字第 371 號、第 572 號及第 590 號解釋所示法官聲請釋憲之要件相符，爰予受理。

according to either of the following two provisions: (1) the provision of Article 26, Paragraph 2 of the Administrative Penalty Act (hereafter the "First Provision at Issue") regarding a disposition of deferred prosecution conditioned on a Burden to be Performed, issued by a prosecutor to a defendant (or a criminal suspect; applicable when appropriate hereinafter) or (2) the provision of Article 45, Paragraph 3 of the Administrative Penalty Act (hereafter the "Second Provision at Issue") in reference to Article 26, Paragraphs 3 and 4 of the same Act. The aforesaid Petitioners claimed the First and Second Provisions at Issue violated the *non bis in idem* principle ("the right not to be punished twice for the same conduct") and the doctrine of legitimate expectation. Holding reasonably firm belief that both Provisions at Issue were in conflict with the Constitution, the petitioners petitioned this Court for constitutional interpretation, after suspending the proceedings *sua sponte*. We found these petitions to be complying with the requirements for the judge-initiated petition for constitutional interpretation, as set forth in our J.Y. Interpretations

Nos. 371, 572 and 590, and granted review.

Petitioner Yu-Zhen He of Case No. 8 in the attached table, regarding her case of administrative complaint against violation of the Road Traffic Act, and Petitioners Chieh-Chiang Lo, Yu-Hua Pang and Shao-Yeh Huang of Case No. 9 in the attached table, regarding their case involving the Private School Act, were ordered by the competent authorities to pay the penalties after deducting the amount of the burdens to be performed, after being granted by the prosecutor a disposition of deferred prosecution conditioned the burdens to be performed. The Petitioners brought administrative complaints and lawsuits to challenge said orders, and all failed. They claimed the laws applied by the court of last resort in the final decisions violated the Constitution, and petitioned for constitutional interpretation. We found their petitions regarding the First and Second Provisions at Issue to be complying with the requirements set forth in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure

附表編號 8 聲請人何裕蓁因違反道交條例聲明異議事件，附表編號 9 聲請人羅喆強、龐玉華及黃紹業因私立學校法事件，經檢察官為緩起訴處分並命為應履行之負擔，復遭主管機關於扣抵應履行之負擔後，命補繳罰鍰。聲請人不服，提起行政救濟遭駁回，認確定終局裁判所適用之法規有違憲疑義，聲請解釋，核其聲請就系爭規定一及二部分，均與司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款所定要件相符，爰予受理。

Act (hereafter the "CCPA"), and granted review.

Petitioner Li-Er Huang of Case No. 10 in the attached table and Petitioner Yu-Feng Huang of Case No. 11 in the attached table, regarding their respective cases of individual income tax, and Petitioner Shi-Wei Lin of Case No. 12 and Petitioner Wan-Hsing Hsu of Case No. 13, regarding their respective cases involving the Income Tax Act, were punished by the competent authorities according to Article 26, Paragraph 2 of the Administrative Penalty Act of February 5, 2006, citing the Ministry of Finance Letter Tai-Tsai-Shui-09600090440 of March 6, 2007 (hereafter the "First Letter at Issue"), even after the prosecutor had given them the dispositions of conditional deferred prosecution and ordered them to pay the Burdens to be Performed. The Petitioners brought administrative complaints and lawsuits to challenge the said orders, and all failed. They claimed the laws applied by the court of last resort in the final decisions violated the Constitution, and petitioned for constitutional interpreta-

附表編號 10 聲請人黃麗兒及附表編號 11 聲請人黃玉鳳因綜合所得稅事件，附表編號 12 聲請人林世惟及附表編號 13 聲請人徐萬興因所得稅法事件，經檢察官為緩起訴處分並命為應履行之負擔後，主管機關又據財政部 96 年 3 月 6 日台財稅字第 09600090440 號函（下稱系爭函一），適用 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項對聲請人裁罰。聲請人不服，經行政救濟遭駁回，認確定終局裁判所適用之法規，有違憲疑義，聲請解釋，核其聲請關於系爭函一部分，均與大審法第 5 條第 1 項第 2 款所定要件相符，爰予受理。

tion. We found their petitions regarding the First Letter at Issue to be complying with the requirements set forth in Article 5, Paragraph 1, Subparagraph 2 of the CCPA, and granted review.

Petitioner Shi-Wei Lin of Case No. 12 in the attached table and Petitioner Wan-Hsing Hsu of Case No. 13 in the attached table, regarding their respective cases involving the Income Tax Act, claimed that the opinions of the final court judgment of last resort, on whether Article 26, Paragraph 2 of the Administrative Penalty Act (taking effect on February 5, 2006) shall be applied to a final deferred prosecution, were different from those of the Taiwan High Court in its 2008 Chiao-Kang-607 Ruling (hereafter the "First Ruling at Issue") on a traffic case, and in its 2009 Chiao-Kang-2209 (hereafter the "Second Ruling at Issue") on a criminal case. Both rulings applied the same Act in the said final judgment. Therefore, they petitioned for uniform interpretation. We found their petitions to have met the requirements set forth in Article 7, Paragraph 1, Subparagraph 2 of the CCPA,

附表編號 12 聲請人林世惟、附表編號 13 聲請人徐萬興因所得稅法事件，認確定終局裁判就緩起訴處分確定，有無 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項之適用所表示之見解，與臺灣高等法院 97 年度交抗字第 607 號交通事件裁定（下稱系爭裁定一）及 98 年度交抗字第 2209 號刑事裁定（下稱系爭裁定二）適用同一法律所表示之見解發生歧異，聲請統一解釋，核其聲請均符合大審法第 7 條第 1 項第 2 款規定，應予受理。

and granted review.

All of the above Petitions involve the same issue whether the competent authorities may further impose penalties on breach of administrative law obligations, after a prosecutor conferred a disposition of conditional deferred prosecution and mandated a defendant to pay the Burden to be Performed. All cases share a commonality. We therefore consolidate all of them and make this Interpretation with the following reasons:

按上述聲請案均涉及檢察官命被告為應履行之負擔而作成緩起訴處分後，主管機關得否再依違反行政法上義務規定處以罰鍰之爭議，有其共通性，爰併案審理，作成本解釋，理由如下：

I. The First Provision at Issue does not violate the principle of proportionality and does not infringe the right to property.

一、系爭規定一未牴觸比例原則，與財產權之保障無違

Article 15 of the Constitution provides that the people's right to property shall be protected. Nonetheless, the state may impose restrictions by law on people's right to property. Such restrictions must be necessary for maintaining social order or for advancing public interests, and do not go beyond the scope of the principle of proportionality under Article 23 of the Constitution (*see* our J.Y. Inter-

憲法第 15 條規定人民之財產權應予保障。然國家為維持社會秩序、增進公共利益之必要，於不違反憲法第 23 條比例原則之範圍內，非不得以法律對人民之財產權予以限制（本院釋字第 596 號及第 672 號解釋參照）。

pretations Nos. 596 and 672.)

Article 26, Paragraphs 1 and 2 of the Administrative Penalty Act provide: "(Paragraph 1) If an action concurrently violates the criminal law and the obligation provision of administrative law, it shall be punished by the criminal law. … (Paragraph 2) If an offense described in the preceding Paragraph is granted a final disposition of non-prosecution or deferred prosecution, or a final judgement of acquittal, exemption from prosecution, lack of jurisdiction, not to be put on trial, exemption from protective measures, exemption from punishment, or suspended sentences, such offense may still be punished for breach of administrative law obligations." The part regarding the disposition of deferred prosecution in Paragraph 2 (*i.e.*, the First Provision at Issue) was amended in 2011 to settle the controversy in practice whether this Paragraph shall be applied to a disposition of deferred prosecution (*see* Legislative Yuan Gazette Vol. 100, No. 70, page 185.).

行政罰法第 26 條第 1 項、第 2 項規定：「（第 1 項）一行為同時觸犯刑事法律及違反行政法上義務規定者，依刑事法律處罰之。……（第 2 項）前項行為如經不起訴處分、緩起訴處分確定或為無罪、免訴、不受理、不付審理、不付保護處分、免刑、緩刑之裁判確定者，得依違反行政法上義務規定裁處之。」其中第 2 項關於緩起訴處分部分（即系爭規定一），係行政罰法於 100 年修正時，為杜實務上關於緩起訴處分是否有該條項適用之爭議所增訂（立法院公報第 100 卷第 70 期第 185 頁以下參照）。

The system of deferred prosecution was created to screen cases, as a complementary measure for the adversarial criminal procedure system. It also serves the purposes of compensating the victim's loss, functioning as a mechanism of individual deterrence, and encouraging the self-correction and social rehabilitation of defendants (*see* Legislative Yuan Gazette, Vol. 91, No. 10, pages 943 & 948f.). Therefore, a disposition of deferred prosecution, in nature, is for a prosecutor, authorized by statutes, to conclude an investigation. It does not function to reaffirm the existence of the power to punish. Instead, it is a procedural measure to prevent the exercise of the power to punish. From this perspective, a disposition of deferred prosecution is a decision not to prosecute a defendant. In this regard, the remedial options for a complainant against such a disposition are the motion for reconsideration and the motion for trial of the case (*see* Articles 256-1 and 258-1 of the Code of Criminal Procedure). So it is in fact an expedient disposition of conditional non-prosecution.

查緩起訴處分之制度係為發揮篩檢案件之功能，以作為刑事訴訟制度採行當事人進行主義應有之配套措施，並基於填補被害人之損害、發揮個別預防功能、鼓勵被告自新及復歸社會等目的而設（立法院公報第 91 卷第 10 期第 943 頁及第 948 頁以下參照）。故緩起訴處分之本質，係法律授權檢察官為終結偵查所為之處分，其作用並非確認刑罰權之存在，反係終止刑罰權實現之程序性處理方式。就此而言，緩起訴處分既屬對被告不予追訴之決定，亦以聲請再議及交付審判程序作為告訴人之救濟手段（刑事訴訟法第 256 條第 1 項、第 258 條之 1 參照），故實係附條件之便宜不起訴處分。

Furthermore, according to Article 253-2, Paragraph 1 of the Code of Criminal Procedure, a prosecutor, when granting a disposition of deferred prosecution, may also require the defendant to comply with or to perform, within a specific period of time, the item(s) specified in the respective subparagraphs. Subparagraph 4 therein provides that [the defendant shall] pay a specific amount of money to the Treasury, a designated non-profit organization or a local government (to the Treasury only, after amendment on June 4, 2014) within a specific period of time; Subparagraph 5 provides that [the defendant shall] perform a specific number of hours of community service to a designated governmental agency, a governmental organization, an incorporated administrative agency, a neighboring community or any other non-profit organization or association (the contents of the preceding two subparagraphs being the Burdens to be Performed).

又檢察官依刑事訴訟法第 253 條之 2 第 1 項規定，作成緩起訴處分時，得命被告於一定期間內遵守或履行該條項各款所規定之事項，其中第 4 款規定，於一定期間內支付一定金額予國庫、公益團體或地方自治團體（103 年 6 月 4 日第 4 款修正為僅向公庫支付）；第 5 款規定向指定之政府機關、政府機構、行政法人、社區或其他符合公益目的之機構或團體提供一定時數之義務勞務（上開二款所規定內容即應履行之負擔）。

The Burden to be Performed is not a type of criminal punishments specified in the criminal law. It is a duty to be per-

應履行之負擔，並非刑法所定之刑罰種類，而係檢察官本於終結偵查之權限，為發揮個別預防功能、鼓勵被告

formed by a defendant, as required by a prosecutor with the defendant's consent and within the prosecutor's capacity to conclude an investigation, after balancing the facts of individual cases and the safeguarding of public interests. It serves the purposes such as functioning as a mechanism of specific deterrence and encouraging the self-correction and social rehabilitation of the defendant. After all, by nature, it is not a criminal punishment imposed by an adjudicating authority in compliance with the criminal procedures. However, by the Burden to be Performed, a defendant is subject to an obligation to make a certain monetary payment or provide labor service. Therefore, his or her property right or personal freedom is restricted. On such people, this Burden constitutes a restriction on their basic rights with unfavorable effects similar to punishments. Therefore, the state, when imposing a penalty under the administrative law on the same action of the people, after imposing a Burden to be Performed, the entirety of the unfavorable effects on the basic rights of the people may not be excessive and must comply with the prin-

自新及復歸社會等目的，審酌個案情節與公共利益之維護，經被告同意後，命其履行之事項，性質上究非審判機關依刑事審判程序所科處之刑罰。惟應履行之負擔，課予被告配合為一定之財產給付或勞務給付，致其財產或人身自由將受拘束，對人民而言，均屬對其基本權之限制，具有類似處罰之不利益效果。從而國家對於人民一行為先後課以應履行之負擔及行政法之罰鍰，其對人民基本權造成不利益之整體效果，亦不應過度，以符比例原則之要求。

ciple of proportionality.

The First Provision at Issue authorizes [a competent authority] to impose a penalty for breach of administrative law obligations, even after a defendant is granted a disposition of conditional deferred prosecution with a Burden to be Performed. Such authorization is based on the legislature's considerations that the purpose and nature of a Burden to be Performed are different from those of a criminal punishment. Therefore, without the imposition of an administrative penalty, the level of culpability on a wrongdoing subject to the administrative penalty would be insufficient. In order to restore the legal order and to promote public interests, the further imposition of administrative penalty is warranted with such legitimate purposes. The measures to impose an administrative penalty, on top of the Burden to be Performed, are rationally related to the achievement of its purposes, since the entirety of its unfavorable effects on the people is not obviously out-of-proportion and not excessive. So it does not violate the principle

系爭規定一允許作成緩起訴處分並命被告履行負擔後，仍得依違反行政法上義務規定另裁處罰鍰，係立法者考量應履行之負擔，其目的及性質與刑罰不同，如逕予排除行政罰鍰之裁處，對應科處罰鍰之違法行為言，其應受責難之評價即有不足，為重建法治秩序及促進公共利益，允許另得裁處罰鍰，其目的洵屬正當。其所採另得裁處罰鍰之手段，連同應履行之負擔，就整體效果而言，對人民造成之不利益，尚非顯失均衡之過度評價，與目的間具合理關聯性，並未違反比例原則，亦不涉及一行為二罰之問題。尤以立法者為減輕對人民財產所造成之整體不利益效果，以避免過度負擔，於 100 年修正行政罰法時，同時增訂第 26 條第 3 項及第 4 項，規定應履行之負擔得扣抵罰鍰，系爭規定一更與憲法第 15 條保障人民財產權之意旨無違。

of proportionality or trigger the question of bis in idem. Furthermore, in order to alleviate the overall negative effects on people's property so as to prevent people from being overburdened, the legislature amended Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act in 2011 to allow the Burden to be Performed to be deducted from an administrative penalty. Hence the First Provision at Issue does not violate the spirit of the people's right to property, as protected by Article 15 of the Constitution.

To avoid a defendant's misunderstanding about the legal effects of a Burden to be Performed in a disposition of deferred prosecution, when a prosecutor plans to confer conditional disposition of deferred prosecution with the Burden to be Performed and asks for the defendant's consent, the prosecutor shall explain to the defendant that a competent administrative agency may still punish the same action according to law if it constitutes a breach of administrative law obligations. It is hereby pointed out.

為避免被告對緩起訴處分應履行負擔效果之誤解，檢察官擬作成應履行負擔之緩起訴處分，而徵求被告同意時，應併向被告說明，該同一行為如違反行政法上義務規定，行政機關仍可能依法裁處，併此指明。

II. The Second Provision at Issue does not violate the *Ex Post Facto* principle or the doctrine of legitimate expectation.

二、系爭規定二未牴觸法律不溯及既往及信賴保護原則

The principle of *Rechtsstaat* (Rule of Law) is a fundamental principle of the Constitution. It prioritizes the protection of people's rights, the stability of legal order, and the compliance with the doctrine of legitimate expectation. Therefore, whenever there is a change in statute, unless the statute specifically requires a retroactive application of such a change, the change shall in principle take effect prospectively from the promulgation date (or the effective date) (*see* J.Y. Interpretations Nos.574 and No.629). Also, if the law specifically requires a retroactive application and such a retroactive application will benefit the people, it will not violate the doctrine of legitimate expectation. Nor will it be prohibited by the *Ex Post Facto* principle.

法治國原則為憲法之基本原則，首重人民權利之維護、法秩序之安定及信賴保護原則之遵守。因此，法律一旦發生變動，除法律有溯及適用之特別規定者外，原則上係自法律公布生效日起，向將來發生效力（本院釋字第 574 號及第 629 號解釋參照）。又如法律有溯及適用之特別規定，且溯及適用之結果有利於人民者，即無違信賴保護原則，非法律不溯及既往原則所禁止。

Article 45, Paragraph 3 of the Administrative Penalty Act prescribes: "the stipulations of Article 26, Paragraphs 3 to

行政罰法第 45 條第 3 項規定：「本法中華民國 100 年 11 月 8 日修正之第 26 條第 3 項至第 5 項規定，於修

5 of this Act, as amended on November 8, 2011, also apply to an action which took place before the amendment, was not only in breach of an administrative law obligation but also concurrently violated the criminal law, for which violation a disposition of deferred prosecution has been rendered but an administrative penalty is yet to be imposed….” The Second Provision at Issue requires a retroactive application of Article 26, Paragraphs 3 to 5 of the Administrative Penalty Act, as amended on November 8, 2011. Therefore, the amendment applies also to an offense that took place before the 2011 Amendment of the Act but is yet to be punished. This is a statutory provision specifically requiring a retroactive application. Further, the stipulations in Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act that allows a Burden to be Performed to be deducted from a penalty is to lessen the disadvantage on people’s property and thus is hereby regarded as a new rule beneficial to the actor. There is surely no violation of the *Ex Post Facto* principle or the doctrine of legitimate expectation.

正施行前違反行政法上義務之行為同時觸犯刑事法律，經緩起訴處分確定，應受行政罰之處罰而未經裁處者，亦適用之……。」查系爭規定二係將 100 年 11 月 8 日修正增訂之行政罰法第 26 條第 3 項及第 4 項規定之效力，溯及於修正施行前，應受行政罰之行為而尚未裁處者，亦有適用，屬法律有溯及適用之特別規定。又查行政罰法第 26 條第 3 項及第 4 項，有關應履行之負擔得扣抵罰鍰之規定，減少人民財產上之不利益，核屬有利於行為人之新規定，自無違法律不溯及既往原則及信賴保護原則。

Some Petitioners argue that a certain number of district courts have been expressing consistent opinions within their respective jurisdictions that no administrative penalty may be imposed on top of a disposition of conditional deferred prosecution. Such opinions shall suffice to constitute the basis of expectation to be relied on by the people in their respective jurisdiction. However, even if the opinions of courts in some jurisdictions appear to be consistent regarding the application of a specific statute, such opinions are not binding on other judges, according to the principle of judge's decisional independence. Therefore, this can hardly be the basis of expectation to be relied on for claiming legitimate expectation. It is hereby noted as well.

至部分聲請人主張若干地方法院關於緩起訴處分附帶履行負擔後不得再處罰鍰，已形成該院轄區內一致之見解，足為該院轄區內人民信賴基礎等語，按部分地區之法院，適用特定法規所表示之見解，縱有持續一致之情形，惟基於法官獨立審判原則，該見解對其他法官並無拘束力，尚難以之為信賴基礎，主張信賴保護，併予敘明。

III. The First Letter at Issue does not violate the Principle of *Gesetzesvorbehalt* (Statutory Reservation).

三、系爭函一與法律保留原則無違

The First Letter at Issue provides: "Subject: When a single action is not only in breach of tax law obligations but also concurrently violates the criminal law, for

系爭函一謂：「主旨：關於一行為同時觸犯刑事法律及違反稅法上義務規定，經檢察官依刑事訴訟法第 253 條之 1 為緩起訴處分後，稅捐稽徵機關得

which violation a disposition of deferred prosecution has been conferred by a prosecutor according to Article 253-1 of the Criminal Procedure Code, may the taxation authority still impose an administrative penalty on such action for its breach of the tax law obligations? Explanation: 2. On this controversy, the Ministry of Justice has been consulted and responded with Ministry of Justice Letter Fa-Lu-Chueh-0960005671 of February 16, 2007 (hereafter as Second Letter at Issue). It holds: 'a deferred prosecution is a disposition of conditional non-prosecution, namely, a type of non-prosecution. This is evident in the stipulation of Article 256 of the Criminal Procedure Code. Since there is no prosecution, it should be regarded as non-prosecution. The instruction given to and the duty imposed on a defendant by a prosecutor according to Article 253-2, Paragraph 1, Subparagraphs 4 and 5 of the Criminal Procedure Code are a type of special measure and not a criminal punishment. Therefore, a criminal case shall be considered non-prosecuted and final, after a prosecutor confers a final disposition of deferred prosecution. According to

否就該違反稅法上義務再處以行政罰疑義乙案。說明：二、案經洽據法務部96年2月16日法律決字第0960005671號函（下稱系爭函二）意見略以：『緩起訴者乃附條件的不起訴處分，亦即是不起訴的一種，此觀諸刑事訴訟法第256條規定自明，既為不起訴即依不起訴處理。檢察官為緩起訴處分時依刑事訴訟法第253條之2第1項規定對被告所為之指示及課予之負擔，係一種特殊的處遇措施，並非刑罰。因此，刑事案件經檢察官為緩起訴處分確定後，宜視同不起訴處分確定，依行政罰法第26條第2項規定，得依違反行政法上義務規定裁處之。』」關於經檢察官命被告履行刑事訴訟法第253條之2第1項第4款及第5款所定事項之緩起訴處分部分，按緩起訴處分實屬附條件之便宜不起訴處分，而其所附之應履行負擔，雖具有類似處罰之不利益效果，但並非經刑事審判程序依刑事實體法律所為之刑罰，如逕予排除罰鍰之裁處，對應科處罰鍰之違法行為之評價即有不足，為重建法治秩序與促進公共利益，得依違反行政法上義務規定另裁處罰鍰，俾對行為人之一行為進行充分評價。是上開函乃稅捐主管機關基於法定職權洽據法務部意見，說明95年2月5日施行之行

Article 26, Paragraph 2 of the Administrative Penalty Act, such offense may be punished as a breach of the administrative law obligations.' On the part regarding a disposition of deferred prosecution where a prosecutor requires the defendant to perform the burdens specified in Article 253-2, Paragraph 1, Subparagraphs 4 and 5 of the Code of Criminal Procedure, a disposition of deferred prosecution is in fact an expedient disposition of conditional non-prosecution. The Burden to be Performed carries unfavorable effects similar to punishments, but it is not a criminal punishment imposed by an adjudicating authority according to the substantive criminal laws in compliance with the criminal procedures. Without the imposition of an administrative penalty, the level of culpability on a wrongdoing subject to the administrative penalty would be insufficient. In order to restore the legal order and to promote public interests, the further imposition of administrative penalty is warranted so as to fully evaluate the entire action of an actor. Thus the above Letter is an explanation given by the taxation authority, based on its statutory au-

政罰法第 26 條第 2 項規定之適用原則，合於一般法律解釋方法，並未增加法律所無之限制或負擔，與法律保留原則無違。

thority and after consulting the Ministry of Justice, on the application guideline of Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006. Such explanation is compatible with the general doctrines of statutory construction, and does not create restrictions or burdens beyond the statutory scheme. It does not violate the Principle of *Gesetzesvorbehalt* (Statutory Reservation).

IV. By interpretation, Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, includes a disposition of deferred prosecution.

四、95 年 2 月 5 日施行之行政罰法第 26 條第 2 項解釋上包括緩起訴處分

On the part of Uniform Interpretation: Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, provides: "If an offense described in the preceding Paragraph is granted a final disposition of non-prosecution, or a final judgement of acquittal, exemption from prosecution, lack of jurisdiction, not to be put on trial, such offense may still be punished for

有關統一解釋部分，95 年 2 月 5 日施行之行政罰法第 26 條第 2 項規定：「前項行為如經不起訴處分或為無罪、免訴、不受理、不付審理之裁判確定者，得依違反行政法上義務規定裁處之。」並未明文規定「緩起訴處分確定」是否有該規定之適用。下列裁判就此確有見解歧異：（一）附表編號 12 及 13 之確定終局裁判認為緩起訴處分，與不起訴處分之救濟途徑均係聲請再議，且

breach of administrative law obligations." It does not explicitly indicate whether this provision will apply to a "final disposition of deferred prosecution". The following court decisions did have different opinions on this issue: (I) the final judgements by the courts of last resort listed in Tables 12 and 13 held that the remedial option against a disposition of deferred prosecution be a motion for reconsideration, which also applies to a disposition of non-prosecution. Both dispositions prohibit a case to be prosecuted twice. It is evident that the nature of a disposition of deferred prosecution is similar to that of a disposition of conditional non-prosecution. Without the defendant's consent, the prosecution cannot enforce a Burden to be Performed. So a Burden to be Performed shall not be considered as criminal punishment. Therefore, a final disposition of deferred prosecution shall be regarded as a final disposition of non-prosecution and the offense may be punished as a breach of the administrative law obligations; (II) the First and Second Rulings at Issue, on the other hand, held that a disposition of deferred prosecution is basically

均發生禁止再行起訴之效力，足見緩起訴處分實具有附條件不起訴處分之性質。應履行之負擔非得被告同意，檢察官亦無從強制其負擔，尤不能認具刑罰之性質。故緩起訴處分確定後，應視同不起訴處分確定，得依違反行政法上義務規定裁罰之。（二）系爭裁定一及二則認為緩起訴處分基本上係認被告有犯罪嫌疑而暫緩起訴，此與不起訴處分係因犯罪嫌疑不足而作成，顯有不同。應履行之負擔係基於刑事法律之處罰，仍有財產減少及負擔一定義務之影響，性質上具實質制裁之效果。故緩起訴處分自不應適用 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項。

a withheld prosecution believing that the defendant is guilty. It is different from a disposition of non-prosecution, which is made for lacking sufficient evidences of guilt. These two dispositions are obviously different. A Burden to be Performed is a punishment based on the criminal law. It infringes [the people's] property and imposes a certain duty [on the people]. It, in fact, has the effect of a substantive punishment. Therefore, Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, shall not apply to a disposition of deferred prosecution.

This Court finds that, although Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, did not explicitly include a "final disposition of deferred prosecution" in its provision, a Burden to be Performed only carries some unfavorable effects similar to punishments. It, in itself, is not a criminal punishment. Hence, it is in fact an expedient disposition of conditional non-prosecution. Therefore, Article 26, Paragraph 2 of the Administrative Penalty

查 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項雖未將「緩起訴處分確定」明列於條文中，惟應履行之負擔既僅具有類似處罰之不利益效果，並非刑罰，緩起訴處分實屬附條件之便宜不起訴處分，故經緩起訴處分確定者，解釋上自得適用 95 年 2 月 5 日施行之行政罰法第 26 條第 2 項規定，依違反行政法上義務規定裁處之。

Act, which took effect on February 5, 2006, by interpretation, may be applied to an action being granted a final disposition of deferred prosecution and punish such action for breach of the administrative law obligations.

I. Petitions Dismissed

On the petitions, filed by the Petitioners listed in Tables 1, 3 and 4, for interpretation regarding the final judgements of suspended sentences in Article 26, Paragraph 2 of the Administrative Penalty Act, this Court finds that the original cases of these Petitions are cases of drunk driving, granted dispositions of deferred prosecution and further punished by administrative penalties. They did not involve any question of suspended sentences. On the petitions, filed by the Petitioners listed in Tables 1 to 7, for interpretation of Article 45, Paragraph 3 of the Administrative Penalty Act in its reference to Article 26, Paragraph 5 of the same Act, this Court finds that the original

五、不受理部分

附表編號 1、3 及 4 聲請人聲請解釋行政罰法第 26 條第 2 項中關於緩刑之裁判確定部分，經查前開聲請案之原因案件，均屬人民之酒駕行為經緩起訴處分再受行政罰之情形，並未涉及緩刑之問題；又附表編號 1 至 7 聲請人聲請解釋行政罰法第 45 條第 3 項關於適用行政罰法第 26 條第 5 項部分，經查前開聲請案之原因案件，並無緩起訴處分或緩刑裁判確定後復經撤銷之情事，故該等部分並非前開聲請人審理原因案件應適用之規定，核與本院釋字第 371 號、第 572 號及第 590 號解釋意旨不符；另附表編號 1 聲請人以健全法官聲請釋憲制度為由，主張應公開法官聲請書全文，並開放其他法官加入聲請或表示其他意見，據以聲請補充解釋本院釋字第

cases of these Petitions did not involve any final disposition of deferred prosecution or any final judgement of suspended sentences cancelled later. So the said provisions were not the applicable laws to be applied by the Petitioner in their adjudication of the original cases. These petitions do not meet the requirements as set forth in our J.Y. Interpretations Nos. 371, 572 and 590. On the petition, filed by the Petitioner listed in Table 1, for a supplementary interpretation to our J.Y. Interpretation No. 371 to the effect that the full texts of all petitions filed by judges shall be made public and any other judge shall be allowed to submit joint-petitions or comments in order to strengthen the system of judge-initiated petitions for constitutional interpretation, this Court finds that the wording of J.Y. Interpretation No. 371 is not ambiguous, nor does it miss any reasoning. There is no need to render a supplementary interpretation. All of the above Petitions are hereby dismissed.

371 號解釋部分，查釋字第 371 號解釋並無文字晦澀或論證遺漏之情形，應無補充解釋之必要，俱應不受理。

On the petitions, filed by the Petitioners listed in Tables 3 to 6, challenging the constitutionality of Article 35,

附表編號 3 至 6 聲請人指摘道交條例第 35 條第 8 項規定違憲部分，經查前開聲請案之原因案件，均屬人民之

Paragraph 8 of the Road Traffic Act, this Court finds that the original cases of these Petitions were all cases of drunk driving granted conditional dispositions of deferred prosecution with a Burden to be Performed by a prosecutor. They do not involve any fine sentenced by a final judgment according to Paragraph 8 of the same Article: "[should the driver …] receives a fine by a final judgement and the amount of fine is lower than the minimum administrative penalty as provided for by Article 92, Paragraph 4 of this Act, he/she shall still pay the difference to match the minimum administrative penalty". So Article 35, Paragraph 8 of the Road Traffic Act is not the applicable law to be applied by the Petitioners in the adjudication of the respective original cases. On the petitions, filed by the Petitioners listed in Tables 3 to 7 challenging the constitutionality of Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act, which took effect on November 23, 2011, this Court finds that such Petitions did not present concrete reasons to illustrate their firm belief the statute in question is objectively unconstitutional. Therefore,

酒駕行為經檢察官緩起訴處分而命為應履行之負擔，並無同條第 8 項規定：「經裁判確定處以罰金低於本條例第 92 條第 4 項所定最低罰鍰基準規定者，應依本條例裁決繳納不足最低罰鍰之部分」之經裁判確定處以罰金之情形，故道交條例第 35 條第 8 項非前開聲請人審理原因案件應適用之規定。另附表編號 3 至 7 聲請人指摘 100 年 11 月 23 日增訂施行之行政罰法第 26 條第 3 項及第 4 項規定違憲部分，核其所陳，並未提出客觀上形成確信法律為違憲之具體理由。是此等部分，均與本院釋字第 371 號、第 572 號及第 590 號解釋所闡釋法官聲請解釋憲法之要件不符，俱應不受理。

the Petitions in this part do not meet the requirements for judge's petition for constitutional interpretation, as specified in J.Y. Interpretation Nos. 371, 572 and 590, and are hereby dismissed.

On the petition, filed by the Petitioner listed in Table 8, challenging the constitutionality of Article 26 of the Administrative Penalty Act and the remaining provisions of Article 45, Paragraph 3 of the same Act excluding the First and Second Provisions at Issue, the petition, filed by the Petitioner listed in Table 10, challenging the constitutionality of Article 17, Paragraph 1, Subparagraph 2, Clause 2, Subclause 1 and Article 110, Paragraph 1 of the Income Tax Act, and the petition, filed by the Petitioner listed in Table 11, challenging the constitutionality of the Ministry of Finance Order Tai-Tsai-Shui-0920452464 of June 3, 2003 (hereafter as the "Order at Issue"), this Court finds that none of them presented concrete reasons on how these preceding regulations violate the Constitution objectively. Nor do they explain how the constitutional rights are infringed thereby. On the

附表編號 8 聲請人指摘行政罰法第 26 條及同法第 45 條第 3 項除系爭規定一及二以外之規定違憲部分，附表編號 10 聲請人指摘所得稅法第 17 條第 1 項第 2 款第 2 目第 1 小目、第 110 條第 1 項規定違憲部分，及附表編號 11 聲請人指摘財政部 92 年 6 月 3 日台財稅字第 0920452464 號令（下稱系爭令）違憲部分，均未具體敘明前開規定於客觀上究有何牴觸憲法之處，而使其憲法上權利因此受有如何之侵害。另附表編號 12 及 13 聲請人指摘系爭函二違憲部分，核該函內容係法務部對財政部洽詢法律問題所為之函復，非屬法律或命令，不得執以聲請解釋憲法。至附表編號 12 聲請人指摘最高行政法院 102 年度 1 月份第 1 次庭長法官聯席會議決議（下稱系爭決議）違憲部分，聲請人主張稅捐稽徵法第 48 條之 3 屬行政罰法之特別規定，系爭決議卻優先適用普通規定之行政罰法，實有違法律優位原則，而生牴觸憲法第 172 條之疑義等

petition, filed by the Petitioner listed in Tables 12 and 13, challenging the constitutionality of the Second Letter at Issue, this Court finds that this letter was a response from the Ministry of Justice to the legal question raised by the Ministry of Finance. It is neither a statute nor an order. It is not permissible to file a petition for constitutional interpretation, by citing such Letter. Also, the Petitioner listed in Table 12 filed a petition and challenged the constitutionality of the Supreme Administrative Court's First Resolution of the Joint Meeting of Chief Judges and Judges (done in January 2013) (hereafter as the "Resolution at Issue"). In this petition, the Petitioner claimed that, in spite that Article 48-3 of the Tax Collection Act was a special law to the Administrative Penalty Act, the Resolution at Issue wrongfully gave the Administrative Penalty Act, being the general law, the precedence over the special law, and applied it. Such application violated the *Vorrang des Gesetzes* Principle (the Principle of the Superior Order of Statutes), and therefor raised a doubt that Article 172 of the Constitution was violated. This Court finds

語，核其所陳，僅係法律適用之爭執，尚難謂已針對系爭決議如何違憲，為客觀具體之敘明。是上開聲請，核與大審法第 5 條第 1 項第 2 款規定不符，依同條第 3 項規定，俱應不受理。

that the arguments in their Petitions only raised disagreements on the application of statutes, and did not present objective and concrete reasons on how the Resolution at Issue violated the Constitution. Therefore, none of the above Petitions meets the requirements of Article 5, Paragraph 1, Subparagraph 2 of the CCPA. They are hereby dismissed according to Paragraph 3 of the same Article.

Tables

I. Petitions for Constitutional Interpretations

Number	Petitioners	Original Cases or Final Judgments by the Court of Last Resort	Provisions at Issue	Scope of Review
1.	Judge of the KUAI Unit, Taiwan Miaoli District Court	Taiwan Miaoli District Court 2011 Chiiao-Sheng- 403, 404 and 2012 Chiao-Sheng-8, 10, 16, 20, 22, 24, 28, 31, 32, 34, 39, 40, 44, 46, 48, 51, 52, 54, 61, 63, 67, 73, 74, 76, 77, 80, 81, 83, 91, 100, 124, 158, 162, 164, 169 and 175Cases of contestation for violations of the Road Traffic Management and Penalty Act (38 cases in total)	(1) The parts regarding deferred prosecution and suspended sentences in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45 Paragraph 3 of the Administrative Penalty Act (3) A supplementary interpretation to Interpretation No.371	First and Second Provisions at Issue
2.	Judge of the HSIEN Unit, Court of Administrative Litigation, Taiwan Miaoli District Court	Taiwan Miaoli District Court 2012 Chiao-13, 2013 Chiao-35 and 51 Cases of traffic adjudication (3 cases in total)	(1) The part regarding deferred prosecution in Article 26 Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act	First and Second Provisions at Issue

3.	Judge of the JOU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court	Taiwan Taoyuan District Court 2012 Chiao-11, 24,134, 137, 2013 Chiao-56, 88, 121, 175, and 2015 Chiao-6 Cases of traffic adjudication (9 cases in total)	(1) The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act (3) Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act (4) Article 35, Paragraph 8 of the Road Traffic Act	First and Second Provisions at Issue
4.	Judge of the CHAO Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court	Taiwan Taoyuan District Court 2012 Chiao-42, 2013 Chiao-7, 20, 55, 245, and 2014 Chiao-77 Cases of traffic adjudication (6 cases in total)	(1) The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act (3) Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act (4) Article 35, Paragraph 8 of the Road Traffic Act	First and Second Provisions at Issue

5.	Judge of the YU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court	Taiwan Taoyuan District Court 2012 Chiao-94 Case of traffic adjudication	(1) The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act (3) Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act (4) Article 35, Paragraph 8 of the Road Traffic Act	First and Second Provisions at Issue
6.	Judge of the YU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court	Taiwan Taoyuan District Court 2012 Chiao-102, 2013 Chiao-111, 226, and 2014 Chiao-117 Cases of traffic adjudication (4 cases in total)	(1) The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act (3) Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act (4) Article 35 Paragraph 8 of the Road Traffic Act	First and Second Provisions at Issue

7.	Judge of the YU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court	Taiwan Taoyuan District Court 2014 Chian-19 Case of violations of the Employment Service Act	(1) The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act (3) Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act	First and Second Provisions at Issue
8.	Yu-Zhen He	Taiwan High Court Taichung Branch Court 2012 Jiao-Kang-418 Ruling	(1) Article 26 of the Administrative Penalty Act (2) Article 45, Paragraph 3 of the Administrative Penalty Act	First and Second Provisions at Issue
9.	Chieh-Chiang Lo, Yu-Hua Pang and Shao-Yeh Huang	Supreme Administrative Court 2017 Tsai-377 Ruling, Taipei High Administrative Court 2016 Su-1116 Decision	The part regarding deferred prosecution in Article 26, Paragraph 2 of the Administrative Penalty Act	First Provision at Issue
10.	Li-Er Huang	Supreme Administrative Court 2009 Tsai-2506 Ruling, Taipei High Administrative Court 2009 Su-37 Decision	(1), Article 17, Paragraph 1, Subparagraph 2, Clause 2, Subclause 1 of the Income Tax Act	First Letter at Issue

10.			(2)Article 110, Paragraph 1 of the Income Tax Act (3)First Letter at Issue	
11.	Yu-Feng Huang of Appendix 11	Supreme Administrative Court 2013 Tsai-903 Ruling, Taipei High Administrative Court 2012 Su-1778 Decision	(1)Order at Issue (2)First Letter at Issue	First Letter at Issue
12.	Shi-Wei Lin	Supreme Administrative Court 2011 Pan-1967 Decision, Taipei High Administrative Court 2011 Su-409 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue
		Supreme Administrative Court 2011 Pan-2020 Decision, Taipei High Administrative Court 2011 Su-408 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue
		Supreme Administrative Court 2013 Pan-93 Decision, Taipei High Administrative Court 2011 Su-2046 Decision	(1)First Letter at Issue (2)Second Letter at Issue (3)Resolution at Issue	First Letter at Issue
13.	Petitioner Wan-Hsing Hsu	Supreme Administrative Court 2011 Tsai-2147 Ruling, Taipei High Administrative Court 2011 Su-387 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue

13		Supreme Administrative Court 2011 Pan-1968 Decision, Taipei High Administrative Court 2011 Su-384 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue
		Supreme Administrative Court 2012 Pan-400 Decision, Taipei High Administrative Court 2011 Su-1747 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue
		Supreme Administrative Court 2012 Tsai-1753 Ruling, Taipei High Administrative Court 2011 Su-1748 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue
		Supreme Administrative Court 2012 Tsai-2240 Ruling, Taipei High Administrative Court 2011 Su-1749 Decision	(1)First Letter at Issue (2)Second Letter at Issue	First Letter at Issue

II. Petitions for Uniform Interpretation

The Petitioners of Appendixes 12 and 13 above considered that the judgments such as Supreme Administrative Court 2011 Pan-1967 Decision etc. (see the above chart for all relevant judgements) and the First and Second Rulings at Issue have adopted diverse viewpoints on the application of one single law and therefore petitioned for a uniform interpretation.

附表

一、聲請憲法解釋部分

編號	聲請人	原因案件或確定終局裁判	聲請釋憲客體	受理範圍
1.	臺灣苗栗地方法院快股法官	臺灣苗栗地方法院 100 年度交聲字第 403 號、第 404 號及 101 年度交聲字第 8 號、第 10 號、第 16 號、第 20 號、第 22 號、第 24 號、第 28 號、第 31 號、第 32 號、第 34 號、第 39 號、第 40 號、第 44 號、第 46 號、第 48 號、第 51 號、第 52 號、第 54 號、第 61 號、第 63 號、第 67 號、第 73 號、第 74 號、第 76 號、第 77 號、第 80 號、第 81 號、第 83 號、第 91 號、第 100 號、第 124 號、第 158 號、第 162 號、第 164 號、第 169 號、第 175 號等違反道路交通管理處罰條例聲明異議案件（共計 38 件）	（1）行政罰法第 26 條第 2 項關於緩起訴及緩刑部分 （2）行政罰法第 45 條第 3 項 （3）釋字第 371 號解釋之補充解釋	系爭規定一及二
2.	臺灣苗栗地方法院行政訴訟庭賢股法官	臺灣苗栗地方法院 101 年度交字第 13 號、102 年度交字第 35 號及第 51 號等交通裁決事件（共計 3 件）	（1）行政罰法第 26 條第 2 項關於緩起訴部分 （2）行政罰法第 45 條第 3 項	系爭規定一及二

3.	臺灣桃園地方法院行政訴訟庭柔股法官	臺灣桃園地方法院 101 年度交字第 11 號、第 24 號、第 134 號、第 137 號，102 年度交字第 56 號、第 88 號、第 121 號、第 175 號及 104 年度交字第 6 號等交通裁決事件（共計 9 件）	（1）行政罰法第 26 條第 2 項關於緩起訴及緩刑部分 （2）行政罰法第 45 條第 3 項 （3）行政罰法第 26 條第 3 項、第 4 項 （4）道交條例第 35 條第 8 項	系爭規定一及二
4.	臺灣桃園地方法院行政訴訟庭昭股法官	臺灣桃園地方法院 101 年度交字第 42 號、102 年度交字第 7 號、第 20 號、第 55 號、第 245 號及 103 年度交字第 77 號等交通裁決事件（共計 6 件）	（1）行政罰法第 26 條第 2 項關於緩起訴及緩刑部分 （2）行政罰法第 45 條第 3 項 （3）行政罰法第 26 條第 3 項、第 4 項 （4）道交條例第 35 條第 8 項	系爭規定一及二
5.	臺灣桃園地方法院行政訴訟庭語股法官	臺灣桃園地方法院 101 年度交字第 94 號交通裁決事件	（1）行政罰法第 26 條第 2 項關於緩起訴部分 （2）行政罰法第 45 條第 3 項 （3）行政罰法第 26 條第 3 項、第 4 項 （4）道交條例第 35 條第 8 項	系爭規定一及二

6.	臺灣桃園地方法院行政訴訟庭語股法官	臺灣桃園地方法院 101 年度交字第 102 號、102 年度交字第 111 號、第 226 號、103 年度交字第 117 號等交通裁決事件（共計 4 件）	（1）行政罰法第 26 條第 2 項關於緩起訴部分 （2）行政罰法第 45 條第 3 項 （3）行政罰法第 26 條第 3 項、第 4 項 （4）道交條例第 35 條第 8 項	系爭規定一及二
7.	臺灣桃園地方法院行政訴訟庭語股法官	臺灣桃園地方法院 103 年度簡字第 19 號違反就業服務法事件	（1）行政罰法第 26 條第 2 項關於緩起訴部分 （2）行政罰法第 45 條第 3 項 （3）行政罰法第 26 條第 3 項、第 4 項	系爭規定一及二
8.	何裕蓁	臺灣高等法院臺中分院 101 年度交抗字第 418 號裁定	（1）行政罰法第 26 條 （2）行政罰法第 45 條第 3 項	系爭規定一及二
9.	羅喆強、龐玉華、黃紹業	最高行政法院 106 年度裁字第 377 號裁定、臺北高等行政法院 105 年度訴字第 1116 號判決	行政罰法第 26 條第 2 項關於緩起訴部分	系爭規定一
10.	黃麗兒	最高行政法院 98 年度裁字第 2506 號裁定、臺北高等行政法院 98 年度訴字第 397 號判決	（1）所得稅法第 17 條第 1 項第 2 款第 2 目第 1 小目 （2）所得稅法第 110 條第 1 項 （3）系爭函一	系爭函一

11.	黃玉鳳	最高行政法院102年度裁字第903號裁定、臺北高等行政法院101年度訴字第1778號判決	（1）系爭令 （2）系爭函一	系爭函一
12.	林世惟	最高行政法院100年度判字第1967號判決、臺北高等行政法院100年度訴字第409號判決	（1）系爭函一 （2）系爭函二	系爭函一
		最高行政法院100年度判字第2020號判決、臺北高等行政法院100年度訴字第408號判決	（1）系爭函一 （2）系爭函二	系爭函一
		最高行政法院102年度判字第93號判決、臺北高等行政法院100年度訴字第2046號判決	（1）系爭函一 （2）系爭函二 （3）系爭決議	系爭函一
13.	徐萬興	最高行政法院100年度裁字第2147號裁定、臺北高等行政法院100年度訴字第387號判決	（1）系爭函一 （2）系爭函二	系爭函一
		最高行政法院100年度判字第1968號判決、臺北高等行政法院100年度訴字第384號判決	（1）系爭函一 （2）系爭函二	系爭函一
		最高行政法院101年度判字第400號判決、臺北高等行政法院100年	（1）系爭函一 （2）系爭函二	系爭函一

		度訴字第 1747 號判決		
		最高行政法院 101 年度裁字第 1753 號裁定、臺北高等行政法院 100 年度訴字第 1748 號判決	（1）系爭函一 （2）系爭函二	系爭函一
		最高行政法院 101 年度裁字第 2240 號裁定、臺北高等行政法院 100 年度訴字第 1749 號判決	（1）系爭函一 （2）系爭函二	系爭函一

二、聲請統一解釋部分

上述編號 12 及 13 聲請人認最高行政法院 100 年度判字第 1967 號等裁判（相關裁判同前）與系爭裁定一及二，就適用同一法律所表示之見解發生歧異，均另聲請統一解釋。

Justice Chiung-Wen CHANG filed an opinion concurring in part.

Justice His-Chun HUANG filed a concurring opinion.

Justice Ming-Cheng TSAI filed a concurring opinion.

Justice Horng-Shya HUANG filed an opinion dissenting in part and concurring in part.

Justice Beyue SU CHEN filed an opinion dissenting in part.

Justice Chang-Fa LO filed a dissenting opinion.

Justice Dennis Te-Chung TANG filed a dissenting opinion.

Justice Jui-Ming HUANG filed a dissenting opinion.

Justice Sheng-Lin JAN filed a dissenting opinion.

Justice Dennis Te-Chung TANG later filed a revised dissenting opinion on August 1, 2017.

本號解釋張大法官瓊文提出之部分協同意見書；黃大法官璽君提出之協同意見書；蔡大法官明誠提出之協同意見書；黃大法官虹霞提出之部分不同部分協同意見書；陳大法官碧玉提出之部分不同意見書；羅大法官昌發提出之不同意見書；湯大法官德宗提出之不同意見書；黃大法官瑞明提出之不同意見書；詹大法官森林提出之不同意見書；湯大法官德宗提出更正之不同意見書。

J. Y. Interpretation No.752（July 28, 2017）*

【Whether Cases Which Are Pronounced Guilty for the First Time in the Court of Second Instance Are Appealable to the Court of Third Instance】

ISSUE: Cases which are listed under the Code of Criminal Procedure, Article 376, Clause 1 and 2:

1. Is it unconstitutional for a case to be not appealable to the court of third instance if the case is first pronounced guilty in the court of first instance but is later overruled on appeal or where the judgement is revoked and the accused is pronounced guilty in the court of second instance ?
2. Is it unconstitutional for a case to be not appealable to the court of third instance if the case is first pronounced not guilty in the court of first instance but is later overruled on appeal or where the judgement is revoked and the accused is pronounced guilty in the court of second instance ?

RELEVANT LAWS:

Article 7 and Article 16 of the Constitution（憲法第七條及第十六條）；J.Y. Interpretations Nos. 396, 418, 442, 512, 574, 639, 653, 665（司法院釋字第三九六號、第四一八 號、第四四二號、第五一二號、第五七四號、第六三九號、第六五三號及第六六五號解釋）；The Code of Criminal Pro-

* Translated by Chuan-Ju CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

cedure, Article 344, Section 4, Article 345, Article 346, Article 376, Clause 1 and 2, Article 420 and the following articles, Article 441 and the following articles（刑事訴訟法第三四四條第四項、第三四五條、第三四六條、第三七六條第一款及第二款與第四二０條以下及第四四一條以下之規定）; Sexual Harassment Prevention Act, Article 25, Section 1（性騷擾防治法第二十五條第一項）; Constitutional Court Procedure Act, Article 5, Section 1, Clause 2（司法院大法官審理案件法第五條第一項第二款）; Government Bills No. 4969, L.Y. Bill-Related Documents yuan-tzung-161 of June 22, 1994（立法院八十三年六月二十二日議案關係文書院總第一六一號政府提案第四九六九號）

KEYWORDS:

pronounced guilty for the first time（初次受有罪判決）, at least one opportunity to file an appeal for remedy（至少一次上訴救濟機會）, protection of the right to litigate（訴訟權保障）, where there is a right there is a remedy（有權利即有救濟）, discretion of the Legislature（立法形成）**

HOLDING: According to the Code of Criminal Procedure, Article 376, Clauses 1 and 2: "Once judged by the court of second instance, cases involving the following offenses are not appealable to the court of third instance: 1. Offenses with a maximum punishment of

解釋文：刑事訴訟法第 376 條第 1 款及第 2 款規定：「下列各罪之案件，經第二審判決者，不得上訴於第三審法院：一、最重本刑為三年以下有期徒刑、拘役或專科罰金之罪。二、刑法第 320 條、第 321 條之竊盜罪。」就經第一審判決有罪，而第二審駁回上訴或

no more than three years imprisonment, detention, or a fine only; 2. Offenses of theft specified in Articles 320 and 321 of the Criminal Code;" cases which are first pronounced guilty in the court of first instance, but are later overruled on appeal or where the judgement is revoked and the accused pronounced guilty in the court of second instance, are not appealable to the court of third instance, in accordance with regulations. Such regulation falls under the discretion of the Legislature, and does not violate people's right to litigate, which is protected by Article 16 of the Constitution. However, in cases first pronounced not guilty in the court of first instance, but where the judgment is later revoked and the accused pronounced guilty in the court of second instance, the people's right to litigate, protected by Article 16 of the Constitution, is violated since the law cannot provide even one chance of appeal for a remedy. This practice is to be held invalid from the date of issuance of this Interpretation.

撤銷原審判決並自為有罪判決者，規定不得上訴於第三審法院部分，屬立法形成範圍，與憲法第 16 條保障人民訴訟權之意旨尚無違背。惟就第二審撤銷原審無罪判決並自為有罪判決者，被告不得上訴於第三審法院部分，未能提供至少一次上訴救濟之機會，與憲法第 16 條保障人民訴訟權之意旨有違，應自本解釋公布之日起失其效力。

In cases listed under the aforementioned article, where the court of second

上開二款所列案件，經第二審撤銷原審無罪判決並自為有罪判決，於本

instance revoked a non-guilty judgement of a lower court and pronounced the accused guilty by its own authority, the defendant and persons who may appeal on behalf of the interests of the defendant can file for an appeal if period for appeal has not been exceeded. The court of second instance shall rule and notify the defendant that he or she can appeal to the court of third instance with 10 days after the second day of the ruling was served. In accordance with the Code of Criminal Procedure, Article 376, Clauses 1 and 2, the court cannot overrule the appeal if the defendant files an appeal within the period of appeal and the court has not yet made a judgement.

解釋公布之日，尚未逾上訴期間者，被告及得為被告利益上訴之人得依法上訴。原第二審法院，應裁定曉示被告得於該裁定送達之翌日起 10 日內，向該法院提出第三審上訴之意旨。被告於本解釋公布前，已於前揭上訴期間內上訴而尚未裁判者，法院不得依刑事訴訟法第 376 條第 1 款及第 2 款規定駁回上訴。

REASONING: The petitioner, Chang Tsung-Jen (Petitioner A), was prosecuted by the prosecutor of the Yilan District Prosecutors' Office under a larceny charge. In criminal case no. 104-yi-tzu-125, the Yilan District Court ruled that the defendant was guilty of one or more of the charges but not guilty of the others (case number: 104 Yi, No. 125). Petitioner A and the prosecutor filed for

解釋理由書：聲請人張宗仁（下稱聲請人一）因竊盜案件，經臺灣宜蘭地方法院檢察署檢察官提起公訴。臺灣宜蘭地方法院以 104 年度易字第 125 號刑事判決，就檢察官起訴指稱之犯行，為部分有罪、部分無罪之判決。聲請人一及檢察官各就有罪與無罪部分，分別提起上訴。臺灣高等法院以 104 年度上易字第 2187 號刑事判決，就第一審判處有罪部分，均予維持；就第一審判決

appeals respectively. In criminal case no. 104-shang-yi-tzu-2187, the Taiwan High Court maintained the judgement of guilt pronounced in the court of first instance. For 5 of the charges for which the accused was pronounced not guilty in the court of first instance, the High Court revoked the judgement and pronounced the accused guilty in accordance with Article 321 of the Criminal Code. Then, Petitioner A filed for an appeal regarding the judgement of guilt. In criminal case no. 104-shang-yi-tzu-2187, the Taiwan High Court viewed larceny as a case not appealable under the Code of Criminal Procedure, Article 376, Clauses 1 and 2 (hereinafter "the Article at issue"), therefore, the Court overruled its appeal (hereinafter " Final Ruling"). Petitioner A claimed that if the court had applied Clause 2 of the Article at issue to cases where the court of second instance maintains the guilty judgement of the court of first instance, or the court of second instance revokes the non-guilty judgement of the court of first instance and then pronounces the accused guilty, this would violate the principle of equality required

無罪部分，則就其中 5 項犯行改依刑法第 321 條判決聲請人一有罪。嗣聲請人一就第二審之有罪判決，提起上訴。臺灣高等法院認聲請人一所犯刑法第 321 條竊盜罪，屬刑事訴訟法第 376 條（該條第 1 款及第 2 款下併稱系爭規定）第 2 款所定不得上訴於第三審法院之案件，以 104 年度上易字第 2187 號刑事裁定（下稱確定終局裁定），駁回其上訴。聲請人一認系爭規定之第 2 款適用於第二審維持第一審有罪判決及第二審撤銷第一審無罪判決並自為有罪判決部分，牴觸憲法第 7 條平等原則及第 23 條比例原則，不法侵害人民受憲法保障之人身自由及訴訟權，向本院聲請解釋憲法。

by Article 7 of the Constitution as well as the principle of proportionality required by Article 23 of the Constitution, and it would violate the people's right to litigate and their right to personal freedom, which is protected by the Constitution. Therefore, [Petitioner A] petitioned to this Court for a constitutional interpretation.

Another petitioner, Chen Yen-Hung (Petitioner B), was prosecuted by the prosecutor of Kaohsiung District Prosecutors' Office on a charge of sexual harassment. In criminal case no. 98-yi-tzu-1416, the Kaohsiung District Court pronounced Petitioner B not guilty because it could not be proved that Petitioner B had committed a crime. The prosecutor filed an appeal. In criminal case no. 99-shang-yi-tzu-476, the Taiwan High Court Kaohsiung Branch Court revoked the non-guilty judgement of the court of first instance and pronounced Petitioner B guilty in accordance with Article 25, Section 1 of the Sexual Harassment Prevention Act (hereinafter "Final Judgement"). Because Article 25, Section 1 of the Sexual Harassment Prevention Act falls under

另一聲請人陳彥宏（下稱聲請人二）因違反性騷擾防治法案件，經臺灣高雄地方法院檢察署檢察官提起公訴。臺灣高雄地方法院認不能證明聲請人二犯罪，以 98 年度易字第 1416 號刑事判決，為其無罪之諭知。嗣檢察官提起上訴，臺灣高等法院高雄分院以 99 年度上易字第 476 號刑事判決（下稱確定終局判決），撤銷第一審無罪判決，並依性騷擾防治法第 25 條第 1 項規定，改判聲請人二有罪。因前揭性騷擾防治法第 25 條第 1 項規定，屬系爭規定之第 1 款所列「最重本刑為三年以下有期徒刑、拘役或專科罰金之罪」，故聲請人二不得就該判決上訴於第三審法院而確定。聲請人二認系爭規定之第 1 款有牴觸憲法第 7 條保障之平等權及第 16 條保障之訴訟權，向本院聲請解釋憲法。

those offenses stipulated by Clause 1 of the Article at issue —"Offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only" — Petitioner B cannot file an appeal to the court of third instance and the judgement became final. Petitioner B claimed that Clause 1 of the Article at issue violates the right to equality protected by Article 7 of the Constitution and the right to litigate protected by Article 16 of the Constitution. Therefore, [Petitioner B] petitioned to this Court for a constitutional interpretation.

According to Article 5, Paragraph 1, Clause 2 of the Constitutional Court Procedure Act (hereinafter "Act"), "The grounds on which the petitions for interpretation of the Constitution may be made are as follows, 1.When an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement have been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judg-

按司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款規定，人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得聲請解釋憲法。次按系爭規定明定：「下列各罪之案件，經第二審判決者，不得上訴於第三審法院：一、最重本刑為三年以下有期徒刑、拘役或專科罰金之罪。二、刑法第 320 條、第 321 條之竊盜罪。」查確定終局裁定係適用系爭規定之第 2 款，裁定駁回聲請人一之上

ment." Then, according to the Article at issue, "Once judged by the court of second instance, cases involving the following offenses are not appealable to the court of third instance: 1. Offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only; 2. Offense of theft specified in Articles 320 and 321 of the Criminal Code." Since the Final Ruling applies to Clause 2 of the Article at issue, the Court considered that the petition for constitutional interpretation made by Petitioner A met the requirements stipulated by Article 5, Section 1, Clause 2 of the Act, and therefore granted a review accordingly. In addition, although the Final Judgement did not explicitly apply Clause 1 of the Article at issue, nonetheless, since Clause 1 of the Article at issue does regulate the Final Judgement such that Petitioner B cannot file an appeal to the court of third instance, therefore, the Court considered that the Final Judgement applied [Clause 1 of the Article at issue]. Hence, the case falls within the scope of Article 5, Paragraph 1, Clause 2 of the Act. Petitioner B does not need to file an appeal to the

訴，故聲請人一就系爭規定之第 2 款所為解釋憲法之聲請，核與大審法第 5 條第 1 項第 2 款規定之要件相符，應予受理。另查確定終局判決雖未明文適用系爭規定之第 1 款，然系爭規定之第 1 款既係直接規範確定終局判決，使聲請人二不得上訴於第三審法院，故應認其已為該確定終局判決所當然適用，而屬大審法第 5 條第 1 項第 2 款所規定確定終局裁判所適用之法律。原不待聲請人二單純為滿足該條之要件，提起明知將遭駁回之第三審上訴，促使法院於駁回之裁定中直接適用系爭規定之第 1 款，以便其依大審法前揭規定聲請解釋憲法。故聲請人二因系爭規定之第 1 款，使其無法就改判有罪之第二審判決上訴於第三審法院，認該款有牴觸憲法第 16 條之疑義，向本院聲請解釋憲法，核與大審法前揭規定之要件相符，亦應予受理。

court of third instance, knowing that it will definitely be overruled by applying Clause 1 of the Article at issue, in order to satisfy the requirements required by the law, and to petition to this Court for a constitutional interpretation. Therefore, Petitioner B claimed that Clause 1 of the Article at issue might violate Article 16 of the Constitution because it forbade him to file an appeal to the court of third instance for the judgement of guilt he first received in the court of second instance. [Petitioner B] petitioned to this Court. [This Court] granted a review in accordance with the Act because it meets the stipulations required by the Act.

Although the two petitioners petitioned to this Court for constitutional interpretations with respect to different clauses of the Article at issue, yet, because there exists commonality, the Court reviewed these cases together, and made the following interpretation. The reasoning is as follows:

上開二聲請人雖係分別就系爭規定之不同款規定提出聲請，然系爭規定二款是否牴觸憲法，有其共通性，爰併案審理，作成本解釋，理由如下：

Article 16 of the Constitution protects the people's right to litigate. This

憲法第 16 條保障人民訴訟權，係指人民於其權利遭受侵害時，有請求法

means that people have the right to request for relief from a court of law in the event that their rights are infringed upon (in reference to J.Y. Interpretation No. 418). Based on the constitutional principle—where there is a right, there is a remedy—when a person's rights or legal interests are infringed on, the state shall provide such a person with an opportunity to institute legal proceedings in court, to request a fair trial in accordance with the due process of law, and to obtain timely and effective remedies. This is the core [value] of the protection of the right of litigation (in reference to J.Y. Interpretations Nos. 396, 574 & 653). When people are pronounced guilty in the first instance, their right to freedom and property might be placed in an unfavorable position. To protect their right to litigate and to avoid mistakes or wronging an innocent person, the State shall provide such a person with at least one opportunity to file an appeal for remedy in accordance with the aforementioned J.Y. Interpretations. This is also the core [value] of the protection of the right to litigate. In addition, taking into consideration the category and nature

院救濟之權利（本院釋字第 418 號解釋參照）。基於有權利即有救濟之憲法原則，人民權利遭受侵害時，必須給予向法院提起訴訟，請求依正當法律程序公平審判，以獲及時有效救濟之機會，此乃訴訟權保障之核心內容（本院釋字第 396 號、第 574 號及第 653 號解釋參照）。人民初次受有罪判決，其人身、財產等權利亦可能因而遭受不利益。為有效保障人民訴訟權，避免錯誤或冤抑，依前開本院解釋意旨，至少應予一次上訴救濟之機會，亦屬訴訟權保障之核心內容。此外，有關訴訟救濟應循之審級、程序及相關要件，則應由立法機關衡量訴訟案件之種類、性質、訴訟政策目的、訴訟制度之功能及司法資源之有效運用等因素，以決定是否予以限制，及如欲限制，應如何以法律為合理之規定（本院釋字第 396 號、第 442 號、第 512 號、第 574 號、第 639 號及第 665 號解釋參照）。

of the litigation, the purpose of the litigation policy, the function of the litigation system, and effective usage of judicial resources, the legislative authority shall decide whether the State should limit the number of reviews, the procedure and related requirements, and, if so, how to make an appropriate law (in reference to J.Y. Interpretations Nos. 396, 442, 512, 574, 639 & 665).

Because the Article at issue limits the people's right to file appeals to the court of third instance, it involves Article 16 of the Constitution on the people's right to litigate. The purpose of the Article [at issue] is to reduce the burden of judges, so they can focus on more serious and complicated cases, so as to improve judicial efficiency (*see* Government Bill No. 4969, L.Y. Bill-Related Documents yuan-tzung-161 of June 22, 1994). Therefore, the Article at issue was made at the discretion of the legislative authority taking into consideration the category and nature of the litigation, the purpose of the litigation policy, the function of the litigation system, and effective usage of

系爭規定限制人民上訴於第三審法院，涉及憲法第 16 條所保障人民之訴訟權。其規定旨在減輕法官負擔，使其得以集中精力處理較為重大繁雜之案件，以期發揮司法功能（立法院 83 年 6 月 22 日議案關係文書院總第 161 號政府提案第 4969 號參照）。故系爭規定係立法機關衡量訴訟案件之種類、性質、訴訟政策目的、訴訟制度之功能及司法資源之有效運用等因素，所為之裁量。倘就系爭規定所列案件，被告經第一審判決有罪，而第二審駁回上訴或撤銷原審判決並自為有罪判決，因其就第一審有罪之判決，已有由上訴審法院審判之機會，就此部分，系爭規定不許其提起第三審上訴，屬立法形成範圍，與憲法第 16 條保障人民訴訟權之意旨尚

judicial resources. For such cases where a defendant is pronounced guilty by the court of first instance, and where this verdict is overruled on appeal or the original judgement is revoked and the accused pronounced guilty by the court of second instance, the court [of second instance] has given [the defendant] an opportunity to appeal regarding the judgement of guilt pronounced by the court of first instance. For this part, the Article at issue forbids [the defendants] to file an appeal to the court of third instance, this falls under the discretion of the legislative authority, and therefore it does not violate Article 16 of the Constitution, which grants protection of people's right to litigate.

無違背。

However, in such cases where the court of second instance has revoked a non-guilty judgement of the lower court and pronounced the accused guilty itself ,the Article at issue forbids the defendant to file an appeal to the court of third instance. The law declares the defendant guilty for the first, and also final, which precludes the defendant from seeking a remedy through the ordinary procedure of

惟系爭規定就所列案件，經第二審撤銷原審無罪判決並自為有罪判決者，亦規定不得上訴於第三審法院，使被告於初次受有罪判決後即告確定，無法以通常程序請求上訴審法院審查，以尋求救濟之機會。被告就此情形雖仍可向法院聲請再審或向檢察總長聲請提起非常上訴，以尋求救濟，然刑事訴訟法第 420 條以下所規定再審以及第 441 條以下所規定非常上訴等程序之要件甚為

asking for review by a superior court. Although in such a situation, the defendant can seek a remedy by filing a motion for retrial or by asking the chief-procurator to file an extraordinary appeal to the Supreme Court, it is hard to do so in reality because the stipulations required by the Code of Criminal Procedure Article 420 on retrials and Article 441 on extraordinary appeals are extremely strict. In the case of a defendant who is pronounced guilty by the court of second instance, thereby revoking a previous verdict of not guilty, the remedy provided by these special procedures cannot substitute for those provided by ordinary procedures. The Article at issue shall provide an appropriate opportunity to appeal in those cases where the court of second instance has revoked a non-guilty judgement of the lower court and pronounced the accused guilty. This is the core value of the protection of the right to litigate. Therefore, it does not fall under the discretion of the legislative authority, although this may limit the number of reviews after taking all relevant factors into consideration. Cases listed under the Article at issue, where the court

嚴格，且實務踐行之門檻亦高。此等特別程序對經第二審撤銷原審無罪判決並自為有罪判決之被告，所可提供之救濟，均不足以替代以上訴之方式所為之通常救濟程序。系爭規定就經第二審撤銷原審無罪判決並改判有罪所應賦予之適當上訴機會，既屬訴訟權保障之核心內容，故非立法機關得以衡量各項因素，以裁量是否予以限制之審級設計問題。系爭規定所列案件，經第二審撤銷原審無罪判決並自為有罪判決者，初次受有罪判決之被告不得上訴於第三審法院之部分，未能提供至少一次上訴救濟之機會，以避免錯誤或冤抑，與憲法第16條保障人民訴訟權之意旨有違，應自本解釋公布之日起失其效力。

of second instance has revoked a non-guilty judgement of a lower court and pronounced the accused guilty itself, the State does not provide the defendant with even one chance to appeal for a remedy since someone pronounced guilty for the first time cannot file an appeal to the court of third instance, are a violation of Article 16 of the Constitution, which protects the people's right to litigate, therefore, the Article at issue is to be held invalid from the date of issuance of this Interpretation.

In cases listed under the Article at issue, where the court of second instance has revoked a non-guilty judgement of a lower court and pronounced the accused guilty itself, the defendant and persons who may appeal on behalf of the interests of the defendant may file for an appeal if the period for appeal (including time spent in travel) has not been exceeded (Article 344, Section 4, Articles 345 and 346 of the Code of Criminal Procedure). That court of second instance shall rule and notify the defendant that he or she may appeal to the court of third instance within 10 days from the next day after

系爭規定所列案件，經第二審撤銷原審無罪判決並自為有罪判決，於本解釋公布之日，尚未逾上訴期間（包括在途期間）者，被告及得為被告利益上訴之人（刑事訴訟法第 344 條第 4 項、第 345 條及第 346 條參照）得依法上訴。原第二審法院，應裁定曉示被告得於該裁定送達之翌日起 10 日內，向該法院提出第三審上訴之意旨。被告於本解釋公布前，已於前揭上訴期間內上訴而尚未裁判者，法院不得依系爭規定駁回上訴。

the ruling was served. The court may not overrule the appeal in accordance with the Article at issue if the defendant files an appeal within the period which is allowed for an appeal and the court has not yet made a judgement.

Petitioner A filed an appeal with regard to the initial case within the period for an appeal and was overruled by the court of second instance for the reason that it was the final judgement. That ruling has no substantial effect. For the part where the court of second instance revoked the non-guilty judgement of the lower court and pronounced the accused guilty, the court shall send the appeal to the court of third instance in accordance with this interpretation. Within 10 days after the date of serving this interpretation, Petitioner B may file an appeal to the court of third instance in accordance with this interpretation and relevant laws of appeal stipulated in the Code of the Criminal Procedure, with regard to the initial part of the case by which the court of second instance revoked the non-guilty judgement of the lower court and pro-

聲請人一就本解釋之原因案件，曾於上訴期間內提起上訴，經第二審法院以確定終局裁定駁回，該程序裁定，不生實質確定力。該法院應依本解釋意旨，就該第二審撤銷原審無罪判決並自為有罪判決部分之上訴，逕送第三審法院妥適審判。聲請人二就本解釋之原因案件，得於本解釋送達之日起 10 日內，依本解釋意旨及刑事訴訟法上訴之相關規定，就第二審撤銷原審無罪判決並自為有罪判決之部分，上訴於第三審法院。

nounced the accused guilty itself.

Justice Jiun-Yi LIN filed a concurring opinion in part.

Justice Chang-Fa LO, Justice Horng-Shya HUANG, Justice Chih-Hsiung HSU, Justice Jui-Ming HUANG, and Justice Sheng-Lin JAN concurred and filed opinion respectively.

Justice Jau-Yuan HWANG filed an opinion concurring in part and dissenting in part, in which Justice Justice Beyue SU CHEN joined and in Part III (the dissenting part) of which Justice Dennis Te-Chung TANG and Justice Chen-Huan WU joined.

Justice Hsi-Chun HUANG filed a dissenting opinion in part, in Part I and II of which Justice Beyue SU CHEN, Justice Dennis Te-Chung TANG, and Justice Chen-Huan WU joined.

本號解釋林大法官俊益提出之部分協同意見書；羅大法官昌發提出之協同意見書；黃大法官虹霞提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出之協同意見書；黃大法官昭元提出之部分協同部分不同意見書；陳大法官碧玉加入、湯大法官德宗及吳大法官陳鐶加入三、不同意見部分）；黃大法官璽君提出之部分不同意見書（陳大法官碧玉、湯大法官德宗加入、吳大法官陳鐶加入一、二部分）。

J. Y. Interpretation No.753（October 6, 2017）*

【Measures Regulating Breach of Contract under the National Health Insurance Act Case】

ISSUE:

1. Does the *Gesetzesvorbehalt* principle apply to the contract with the National Health Insurance Healthcare Providers? Do the relevant provisions of the National Health Insurance Act authorizing the Competent Authority to issue Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions ("Contracting and Management Regulations") violate the principle of clarity and definiteness of statutory authorization?
2. Are provisions of the abovementioned Contracting and Management Regulations concerning contract suspension, refusal of reimbursement, offsets of the period of suspended contract, and deductions of medical expenses exceed the scope of authorization by the enabling statute?
3. Do provisions of the abovementioned Contracting and Management Regulations concerning contract suspension, refusal of reimbursement, and offsets of the period of suspended contract violate the principle of proportionality under the Constitution?

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* Translated by Chao-Tien CHANG

** Contents within frame, not part of the original text, are added for reference purposes only.

RELEVANT LAWS:

Articles 15, 23, 155 and 157 of the Constitution, Article 10, Paragraphs 5 and 8 of the Additional Articles of the Constitution（憲法第 15 條、第 23 條、第 155 條、第 157 條、憲法增修條文第 10 條第 5 項及第 8 項規定）；J.Y. Interpretation Nos. 394, 426, 443, 524, 533, 545, 550, 612, 734, 743（司法院釋字第 394 號、第 426 號、第 443 號、第 524 號、第 533 號、第 545 號、第 550 號、第 612 號、第 734 號及第 743 號解釋）；Article 55, Paragraph 2 of the National Health Insurance Act ("NHI Act"), promulgated on August 9, 1994; Article 66, Paragraph 1 of the NHI Act, amended on January 26, 2011（83 年 8 月 9 日制定公布之全民健康保險法第 55 條第 2 項、100 年 1 月 26 日修正公布之同法第 66 條第 1 項規定）；Article 66, Paragraph 1, Subparagraph 8 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions ("Contracting and Management Regulations"), amended on March 20, 2007; Article 70, First Sentence of the Contracting and Management Regulations, amended on February 8, 2006; Article 39, Paragraph 1 of the Contracting and Management Regulations, amended on September 15, 2010; Article 37, Paragraph 1, Subparagraph 1 of the Contracting and Management Regulations, amended on December 28, 2012.（96 年 3 月 20 日修正發布之全民健康保險醫事服務機構特約及管理辦法第 66 條第 1 項第 8 款、95 年 2 月 8 日修正發布之同辦法第 70 條前段、99 年 9 月 15 日修正發布之同辦法第 39 條第 1 項及 101 年 12 月 28 日修正發布之同辦法第 37 條第 1 項第 1 款規定）

KEYWORDS:

National Health Insurance Contract（全民健保特約）, medical reimbursement frauds（詐領醫療費用）, dispensations not in compliance with prescriptions（未依處方箋記載調劑）, contract suspension（停止特約）, refusal of reimbursement（不予支付）, offsets of the period of suspended contract（停約之抵扣）, deductions of medical expenses（扣減醫療費用）, administrative contract（行政契約）, right to existence（生存權）, right to health（健康權）, right to property（財產權）, right to work（工作權）, measures handling breach of contract（違約之處理）, non-performance of contract（債務不履行）, agreement on responsivities of contract violation（約定違約責任）, rule-of-law state（法治國）, principle of clarity and definiteness of statutory authorization（法律授權明確性）, *Gesetzesvorbehalt* principle（法律保留）, principle of proportionality（比例原則）, hearing（聽證）**

HOLDING: Article 55, Paragraph 2 of the National Health Insurance Act, promulgated on August 9, 1994, provided: "[r]egulations regarding contracting and management of National Health Insurance medical care institutions in Paragraph 1 shall be enacted by the

解釋文：中華民國83年8月9日制定公布之全民健康保險法第55條第2項規定：「前項保險醫事服務機構之特約及管理辦法，由主管機關定之。」及100年1月26日修正公布之同法第66條第1項規定：「醫事服務機構得申請保險人同意特約為保險醫事服務機構，得申請特約為保

Competent Authority." And Article 66, Paragraph 1, amended on January 26, 2011, provided: "[m]edical care institutions should apply to the Insurer to become contracted medical care institutions. The Competent Authority shall determine the qualifications, procedure, review standards, disqualification, resolution of violations, and other relevant matters pertaining to contracted medical care institutions." Both articles do not violate the principle of clarity and definiteness of statutory authorization in a rule-of-law state. Nor do them infringe upon the right to work and the right to property under Article 15 of the Constitution.

險醫事服務機構之醫事服務機構種類與申請特約之資格、程序、審查基準、不予特約之條件、違約之處理及其他有關事項之辦法，由主管機關定之。」均未牴觸法治國之法律授權明確性原則，與憲法第 15 條保障人民工作權及財產權之意旨尚無違背。

Article 66, Paragraph 1, Subparagraph 8 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions, amended on March 20, 2007, provided: "[t]he Insurer shall suspend the contract for one to three months,

96 年 3 月 20 日修正發布之全民健康保險醫事服務機構特約及管理辦法第 66 條第 1 項第 8 款規定：「保險醫事服務機構於特約期間有下列情事之一者，保險人應予停止特約 1 至 3 個月，或就其違反規定部分之診療科別或服務項目停止特約 1 至 3 個月：……八、其他以不正當行為或以虛偽之証明、報告

or suspend the medical department or specific service items for one to three months, if the insurance medical care institution has any of the following circumstances during the term of the contract: … 8. Other unscrupulous behavior or false certifications, reports or statements in order to declare medical expenses." Article 70, First Sentence of the same regulation, amended and promulgated on February 8, 2006, provided: "[f]or any contracted medical care institution whose contract is suspended …, the responsible or liable medical personnel shall not be reimbursed for the medical services provided to the insurance beneficiaries during suspension …" Article 39, Paragraph 1 of the same regulations, amended on September 15, 2010, provided: "[w]here the suspension … of a contract pursuant to Articles 37 to 38 poses a threat of significant impact on the beneficiaries' right to receive medical care, or is necessary to prevent or mitigate risks to the public, the

或陳述，申報醫療費用。」95 年 2 月 8 日修正發布之同辦法第 70 條前段規定：「保險醫事服務機構受停止……特約者，其負責醫事人員或負有行為責任之醫事人員，於停止特約期間……，對保險對象提供之醫療保健服務，不予支付。」99 年 9 月 15 日修正發布之同辦法第 39 條第 1 項規定：「依前二條規定所為之停約……，有嚴重影響保險對象就醫權益之虞或為防止、除去對公益之重大危害，服務機構得報經保險人同意，僅就其違反規定之服務項目或科別分別停約……，並得以保險人第一次處分函發文日期之該服務機構前一年該服務項目或該科申報量及各該分區總額最近一年已確認之平均點值核算扣減金額，抵扣停約……期間。」（上開條文，均於 101 年 12 月 28 日修正發布，依序分別為第 39 條第 4 款、第 47 條第 1 項、第 42 條第 1 項，其意旨相同）均未逾越母法之授權範圍，與法律保留原則尚無不符，亦未牴觸憲法第 23 條比例原則，與憲法第 15 條保障人民工作權及財產權之意旨尚無違背。

medical care institution, subject to the Insurer's approval, may suspend … the scope of the specific service items or categories of medical care of the contract for violation of the respective requirements, and may apply to the Insurer for the deduction of the payment to offset the suspended … contract period according to the declared volume of the medical department which is subject to specific service items or categories of a medical care as well as the verified average points of the total volume of the district of the most recent year." The abovementioned provisions (which all have been amended and promulgated on December 28, 2012 into Article 39, Subparagraph 4, Article 47, Paragraph 1, and Article 42, Paragraph 1 in order, with the same regulatory meanings) do not go beyond the authorization of the enabling statue, thereby not in breach of the *Gesetzesvorbehalt* principle. The provisions are also consistent with the principle of proportionality under

Article 23, as well as the right to work and the right of property under Article 15 of the Constitution.

Article 37, Paragraph 1, Subparagraph 1 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions, amended and promulgated on December 28, 2012, provides: "[t]he Insurer may deduct ten times of the reported medical expenses applied by the insurance medical care institutions based upon the average total value of the most recent quarter of their locations, should the insurance medical care institutions be found under any of the following circumstances: 1. Failure to provide medical services according to prescriptions …" This provision does not exceed the authorization of the enabling statue, thereby not in breach the *Gesetzesvorbehalt* principle. Neither does this provision infringe upon the right to work and the right of property under Ar-

101 年 12 月 28 日修正發布之同辦法第 37 條第 1 項第 1 款規定：「保險醫事服務機構有下列情事之一者，以保險人公告各該分區總額最近一季確認之平均點值計算，扣減其申報之相關醫療費用之 10 倍金額：一、未依處方箋……之記載提供醫事服務。」未逾越母法之授權範圍，與法律保留原則尚無不符，與憲法第 15 條保障人民工作權及財產權之意旨並無違背。

ticle 15 of the Constitution.

REASONING: The representative of the Catholic St. Joseph Hospital Foundation, Shi-Chie Chang (now changed into Tsong-Ming Li by a motion to assume the action, hereinafter "Petitioner 1"), and the Central Health Insurance Bureau of the Department of Health, the Executive Yuan prior to the governmental reorganization (now reorganized as the National Health Insurance Administration, Ministry of Health and Welfare, hereinafter "NHI Administration"), entered into a National Health Insurance Healthcare Providers Contract (hereinafter "the Contract"). During September to October in 2007, a surgical surgeon under the supervision of Petitioner 1 conspired with a patient to mix someone else's cancer tissues into the patient's biopsy, misleading the examination results to be malignant breast tumors. With the false result, a mastectomy surgery and other treatments were taken. Based upon such treatments, Petitioner 1 applied for multiple medical expenses to the Insurer. The false claims were later investigated and

解釋理由書：聲請人財團法人天主教若瑟醫院代表人張世杰（現已變更為李聰明，並聲明承受本件聲請，下稱聲請人一），與改制前之行政院衛生署中央健康保險局（現已改制為衛生福利部中央健康保險署，下稱健保署）間訂有全民健康保險特約醫事服務機構合約（下稱特約）。於中華民國 96 年 9 月至 10 月間，聲請人一所屬外科主治醫師與病患共謀，將他人癌症組織混入該名病患之切片檢體，致使檢查結果為乳房惡性腫瘤，據而施行乳房切除手術等處置，再依此申報多筆醫療費用。案經檢察官偵辦而發現，健保署遂於 99 年 7 月 29 日，依行為時 83 年 8 月 9 日制定公布之全民健康保險法（下稱 83 年健保法）第 55 條第 2 項規定（下稱系爭規定一）之授權，於 96 年 3 月 20 日修正發布之全民健康保險醫事服務機構特約及管理辦法（下稱特管辦法）第 66 條第 1 項第 8 款停止特約部分之規定（下稱系爭規定二）、95 年 2 月 8 日修正發布之同辦法第 70 條前段停止特約不予支付部分之規定（下稱系爭規定三）及特約第 20 條第 1 項規定，停止聲請人一外科（含門、住診）醫療業

found out by the prosecutor. According to the laws at the time of the said fraud, i.e. related provisions of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions (hereinafter "Contracting and Management Regulations") enacted according to the authorization of Article 55, Paragraph 2 (hereinafter "Provision I") of the National Health Insurance Act promulgated on August 9, 1994 (hereinafter "NHI Act of 1994"), including the part regarding contract suspension under Article 66, Paragraph 1, Subparagraph 8, amended and promulgated on March 20, 2007 (hereinafter "Provision II"), Article 70, First Sentence regarding refusal of reimbursement during contract suspension, amended and promulgated on February 8, 1996 (hereinafter "Provision III"), and Article 20, Paragraph 1 of the Contract, the NHI Administration suspended Petitioner 1's contracted surgical services (including outpatient and inpatient ones) for around 2 months and refused to pay for any expenses associated with services rendered to the insurance beneficiaries by the liable physician within the period of suspension.

務特約 2 個月，涉案醫師於停止特約期間對保險對象提供之醫療服務，不予支付。聲請人一不服，提起行政救濟，另於 100 年 5 月 4 日，依 99 年 9 月 15 日修正發布之同辦法第 39 條第 1 項抵扣停約部分之規定（下稱系爭規定四），申請以扣減金額方式抵扣停約期間之執行（下稱停約之抵扣），經健保署同意並核定扣減金額為新臺幣（下同）14,001,281 元。行政訴訟嗣經最高行政法院 101 年度判字第 929 號判決，以上訴無理由而駁回確定在案。聲請人一認系爭規定一至四，有違反憲法第 15 條及第 23 條法律保留原則、比例原則之疑義，向本院聲請解釋憲法，核與司法院大法官審理案件法第 5 條第 1 項第 2 款所定要件相符，爰予受理。

Petitioner 1 objected and filed a lawsuit for the administrative remedy. Meanwhile, according to Article 39, Paragraph 1 of the Contracting and Management Regulations, amended and promulgated on September 15, 2010 (hereinafter "Provision IV") concerning offsets of the suspended contract period, Petitioner 1 applied for deductions to offset the enforcement of the suspended contract period (hereinafter "offsets of the suspended contract period") on May 4, 2011. The NHI Administration approved this application and agreed to deduct NTD $ 14,001,281. Petitioner 1's lawsuit was later dismissed by the final judgement of Supreme Administrative Court 101-Pan-929 (2012), which held the appeal meritless. Petitioner 1 petitioned for constitutional interpretation to this Court, contending that Provision I to 4 violated the *Gesetzesvorbehalt* principle and the principle of proportionality under Article 15 and 23 of the Constitution. The petition satisfies the criteria specified in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and shall be granted review.

Further, Petitioner Hsian-Tang Chen as Dongtai Pharmacy (hereinafter Petitioner 2), and the NHI Administration entered into the Contract too. Chen Hsian Tang did not practice in person as a pharmacist at the Pharmacy from 12 pm, May 18 to 10 am, May 19 of 2013. Instead he hired another pharmacist to dispense, while using the stamp of "Dongtai Pharmacy Hsian-Tang Chen" on the prescriptions. Chen's name as the dispensing pharmacist continued to be used in the computer system, according to which Petitioner 2 declared and apply for medical expenses. The false claims were found out through on-site investigation by the NHI Administration on June 12, 2014. The NIH deducted NTD $ 311,710, *i.e.* 10 times of the related medical expenses declared (hereinafter "deductions of medical expenses") [Note], according to Article 37, Paragraph 1, Subparagraph 1 of the Contracting and Management Regulations, amended and promulgated on December 28, 2012 (hereinafter "Provision VI"), under the authorization of Article 66, Paragraph 1 of the National Health Insurance Act (hereinafter "Provision V),

另聲請人陳憲堂即東泰藥局（下稱聲請人二）與健保署間訂有特約。陳憲堂於 102 年 5 月 18 日中午 12 時至同月 19 日上午 10 時間，未親自在藥局執行藥師業務，卻由受聘藥師代為調劑藥品，並在處方箋上蓋用「東泰藥局陳憲堂」之印章，電腦系統填載陳憲堂為調劑藥師，再據以申報醫療費用。案經健保署於 103 年 6 月 12 日實地稽查發現，遂依 100 年 1 月 26 日修正公布之全民健康保險法（下稱現行健保法）第 66 條第 1 項規定（下稱系爭規定五）之授權，於 101 年 12 月 28 日修正發布之特管辦法第 37 條第 1 項第 1 款規定（下稱系爭規定六）及特約第 20 條規定，扣減申報之相關醫療費用 10 倍（下稱扣減醫療費用）之金額 311,710 元（註）。聲請人二不服，提起行政救濟，經臺北高等行政法院 105 年度簡上字第 55 號判決，以上訴無理由而駁回確定在案。聲請人二認系爭規定五及六，有違反憲法第 7 條、第 15 條、第 16 條及第 23 條法律保留原則之疑義，向本院聲請解釋憲法，核與司法院大法官審理案件法第 5 條第 1 項第 2 款所定要件相符，亦予受理。

amended and promulgated on January 26, 2011 (hereinafter "the existing NHI Act"), and Article 20 of the Contract. Petitioner 2 objected and filed a lawsuit for the administrative remedy. The lawsuit was later dismissed by the final judgment of the Taipei High Administrative Court 105-Jian-Shang-55 (2016), which held the appeal meritless. Petitioner 2 petitioned for constitutional interpretation to this Court, contending that Provision V and VI violated Article 7, 15, 16 and the *Gesetzesvorbehalt* principle under Article 23 of the Constitution. The petition satisfies the criteria specified in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and shall also be granted review.

Both of the two petitions abovementioned involve the issues of, when the contracted insurance medical care institution breaches the contract, whether the NHI Administration's measures taken according to Provision I to VI violate the *Gesetzesvorbehalt* principle as well as the principle of clarity and definiteness of authorization, and therefor are inconsistent

按上述二聲請案，均涉及締結特約之保險醫事服務機構違約時，健保署為一定處置所依據之系爭規定一至六是否有違反法律保留原則、法律授權明確性原則而牴觸憲法之疑義，有其共通性，爰併案審理，作成本解釋，理由如下：

with the Constitution. Given the commonality of the petitions, this Court consolidates the above two cases and renders this Interpretation as follows:

1. The issue regarding whether the provisions in question violate the *Gesetzesvorbehalt* principle and the principle of clarity and definiteness of authorization.

一、有關是否違反法律保留與法律授權明確性原則部分

In accordance with its organizational laws and regulations, the NHI Administration is a national organization. To exercise its legally authorized powers, the NHI Administration enters into the Contract concerning matters of administering the National Health Insurance (hereinafter "National Health Insurance") with various healthcare providers, and reaching into agreements that such insurance medical care institutions are qualified as the providers of medical and healthcare services for the insured, in order to fulfill the administrative purposes of improving people's health as well as maximizing public benefits. For these reasons, the said Contract in nature is an administrative contract, which has been

健保署依其組織法規係國家機關，為執行其法定之職權，就辦理全民健康保險（下稱全民健保）醫療服務有關事項，與各醫事服務機構締結特約，約定由保險醫事服務機構提供保險對象醫療服務，以達促進國民健康、增進公共利益之行政目的，此項特約具有行政契約之性質，業經本院釋字第 533 號解釋在案。全民健保為強制性之社會保險，於保險對象在保險有效期間，發生疾病、傷害、生育事故時，由保險醫事服務機構提供醫療服務，健保署則依前揭特約支付保險醫事服務機構醫療費用。全民健保特約既為行政契約，健保署與保險醫事服務機構間之公法上法律關係，除依其性質或法規規定不得締約者外，該法律關係即得以契約設定、變更或消滅（行政程序法第 135 條前段規定參照）。

affirmed by J.Y. Interpretation No. 533. The National Health Insurance is a compulsory social insurance. When diseases, injuries or maternity accidents occur to the insurance beneficiaries during the period when the insurance contract is valid, medical services will be rendered by the insurance medical care institution. The NHI Administration will pay for medical expenses to the insurance medical care institution according to the Contract. Since the Contract is an administrative contract, the public law relations between the NHI Administration and the insurance medical care institution may be created, altered or extinguished by contracts, unless, except where no contract may be made by the nature of such relations or under law or regulation (*see* Article 135, First Sentence of the Administrative Procedure Act). The scope of the *Gesetzesvorbehalt* principle in a rule-of-law nation includes but is not limited to matters restraining people's rights enumerated in Article 23 of the Constitution. Administrative measures by the government, even if not directly restricting people's freedoms, shall be authorized by statute or by statute-

按法治國法律保留原則之範圍，原不以憲法第 23 條所規定限制人民權利之事項為限。政府之行政措施雖未直接限制人民之自由權利，但如屬涉及公共利益之重大事項者，仍應由法律加以規定，如以法律授權主管機關發布命令為補充規定時，其授權應符合具體明確之原則（本院釋字第 443 號、第 743 號解釋參照）。全民健保特約內容涉及全民健保制度能否健全運作者，攸關國家能否提供完善之醫療服務，以增進全體國民健康，事涉憲法對全民生存權與健康權之保障，屬公共利益之重大事項，仍應有法律或法律具體明確授權之命令為依據。至授權是否具體明確，應就該授權法律整體所表現之關聯意義為判斷，非拘泥於特定法條之文字（本院釋字第 394 號、第 426 號、第 612 號及第 734 號解釋參照）。

authorized rules in the case where such measures are related to material public interests. When the law authorizes the Competent Authority to make supplemental rules, such authorization shall be specific and precise (*see* J.Y Interpretations No. 443 and No. 743). The content of the National Health Insurance Contract involves whether the National Health Insurance system could soundly operate, which is critical to whether the state could provide comprehensive healthcare services in pursuit of the health of the entire population. Such matters, involving constitutional protection of all the people's right of existence and right to heath, are considered important matters of material public interests. Therefore, it shall be made by statute or by rules specifically and unequivocally by statute. The so-called specific and unequivocal authorization of statute must be judged from the viewpoint of the relevancy as expressed by the enabling statute in its entirety rather than being judged by rigid adherence to the language of any particular provision (*see* J.Y. Interpretations No. 394, No. 426, No. 612 and No. 734).

Article 1 of the NHI Act of 1994 declared its object and purpose to be "to promote the health of all nationals, to administer national health insurance …, and to provide health services." To administer the National Health Insurance, the NHI Administration enters into the Contract with insurance medical care institutions and entrusts institutions to provide medical services. Therefore, effective management of insurance medical care institutions and urging those institutions to perform the Contract in accordance with the contractual purpose are critical for the state to continuously provide comprehensive healthcare services. The matters that the NHI Administration suspends the contract, refuses to reimburse, offsets the suspended contract period, or deducts medical expenses according to Provision II to IV and VI during the performance of the Contract are important matters concerning whether the National Health Insurance could soundly operate. They also involve the right to property and the right to work of the insurance medical care institutions and their medical service personnel. According to the *Gesetzesvorbehalt* principle

83 年健保法第 1 條揭示其立法目的為「為增進全體國民健康，辦理全民健康保險……，以提供醫療保健服務」。為辦理全民健保業務，承辦之健保署乃與醫事服務機構訂定特約，委由該特約之保險醫事服務機構提供醫療服務。是有效管理保險醫事服務機構並督促其確實依特約本旨履約，乃國家持續提供完善醫療服務之關鍵。於特約履行中，健保署認保險醫事服務機構違反特約，依系爭規定二至四及六予以停止特約、不予支付、停約之抵扣及扣減醫療費用等，屬全民健保制度能否健全運作之重大事項，並涉及保險醫事服務機構及所屬醫事服務人員之財產權與工作權，依法治國之法律保留原則，應有法律或法律明確授權之命令為依據。上述停止特約、不予支付、停約之抵扣及扣減醫療費用等為對保險醫事服務機構之管理事項並屬違約之處理，同法第 55 條第 2 項即系爭規定一已明定：「前項保險醫事服務機構之特約及管理辦法，由主管機關定之。」於 100 年 1 月 26 日修正為第 66 條第 1 項即系爭規定五明定：「醫事服務機構得申請保險人同意特約為保險醫事服務機構，得申請特約為保險醫事服務機構之醫事服務機構種類與申請特約之資格、程序、審

in a rule-of-law nation, they shall be made by statute or rules authorized specifically and unequivocally by statute. The abovementioned provisions, including contract suspension, refusal of reimbursement, offsets of the suspended contract period, and deductions of medical expenses, are all matters concerning management of insurance medical care institutions and measures handling breach of contract. Article 55, Paragraph 2 of the NHI Act of 1994 (aka. Provision I.) had explicitly stipulated: "[r]egulations regarding contracting and managing methods of the contracted medical institutions shall be determined by the Competent Authority." The same provision was later amended on January 26, 2011 into Article 66, Paragraph 1 (aka. Provision V), which also explicitly provides: "[m]edical care institutions should apply to the Insurer to become contracted medical care institutions. The Competent Authority shall determine the qualifications, procedure, review standards, disqualification, resolution of violations, and other relevant matters pertaining to contracted medical care institutions." The abovementioned statutes have authorized

查基準、不予特約之條件、違約之處理及其他有關事項之辦法，由主管機關定之。」即已授權主管機關就上開事項得以法規命令為之，故尚與法律保留原則無違。

the Competent Authority to make regulations over abovementioned matters, and thereby the provisions in question do not violate the *Gesetzesvorbehalt* principle.

Another issue is whether the authorized regulations are consistent with the principle of clarity and definiteness of authorization. According to Article 31, Paragraph 1 of the NHI Act of 1994, the insurance medical care institution should render outpatient or inpatient services in accordance with the law, and the physician may give the insurance beneficiaries prescriptions for dispensation in pharmacies. Article 42 stipulated that, if medical services rendered by the insurance medical care institution's to the insurance beneficiaries is considered to be inconsistent with the NHI Act, the insurance medical care institution should bear its own expenses. Article 52 provided that the Insurer shall assemble a medical service review committee to review the items, the quantity and the quality of medical services rendered by the insurance medical care institution under the National Health Insurance. Article 55, Paragraph 1

至該授權規定有無符合授權明確性原則部分，查 83 年健保法第 31 條第 1 項規定，由保險醫事服務機構依法給予門診或住院診療服務；醫師並得交付處方箋予保險對象至藥局調劑；第 42 條規定，保險醫事服務機構對保險對象之醫療服務，經認定不符合健保法規定者，其費用應由該保險醫事服務機構自行負責；第 52 條規定，保險人為審查保險醫事服務機構辦理本保險之醫療服務項目、數量及品質，應組成醫療服務審查委員會審查之；第 55 條第 1 項規定，保險醫事服務機構為特約醫院及診所、特約藥局、保險指定醫事檢驗機構、其他經主管機關指定之特約醫事服務機構（91 年 7 月 17 日修正發布之第 55 條第 1 項僅修正文字，其意旨相同）；第 62 條規定，保險醫事服務機構對於主管機關或保險人因業務需要所為之訪查或查詢、借調病歷、診療紀錄、帳冊、簿據或醫療費用成本等有關資料，不得規避、拒絕或妨礙。經由上開健保法規定，立法者業已就特管辦法之內容，提

stipulated that the insurance medical care institutions include contracted hospitals and clinics, contracted pharmacies, medical inspection institutions designated by the Insurer, and other contracted medical care institutions designated by the Competent Authority (later amended and promulgated on July 17, 2002, with only minor textual revisions without changing its regulatory contents). Article 62 stipulated that the Competent Authority or the Insurer, for administrative necessity, may visit, inquire or ask the insurance medical care institution to provide relevant documents, such as healthcare records, diagnosis records, account records, receipts and cost of medical expenses. The insurance medical care institution should not elude, reject, obstruct to the requests. According to abovementioned articles of the NHI Act, the legislator has already provided specific guidelines concerning the content of the Contracting and Management Regulations to the Competent Authority. Measures dealing with breach of contract are common parts of a contract. The term Management of the Contracting and Management Regulations should include

供主管機關可資遵循之具體方針。違約之處理係屬一般契約之尋常內容，特約管理辦法之管理一詞，客觀上應包含違約處理方式之決定在內，故可推知立法者有意授權主管機關，以特管辦法規範保險醫事服務機構違約之處理，俾有效管理保險醫事服務機構，提供完善醫療服務之授權目的。綜上，系爭規定一就授權主管機關訂定特管辦法之目的、內容及範圍尚稱明確，與法治國之法律授權明確性原則尚無違背。系爭規定五明定違約處理為授權內容，其範圍益臻明確，亦與法治國之法律授權明確性原則無違。

measures dealing with breach of contract from the view of objective interpretation. It is reasonable to assume the legislator's intent to authorize the Competent Authority to tackle with breach of contract by the Contracting and Management Regulations in pursuit of the purposes of authorization - to effectively manage insurance medical care institutions as well as to provide comprehensive healthcare services. To sum up, Provision I's authorization to the Competent Authority to enact the Contracting and Management Regulations is equivocal enough, in terms of its purpose, content and scope, and thereby does not violate the principle of clarity and definiteness of authorization in a rule-of-law nation. Provision V explicitly stipulates measures handling breach of contract as a part of authorization, whose scope of authorization is clear, and therefore is consistent with the principle of clarity and definiteness of authorization in a rule-of-law nation.

2. The Issue regarding whether the Contracting and Management Regulations is beyond the authorization of its enabling

二、有關特管辦法是否逾越母法部分

statute.

For the purpose of administering the National Health Insurance by the Competent Authority, the Contracting and Management Regulations are articulated as the governing regulations to administer the National Health Insurance, to enter into Contracts, to manage insurance medical care institutions and to deal with breach of contract. Parts of the regulations have been incorporated into a part of the model Contracts. Article 1, Paragraph 1 of the model Contract issued by the NHI Administration Letter No. 0990072145 of February 12, 2010 (hereinafter "Model Contract for Contracted Hospitals") and Article 1, Paragraph 1 of the model Contract issued by the NHI Administration Letter No. 0910005868 of April 26, 2002 (hereinafter "Model Contract for Contracted Pharmacies") both stipulate that contracting parties should administer the National Health Insurance in accordance with the NHI Act, the Enforcement Rules of the NHI Act, the Contracting and Management Regulations, other related laws and regulations, as well as the Contract.

特管辦法係主管機關為辦理全民健保，用於特約及管理保險醫事服務機構或違約處理之準據規定，部分條文並納為特約範本內容之一部。健保局 99 年 2 月 12 日健保醫字第 0990072145 號公告之特約範本（下稱特約醫院範本）第 1 條第 1 項，以及 91 年 4 月 26 日健保醫字第 0910005868 號函公告之特約範本（下稱特約藥局範本）第 1 條第 1 項，均規定契約雙方應依照健保法、健保法施行細則、特管辦法等法令及合約規定辦理全民健保。特約醫院範本第 20 條第 1 項規定保險醫事服務機構若有特管辦法第 66 條規定（其中第 1 項第 8 款即系爭規定二）之情形，健保署應予停止特約；特約藥局範本第 20 條規定保險醫事服務機構若有特管辦法第 33 條規定（其中第 1 項第 1 款與系爭規定六意旨相同）之情形，健保署應予扣減醫療費用。

Article 20, Paragraph 1 of the Model Contract for Contracted Hospitals stipulates that, should any of the circumstances listed in Article 66 of the Contracting and Management Regulations (of whom Paragraph 1, Subparagraph 8 aka. Provision II) occur, the NHI Administration shall suspend the contract. Article 20 of the Model Contract for Contracted Pharmacies provides that should any of the circumstances listed in Article 33 of the Contracting and Management Regulations (among which Paragraph 1, Subparagraph 1 with the same regulatory contents with Provision VI) occur, the NHI Administration shall deduct the medical expenses.

Article 72, First Sentence of the NHI Act of 1994 provided: "[t]he person who apply for reimbursements or claims medical expenses through improper conduct, or makes false certification, report, misrepresentation, shall be fined in the amount equivalent to two times of the benefits or medical expenses received." However, according to the Contract, the insurance medical care institution bears the obligation to render medical services

83 年健保法第 72 條前段雖規定：「以不正當行為或以虛偽之證明、報告、陳述而領取保險給付或申報醫療費用者，按其領取之保險給付或醫療費用處以 2 倍罰鍰」。惟因保險醫事服務機構依特約，負有向保險對象提供醫療服務之義務，並享有得依支出成本向保險人申報及領取醫療費用之權利；且應據實申報醫療費用，不得以不正當行為或虛偽之證明、報告或陳述為之（下稱詐領醫療費用）；亦不得未依處方箋之記

to the insurance beneficiaries, and also enjoys the right to claim medical expenses and to apply for reimbursements based on costs to the Insurer. Further, the insurance medical care institution should declare medical expenses based on facts, not through any improper conduct, false certification, report, or misrepresentation (hereinafter "medical reimbursement frauds"). Neither should the insurance medical care institution provide medical services without following prescriptions (hereinafter "dispensations failing to follow prescriptions"). In addition to the abovementioned article imposing fines, the legislature authorized that the Insurer and the insurance medical care institution may reach into agreements by the Contract, in order to let the Insurer take handling measures when the insurance medical care institution violates the Contract, for the purposes of preventing depletion of resources of the National Health Insurance, enhancing management of insurance medical care institutions and urging those institutions to perform the Contract according to the contractual purpose, Provision II explicitly provided: "[t]

載提供醫事服務（下稱未依處方箋記載調劑）。立法機關為避免侵害全民健保資源、強化對保險醫事服務機構之管理及督促其確實依特約本旨履約，於保險醫事服務機構違約詐領醫療費用時，除前揭有關罰鍰規定外，並授權保險人與保險醫事服務機構得另行經由特約之約定，於保險醫事服務機構有違反特約之情形時，保險人得為違約處理之管理措施。系爭規定二明定：「保險醫事服務機構於特約期間有下列情事之一者，保險人應予停止特約 1 至 3 個月，或就其違反規定部分之診療科別或服務項目停止特約 1 至 3 個月：……八、其他以不正當行為或以虛偽之証明、報告或陳述，申報醫療費用。」（101 年 12 月 28 日修正發布之第 39 條第 4 款規定意旨相同）系爭規定三明定：「保險醫事服務機構受停止……特約者，其負責醫事人員或負有行為責任之醫事人員，於停止特約期間……，對保險對象提供之醫療保健服務，不予支付。」（101 年 12 月 28 日修正發布之第 47 條第 1 項規定意旨相同）核其性質乃屬保險人為有效管理保險醫事服務機構並督促其確實依特約本旨履約之必要措施，與違反行政法上作為義務而課處罰鍰者有異，故系爭規定二及三，未逾越母法之授權

he Insurer shall suspend the contract for one to three months or suspend the medical department or specific service item for one to three months, if the insurance medical care institution has any of the following circumstances during the term of the contract: … 8. Other unscrupulous behavior or false certifications, reports or statements associated with the declaration of medical expenses." (Article 39, Subparagraph 4 of the same regulations, amended and promulgated on December 28, 2012, with the same regulatory contents) Provision III explicitly provided: "[f]or any insurance medical care institution whose contract is suspended …, the responsible or liable medical personnel shall not be reimbursed for the services of medical services they provide to insurance beneficiaries during suspension …" (Article 47, Subparagraph 1 of the same regulations, amended and publicized on December 28, 2012, with the same regulatory contents). Considering that both provisions are measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge institutions to perform the Contract according

範圍。

to the contractual purpose, and that the nature of both provisions is different from fines imposed upon breach of administrative obligations, Provision II and III have not gone beyond the authorization of their enabling statute.

Regarding the substitution of the enforcement of the suspended contract period, Provision IV explicitly provided: "[w]here the suspension … of a contract pursuant to Articles 37 to 38 poses a threat of significant impact on the beneficiaries' right to receive medical care, or is necessary to prevent or mitigate risks to the public, the medical care institution, subject to the Insurer's approval, may suspend … the contract within the scope of the specific service items or categories of a medical care which violates the requirement respectively, and may apply to the Insurer for the deduction of the payment to offset the suspended … contract period according to the declared volume of the medical department which is subject to specific service items or categories of a medical care as well as the verified average points of the total volume of the dis-

關於替代停約期間之執行，系爭規定四明定：「依前二條規定所為之停約……，有嚴重影響保險對象就醫權益之虞或為防止、除去對公益之重大危害，服務機構得報經保險人同意，僅就其違反規定之服務項目或科別分別停約……，並得以保險人第一次處分函發文日期之該服務機構前一年該服務項目或該科申報量及各該分區總額最近一年已確認之平均點值核算扣減金額，抵扣停約……期間。」（101 年 12 月 28 日修正發布之第 42 條第 1 項規定意旨相同）規定替代停約期間執行之要件、程序及標準等，得由保險醫事服務機構申請，經健保署同意並依一定方式計算，由保險醫事服務機構以扣減金額方式，抵扣停約期間之執行。核其性質，係就上開停止特約之執行，規定得依保險醫事服務機構之申請及健保署之同意，以停約之抵扣替代之，保險醫事服務機構得繼續提供保險對象醫療服務，並申報

trict of the most recent year." (Article 42, Subparagraph 1 of the same regulations, amended and promulgated on December 28, 2012, with the same regulatory contents) This provision stipulated the requirements, procedures and standards of substitutions of the enforcement of the suspended contract period, according to which the insurance medical care institution may apply for reimbursement deductions to offset the enforcement of the suspended contract period, with the approval of the NHI Administration and the deduction calculated according to certain methods. The essence of this provision is to allow the abovementioned enforcement of the suspended contract period to be substituted by the offsets, as long as the insurance medical care institution applies and obtains approval from the NHI Administration, so that the insurance medical care institution can continue to provide medical services to the insurance beneficiaries and declare its medical expenses. This provision remains to be within in the scope of measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge insti-

醫療費用，仍屬保險人為有效管理保險醫事服務機構並督促其確實依特約本旨履約之必要措施，未逾越母法之授權範圍。

tutions to perform the Contract according to the contractual purpose. Therefore, this provision is not beyond the authorization of its enabling statute.

As for dispensations failing to follow prescriptions, Provision VI explicitly provides: "[t]he Insurer may deduct ten times of the reported medical expenses by the insurance medical care institutions based on the average total value of the most recent quarter of their locations, should the insurance medical care institutions be found under any of the following circumstances: 1. Failure to provide medical services according to prescriptions …" Provision VI stipulates that the Insurer may claim for institutions' obligations of non-performance by the Contract, which is also a measure tackling with breach of contract, falling within the scope of measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge institutions to perform the Contract according to the contractual purpose. Provision VI differentiates, in terms of the regulating purpose, the behavioral patterns by regulated

至未依處方箋記載調劑，系爭規定六明定：「保險醫事服務機構有下列情事之一者，以保險人公告各該分區總額最近 1 季確認之平均點值計算，扣減其申報之相關醫療費用之 10 倍金額：一、未依處方箋……之記載提供醫事服務。」係規定得經由特約而主張之債務不履行約定違約責任，亦為違約處理之處置，核屬保險人為有效管理保險醫事服務機構並督促其確實依特約本旨履約之必要措施，與現行健保法第 81 條第 1 項前段規定：「以不正當行為或以虛偽之證明、報告、陳述而領取保險給付、申請核退或申報醫療費用者，處以其領取之保險給付、申請核退或申報之醫療費用 2 至 20 倍之罰鍰」所規範之目的及規範對象之行為態樣、不法內涵有異，故系爭規定六，未逾越母法之授權範圍。

subjects and the nature of illegality, from Article 81, Paragraph 1, First Sentence of the existing NHI Act, which provides: "[t]he person who applies for reimbursements or claims medical expenses through improper conduct, or makes false certification, report or misrepresentation, shall be fined equivalent to two to twenty times of the benefits or medical expenses received." Therefore, Provision VI does not exceed the authorization of the enabling statute.

To sum up, Provision II to IV and Provision VI, which have been incorporated as part of the Contract, are not beyond the authorization of the enabling statute and thereby not inconsistent with the *Gesetzesvorbehalt* principle.

Nevertheless, given the content of the Contracting and Management Regulations greatly affects the sustainable and sound development of the National Health Insurance system as well as the rights and obligations of insurance medical care institutions, the Competent Authority should hold public hearings according to

綜上，為特約內容一部分之系爭規定二至四及六，均未逾越母法之授權範圍，與法律保留原則尚無不符。

惟鑑於特管辦法之內容，關係全民健保制度之永續健全發展及保險醫事服務機構之權利義務至鉅，主管機關應依行政程序法以公開方式舉辦聽證，使利害關係人代表，得到場以言詞為意見之陳述及論辯後，斟酌全部聽證紀錄，說明採納及不採納之理由作成決定。現行特管辦法訂定程序應予改進，併此指

the Administrative Procedure Act, allowing representatives of stakeholders to attend to orally present their opinions and debate. The Competent Authority should take the entire hearing records into account and make decisions accompanying with reasons of adopting stakeholders' opinions or not. The existing Contracting and Management Regulations should be reviewed and improved.

明。

3. The issue regarding contract suspension and refusal of reimbursement that involve the principle of proportionality

三、有關停止特約與不予支付涉及比例原則部分

According to Articles 155 and 157 of the Constitution and Article 10, Paragraphs 5 and 8 of the Additional Articles to the Constitution, the National Health Insurance is a compulsory social insurance that the state must implement. It is an institute reflecting the duty of the state to take care of its people by offering them a decent life and having to do with the welfare of all citizens (*see* J.Y. Interpretation Nos. 524, 533 and 550). Resources of the National Health Insur-

依憲法第 155 條、第 157 條、憲法增修條文第 10 條第 5 項及第 8 項規定，全民健保為國家應實施之強制性社會保險，乃國家實現人民享有人性尊嚴之生活所應盡之照顧義務，關係全體國民福祉至鉅（本院釋字第 524 號、第 533 號及第 550 號解釋參照）。全民健保資源有限，於全民健保總額支付制下（83 年健保法第 47 條以下及現行健保法第 60 條以下參照），詐領醫療費用，將排擠據實提供醫療服務者所得請領之數額，間接損及被保險人獲得醫療服務

ance are not unlimited. Under the Global Budget payment system of the National Health Insurance, medical reimbursement frauds would compress reimbursements received by healthcare providers who honestly provide their services, indirectly harm the quantity and the quality of medical services received by the insured, and erode the finance of the National Health Insurance. Medical reimbursement frauds would also cause all the citizens to bear increased premiums and jeopardize the sound development of the National Health Insurance system (*see* J.Y. Interpretation No. 545). The purposes of contract suspension and refusal of reimbursement in Provision II and III are to prevent and tackle with medical reimbursement frauds in furtherance of comprehensive medical services. The purposes serve important public interest and therefore shall be legitimate. The means, *i.e.* contract suspension and refusal of reimbursement, could cause a decreased number of patients or impair the fame of contracted medical care institutions through public announcement that deters or penalizes medical reimbursement frauds to a certain degree.

之數量及品質，並侵蝕全民健保財務，致影響全民保費負擔，危及全民健保制度之健全發展（本院釋字第 545 號解釋參照）。故系爭規定二、三之停止特約及不予支付之目的，在於預防及處置詐領醫療費用，提供完善醫療服務，係為維護重要公共利益，應屬正當。而所採取之手段，係停止特約而不予支付，結果可能造成病患流失，又因公告周知而影響名譽，對詐領醫療費用有一定嚇阻及懲罰作用，自有助於目的之達成。且現行特管辦法就違約之各種情形，依情節輕重，大致區分為通知限期改善、違約記點、扣減醫療費用、停止特約及終止特約等不同處置。其中停止特約，更得視違約情節輕重不同而有 1 至 3 個月不同之處置（96 年 4 月 16 日修正發布全民健康保險醫事服務機構特約及管理辦法第 66 條違規處分裁量基準參照），並得僅停止違約之科別或服務項目全部或一部、門診或住診；另又設有系爭規定四作為調節機制，並無顯不合理之處。是特約中有關系爭規定二、三之停止特約及不予支付，與憲法第 23 條比例原則尚無違背。

The means are indeed helpful to achieve the purposes. Moreover, the existing Contracting and Management Regulations, in accordance with the seriousness of contract violation, generally divide into different measures to be taken, ranging from requests to make improvement within a specific period of time, imposing contract-violation points, deducting medical expenses, to suspending or terminating the contract. Among them, contract suspension may even be implemented from one to three months in accordance with the seriousness of contract violation (*see* the Uniform Standards of Penalties for Violations under Article 66 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions, amended and promulgated on April 16, 2007); moreover, the suspension could only be limited to the scope of the entire or a portion of service, or the outpatient or inpatient part of the specific medical department, service items or categories of a medical care which violates the requirement respectively. Additionally, Provision IV also serves as an equitable mechanism. There is nothing

significantly unreasonable in above provisions. Therefore, Provision II and III concerning contract suspension and refusal of reimbursement are not inconsistent with the principle of proportionality under Article 23 of the Constitution.

4. The issue regarding offsets of the suspended contract period that involve the principle of proportionality

Provision IV regarding offsets of the suspended contract period refers to that the insurance medical care institution, by an application approved by the NHI Administration, may pay for the amounts calculated with certain methods to substitute the enforcement of the suspended contract period. The amount of deductions is calculated as below: the average monthly declared volume of the suspended medical department or the suspended service items or categories of a medical care of the most recent year, with reference to the months of suspension, multiplies the average of the verified average points of the total volume of the district of the most recent year. The de-

四、有關停約之抵扣涉及比例原則部分

系爭規定四停約之抵扣，係保險醫事服務機構報經健保署同意，依一定方式核算扣減金額，由保險醫事服務機構繳納金額後，替代停約期間之執行。且關於扣減金額之計算，係以受停約之該科別或服務項目前 1 年平均每月申報點數，配合受停約月數，以保險醫事服務機構位處全民健保分區最近 1 年平均點值，相乘後核算應扣減金額，與停約期間對保險對象提供醫療服務不予支付之金額相當。停止特約與憲法第 23 條比例原則既無違背，系爭規定四停約之抵扣，自無違反憲法比例原則之可言。

ductible amount is generally equivalent to the amount of refusal of reimbursement for services provided to the insurance beneficiaries during suspension. Since contract suspension does not violate the principle of proportionality under Article 23, neither does Provision IV regarding offsets of the suspended contract period violate the same constitutional principle.

To sum up, each provision of Provisions II to IV is consistent with the principle of proportionality under Article 23 of the Constitution, as well as the right to work and right to property protected by Article 15 of the Constitution.

Petitioner 2 also contended that Provision VI is inconsistent with Articles 7 and 16 of the Constitution. However, Petitioner 2's arguments presented regarding this part did not objectively and concretely point out how these provisions violated the Constitution, and shall be procedurally rejected. It is so noted.

Note:

The NHI Administration's letter re-

綜上，系爭規定二至四均未牴觸憲法第 23 條比例原則，與憲法第 15 條保障人民工作權及財產權之意旨尚無違背。

至聲請人二之聲請意旨另主張系爭規定六違反憲法第 7 條及第 16 條部分，經查並未於客觀上具體指摘，爰不另為處理，併予敘明。

附註：

註：健保署 106 年 7 月 18 日函復

sponding to the Judicial Yuan on July 18, 2017 stated that " … 'medical services failing to follow prescriptions (pharmaceutical dispensations)' stipulated under Article 37, Paragraph 1, Subparagraph 1 of the Contracting and Management Regulations, refers to that the criteria of legal medical services (pharmaceutical dispensations) require the dispensing person not only to fulfill the subjective requirement as qualified pharmacist, but also to sign on prescriptions by himself or herself according to related pharmaceutical laws. Any part of dispensations where the signing pharmacist does not practice by himself or herself, in spite of adhering to prescriptions, remains to be within the scope of sanctions under Article 37, Paragraph 1, Subparagraph 1 of the Contracting and Management Regulations…"

本院，略以：「……特管辦法第 37 條第 1 項第 1 款規定：『未依處方箋之記載提供醫事服務（藥品調劑）』，應含處方箋調劑之人，除須具備藥師資格之主觀條件外，更應按相關藥事法規規定，在處方箋上簽章，方為足證已提供合於規定之醫事服務（藥品調劑），爰調劑與處方箋相符，但未親自為之部分，仍構成特管辦法第 37 條第 1 項第 1 款應處分之範圍……。」

Justice Ming-Cheng TSAI recused himself from this case.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Chong-Wen CHANG filed an opinion concurring in part.

Justice Horng-Shya HUANG filed a

蔡明誠大法官迴避審理本案。

本號解釋林大法官俊益提出之部分協同意見書；張大法官瓊文提出之部分協同意見書；黃大法官虹霞提出之協同意見書；吳大法官陳鐶提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；

concurring opinion.

Justice Chen-Huan WU filed a concurring opinion.

Justice Chi-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Sheng-Lin JAN filed an opinion dissenting in part.

Justice Beyue SU CHEN filed a dissenting opinion.

湯大法官德宗提出之部分協同暨部分不同意見書；羅大法官昌發提出之部分不同意見書；詹大法官森林提出之部分不同意見書；陳大法官碧玉提出之不同意見書。

J. Y. Interpretation No.754（October 20, 2017）*

【Filing one Import Declaration Form and the Combined Penalties for Tax Evasions】

ISSUE: Does filing one import declaration form to evade import duty, commodity tax, and business tax constitute one single conduct or multiple conducts? Do the combined penalties for the tax evasions violate the principle of double jeopardy embraced by a rule-of-law nation ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條及第二十三條）；J.Y. Interpretations Nos. 503 and 604 of the Judicial Yuan（司法院釋字第五０三號及第六０四號）；Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act（海關緝私條例第三十七條第一項）；Article 4, Paragraph 1 of Article 16 and Paragraph 1 of Article 17 of the Customs Act（關稅法第四條、第十六條第一項及第十七條第一項）；Paragraph 2 of Article 23 and Subparagraph 10 of Article 32 of the Commodity Tax Act（貨物稅條例第二十三條第二項及第三十二條第十款）；Article 41 and Subparagraph 7 of Paragraph 1 of Article 51 of the Value-added and Non-Value-added Business Tax Act（加值型及非加值型營業稅法第四十一條

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* Translated by C. Y. HUANG

** Contents within frame, not part of the original text, are added for reference purposes only.

及第五十一條第一項第七款）

KEYWORDS:

the principle of double jeopardy（一行為不二罰原則）, single conduct（一行為）, multiple conducts（數行為）, number of conducts（行為數）, import duty（進口稅）, customs duty（關稅）, commodity tax（貨物稅）, business tax（營業稅）, principle of proportionality（比例原則）**

HOLDING: The second Joint Meeting of the Supreme Administrative Court in May 2011 passed the following resolution (the "Resolution"): "When filing an import declaration, the importer needs to fill in the matters concerning import duty, commodity tax and business tax and submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs

解釋文：最高行政法院100年度5月份第2次庭長法官聯席會議有關：「……進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為3個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第37條第1項第4款、貨物稅條例第32條第10款暨營業稅法第51條第7款規定者，應併合處罰，不生一行為不二罰之問題」之決議，與法治國一行為不二罰之原則並無牴觸。

Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Paragraph 1 of Article 51 of the Value-added and Non-Value-added Business Tax Act, the penalties should be combined. It will not raise concerns about double jeopardy." The Resolution is consistent with the principle of double jeopardy embraced by a rule-of-law nation.

REASONING: The petitioner Zhu, Tian-Jiang, who was the owner of the Yi-Lu Firm, filed a declaration with the Kaohsiung Directorate of Customs, Ministry of Finance (now reorganized as Kaohsiung Customs, Customs Administration, Ministry of Finance, which is the agency which made the administrative decision, hereinafter the "Agency") in 2008 for import of goods. After an audit by the Agency, the actual transaction value was found to be inconsistent with the declared amount. The Agency found that the importer submitted forged invoices, declared a false value of the cargos, and committed tax evasion. In addition to taxing the evaded import duty and the evaded busi-

解釋理由書：聲請人朱田江即一路通商行於中華民國 97 年向財政部高雄關稅局（現改制為財政部關務署高雄關，下稱原處分機關）報運進口貨物，經原處分機關稽核發現該批貨物之實際交易價格，與報單申報內容不符，有繳驗偽造發票、虛報所運貨物價值及逃漏稅款情事，原處分機關除追繳所漏進口稅、營業稅外，另依海關緝私條例第 37 條第 1 項第 2 款，按所漏進口稅額處 2 倍罰鍰新臺幣（下同）328 萬 1,708 元，並依行為時加值型及非加值型營業稅法（下稱營業稅法）第 51 條，按所漏營業稅額處 1.5 倍罰鍰 73 萬 8,380 元。聲請人對上開處分提起行政救濟，高雄高等行政法院以 101 年度訴字第 148 號判決駁回，聲請人不服，

ness tax, the Agency also imposed a fine equivalent to two times the amount of the import duty evaded, which amounted to NT$ 3,281,708 according to Subparagraph 2 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, and a fine equivalent to 1.5 times of the amount of the business tax evaded, which amounted to NT$ 738,380 according to Article 51 of the Value-added and Non-Value-added Business Tax Act (hereinafter the "Business Tax Act"). The petitioner brought an administrative action against the foregoing administrative decision. The petitioner's action was dismissed by the Kaohsiung High Administrative Court Judgment 101 Su-Zi No. 148 (2012). The petitioner appealed to the Supreme Administrative Court, but the appeal was again dismissed by Supreme Administrative Court Judgment 101 Pan-Zi No. 1037 (2012) (hereinafter the "Final Judgment") because of a lack of legal grounds. As to the part relating to the fine, the Final Judgment cited the following passage of the Resolution as the basis of its decision: "Customs duty is an import duty imposed on cargos imported from abroad. Commodity tax

提起上訴，經最高行政法院 101 年度判字第 1037 號判決（下稱確定終局判決）以其上訴為無理由而駁回。就其中罰鍰部分，確定終局判決援用同法院 100 年度 5 月份第 2 次庭長法官聯席會議決議（下稱系爭決議）：「關稅係對國外進口貨物所課徵之進口稅；貨物稅乃對國內產製或自國外進口之貨物，於貨物出廠或進口時課徵之稅捐；營業稅則為對國內銷售貨物或勞務，及進口貨物所課徵之稅捐，三者立法目的不同。依關稅法第 16 條第 1 項、貨物稅條例第 23 條第 2 項暨加值型及非加值型營業稅法（下稱營業稅法）第 41 條規定，進口稅、貨物稅及營業稅均採申報制，且貨物進口時，應徵之貨物稅及營業稅，由海關代徵。雖為稽徵之便，由進口人填具一份進口報單，再由海關一併依法課徵進口稅、貨物稅及營業稅。但進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為 3 個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第 37 條第 1 項第 4 款、貨物稅條例第 32 條第 10 款暨營業稅法第 51 條第 7 款規定者，應併合處罰，不生一行

is a tax imposed on commodities manufactured domestically or imported from abroad when they leave the factory or are imported. Business tax is a tax imposed on domestic goods or services or imported commodities. The three have different legislative purposes. According to Paragraph 1 of Article 16 of the Customs Act, Paragraph 2 of Article 23 of the Commodity Tax Act, and Article 41 of the Business Tax Act, import duty, commodity tax and business tax are levied based on the importer's declaration. The amount of business tax and commodity tax payable when goods are imported shall be levied by the customs. Although, for the convenience of taxation, the importer shall make a single import declaration for the customs to levy the import duty, commodity tax and business tax together, the importer shall fill in matters concerning import duty, commodity tax and business tax when filing the import declaration form and shall submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer

為不二罰之問題。」（其中營業稅法第 51 條第 7 款部分於 100 年 1 月 26 日修正公布時改列為第 51 條第 1 項第 7 款）為判決依據，聲請人認為系爭決議對單一不實申報行為強行割裂為 3 個申報行為，並予數罰，顯已構成過度處罰，牴觸憲法第 23 條比例原則，侵害人民受憲法第 15 條所保障之財產權，違反司法院釋字第 503 號及第 604 號解釋所揭櫫一行為不二罰之原則，向本院聲請解釋憲法。

fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Article 51 of the Business Tax Act, the penalties should be combined. It will not raise concerns about double jeopardy." The Resolution is consistent with the principle of double jeopardy embraced by a nation of rule-of-law." (Subparagraph 7 of Article 51 of the Business Tax Act was moved to Subparagraph 7 of Paragraph 1 of Article 51 in the amendment dated 26 January 2011.). The petitioner argued that the Resolution, which forcibly severs one untruthful declaration into three declaration conducts and imposes multiple penalties, constitutes excessive punishment in violation of the principle of proportionality provided for in Article 23 of the Constitution, the property rights protected by Article 15 of the Constitution, and the principle of double jeopardy affirmed in Judicial Yuan Interpretations No. 503 and

No. 604. The petitioner therefore petitioned for an interpretation by the Honorable Justices.

According to Subparagraph 2 of Paragraph 1 of Article 5 of the Constitutional Court Procedure Act, when an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment, a petition for interpretation of the Constitution may be made. And a resolution of the Supreme Administrative Court, if and when cited by a judge in rendering a judgment, should be regarded as equivalent to an order, and thus qualifies as a subject of constitutional interpretation (*see* J.Y. Interpretations Nos. 374, 516, 620 and 622). Since the Final Judgement in the present case cited the Resolution and dismissed the petitioner's appeal because of a lack of legal grounds, the subject of this petition for constitutional interpretation shall be the Resolution. Hence, the

按司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款規定，人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得聲請解釋憲法。次按最高行政法院決議如經法官於裁判上援用，應認其與命令相當，得為憲法解釋之客體（本院釋字第 374 號、第 516 號、第 620 號及第 622 號解釋參照）。查確定終局判決援用系爭決議，以上訴為無理由駁回聲請人之上訴，是本件聲請，應以系爭決議為審查客體，故聲請人就系爭決議所為解釋憲法之聲請，核與大審法第 5 條第 1 項第 2 款規定之要件相符，應予受理。爰作成本解釋，理由如下：

petitioner's petition for interpretation of the Constitution concerning the Resolution complies with the requirements under Subparagraph 2 of Paragraph 1 of Article 5 of the Constitutional Court Procedure Act, and the petition shall be granted. Therefore, this interpretation is made and the reasoning is as follows:

When acts against tax obligations involve several penal statutory provisions, they could be sanctioned separately if there are substantially multiple conducts. To ascertain the number of conducts, factors such as the constituent elements of the laws and regulations, the legal interests to be protected, and the purposes of the sanction shall be taken into consideration as a whole. Import duty is a tax imposed on goods imported from abroad. Commodity tax is a tax imposed on commodities manufactured domestically or imported from abroad when they leave the factory or are imported. Business tax is a tax imposed on domestic goods or services or imported commodities. Hence, imported goods may simultaneously involve levy of import duty, commodity

違反租稅義務之行為，涉及數處罰規定時，如係實質上之數行為，原則上得分別處罰之。至行為數之認定，須綜合考量法規範構成要件、保護法益及處罰目的等因素。進口稅係對國外進口貨物所課徵之稅捐；貨物稅乃對國內產製或自國外進口之貨物，於貨物出廠或進口時課徵之稅捐；營業稅則為對國內銷售貨物或勞務及進口貨物所課徵之稅捐。是進口貨物可能同時涉及進口稅、貨物稅及營業稅等租稅之課徵。立法者為使主管機關正確核課租稅，並衡諸核課之相關事實資料多半掌握於納稅義務人手中，關稅法第 17 條第 1 項規定：「進口報關時，應填送貨物進口報單、並檢附發票、裝箱單及其他進口必須具備之有關文件。」貨物稅條例第 23 條第 2 項規定：「進口應稅貨物，納稅義務人應向海關申報，並由海關於徵收關

tax and business tax. To ensure that the competent authority can levy taxes correctly, and considering that the facts and information relevant to levy of taxes are mostly held in the hands of the duty-payers, the legislators so enacted Paragraph 1 of Article 17 of the Customs Act, Paragraph 2 of Article 23 of the Commodity Tax Act and Article 41 of the Business Tax Act to expressly require that people who import goods declare relevant taxes truthfully according to the laws. Paragraph 1 of Article 17 of the Customs Act provides: "Upon declaration of importation, an import declaration form shall be filled out and submitted along with a bill of invoice, packing list and relevant documents required for importation." Paragraph 2 of Article 23 of the Commodity Tax Act provides: "For imported taxable commodities, taxpayers should file with the custom offices, and the commodity tax shall be collected by the custom office together with the custom duties." Article 41 of the Business Tax Act provides: "The amount of business tax payable on imported goods shall be levied by customs. With respect to the collection procedures

稅時代徵之。」營業稅法第 41 條規定：「貨物進口時，應徵之營業稅，由海關代徵之；其徵收……程序準用關稅法及海關緝私條例之規定辦理。」明定人民於進口應稅貨物時，有依各該法律規定據實申報相關稅捐之義務。納稅義務人未據實申報，違反各該稅法上之義務，如致逃漏進口稅、貨物稅或營業稅，分別合致海關緝私條例第 37 條第 1 項、貨物稅條例第 32 條第 10 款及營業稅法第 51 條第 1 項第 7 款之處罰規定，各按所漏稅額處罰，3 個漏稅行為構成要件迥異，且各有稅法專門規範及處罰目的，分屬不同領域，保護法益亦不同，本得分別處罰。至於為簡化稽徵程序及節省稽徵成本，除進口稅本由海關徵收（關稅法第 4 條參照）外，進口貨物之貨物稅及營業稅亦由海關代徵，且由納稅義務人填具一張申報單，於不同欄位申報 3 種稅捐，仍無礙其為 3 個申報行為之本質，其不實申報之行為自亦應屬數行為。

and administrative relief of business tax, the provisions of the Customs Act and the Customs Anti-Smuggling Act shall apply mutatis mutandis." If the duty-payer fails to declare truthfully, thereby violating the obligations under such tax laws and leading to evasion of import duty, commodity tax or business tax, such an untruthful declaration shall trigger the penalties under Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Paragraph 1 of Article 51 of the Business Tax Act; the duty-payer shall be sanctioned based on the evaded amount. The constituent elements of the three tax-evasion conducts are different, and these conducts are specifically regulated by different tax regulations for which the purposes of sanction, legislative fields, and protected interests vary. These conducts essentially could be sanctioned separately. Only for simplifying the procedure of taxation and saving the cost thereof, not only is import duty levied by the customs (*see* Article 4 of the Customs Act), but the commodity tax and business tax of

imported goods are also levied by the customs. In addition, the duty-payer may fill out only one single declaration form to declare three taxes. However, this does not change the fact that there are three declaration conducts. An untruthful declaration shall be of multiple conducts in nature.

In this connection, the Resolution states: "When filing the import declaration, the importer needs to fill in matters concerning import duty, commodity tax and business tax and submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Article 51 of the Business Tax Act, the

綜上，系爭決議有關：「……進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為 3 個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第 37 條第 1 項第 4 款、貨物稅條例第 32 條第 10 款暨營業稅法第 51 條第 7 款規定者，應併合處罰，不生一行為不二罰之問題」部分，與法治國一行為不二罰之原則（本院釋字第 604 號解釋參照），並無牴觸。

penalties should be combined. It will not raise concerns about double jeopardy." In light of the above, the foregoing part of the Resolution does not contradict the principle of double jeopardy embraced by a rule-of-law nation (*see* J.Y. Interpretation No. 604).

To serve different purposes of regulation of tax, the state has the power to enact different laws and regulations to levy import duty, commodity tax and business tax, and sanction an individual according to the laws in a combined fashion if the individual fails to process the declaration truthfully when importing goods. However, the combination of penalties in any specific case shall not pose excessive burdens on the person being sanctioned so as to comply with the principle of proportionality provided for in Article 23 of the Constitution.

國家基於不同之租稅管制目的，分別制定法規以課徵進口稅、貨物稅及營業稅，於行為人進口貨物未據實申報時，固得依各該法律之規定併合處罰，以達成行政管制之目的，惟於個案併合處罰時，對人民造成之負擔亦不應過苛，以符合憲法第 23 條比例原則之精神，併此指明。

Justice Sheng-Lin JAN filed an opinion concurring in part.

Justice Ming-Cheng TSAI filed a concurring opinion.

Justice Chih-Hsiung HSU, filed

本號解釋詹大法官森林提出之部分協同意見書；蔡大法官明誠提出之協同意見書；許大法官志雄提出，陳大法官碧玉、林大法官俊益、黃大法官昭元加入之協同意見書；羅大法官昌發提出

a concurring opinion, in which Justice Beyue SU CHEN, Justice Jiun-Yi LIN, Justice Jau-Yuan HWANG, joined.

Justice Chang-Fa LO filed a dissenting opinion.

Justice Dennis Te-Chung TANG filed a dissenting opinion.

Justice Horng-Shya HUANG filed a dissenting opinion.

Justice Jui-Ming HUANG filed a dissenting opinion.

之不同意見書；湯大法官德宗提出之不同意見書；黃大法官虹霞提出之不同意見書；黃大法官瑞明提出之不同意見書。

J. Y. Interpretation No.755（December 1, 2017）*

【Judicial Remedies for Inmates】

ISSUE: According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, inmates are not allowed to seek remedies in court. Does the foregoing contradict Article 16 of the Constitution, which protects people's right to institute legal proceedings ?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution（憲法第十六條及第二十三條）；2；J.Y. Interpretations Nos. 653, 691 and 736（司法院釋字釋字第六五三號、第六九一號、第七三六號解釋）；Article 1 and Article 6 of the Prison Act（監獄行刑法第一條、第六條）；Article 5, Paragraph 1, Subparagraph 7 of the Enforcement Rules of the Prison Act（監獄行刑法施行細則第五條第一項第七款）

KEYWORDS:

disciplinary actions or other management measures taken by the prison（監獄處分或其他管理措施）, the purpose of enforcing prison sentences（監獄行刑目的）, protection of the right to institute legal proceedings（訴訟

* Translated by Chen-Hung CHANG

** Contents within frame, not part of the original text, are added for reference purposes only.

權保障）, timely and effective remedies（及時有效救濟）, grievance（申訴）, where there is a right, there is a remedy（有權利即有救濟）, freedom of residence and movement（居住與遷徙自由）**

HOLDING: According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, when inmates contest disciplinary actions or other management measures taken by the prison, they are not allowed to seek remedies in court. However, if the aforementioned actions or measures exceed the extent necessary for achieving the purposes of enforcing prison sentences and if they unlawfully infringe inmates' constitutional rights—especially when such infringement is not obviously minor—denying inmates the right to seek remedies in court exceeds the scope of necessity under Article 23 of the Constitution and is not in conformity with Article 16 of the Constitution, which protects people's right to institute legal proceedings. Relevant authorities shall review and revise the Prison Act and rel-

解釋文：監獄行刑法第 6 條及同法施行細則第 5 條第 1 項第 7 款之規定，不許受刑人就監獄處分或其他管理措施，逾越達成監獄行刑目的所必要之範圍，而不法侵害其憲法所保障之基本權利且非顯屬輕微時，得向法院請求救濟之部分，逾越憲法第 23 條之必要程度，與憲法第 16 條保障人民訴訟權之意旨有違。相關機關至遲應於本解釋公布之日起 2 年內，依本解釋意旨檢討修正監獄行刑法及相關法規，就受刑人及時有效救濟之訴訟制度，訂定適當之規範。

evant regulations within two years from the date of promulgation of this Interpretation and enact appropriate regulations to allow inmatestimely and effective judicial remedies.

Before the revision of the aforementioned laws, if inmates believe that the disciplinary actions or other management measures taken by the prison exceed the extent necessary for achieving the purposes of enforcing prison sentences—thus unlawfully infringing their constitutional rights, especially when such infringement is not obviously minor—they shall first file a grievance to the supervisory authority.If they want to challenge the decisions made by the supervisory authority subsequently, they can directly litigate in local district administrative courts in accordance with the location of the prison to seek a remedy.Such litigation shall be filed within a peremptory period of 30 days from the date they receive the decision from the supervisory authority.Regulations related to summary proceedings in the Administrative Procedure Act shall apply *mutatis mutandis* to these cases,

修法完成前，受刑人就監獄處分或其他管理措施，認逾越達成監獄行刑目的所必要之範圍，而不法侵害其憲法所保障之基本權利且非顯屬輕微時，經依法向監督機關提起申訴而不服其決定者，得於申訴決定書送達後 30 日之不變期間內，逕向監獄所在地之地方法院行政訴訟庭起訴，請求救濟。其案件之審理準用行政訴訟法簡易訴訟程序之規定，並得不經言詞辯論。

which may be tried without oral arguments.

REASONING: While serving his sentence of imprisonment, Petitioner XIE Qingyan (hereinafter Petitioner A) resented not being allowed to use the word "jailer," and criticized the prison in his correspondence.He was, therefore, disciplined by the Taoyuan Prison, Agency of Corrections, Ministry of Justice (hereinafter Taoyuan Prison) for this violation. Petitioner A objected and filed a grievance according to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules. Subsequently, he filed a petition to the Taiwan Shilin District Court for revocation of the aforementioned disciplinary measure. The Taiwan Shilin District Court dismissed the case with Ruling Sheng Zi No.884 (2015) (hereinafter Final and Binding Ruling 1), holding that "if inmates contest disciplinary actions taken by the prison, they shall seek remedy following Article 6 of the Prison Act and Article 5, Paragraph 1 of its Enforcement Rules."The ruling was final and binding.

解釋理由書：聲請人謝清彥（下稱聲請人一）於受自由刑執行期間，因不滿監獄人員禁止其使用「獄卒」一詞，乃於書信批判監所，遭法務部矯正署桃園監獄（下稱桃園監獄）以其違規為由予以處分，聲請人一不服，依監獄行刑法第 6 條（下稱系爭規定一）及同法施行細則第 5 條第 1 項第 7 款（下稱系爭規定二）等規定申訴後，向臺灣士林地方法院聲請撤銷原處分，經該院以 104 年度聲字第 884 號刑事裁定（下稱確定終局裁判一），認「受刑人如不服監獄之處分，自應循監獄行刑法第 6 條第 1 項、同法施行細則第 5 條第 1 項之規定進行申訴程序救濟」，而駁回其聲請確定。又聲請人一不服法務部矯正署臺北看守所（下稱臺北看守所）所長強制保管其原子筆並限制其寄發賀卡之處分，逕向臺灣臺北地方法院聲請撤銷該處分，經該院以 104 年度聲字第 1968 號刑事裁定（下稱確定終局裁判二），認「本件受刑人如對臺北看守所之各該處分有所不服，應依循立法者所規定之前開程序（按：即系爭規定一及二）進行救濟」，而駁回其聲請確定。另聲請

Moreover, Petitioner A complained that the warden of the Taipei Detention Center, Agency of Corrections, Ministry of Justice (hereinafter Taipei Detention Center) took his ballpoint pen away from him and restricted him from sending greeting cards.Therefore, he filed a petition to the Taiwan Taipei District Court for revocation of these restrictions.The Taiwan Taipei District Court dismissed the case with Criminal Ruling Sheng Zi No.1968 (2015) (hereinafter Final and Binding Ruling 2), holding that "if the inmate in this case disagrees with actions taken by the Taipei Detention Center, he shall seek remedy following the aforementioned procedures (editor's note: namely Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules) enacted by legislators."In addition, Petitioner A claimed that the warden of Taoyuan Prison had threatened to punish him for violation and so deleted his grievance.He filed an objection to the Taiwan Taoyuan District Criminal Court, and later appealed to the Taiwan High Court. The Taiwan High Court pointed out that the supervisory authority of prisons men-

人一認桃園監獄典獄長以違規處分恫嚇並刪除其陳情書，逕向臺灣桃園地方法院刑事庭聲明異議，嗣並向臺灣高等法院提出抗告。該院以系爭規定一所稱監督機關係指法務部矯正署，法院並非監獄之監督機關，認「刑事法院對判決確定後刑之執行，包括監獄對受刑人之管理、處分情形，於檢察官簽發執行指揮書將受刑人發監執行，即已脫離審判權範圍，刑事法院既非監獄監督機關，對監獄及其主管機關所為之處分自無權審究」，以 104 年度抗字第 972 號刑事裁定（下稱確定終局裁判三）駁回確定。

tioned in Article 6 of the Prison Act was the Agency of Corrections, Ministry of Justice, not the court.“…Once a final and binding ruling is made and the prosecutor issues the command instructions for execution, the enforcement of the sentences, including how prisons manage and discipline inmates, is out of the jurisdiction of the criminal court. Since the criminal court is not the supervisory authority of prisons, it naturally cannot review the actions taken by prisons or the agency-in-charge.”The Taiwan High Court therefore dismissed the case with Ruling Kang Zi No.972 (2015) (hereinafter Final and Binding Ruling 3).

Petitioner LIU Yuhua (hereinafter Petitioner B) complained that Taoyuan Prison had canceled edifying activities at short notice, changed lunch and dinner menus and asked inmates to pay for washing-up liquid. After filing a grievance according to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, he filed a petition to the Taiwan Yilan District Court and later appealed to the Taiwan High Court.

聲請人劉育華（下稱聲請人二）因不服法務部矯正署宜蘭監獄臨時取消教化活動、變更午晚餐菜色及要求受刑人支付餐具清潔用品費用等處分，經依系爭規定一及二申訴後，向臺灣宜蘭地方法院聲請撤銷變更處分遭駁回後，嗣向臺灣高等法院提出抗告，該院以 105 年度抗字第 757 號刑事裁定（下稱確定終局裁判四），認「抗告人為受刑人，其不服監獄所為處分，應依監獄行刑法規定，經由典獄長申訴於監督機關或視

The Taiwan High Court dismissed the case with Ruling Kang Zi No.757 (2015) (hereinafter Final and Binding Ruling 4), holding that "As an inmate, if the appellant contests actions taken by the prison, he should file a grievance according to the Prison Act through the warden to the supervisory authority or inspectoral officials."

察人員」，而駁回其抗告確定。

Petitioner XU Qianxiang (hereinafter Petitioner C) refused to accept that the Pingtung Prison, Agency of Corrections, Ministry of Justice had denied his application for prison camp. He filed an administrative appeal but was denied by the agencies with jurisdiction. He then instituted administrative litigation but the case was dismissed by the Supreme Administrative Court with Ruling Cai Zi No.1249 (2016) (hereinafter Final and Binding Ruling 5). The Supreme Administrative Court affirmed the ruling made by the previous court, which stated that "According to Article 6 of the Prison Act and Article 5 of its Enforcement Rules, when inmates disagree with actions taken by the prison, they can only file a grievance to the war-

聲請人徐千祥（下稱聲請人三）因不服法務部矯正署屏東監獄就其申請外役監審查未獲選之處分提起訴願，經訴願機關決定不受理後提起行政訴訟，嗣經最高行政法院以 105 年度裁字第 1249 號裁定（下稱確定終局裁判五），認前審裁定以「監獄行刑法第 6 條及其施行細則第 5 條已明定受刑人不服監獄之處分時，僅得向典獄長或視察人員提出申訴，並規定刑事執行監督機關對於受刑人申訴事件有最後之決定權，上開規定為立法機關與主管機關就受刑人不服監獄處分事件所設之申訴制度，屬立法形成之自由，故於監獄之處分符合刑罰執行性質及實現刑罰內容而不能提起行政爭訟之範圍內，難謂有違憲法第 16 條規定保障人民訴訟權之意旨，仍應加以適用」一節，並無違誤，而駁回

den or inspectoral officials.In addition, the supervisory authorities of sentence enforcement institutions shall have the final decision on inmates' grievances.It is within the discretion of the Legislature to enact these provisions, which constitute a grievance system designed by the Legislature and the agency-in-charge to cope with grievances filed by inmates who disagree with actions taken by the prison. Therefore, when the actions taken by the prison are in conformity with the nature of sentence enforcement and implementation, though these provisions do not allow inmates to institute administrative litigation, they do not violate Article 16 of the Constitution, which protects people's right to institute legal proceedings, and should still be applied. "The case was dismissed; the ruling was final and binding.

其抗告確定。

Petitioner CHIOU Ho-shun (hereinafter Petitioner D) complained that the Taipei Detention Center denied his application to send letters; so he filed an administrative appeal but was denied by the agencies with jurisdiction. He then instituted administrative litigation but

聲請人邱和順（下稱聲請人四）因不服臺北看守所否准其申請寄送信函之決定提起訴願，經訴願機關決定不受理後提起行政訴訟，經最高行政法院以102年度判字第514號判決（下稱確定終局裁判六），認「監獄依監獄行刑法對於受刑人通訊與言論自由所為管制措

the case was dismissed by the Supreme Administrative Court with Ruling Pan Zi No.514 (2013) (hereinafter Final and Binding Ruling 6). In the ruling, the Supreme Administrative Court stated, "… While enforcing imprisonment or death penalties, if a prison restrains inmates' freedom of correspondence and speech according to the Prison Act, it is actually enforcing a concomitant restraint to the deprivation of physical liberty or the right to life. This is part of sentence enforcement just as much as the deprivation of physical liberty before carrying out the death penalty and is based on the state's power to punish crime. The purpose is to implement sentences given by final and binding rulings. Since these restraints do not create new regulatory effects, they are not administrative dispositions regulated by the Administrative Procedure Act. Hence the inmates cannot file an administrative appeal or institute administrative litigation following usual administrative remedial procedures. According to Article 6 of the Prison Act and Article 5 of its Enforcement Rules, when inmates disagree with actions taken by the prison, they can

施，就剝奪人身自由或生命權之刑罰而言，乃執行法律因其人身自由或生命權受限制而連帶課予之其他自由限制，連同執行死刑前之剝奪人身自由，均屬國家基於刑罰權之刑事執行之一環，其目的在實現已經訴訟終結且確定的刑罰判決內容，並未創設新的規制效果，自非行政程序法所規範之行政處分，受刑人不得循一般行政救濟程序提起訴願及行政訴訟。故前揭監獄行刑法第 6 條及其施行細則第 5 條明文規定受刑人不服監獄之處分時，僅得向典獄長或視察人員提出『申訴』，並規定刑事執行監督機關對於受刑人申訴事件有最後之決定權（法務部係最終監督機關），於該處分符合刑罰執行性質及實現刑罰內容而不能提起行政爭訟之範圍內，尚難謂有違於憲法第 16 條規定保障人民訴訟權之意旨，仍應加以適用」，而駁回其上訴確定。

only file a grievance to the warden or inspectoral officials.In addition, the supervisory authorities of sentence enforcement institutions have the final decision on inmates' grievances (the highest supervisory authority is the Ministry of Justice). Since inmates cannot institute administrative litigation when the actions taken by the prison are in conformity with the nature of sentence enforcement and implementation, Article 6 of the Prison Act and Article 5 of its Enforcement Rules do not violate Article 16 of the Constitution, which protects people's right to institute legal proceedings, and should still be applied. The case was dismissed; the ruling was final and binding.

Petitioners A to D all alleged that Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, which the aforementioned final and binding rulings had applied, may be unconstitutional and filed a petition for constitutional interpretation. Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules were applied in final and

查聲請人一至四均係主張各該確定終局裁判所適用之系爭規定一及二有違憲疑義，向本院聲請解釋憲法。核系爭規定一及二為確定終局裁判一、二、四至六所適用。又系爭規定一為確定終局裁判三所引用並予論述，亦應認係該裁定所適用。是聲請人一至四之聲請，核與司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款規定相符，均應予受理。

binding rulings 1, 2, 4, 5 and 6. Article 6 of the Prison Act was cited and discussed in final and binding ruling 3, and hence should be considered as applied in the ruling. The petitions by petitioners A to D are in accordance with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Court Act, and hence shall be heard.

Petitioner E is a judge from the Taiwan Taipei District Criminal Court.While judging a case (Sheng Geng (1) Zi No.19 (2015) of the Taiwan Taipei District Criminal Court), Petitioner E realized Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, which were applicable in the case, may contravene Article 16 of the Constitution.Consequently, Petitioner E filed a petition for constitutional interpretation providing concrete reasons for objectively believing the statue to be unconstitutional. This petition has fulfilled the requirements, which are explained in J.Y. Interpretation Nos. 371, 572 and 590, for judges filing a petition for constitutional interpretation, and hence shall be heard.

聲請人臺灣臺北地方法院刑事庭正股法官就該院 104 年度聲更（一）字第 19 號聲明異議事件，認應適用之系爭規定一及二有牴觸憲法第 16 條疑義，依客觀上形成確信法律為違憲之具體理由據以提出聲請，符合本院釋字第 371 號、第 572 號及第 590 號解釋所闡釋法官聲請解釋憲法之要件，亦應予受理。

All the aforementioned petitions concern whether the remedial procedures for inmates, who disagree with disciplinary actions or other management measures taken by the prison, are inconsistent with the Constitution. Considering the commonality of these petitions, the Constitutional Court decided to consolidate them for review and made this Interpretation. The reasoning is as follows:

上開聲請人所提出之聲請均涉及受刑人不服監獄處分或其他管理措施之救濟程序規定是否牴觸憲法，有其共通性，爰併案審理，作成本解釋，理由如下：

Article 16 of the Constitution protects people's right of access to court, meaning that individuals shall have the right to seek judicial remedies when their rights or legal interests are infringed. Based on the constitutional principle of "where there is a right, there is a remedy", when a person's rights or legal interests are infringed, the state should provide such a person an opportunity to litigate in court, to request a fair trial in accordance with due process of law, and to obtain timely and effective remedies, which shall not be denied simply because of the person's status (in reference to J.Y. Interpretation No. 736).

憲法第 16 條保障人民訴訟權，係指人民於其權利或法律上利益遭受侵害時，有請求法院救濟之權利。基於有權利即有救濟之憲法原則，人民權利或法律上利益遭受侵害時，必須給予向法院提起訴訟，請求依正當法律程序公平審判，以獲及時有效救濟之機會，不得僅因身分之不同即予以剝奪（本院釋字第 736 號解釋參照）。

The purpose of a sentence of imprisonment is to encourage inmates to reform and adapt to social life (in reference to Article 1 of the Prison Act). During imprisonment, inmates are deprived of physical liberty. Their other rights and freedoms (such as the freedom of residence and movement) may also be restrained concomitantly. Considering that prisons are highly purposeful correctional institutions, for them to achieve the purpose of enforcing prison sentences (including maintaining order and security in prison, providing appropriate correctional treatment for inmates, preventing inmates from becoming involved in other illegal behaviour, etc.), they should be able to take measures necessary for inmate management, to which the judiciary should show a higher degree of deference. Therefore, if their constitutional rights are not infringed, or the infringement is obviously minor, inmates can only follow the grievance procedures in prisons and their supervisory authorities, urging internal review and resolution. However, if the disciplinary actions or other management measures taken by the prison exceed the

法律使受刑人入監服刑，目的在使其改悔向上，適於社會生活（監獄行刑法第 1 條參照）。受刑人在監禁期間，因人身自由遭受限制，附帶造成其他自由權利（例如居住與遷徙自由）亦受限制。鑑於監獄為具有高度目的性之矯正機構，為使監獄能達成監獄行刑之目的（含維護監獄秩序及安全、對受刑人施以相當之矯正處遇、避免受刑人涉其他違法行為等），監獄對受刑人得為必要之管理措施，司法機關應予較高之尊重。是如其未侵害受刑人之基本權利或其侵害顯屬輕微，僅能循監獄及其監督機關申訴程序，促其為內部反省及處理。唯於監獄處分或其他管理措施逾越達成監獄行刑目的所必要之範圍，而不法侵害其憲法所保障之基本權利且非顯屬輕微時，本於憲法第 16 條有權利即有救濟之意旨，始許其向法院提起訴訟請求救濟。

extent necessary for achieving the purpose of enforcing prison sentences and unlawfully infringe inmates' constitutional rights, especially when such infringement is not obviously minor, due to the principle "where there is a right, there is a remedy" under Article 16 of the Constitution, inmates shall be allowed to litigate in court for judicial remedies.

Article 6 of the Prison Act prescribes: "1. If inmates contest actions taken by the prison, they can file grievances through the warden to the supervisory authority or inspectoral officials. Actions taken by the prison remain effective until the related authority decides otherwise. 2. A warden shall report inmates' grievances to the supervisory authority at once. 3. When inspectoral officials visit a prison, inmates, who contest actions taken by the prison, can file grievances to them directly."Article 5, Paragraph 1of the Enforcement Rules of the Prison Act prescribes: "Grievances filed by inmates, who contest actions taken by the prison, shall be processed pursuant to the regulations stipulated below :…7. The supervi-

系爭規定一明定：「（第 1 項）受刑人不服監獄之處分時，得經由典獄長申訴於監督機關或視察人員。但在未決定以前，無停止處分之效力。（第 2 項）典獄長接受前項申訴時，應即時轉報該管監督機關，不得稽延。（第 3 項）第一項受刑人之申訴，得於視察人員蒞監獄時逕向提出。」系爭規定二明定：「受刑人不服監獄處分之申訴事件，依左列規定處理之：……七、監督機關對於受刑人申訴事件有最後之決定。」上開規定均係立法機關與主管機關就受刑人不服監獄處分事件所設之申訴制度。該申訴制度使執行監禁機關有自我省察、檢討改正其所為決定之機會，並提供受刑人及時之權利救濟，其設計固屬立法形成之自由，惟仍不得因此剝奪受刑人向法院提起訴訟請求救濟之權利。

sory authority shall have the final decision on inmates' grievances. "These provisions constitute a grievance system designed by the Legislature and the agency-in-charge to cope with grievances filed by inmates who disagree with actions taken by the prison. This grievance system allows imprisonment enforcement institutions an opportunity to reflect on, review and correct their decisions, in addition to providing inmates timely and effective remedies. It is within the discretion of the Legislature to design such grievance systems. However, it should not be a ground for depriving inmates of the right to litigate in court for judicial remedies.

Article 6 of the Prison Act was enacted on December 29, 1945, promulgated on January 19, 1946, and came into force on December 14, 1947. Subsequent amendments only revised the name of authorities handling grievances. The Enforcement Rules of the Prison Act were enacted and promulgated on March 5, 1975.Article 5, Paragraph 1, Subparagraph 7 has not been revised by subsequent amendment to the Rules. Given the

按系爭規定一係於中華民國 34 年 12 月 29 日制定，35 年 1 月 19 日公布，自 36 年 12 月 14 日施行，其後僅對受理申訴機關之名稱予以修正（由監督官署修正為監督機關）。而系爭規定二則係於 64 年 3 月 5 日訂定發布，其後並未因施行細則之歷次修正而有所變動。考其立法之初所處時空背景，係認受刑人與監獄之關係屬特別權力關係，如對監獄之處分或其他管理措施有所不服，僅能經由申訴機制尋求救濟，並

time, place and circumstances wherein the aforementioned provisions were enacted, it was believed that inmates and prisons were in a special relationship of subordination. Accordingly, if inmates disagreed with disciplinary actions or other management measures taken by the prison, they could only seek remedies through grievance procedures and did not have the right to litigate in court for judicial remedies. However, grievance procedures only provide a way for internal review and correction.They are not equivalent to judicial proceedings for seeking remedies.Hence they cannot replace judicial procedures for seeking remedies in court. The Agency of Corrections, Ministry of Justice issued Opinion Letter Zong Zi No.10101609910 on April 5, 2012 to its subordinate institutions, stating that before the revision of the Prison Act, inmates' grievances and remedies "shall be handled in accordance with the procedure for transferring cases to the criminal court, and not to be bound by Article 5, Paragraph 1, Subparagraph 7 of the Enforcement Rules of the Prison Act."On November 7, 2012, Opinion Letter Zong Zi No.10101194401 was issued

無得向法院提起訴訟請求司法審判救濟之權利。惟申訴程序屬機關內部自我省查糾正之途徑，與向法院請求救濟之審判程序並不相當，自不得取代向法院請求救濟之訴訟制度（本院釋字第 653 號及第 691 號解釋參照）。雖法務部矯正署於 101 年 4 月 5 日以法矯署綜字第 10101609910 號函所屬矯正機關：有關受刑人之申訴救濟，於監獄行刑法修正前，「循送法院刑事庭處理之程序辦理，不受現行監獄行刑法施行細則第 5 條第 1 項第 7 款規定之拘束。」並於 101 年 11 月 7 日以法矯署綜字第 10101194401 號函重申此意旨。然前揭函並無拘束法院之效力，且系爭規定一、二迄未修正，故仍有由本院作成解釋之必要。

to repeat the same instruction. However, the aforementioned Opinion Letters are not binding on courts.Moreover, Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules have not yet been revised. Hence it is necessary to make this Interpretation.

According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, when inmates contest disciplinary actions or other management measures taken by the prison, they are not allowed to seek remedies in court. However, if the aforementioned actions or measures exceed the extent necessary for achieving the purpose of enforcing prison sentences and if they unlawfully infringe inmates' constitutional rights—especially when such infringement is not obviously minor—denying inmates the right to seek remedies in court exceeds the scope of necessity under Article 23 of the Constitution and is not in conformity with Article 16 of the Constitution, which protects people's right to institute legal proceedings. The relevant authorities shall review and revise the

就系爭規定一及二合併觀察，其不許受刑人就受監禁期間，因監獄處分或其他管理措施，逾越達成監獄行刑目的所必要之範圍，而不法侵害其憲法所保障之基本權利且非顯屬輕微時，得向法院請求救濟之部分，逾越憲法第 23 條之必要程度，與憲法第 16 條保障人民訴訟權之意旨有違。相關機關至遲應於本解釋公布之日起 2 年內，依本解釋意旨檢討修正監獄行刑法及相關法規，就受刑人及時有效救濟之訴訟制度，訂定適當之規範。

Prison Act and relevant regulations within two years from the date of promulgation of this Interpretation and enact appropriate regulations to allow inmates timely and effective judicial remedies.

Before the revision of the aforementioned laws, if inmates believe that the disciplinary actions or other management measures taken by the prison exceed the extent necessary for achieving the purpose of enforcing prison sentences, thus unlawfully infringing their constitutional rights—especially when such infringement is not obviously minor—they shall first file a grievance to the supervisory authority. If, subsequently, they want to challenge the decision made by the supervisory authority, they can directly litigate in local district administrative courts in accordance with the location of the prison to seek remedy. Such litigation shall be filed within a peremptory period of 30 days from the date they received the decision from the supervisory authority. Regulations relating to summary proceedings in the Administrative Procedure Act shall apply *mutatis mutandis* to these cases,

修法完成前，受刑人就監獄處分或其他管理措施，認逾越達成監獄行刑目的所必要之範圍，而不法侵害其憲法所保障之基本權利且非顯屬輕微時，經依法向監督機關提起申訴而不服其決定者，得於申訴決定書送達後 30 日之不變期間內，逕向監獄所在地之地方法院行政訴訟庭起訴，請求救濟。其案件之審理準用行政訴訟法簡易訴訟程序之規定，並得不經言詞辯論。其經言詞辯論者，得依同法第 130 條之 1 規定，行視訊審理。

which may be tried without oral arguments. When oral arguments are needed, remote hearings using video technology in accordance with Article 130-1 of the Administrative Procedure Act can be held.

In addition, Article 5 of the Enforcement Rules of the Prison Act has yet to require the supervisory authorities of prisons to establish a committee composed of external, impartial and professional members to reviewand handle grievances. This shall be reviewed and revised by relevant authorities as well.

Petitioner A also filed a petition to supplement J.Y. Interpretations Nos. 639, 663 and 667. Considering the aforementioned Interpretations are not flawed by ambiguity or incompleteness, supplementary Interpretations are not necessary. Hence this petition does not meet the requirements stipulated in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and should be dismissed in accordance with Paragraph 3 of the same Article. Furthermore, Petitioner D filed a petition for constitutional

又系爭規定二未要求監督機關設置具外部公正或專業人員參與之委員會，以審查及處理申訴事件，相關機關應併檢討修正，併予指明。

另聲請人一就本院釋字第 639 號、第 663 號及第 667 號解釋聲請補充解釋部分，查上開解釋並無文字晦澀或論證不周而有補充之必要。是此部分之聲請，核與大審法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定，應不受理。另聲請人四就監獄行刑法第 66 條、同法施行細則第 82 條及第 81 條第 3 項等規定聲請解釋憲法部分，因與聲請人一至三及五聲請解釋之標的不同，故另案處理。均併此敘明。

interpretation of several provisions, including Article 66 of the Prison Act, and Articles 82 and 81, Paragraph 3 of the Enforcement Rules of the Prison Act. Since this petition does not share the same subject matter with petitions filed by Petitioners A, B, C and E, it is to be reviewed separately.

Justice Chen-Huan WU recused himself and took no part in the deliberationor the decision of this case.

Justice Dennis Te-Chung TANG filed an opinion concurring in part, in which Justice Beyue SU CHEN, joined.

Justice Ming-Cheng TSAI filed an opinion concurring in part.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Tzong-Li HSU filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Jau-Yuan HWANG filed a concurring opinion

Justice Horng-Shya HUANG filed

吳大法官陳鐶迴避審理本案。

本號解釋湯大法官德宗提出，陳大法官碧玉加入之部分協同意見書；蔡大法官明誠提出之部分協同意見書；林大法官俊益提出之部分協同意見書；許大法官宗力提出之協同意見書；羅大法官昌發提出之協同意見書；黃大法官瑞明提出之協同意見書；黃大法官昭元提出之協同意見書；黃大法官虹霞提出之部分協同部分不同意見書；許大法官志雄提出之部分協同部分不同意見書；黃大法官璽君提出之部分不同意見書。

an opinion concurring in part and dissenting in part.

Justice Chih-Hsiung HSU filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG filed an opinion dissenting in part.

J. Y. Interpretation No.756（December 1, 2017）*

【Prior Restraint on Cosmetic Advertisements】

ISSUE: 1. Does Article 66 of the Prison Act violate the right to privacy of correspondence protected under Article 12 of the Constitution ?

2. Do Subparagraphs 1, 2 and 7, Article 82 of the Enforcement Rules of the Prison Act exceed the authorization of the enabling statute, namely the Prison Act ?

3. Does Paragraph 3, Article 81 of the Enforcement Rules of the Prison Act violate the principle of legal reservation in Article 23 and freedom of expression in Article 11 of the Constitution ?

RELEVANT LAWS:

Articles 11, 12, and 23 of the Constitution（憲法第十一條、第十二條及第二十三條）；J.Y. Interpretations Nos. 443, 509, 568, 631, 644, 678, 710, 734, 744.（司法院釋字第四四三號、第五０九號、第五六八號、第六三一號、第六四四號、第六七八號、第七一０號、第七三四號及第七四四號解釋）；Article 66 of the Prison Act（監獄行刑法第六十六條）；Paragraph 3 of Article 81, Subparagraphs 1, 2, and 7 of Article 82 of the Enforcement Rules of the Prison Act（監獄行刑法施

* Translated by Jimmy Chia-Shin HSU

** Contents within frame, not part of the original text, are added for reference purposes only.

行細則第八十一條第三項、第八十二條第一款、第二款及第七款）

KEYWORDS:

prison inmate（受刑人）, mailing and receiving letters（發受書信）, inspection and perusal（檢閱）, prison discipline（監獄紀律）, privacy of correspondence（秘密通訊）, freedom of expression（表現自由）, appropriate themes（題意正確）, prior restraint of speech（言論事前審查）, reputation of the prison（監獄信譽）**

HOLDING: Article 66 of the Prison Act provides, "Incoming and outgoing mails of inmates shall be subject to inspection and perusal by prison officials. If the content is found to pose a risk to prison discipline, the prison officer has the authority to order deletion of the designated passage upon exposition of reasons, before the letter may be mailed out of the prison. The prison officer has the authority to delete passages in an incoming letter found to pose a risk to prison discipline, before it is received by the inmate." The purpose of inspection of mail is to ensure there is no contraband attached. To the extent that the measures of inspection

解釋文：監獄行刑法第 66 條規定：「發受書信，由監獄長官檢閱之。如認為有妨害監獄紀律之虞，受刑人發信者，得述明理由，令其刪除後再行發出；受刑人受信者，得述明理由，逕予刪除再行收受。」其中檢查書信部分，旨在確認有無夾帶違禁品，於所採取之檢查手段與目的之達成間，具有合理關聯之範圍內，與憲法第 12 條保障秘密通訊自由之意旨尚無違背。其中閱讀書信部分，未區分書信種類，亦未斟酌個案情形，一概許監獄長官閱讀書信之內容，顯已對受刑人及其收發書信之相對人之秘密通訊自由，造成過度之限制，於此範圍內，與憲法第 12 條保障秘密通訊自由之意旨不符。至其中刪除書信

are reasonably connected with this purpose, the inspection clause of the statute in question does not contravene the right to privacy of correspondence protected in Article 12 of the Constitution. Regarding the perusal of mail, the statute in question does not distinguish types of mail, nor does it take into account the circumstances of individual cases. It indiscriminately authorizes prison officers to read the content of the mail. It is a clear infringement of the privacy of correspondence of both the inmate and the correspondent. It amounts to an excessive restriction of the fundamental right. The statute in question is hence inconsistent with the right to privacy of correspondence protected in Article 12 of the Constitution. Deletion of the content of correspondence should be limited to the extent necessary to maintain prison discipline. A copy of the original correspondence in its entirety should be preserved and should be returned to the inmate upon release from prison, so as to be commensurate with the principle of proportionality. To the extent that the statute in question meets such a requirement, it is not inconsistent with the constitution-

內容部分，應以維護監獄紀律所必要者為限，並應保留書信全文影本，俟受刑人出獄時發還之，以符比例原則之要求，於此範圍內，與憲法保障秘密通訊及表現自由之意旨尚屬無違。

al protection of privacy of correspondence and freedom of expression.

It is provided in Subparagraphs 1, 2 and 7, of Article 82 of the Enforcement Rules of the Prison Act that "The phrase 'posing a risk to prison discipline' contained in Article 66 of the Prison Act refers to correspondence involving the following elements: 1. Statements that are obviously untrue, fraudulent , insulting, or threatening, and which pose a risk that others may be defrauded, distressed, or disturbed. 2. Statements that pose a threat to fair and proper administration of correctional measures…..7. Statements that violate Subparagraphs 1 to 4, 6, 7, and 9, Paragraph 1, Article 18 of the Enforcement Rules of the Prison Act." In those cases referred to in Subparagraph 1, Article 82 of the Enforcement Rules, where the inmate's correspondent is not an inmate, and in those cases referred to in Subparagraph 7 of the same Article, which concern the several Subparagraphs of Paragraph 1, Article 18 of the Enforcement Rules, the aims to be achieved are not necessarily related to the maintenance

監獄行刑法施行細則第 82 條第 1 款、第 2 款及第 7 款規定：「本法第 66 條所稱妨害監獄紀律之虞，指書信內容有下列各款情形之一者：一、顯為虛偽不實、誘騙、侮辱或恐嚇之不當陳述，使他人有受騙、造成心理壓力或不安之虞。二、對受刑人矯正處遇公平、適切實施，有妨礙之虞。……七、違反第 18 條第 1 項第 1 款至第 4 款及第 6 款、第 7 款、第 9 款受刑人入監應遵守事項之虞。」其中第 1 款部分，如受刑人發送書信予不具受刑人身分之相對人，以及第 7 款所引同細則第 18 條第 1 項各款之規定，均未必與監獄紀律之維護有關。其與監獄紀律之維護無關部分，逾越母法之授權，與憲法第 23 條法律保留原則之意旨不符。

of prison discipline. Where the regulation is irrelevant to the maintenance of prison discipline, the Enforcement Rules in question exceed statutory authorization. They are hence inconsistent with the principle of legal reservation in Article 23 of the Constitution.

Paragraph 3, Article 81 of the Enforcement Rules of the Prison Act, which provides that "Submission of essays written by inmates to newspapers or magazines shall be permitted, provided that the themes in those essays are appropriate and inoffensive to the discipline and reputation of the prison," is in contravention of the principle of legal reservation in Article 23 of the Constitution. Such purposes as "appropriate theme" and "reputation of the prison" do not qualify as important public interests, and are therefore inconsistent with the protection of freedom of expression guaranteed by Article 11 of the Constitution. As for the purpose of "discipline of the prison", the regulation in question does not contemplate less intrusive measures, and hence violates freedom of expression protected in Article 11

監獄行刑法施行細則第 81 條第 3 項規定：「受刑人撰寫之文稿，如題意正確且無礙監獄紀律及信譽者，得准許投寄報章雜誌。」違反憲法第 23 條之法律保留原則。另其中題意正確及監獄信譽部分，均尚難謂係重要公益，與憲法第 11 條保障表現自由之意旨不符。其中無礙監獄紀律部分，未慮及是否有限制較小之其他手段可資運用，就此範圍內，亦與憲法第 11 條保障表現自由之意旨不符。

of the Constitution.

The aforementioned provisions, which contravene the Constitution, shall cease to be effective no later than two years after the date of issue of this Interpretation, with the exception that the restrictions concerning "appropriate theme" and "reputation of the prison" of Paragraph 3, Article 81 of the Enforcement Rules of the Prison Act shall cease to be effective from the date of issue of this Interpretation.

前開各該規定與憲法規定意旨有違部分，除監獄行刑法施行細則第 81 條第 3 項所稱題意正確及無礙監獄信譽部分，自本解釋公布之日起失其效力外，其餘部分應自本解釋公布之日起，至遲於屆滿 2 年時，失其效力。

REASONING: Petitioner Chiou Ho-shun was sentenced to death by a final and binding decision. During his time in prison, he applied to the prison authorities for permission to mail personal memoirs to his friend, for the purpose of future publication. After inspecting the content, the Taipei Detention Center, which is supervised by the Agency of Corrections of the Ministry of Justice, determined that some parts jeopardized the reputation of the institution. The petitioner was asked to modify the content before reapplying

解釋理由書：聲請人邱和順因受死刑判決確定，人身自由受限制期間，為請求在外友人協助出版，向監所申請寄出個人回憶錄。經法務部矯正署臺北看守所檢視後，認部分內容有影響機關聲譽，請其修改後再行提出。聲請人不服，經監所召開評議會議，請其再行檢視內容並修正後，始提出申請。聲請人嗣向法院提出行政訴訟，經最高行政法院認其爭訟事項不得提起行政訴訟，以 102 年度判字第 514 號判決（下稱確定終局判決）駁回確定。聲請人主張確定終局判決所適用之監獄行刑法第

for permission. The petitioner did not accept the decision. The Taipei Detention Center called a review board meeting to deliberate on his appeal. The board meeting upheld the original decision and required the petitioner to reexamine his own content before reapplying for permission. The petitioner filed a suit to the administrative court. His case was eventually rejected by the Supreme Administrative Court in Decision 102- Pan-Tze No. 514 (2013) (hereinafter "the final and binding judgment"). The petitioner claims that the sources of law in that judgment, which include Article 66 of the Prison Act (hereinafter "Disputed Provision I"), Subparagraphs 1,2 and 7, Article 82 of the Enforcement Rules of the Prison Act (hereinafter "Disputed Provision II"), and Paragraph 3, Article 81 of the Enforcement Rules of the Prison Act (hereinafter "Disputed Provision III"), are unconstitutional. He petitioned to this Court for constitutional interpretation.

The Provisions I and III disputed in the petition were invoked and construed in the final and binding judgment, and

66 條（下稱系爭規定一）、同法施行細則第 82 條第 1 款、第 2 款及第 7 款（下併稱系爭規定二）及第 81 條第 3 項（下稱系爭規定三）等規定違憲，對之聲請解釋憲法。

核聲請人聲請解釋之系爭規定一及三，為確定終局判決所引用並予論述，應認係該判決所適用。其所聲請解

hence should be considered duly applied in the ruling. Though Disputed Provision II was not applied in the final and binding judgment, because it is an exegetical provision of Disputed Provision I and should be seen as integral to it, this Court considers it a legitimate object of review. Therefore, the petition meets the requirements of Subparagraph 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act. This Court decides to admit the petition, for which this Interpretation is issued for the following reasons:

釋之系爭規定二，雖非確定終局判決所適用，但為系爭規定一之解釋性規定，屬於適用系爭規定一之一環，本院自得將之納為審查客體。核聲請人之前開聲請，均符合司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款解釋憲法之規定，應予受理。爰作成本解釋，理由如下：

1. Concerning Disputed Provision I, which authorizes prison officers to inspect, peruse, and delete the content of mails sent to or received by inmates

一、有關系爭規定一許監獄長官檢、閱及刪除受刑人發受書信部分

Article 12 of the Constitution provides, “The people shall have the freedom of privacy of correspondence.” The purpose of this fundamental right is to protect the people’s right to choose whether, with whom, when, how, and what to communicate without arbitrary interference by the State or others. This is one of the concrete modes of the right to privacy protected

憲法第 12 條規定：「人民有秘密通訊之自由。」旨在確保人民就通訊之有無、對象、時間、方式及內容等事項，有不受國家及他人任意侵擾之權利。此項秘密通訊自由乃憲法保障隱私權之具體態樣之一，為維護人性尊嚴、個人主體性及人格發展之完整，並係保障個人生活私密領域免於國家、他人任意侵擾及維護個人資料之自主控制，所不可或

by the Constitution. It is a fundamental right essential for maintaining human dignity, individual autonomy, and sound development of personality. Furthermore, this right is necessary to safeguard the personal intimate sphere of life from arbitrary invasion by the State or others, and it is necessary for upholding autonomous control of personal information (*see* J.Y. Interpretation No. 631). Moreover, Article 11 of the Constitution guarantees freedom of speech and other forms of expression, on the grounds that freedom of expression underpins self-realization, exchange of ideas, pursuit of truth, meeting the people's right to know, formation of the public will, and facilitates all reasonable functions of political and social activities. It is a mechanism indispensable for the sound functioning of a democratic pluralistic society. (*see* J.Y. Interpretation Nos. 509, 644, 678 and 734).

缺之基本權利（本院釋字第 631 號解釋參照）。又憲法第 11 條規定，人民有言論及其他表現自由，係鑑於言論及其他表現自由具有實現自我、溝通意見、追求真理、滿足人民知的權利，形成公意，促進各種合理之政治及社會活動之功能，乃維持民主多元社會正常發展不可或缺之機制。國家對之自應予最大限度之保障（本院釋字第 509 號、第 644 號、第 678 號及第 734 號解釋參照）。

The purpose of incarceration is to facilitate reform and rehabilitation (*see* Article 1 of Prison Act). It does not aim at total deprivation of rights and liberties (*see* endnote). Except for the restriction

法律使受刑人入監服刑，目的在使其改悔向上，適於社會生活（監獄行刑法第 1 條參照），並非在剝奪其一切自由權利（註）。受刑人在監禁期間，除因人身自由遭受限制，附帶造成其他

of personal liberty and other incidentally restricted liberties, such as freedom of residence and migration, inmates enjoy constitutional rights not essentially different from what is guaranteed to other people. The inmate's fundamental rights such as privacy of correspondence and freedom of expression are protected by the Constitution. Except for measures necessary to achieve the purposes of incarceration (including the maintenance of order and security of the prison, the enforcement of proper corrective treatment, and the prevention of inmates' involvement in unlawful activities), the inmate's fundamental rights should not be restricted. The same applies to death row inmates during the period of their imprisonment.

自由權利（例如居住與遷徙自由）亦受限制外，其與一般人民所得享有之憲法上權利，原則上並無不同。受刑人秘密通訊自由及表現自由等基本權利，仍應受憲法之保障。除為達成監獄行刑目的之必要措施（含為維護監獄秩序及安全、對受刑人施以相當之矯正處遇、避免受刑人涉其他違法行為等之措施）外，不得限制之。受死刑判決確定者於監禁期間亦同。

Disputed Provision I provides that "Incoming and outgoing mails of inmates shall be subject to inspection and perusal by prison officials. If the content is found to pose a risk to prison discipline, the prison officer has the authority to order deletion of the designated passage upon exposition of reasons, before the letter may mailed out of the prison. The prison

系爭規定一明定：「發受書信，由監獄長官檢閱之。如認為有妨害監獄紀律之虞，受刑人發信者，得述明理由，令其刪除後再行發出；受刑人受信者，得述明理由，逕予刪除再行收受。」所稱「檢閱」一詞，包括檢查及閱讀，係對受刑人及其收發書信相對人秘密通訊自由之限制。其中檢查旨在使監獄長官知悉書信（含包裹）之內容物，以確

officer has the authority to delete passages in incoming mail found to pose a risk to prison discipline, before it is received by the inmate." The inspection and perusal clauses constitute restrictions of the privacy of correspondence of the inmate and his/her correspondent. The purpose of inspection is for the prison officers to learn the content of the mail (including packages), in order to detect contraband. This does not necessarily intrude into the content of the correspondence. To the extent that the measures of inspection are reasonably connected to such a purpose (for example, checking the exterior of the object or examining it with instruments after unpacking the mail), the inspection part of Dispute Provision I does not exceed the requirement of necessity of Article 23 of the Constitution, and hence is not inconsistent with the guarantee of privacy of correspondence of Article 12 of the Constitution.

認有無夾帶違禁品，並不當然影響通訊內容之秘密性，其目的尚屬正當。如其所採取之檢查手段與目的之達成間，具有合理關聯（例如開拆後檢查內容物之外觀或以儀器檢查），即未逾越憲法第 23 條之必要程度，與憲法第 12 條保障之秘密通訊自由之意旨尚無違背。

The perusal part of Disputed Provision I that authorizes prison officers to read the incoming and outgoing letters of inmates compromises the confidentiality

至系爭規定一許監獄長官閱讀受刑人發受書信部分，涉及通訊內容之秘密性，屬憲法保障秘密通訊自由之核心內涵。倘係為達成監獄行刑之目的，其

of the content of correspondence. This restriction touches upon the core of constitutional protection of privacy of correspondence. The purpose of this restriction is legitimate, only insofar as it serves a penal function. However, the provision does not distinguish between types of correspondence (for example, whether it is between the inmate and relevant governmental authorities or his/her attorney), nor does it take into account circumstances of individual cases (for example, inmates behavioral performance during the prison term), and it indiscriminately authorizes prison officers to read the content of correspondence. It amounts to clear infringement of the privacy of correspondence of both the inmate and his/her correspondent. It is therefore an excessive restriction of such freedom. The provision in question is inconsistent with the proportionality principle of Article 23 of the Constitution, and contravenes constitutional protection of privacy of correspondence.

規範目的固屬正當。然其未區分書信種類（例如是否為受刑人與相關公務機關或委任律師間往還之書信），亦未斟酌個案情形（例如受刑人於監所執行期間之表現），一概認為有妨害監獄行刑之目的，而許監獄長官閱讀書信之內容，顯已對受刑人及其收發書信之相對人之秘密通訊自由，造成過度之限制。於此範圍內，與憲法第 23 條比例原則之意旨不符，有違憲法保障秘密通訊自由之意旨。

The latter part of Disputed Provision I provides, "…If the content is found to pose a risk to prison discipline, the prison

系爭規定一後段規定：「……如認為有妨害監獄紀律之虞，受刑人發信者，得述明理由，令其刪除後再行發出；

officer has the authority to order deletion of the designated passage upon exposition of reasons, before the letter may be mailed out of the prison. Similarly, the prison officer has the authority to delete passages in incoming mail found to pose a risk to prison discipline, before it is received by the inmate." Such a measure restricts not only the privacy of correspondence but also the freedom of expression of inmates and his/her correspondents. Insofar as the provision in question serves to maintain prison discipline, such a regulative purpose can be deemed legitimate. The deletion, however, should be limited to what is necessary to maintain prison discipline. A copy of the original correspondence in its entirety should be preserved, and should be returned to the inmate upon release from prison, so as to be commensurate with the principle of proportionality. To the extent that the provision in question meets such a requirement, it is not inconsistent with the constitutional protection of privacy of correspondence and freedom of expression.

受刑人受信者，得述明理由，逕予刪除再行收受。」除限制發受書信之受刑人及其收發書信之相對人之秘密通訊自由外，亦限制其表現自由。上開規定許監獄長官刪除受刑人發受書信之內容，係為維護監獄紀律，其規範目的尚屬正當。惟刪除之內容，應以維護監獄紀律所必要者為限，並應保留書信全文影本，俟受刑人出獄時發還之，以符比例原則之要求。於此範圍內，與憲法保障秘密通訊及表現自由之意旨尚屬無違。

2. Concerning Disputed Provision

二、有關系爭規定二闡示母法之

II, which offers exposition of the phrase "posing a risk to prison discipline" contained in the enabling statute

When administrative agencies are authorized by law to issue supplemental regulations, such regulations should be consistent with the legislative intention and must not exceed the scope of power granted by the enabling statute, in order to be constitutionally permissible. (*see* J.Y. Interpretation No. 568) In cases in which the enabling statute offers general authorization for administrative agencies to promulgate rules of enforcement, whether such rules exceed the authorization depends on whether the rules can be construed to rest within the parameters of the textual meaning of the enabling statute. (*see* J.Y. Interpretation No. 710) Disputed Provision I permits prison officers to delete the relevant passages of the correspondence only when it is necessary to maintain prison discipline. Article 93-1 of the Prison Act provides, "The rules of enforcement of this Act shall be promulgated by the Ministry of Justice." Disputed Provision II, promulgated un-

妨害監獄紀律之虞部分

法律授權行政機關發布命令為補充規定者，該命令須符合立法意旨且未逾越母法授權之範圍，始為憲法所許（本院釋字第 568 號解釋參照）；法律概括授權行政機關訂定之施行細則是否逾越母法授權之範圍，應視其規定是否為母法規定之文義所及而定（本院釋字第 710 號解釋參照）。系爭規定一限於維護監獄紀律所必要，始許監獄長官刪除相關部分。監獄行刑法第 93 條之 1 規定：「本法施行細則，由法務部定之。」據此訂定之系爭規定二規定：「本法第 66 條所稱妨害監獄紀律之虞，指書信內容有下列各款情形之一者：一、顯為虛偽不實、誘騙、侮辱或恐嚇之不當陳述，使他人有受騙、造成心理壓力或不安之虞。二、對受刑人矯正處遇公平、適切實施，有妨礙之虞。……七、違反第 18 條第 1 項第 1 款至第 4 款及第 6 款、第 7 款、第 9 款受刑人入監應遵守事項之虞。」系爭規定二第 1 款部分，如受刑人發送書信予不具受刑人身分之相對人，以及第 7 款所引同細則第 18 條第 1 項各款之規定，均未必與監

der the authorization of Article 93-1 of Prison Act, provides, "The phrase 'posing a risk to prison discipline' contained in Article 66 of the Prison Act refers to correspondence with the following elements: 1. Statements that are obviously untrue, fraudulent, insulting, or threatening, and which pose a risk that others may be defrauded, distressed, or disturbed. 2. Statements that pose a threat to fair and proper administration of correctional measures…..7. Statements that violate Subparagraphs 1 to 4, 6, 7, and 9, Paragraph 1, Article 18 of the Enforcement Rules of the Prison Act." In those cases referred to in Subparagraph 1, Article 82 of the Enforcement Rules, where the inmate's correspondent is not an inmate, and in those cases referred to in Subparagraph 7 of the same Article, which invokes the several Subparagraphs of Paragraph 1, Article 18 of the Enforcement Rules, the aims to be achieved are not necessarily related to the maintenance of prison discipline. Where the regulation is irrelevant to the maintenance of prison discipline, the Enforcement Rules in question exceed statutory authorization. They are hence inconsistent

獄紀律之維護有關。其與監獄紀律之維護無關部分，逾越母法之授權，與憲法第 23 條法律保留原則之意旨不符。相關機關如認系爭規定一所列「有妨害監獄紀律之虞」尚不足以達成監獄行刑之目的，應修改法律明定之。

with the principle of legal reservation in Article 23 of the Constitution. If the agency in charge considers the phrase "posing a risk to prison discipline" insufficient for its penal purpose, it should amend the statute for further specification.

3. Concerning the part of Disputed Provision III, which restricts publication of inmates' writings

Any restriction placed on the people's constitutionally protected fundamental rights shall be substantiated by statutes, or regulations concretely and specifically enabled by statutes, so as to be commensurate with the principle of legal reservation of Article 23 of the Constitution. Regarding secondary matters concerning details and technicalities of law enforcement, competent authorities may promulgate necessary regulations. (*see* J.Y. Interpretation No. 443). The Disputed Provision III provides, "Submission of essays written by inmates to newspapers or magazines shall be permitted, provided that the themes in those essays are appropriate and inoffensive to the discipline and

三、有關系爭規定三限制受刑人投稿部分

對憲法所保障人民基本權利之限制，須以法律或法律具體明確授權之命令定之，始無違憲法第 23 條之法律保留原則；若僅屬執行法律之細節性、技術性次要事項，則得由主管機關發布命令為必要之規範（本院釋字第 443 號解釋參照）。系爭規定三明定：「受刑人撰寫之文稿，如題意正確且無礙監獄紀律及信譽者，得准許投寄報章雜誌。」係對受刑人憲法保障之表現自由之具體限制，而非技術性或細節性次要事項，監獄行刑法既未具體明確授權主管機關訂定命令予以規範，顯已違反憲法第 23 條之法律保留原則。

reputation of the prison." This regulation constitutes a concrete restriction of the inmate's constitutionally protected freedom of expression. It is not a secondary matter of technicality or detail. Since the Prison Act does not concretely and specifically authorize the executive agency to make such restrictions, it clearly violates the principle of legal reservation of Article 23 of the Constitution.

Furthermore, freedom of expression is a significant fundamental right guaranteed by the Constitution. It upholds human dignity, individual autonomy, and sound development of personality. In principle, prior restraint by the state is presumed unconstitutional. (*see* J.Y. Interpretation No. 744) Even though prior restraint as applied to inmates' speech is in principle not unconstitutional insofar as it serves the purpose of prison management, in view of the serious restrictions imposed on, and interference with, freedom of speech by prior restraint, the purpose of such restrictions must serve significant public interests, and the measures should be substantively connected to that purpose. In

又人民之表現自由涉及人性尊嚴、個人主體性及人格發展之完整，為憲法保障之重要自由權利。國家對一般人民言論之事前審查，原則上應為違憲（本院釋字第 744 號解釋參照）。為達成監獄行刑與管理之目的，監獄對受刑人言論之事前審查，雖非原則上違憲，然基於事前審查對言論自由之嚴重限制與干擾，其限制之目的仍須為重要公益，且手段與目的間應有實質關聯。系爭規定三之規定中，題意正確部分涉及觀點之管制，且其與監獄信譽部分，均尚難謂係重要公益，與憲法第 11 條保障表現自由之意旨不符。另監獄紀律部分，屬重要公益。監獄長官於閱讀受刑人投稿內容後，如認投稿內容對於監獄秩序及安全可能產生具體危險（如受刑人脫

the Disputed Provision III, the restriction concerning "appropriate theme" involves regulation of viewpoint, which, together with the restriction concerning "reputation of the prison", fails to serve significant public interests, and both are inconsistent with freedom of expression guaranteed by Article 11 of the Constitution. Prison discipline, by contrast, is a significant public interest. After reading the content of the inmate's essays, if the prison officer finds that the content poses concrete dangers to prison order and security (for example, by escape or riots), it is only reasonable that the prison authorities may take precautionary or regulatory measures to address these dangers. However, the prison authorities should use caution to ensure that the damage inflicted upon freedom of expression does not outweigh the benefits gained by the restrictive measures. The authorities should also carefully search for alternative measures that are less intrusive to freedom of expression, and should allow sufficient opportunities for the inmate to submit the essays in the future (for example, preserving the original copy for future submission, or permitting submission

逃、監獄暴動等），本得採取各項預防或管制措施。然應注意其措施對於受刑人表現自由所造成之損害，不得超過限制措施所欲追求目的之利益，並需注意是否另有限制較小之其他手段可資運用，且應留給受刑人另行投稿之足夠機會（例如保留原本俾其日後得再行投稿，或使其修正投稿內容後再行投稿等），而不得僅以有礙監獄紀律為由，完全禁止受刑人投寄報章雜誌。系爭規定三有關「受刑人撰寫之文稿，如……無礙監獄紀律……者，得准許投寄報章雜誌」，就逾越上述意旨部分，亦與憲法第 11 條保障表現自由之意旨有違。

after modification of content). The prison authorities should not comprehensively prevent inmates from submitting their essays to newspapers or magazines, on the pretext of maintaining prison discipline. To the extent that it exceeds constitutional parameters, the part of Disputed Provision III, which provides that "Submission of essays written by inmates to newspapers or magazines shall be permitted, provided that the themes in those essays are appropriate and inoffensive to the discipline and reputation of the prison", violates the freedom of expression guaranteed in Article 11 of the Constitution.

Those parts of Disputed Provisions I, II, and III, which are declared unconstitutional, shall cease to be effective no later than two years after the date of issue of this Interpretation, with the exception that the restrictions concerning "appropriate theme" and "reputation of the prison" of the Disputed Provision III shall cease to be effective from the date of issuance of this Interpretation.

系爭規定一至三與前開憲法規定意旨有違部分，除系爭規定三所稱題意正確及無礙監獄信譽部分，自本解釋公布之日起失其效力外，其餘部分應自本解釋公布之日起，至遲於屆滿 2 年時，失其效力。

4. Petitions dismissed or handled

四、有關不受理及另案處理部分

separately

The petitioner petitioned for constitutional Interpretation of the complete text of Article 82 of the Enforcement Rules of the Prison Act. Except for the Disputed Provision II, which is related to the case at issue and thus should be admitted, the other subparagraphs are not related to the case and fail to meet the requirement of Subparagraph 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act. They are hereby dismissed pursuant to Paragraph 3 of the same Article. As for the part of the petition concerning constitutional interpretation of Article 6 of the Prison Act and Subparagraph 7, Paragraph 1, Article 5 of the Enforcement Rules of the Prison Act, this Court has already issued Interpretation 755. These matters are hereby explicated.

聲請人就監獄行刑法施行細則第 82 條全文聲請解釋，除系爭規定二與原因案件有關，應予受理外，其餘各款與原因案件無關，核與大審法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定，應不受理。另聲請人就監獄行刑法第 6 條及同法施行細則第 5 條第 1 項第 7 款等規定聲請解釋憲法部分，業經本院作成釋字第 755 號解釋在案。均併此敘明。

Endnote: See Article 5 of the Basic Principles for the Treatment of Prisoners, passed by the General Assembly of the United Nations Resolution A/RES/45/111 on December 14th, 1990, which provides, “Except for those limitations that are

註：參照聯合國大會 1990 年 12 月 14 日 A/RES/45/111 號決議通過之受監禁者待遇基本原則（Basic Principles for the Treatment of Prisoners）第 5 點規定：「除可證明屬監禁所必要之限制外，所有受監禁者均保有其在世界人權宣言，以

demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

及（如各該國為後列公約之締約國者）經濟社會文化權利國際公約、公民與政治權利國際公約及其任擇議定書所規定之人權及基本自由，並包括聯合國其他公約所規定之其他權利。」"Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

Justice Jeong-Duen TSAI filed an opinion concurring in part.

Justice Dennis Te-Chung TANG filed an opinion concurring in part, in which Justice Jiun-Yi LIN, joined.

Justice Ming-Cheng TSAI filed an opinion concurring in part.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a

本號解釋蔡大法官烱燉提出之部分協同意見書；湯大法官德宗提出，林大法官俊益加入之部分協同意見書；蔡大法官明誠提出之部分協同意見書；羅大法官昌發提出之協同意見書；許大法官志雄提出之協同意見書；張大法官瓊文提出之協同意見書；黃大法官瑞明提出之協同意見書；黃大法官璽君提出之部分協同部分不同意見書；黃大法官昭元提出之部分協同部分不同意見書；陳

concurring opinion.

Justice Chong-Wen CHANG filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Hsi-Chun HUANG filed an opinion concurring in part and dissenting in part.

Justice Jau-Yuan HWANG filed an opinion concurring in part and dissenting in part.

Justice Beyue SU CHEN filed an opinion dissenting in part.

Justice Sheng-Lin JAN filed an opinion dissenting in part.

大法官碧玉提出之部分不同意見書；詹大法官森林提出之部分不同意見書。

J. Y. Interpretation No.757（December 15, 2017）*

【Supplementary Interpretation of J.Y. Interpretation No. 706】

ISSUE: Whether the petitioner of J.Y. Interpretation No. 706 can directly use the payment receipt issued by the Execution Court as input tax certificate ?

RELEVANT LAWS:

Article 33, Subparagraph 3 of theValue-added and Non-value-added Business Tax Act（營業稅法第三十三條第三款）；J.Y. Interpretation: Nos. 177, 185, 503, 706, 725, 741, 742, 747（司法院釋字第一七七號、第一八五號、第五０三號、第七０六號、第七二五號、第七四一號、第七四二號及第七四七號解釋）；Ministry of Finance Order: 2014.1.7 Tai-Tsai-Shuei No.10204671351（財政部中華民國 103 年 1 月 7 日台財稅字第 10204671351 號令）

KEYWORDS:

business tax（營業稅）, receipt issued by the execution court（執行法院開立之收據）, auction record（拍賣筆錄）, input tax certificate（進項稅額憑證）, output tax（銷項稅額）**

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* Translated by Chun-Yih CHENG

** Contents within frame, not part of the original text, are added for reference purposes only.

HOLDING: In respect of the resulting case of J.Y. Interpretation No. 706, the petitionerof this Interpretation may, within three months of the service of this Interpretation and in accordance with the meaning and purpose of J.Y. Interpretation No. 706, use the court-issued receipt indicating the type and price of the auctioned or sold goods or the payment receipt attaching the auction record indicating the type and price of the auctioned or sold goods as input tax certificate and apply for the deduction of output tax. J.Y. Interpretation No. 706 shall be supplemented as such.

解釋文：本件聲請人就本院釋字第 706 號解釋之原因案件，得自本解釋送達之日起 3 個月內，依本院釋字第 706 號解釋意旨，以執行法院出具載明拍賣或變賣物種類與其拍定或承受價額之收據，或以標示拍賣或變賣物種類與其拍定或承受價額之拍賣筆錄等文書為附件之繳款收據，作為聲請人進項稅額憑證，據以申報扣抵銷項稅額。本院釋字第 706 號解釋應予補充。

REASONING: The petitioner Yung An Leasing Co. Ltd was the petitioner of J.Y. Interpretation No. 706 (hereinafter "Concerned Interpretation"). After the publication of the Concerned Interpretation, the petitionerissued an action for retrial with the Supreme Administrative Court in light of the Concerned Interpretation. The Supreme Administrative Court 2013-Pan-Tze 212 judgment (hereinafter "Final Judgment 1) opined that "the retrial plaintiff (note: the petitioner

解釋理由書：聲請人永安租賃股份有限公司為本院釋字第 706 號解釋（下稱系爭解釋）之聲請人，於系爭解釋公布後，據該號解釋向最高行政法院提起再審之訴，經最高行政法院 102 年度判字第 212 號判決（下稱確定終局判決一）以「再審原告（按：指本件聲請人）自不因 706 號解釋而享有逕向再審被告（按：指財政部臺北國稅局）請求依板橋地院核發之繳款收據作為進項稅額憑證並扣抵銷項稅額」為理由，駁回其訴。聲請人不服，復提起再審之訴，

of this Interpretation) was not entitled by J.Y. No. 709 to directly use vis-à-vis the retrial defendant (note: National Taxation Bureau of Taipei, Ministry of Finance) the Panchiao District Court-issued payment receipt as input tax certificate and deduct output tax", and overruled the action. The petitioner objected to the judgment, and issued anotheraction for retrial. The Supreme Administrative Court 2013-Pan-Tze 736 judgment (hereinafter "Final Judgment 2) opined that the previous retrial judgment was not in error and overruled the action. The petitioner objected to the judgment again, and issued the other action for retrial. The Supreme Administrative Court 2014-Chai-Tze 235 ruling (hereinafter "Final Ruling") opined that at the time of filing the action for retrial, 5 years had lapsed since the original judgment (Supreme Administrative Court 2008-Pan-Tze 63 judgment) became final and binding, and therefore the action for retrial was illegal and overruled.

經最高行政法院 102 年度判字第 736 號判決（下稱確定終局判決二），認前開再審判決並無違誤而駁回其訴。聲請人不服，又提起再審之訴，經最高行政法院 103 年度裁字第 235 號裁定（下稱確定終局裁定）以再審之訴提起時，距原判決（最高行政法院 97 年度判字第 63 號）確定時已逾 5 年為由，認再審之訴不合法而駁回。

The petitioner separately applied for the setoff of overpaid business tax on 19 March 2014. The Daan Branch,

聲請人另於中華民國 103 年 3 月 19 日申請扣抵溢繳之營業稅款，經財政部臺北國稅局大安分局 103 年 4 月 21 日

National Taxation Bureau of Taipei, Ministry of Finance rejected the application by its 2014.4.21Tsai-Bei-Kuo-Shuei-Da-An-Ing-Yeh No. 1030458069 letter. The petitioner objected to the decision, and brought an administrative appeal to the Ministry of Finance. The Ministry of Finance 2014.8.27Tai-Tsai-ShuNo. 10313940740 administrative appeal decision (hereinafter "Administrative Decision") opined that before the publication of J.Y. Interpretation No. 706, the petitioner was consigned goods which were subject to business tax, the matter for the deduction of output tax from input tax had been brought up for administrative remedy and been finally overruled; according to Ministry of Finance 2014.1.7 Tai-Tsai-Shuei No. 10204671351 order, the court-issued payment receipts cannot be used as input tax certificate to deduct output tax;as a result, the administrative appeal should be overruled (Note 1).

財北國稅大安營業字第 1030458069 號函否准。聲請人不服，向財政部提起訴願，經該部 103 年 8 月 27 日台財訴字第 10313940740 號訴願決定書（下稱訴願決定），以聲請人於本院釋字第 706 號解釋公布前，承受應課徵營業稅貨物，其相關進項稅額扣抵銷項稅額已提起行政救濟並經駁回確定案，依財政部 103 年 1 月 7 日台財稅字第 10204671351 號令，無法以執行法院核發之繳款收據作為進項稅額憑證並扣抵銷項稅額為由駁回（註 1）。

The petitioner argued that the aforesaid Final Judgments 1 and 2 piecemeal selected the wording of the Reasoning of the Concerned Interpretation "the relevant

聲請人主張前開確定終局判決一及二，係擷取系爭解釋理由中「相關機關應依本解釋意旨儘速協商……依營業稅法第 33 條第 3 款予以核定，作為買

authorities shall have discussions as soon as possible … shall, in accordance with Item 3 Article 33 of the Business Tax Act, approve the eligibility … as the input tax certificate of the buyer business entity", and misunderstood the essence of J.Y. Interpretation No. 706 which was to declare the regulations unconstitutional, and contradicted the important purpose of the Concerned Interpretation which was to allow the resulting case to seek for retrial or other remedies. The petitioner thus petitioned for supplementary interpretation.

方營業人進項稅額之憑證」之片段文字，誤解系爭解釋宣告法令違憲之本旨，違反聲請人就原因案件應得據以聲請再審或其他救濟之重要意旨。爰就系爭解釋聲請補充解釋。

A petition issued by a party for a supplementary interpretation of the ambiguity of a J.Y. Interpretation as applied by a final binding judgment shall be accepted if there are legitimate grounds (*see* J.Y. Interpretation Nos. 503, 741, and 742). The current petitioner's business tax deduction matter had been judged by the Final Judgments 1 and 2 in the light of the Concerned Interpretation. However, the Concerned Interpretation did not expressly indicate whether the petitioners of the resulting cases may directly use the court-issued payment receipts as in-

按當事人對於確定終局裁判所適用之本院解釋，發生疑義，聲請補充解釋，經核有正當理由者，應予受理（本院釋字第 503 號、第 741 號及第 742 號解釋參照）。本件聲請人因扣抵營業稅事件經確定終局判決一及二引用系爭解釋作為判決依據，惟系爭解釋未明示該案聲請人得否逕以執行法院核發之繳款收據，作為買方營業人進項稅額之憑證，致系爭解釋之部分聲請人未能獲得救濟。核其聲請具有正當理由，應予受理。爰作成本解釋，理由如下：

put tax certificate of the buyer business entity such that some of the petitioners of the Concerned Interpretation couldnot be granted remedies. It is considered that the petition has legitimate grounds and shall be accepted. This Interpretation is thus made. The reasons are as follows:

The J.Y. Interpretations have the binding effects on every government agency and person of the country. When dealing with relevant matters, each government agency shall abide by the meaning and purpose of the Interpretations. In addition, the Interpretations as resulted from people's petitions shall be applicable to the resulting cases of the applications (*see* J.Y. Interpretation Nos. 177 and 185). The petitioner of the resulting case may, from the date of publication of the Interpretation, exercise his rights in accordance with the favorable Interpretation such that the rights and interests of the petitioner who petitioned for constitutional interpretation will be protected and his contributions to the preservation of the Constitution will be affirmed (*see* J.Y. Interpretation Nos. 725 and 741).

本院所為之解釋，有拘束全國各機關及人民之效力，各機關處理有關事項，應依解釋意旨為之。又本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力（本院釋字第 177 號及第 185 號解釋參照）。原因案件之聲請人，自解釋公布之日起，即得據有利之解釋，依法行使其權利，以保障釋憲聲請人之權益，並肯定其對維護憲法之貢獻（本院釋字第 725 號及第 741 號解釋參照）。

The Reasoning of the Concerned Interpretation "the auction or sale procedure administered by the Execution Court in accordance with the law is rigorous. There is public faith in the receipts of non-government unified invoices. The business tax included in the auctioned or sold price may be ascertained in accordance with the statutory formula. Relevant information may be verified by the above court record (*see* Article 10, Business Tax Act, Points 2 and 4, Handling Notes for Levying Business Tax for Court-, Administrative Execution Agency- or Customs-auctioned or -sold Goods; Item 22, Article 4, Usage Rules for Government Unified Invoices). Therefore, the receipt issued by the Execution Court to the buyer business entity upon receipt of the auctioned or sold price amounts to a certificate issued by a seller business entity" has binding effects on every government agency and person of the country. By way of this, the petitioner of the Concerned Interpretation may, as a remedy, use the court-issued receipts indicating the type and price of the auctioned or sold goods or the payment receipts attaching the auction record indicating the

按系爭解釋理由書釋示：「執行法院依法進行之拍賣或變賣程序嚴謹，填發之非統一發票之收據有其公信力，拍定或承受價額內含之營業稅額可依法定公式計算而確定，相關資料亦可以上開法院筆錄為證（營業稅法第 10 條、法院行政執行機關及海關拍賣或變賣貨物課徵貨物營業稅作業要點第 2 點、第 4 點、統一發票使用辦法第 4 條第 22 款參照）。故執行法院於受領拍定或承受價額時開立予買方營業人之收據，亦相當於賣方營業人開立之憑證。」有拘束全國各機關及人民之效力。準此，系爭解釋之聲請人，自得持執行法院出具載明拍賣或變賣物種類與其拍定或承受價額之收據，或以標示拍賣或變賣物種類與其拍定或承受價額之拍賣筆錄等文書為附件之繳款收據（註 2），作為聲請人進項稅額憑證，據以申報扣抵銷項稅額，以為救濟。

type and price of the auctioned or sold goods (Note 2) as the input tax certificate and apply for the deduction of output tax.

As to the Reasoning of the Concerned Interpretation "based on the meaning and purpose of this Interpretation, the relevant authorities shall have discussions as soon as possible, and the Ministry of Finance shall, in accordance with Item 3, Article 33 of the Business Tax Act, approve the eligibility of court-issued receipts, which indicate the type and price of the auctioned or sold goods or to which the court record indicating the type and price of the auctioned or sold goods has been attached, as the input tax certificate of the buyer business entity", its purpose is to require the relevant authorities to apply more concrete general standards in dealing with other cases similar to the petitioner's. It shall not prejudice the petitioner's rights to directly use the court-issued receipts indicating the type and price of the auctioned or sold goods or the payment receipts attaching the auction record indicating the type and price of the auctioned or sold goods as the input tax

另系爭解釋理由書釋示：「相關機關應依本解釋意旨儘速協商，並由財政部就執行法院出具已載明或另以拍賣筆錄等文書為附件標示拍賣或變賣物種類與其拍定或承受價額之收據，依營業稅法第 33 條第 3 款予以核定，作為買方營業人進項稅額之憑證。」部分，旨在要求相關機關以更具體之通案標準，處理聲請人以外之同類型案件。並不影響聲請人得依系爭解釋意旨，逕以執行法院出具載明拍賣或變賣物種類與其拍定或承受價額之收據，或以標示拍賣或變賣物種類與其拍定或承受價額之拍賣筆錄等文書為附件之繳款收據，作為聲請人進項稅額憑證，據以申報扣抵銷項稅額。然系爭解釋聲請人，迄未能經由訴訟（確定終局判決一及二參照）或向稅捐稽徵機關再次申報獲得扣抵（訴願決定參照），無以保障釋憲聲請人之權益，並肯定其對維護憲法之貢獻。爰參照本院釋字第 747 號解釋，補充解釋如解釋文所示。

certificate and apply for the deduction of output tax in accordance with the meaning and purpose of the Concerned Interpretation. However, the petitioner of the Concerned Interpretation cannot offset the tax by way of litigations (*see* Final Judgments 1 and 2) or resubmission of tax filing to the tax authority (*see* Administrative Decision). The rights and interests of the petitioner who petitioned for constitutional interpretation are not protected and his contributions to the preservation of the Constitution are not affirmed. It is therefore so supplementally intererpreted as the Holding by reference to the J.Y. Interpretation 747.

As to the amount of the input tax amount which is deductable from the output tax amount in the resulting case of the Concerned Interpretation, of course it shall be calculated by the tax authority by reducing the already deducted amount as approved (*see* Songshan Branch, National Taxation Bureau of Taipei, Ministry of Finance 2015.8.1Tsai-Bei-Kuo-Shuei-Shon-Shan-Ing-Yeh No. 0940017835). It is so pointed out concurrently.

至於系爭解釋原因案件，得據以扣抵銷項稅額之進項稅額數額，應由稅捐稽徵機關減除業已實際准予扣抵之數額核計（財政部臺北市國稅局松山分局 94 年 8 月 1 日財北國稅松山營業字第 0940017835 號函參照），自屬當然，併予指明。

On a separate note, the petitioner also petitioned for the supplementary interpretation of Paragraph 2, Article 28 of the Tax Collection Act and for the supplementary interpretation on the basis of the Final Ruling. However, Paragraph 2, Article 28 of the Tax Collection Act was not the subject of the Concerned Interpretation, and the Concerned Interpretation was not applied by the Final Ruling, the petitions were inconsistent with the Subparagraph 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act, and both shall not be accepted in accordance with Paragraph 3 of the same Article. It is so explained concurrently.

另聲請人請求對稅捐稽徵法第 28 條第 2 項作補充解釋及依據確定終局裁定聲請補充解釋部分，經查：稅捐稽徵法第 28 條第 2 項並非系爭解釋之解釋標的，且系爭解釋並未為確定終局裁定所適用，核與司法院大法官審理案件法第 5 條第 1 項第 2 款規定不合，依同條第 3 項規定均應不受理，併此敘明。

Note 1: The petitioner issued an administrative action in accordance with Paragraph 2, Article 28 of the Tax Collection Act to claim the return of overpaid tax and the interest accrued thereon. The Taipei Administrative High Court overruled the action. The petitioner objected to the judgment, and appealed. The Supreme Administrative Court 2015 Tsai-Tze 873 ruled that the appeal was illegal and overruled. The petitioner did not petition for

註 1：經查：聲請人曾就此依稅捐稽徵法第 28 條第 2 項提起行政訴訟，請求退還溢繳稅款並加計利息，經臺北高等行政法院 103 年度訴字第 1565 號判決駁回。聲請人不服，提起上訴，經最高行政法院 104 年度裁字第 873 號裁定認上訴為不合法，予以駁回。惟聲請人並未據上開裁判聲請解釋。

the interpretation based on the said judgment and ruling.

Note 2: Ministry of Finance 2014.1.7Tai-Tsai-Shuei No. 10204671351 order listed the following three items as input tax certificates: 1. Copy of certificate of concluded auction of movables or certificate of transfer of immovables, 2. Copy of payment receipts, 3. where payment below the auctioned price in the case of assumption by creditor, the insufficient amount may be substituted for by the copy of allocation sheet under compulsory execution or the allocation sheet of execution income.

註 2：財政部中華民國 103 年 1 月 7 日台財稅字第 10204671351 號令列舉下列三項作為進項稅額之憑證：1. 動產拍定證明書或不動產權利移轉證書影本。2. 繳款收據影本。3. 承受案件未按拍定價額足額繳款者，其不足額部分得以強制執行金額分配表或執行清償所得分配表影本替代。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a

本號解釋湯大法官德宗提出之部分協同意見書；林大法官俊益提出之部分協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出之協同意見書；蔡大法官明誠提出，吳大法官陳鐶、張大法官瓊文加入之部分不同意見書；蔡大法官烱燉、黃大法官虹霞共同提出之不同意見書。

concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion.

Justice Ming-Cheng TSAI, filed an opinion dissenting in part, in which Justice Chen-Huan WU and Justice Chong-Wen CHANG, joined.

Justice Jeong-Duen TSAI and Justice Horng-Shya HUANG jointly filed a dissenting opinion.

J. Y. Interpretation No.758（December 22, 2017）*

【Jurisdiction When the Civil Law is Used to Request a Government Agency to Restore Land】

ISSUE: Should a case filed by a landowner pursuant to Article 767, Paragraph 1 of the Civil Code be a dispute arising from a relationship in private law to be adjudicated by ordinary courts, not being influenced by the fact that the means of attack and defense of the two parties involve disputes arising from a relationshipin public law ?

RELEVANT LAWS:

J. Y. Interpretations Nos. 400, 448, 466, and 695（司法院釋字第四００號、第四四八號、第四六六號、第六九五號解釋）; Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act（司法院大法官審理案件法第七條第一項一款）；Article 767, Paragraph 1 of the Civil Code（民法第七六七條第一項）；Article 178 of the Administrative Litigation Act（行政訴訟法第一七八條）

KEYWORDS:

landowner（土地所有權人）, return of land（返還土地）, means of attack and defense（攻擊防禦方法）, land for public use（公用地役關係）, basis of right of claim（請求權基礎）, jurisdiction（審判權）**

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* Translated by Yen-Chi LIU

** Contents within frame, not part of the original text, are added forreference purposes only.

HOLDING: A case filed by a landowner pursuant to Article 767, Paragraph 1 of the Civil Code is a dispute arising from a relationship in private law to be adjudicated by ordinary courts, and should not be influenced by the fact that the means of attack and defense of the two parties involve disputes arising from a relationship in public law.

解釋文：土地所有權人依民法第 767 條第 1 項請求事件，性質上屬私法關係所生之爭議，其訴訟應由普通法院審判，縱兩造攻擊防禦方法涉及公法關係所生之爭議，亦不受影響。

REASONING: In the case-at-issue, the plaintiff, YEH Sui-Yuan (hereafter, the plaintiff), filed a civil case under the opening and middle sections of Article 767, Paragraph 1 of the Civil Code with the Taiwan Taoyuan District Court against the Civil Affairs Office of Bade District (the former Civil Affairs Office of Bade City before the Taoyuan City Government became a Special Municipality) for paving his own land, located in Bade District of Taoyuan City, with asphalt for public access without his consent. He asked for the removal of the asphalt surface and return of his land against the Taoyuan City Government. The Taiwan Taoyuan District Court, citing J.Y. Interpretation No. 400, held that because the plaintiff

解釋理由書：本件原因案件原告葉水源（下稱原告）以桃園市八德區公所（桃園市改制為院轄市前為桃園縣八德市公所）未經其同意即在其所有坐落於桃園市八德區之土地，鋪設柏油路面供民眾通行為由，以桃園市政府為被告，依民法第 767 條第 1 項前段及中段規定向臺灣桃園地方法院民事庭起訴，請求桃園市政府刨除柏油路面並返還土地。惟該院以原告係依據本院釋字第 400 號解釋主張上開土地尚不符公用地役權之成立要件，隱含確認無公用地役關係之請求，屬公法關係所生之爭議，應提起行政爭訟以為救濟為由，以該院 104 年度桃簡字第 860 號民事裁定，將原因案件移送臺北高等行政法院。前開民事裁定因兩造未於法定期間內提起抗告而告確定。臺北高等行政法院受移

contended that his land did not meet the legal requirements of land for public use, the case implied declaring whether the land was for public use, which would be a dispute in public law. In Summary Judgment No. 860 Ruling of 2015, the Taiwan Taoyuan District Court therefore concluded that the case should be transferred to the Taipei High Administrative Court. This ruling was final because the parties did not appeal during the appeal period. The Taipei High Administrative Court accepted the transferred case listing it as Judgment No. 696 of 2016. The Sixth Panel of the Taipei High Administrative Court (hereafter, the Petitioner) told the plaintiff that his claim may have met the requirements of a general action for performance pursuant to Article 8, Paragraph 1 of the Administrative Litigation Act, or a declaration that the relationship of land for public use does not exist, combining a claim for the return of land according to Article 7 of the said Act. However, the plaintiff insisted his claim was based on the opening and middle sections of Article 767, Paragraph 1 of the Civil Code and the dispute was a matter of civil law.

送後，分案編號為該院 105 年度訴字第 696 號。嗣該院第六庭（下稱聲請人）向原告闡明，其請求可能符合行政訴訟法第 8 條第 1 項之一般給付訴訟，或確認公用地役關係不存在，合併同法第 7 條返還土地之請求，惟原告仍主張其請求權基礎為民法第 767 條第 1 項前段及中段規定，屬民事爭議。聲請人乃以原告係根據民法第 767 條第 1 項前段及中段規定起訴之明確主張，認為本件非屬公法關係所生之爭議，而為私法關係所生之爭議，應由普通法院審理，該院並無受理訴訟權限。聲請人以其就本件有無受理訴訟權限與臺灣桃園地方法院上開移送裁定所示見解歧異為由，依行政訴訟法第 178 條聲請本院解釋。核其聲請，合於司法院大法官審理案件法第 7 條第 1 項第 1 款統一解釋之要件及行政訴訟法第 178 條規定，爰予受理，作成本解釋，理由如下：

The Petitioner therefore concluded that it had no jurisdiction over the case because the plaintiff had made clear that his claim was based on the opening and middle sections of Article 767, Paragraph 1 of the Civil Code and that the case was not one of public law but of private law. Based on the issue of jurisdiction as well as on a conflict of opinion with the ruling of the Taiwan Taoyuan District Court, the Petitioner filed a petition according to Article 178 of the Administrative Litigation Act with this Court. This Court reviewed the petition and held that it met the legal requirements of a "Petition for Uniform Interpretation of Statutes and Regulations" under Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Interpretation Procedure Act and Article 178 of the Administrative Litigation Act, and so we accepted this petition for adjudication. Our reasoning is as follows:

Civil trials and administrative trials are adjudicated respectively by courts of different nature. Unless otherwise provided by the law, disputes arising from relationships governed by private law

我國關於民事訴訟與行政訴訟之審判，依現行法律之規定，分由不同性質之法院審理。除法律別有規定外，就因私法關係所生之爭議，由普通法院審判；因公法關係所生之爭議，由行政法

shall be determined by ordinary courts; disputes arising from relationships governed by public law shall be adjudicated by administrative courts (*see* J.Y. Interpretations Nos. 448, 466 and 695). A claim by a landowner based on Article 767, Paragraph 1 of the Civil Code is, by nature, a dispute in private law and shall be adjudicated by an ordinary court, even though the means of attack and defense of the two parties involve disputes arising from a relationship in public law.

院審判（本院釋字第 448 號、第 466 號及第 695 號解釋參照）。土地所有權人依民法第 767 條第 1 項請求事件，核其性質，屬私法關係所生之爭議，其訴訟應由普通法院審判，縱兩造攻擊防禦方法涉及公法關係所生之爭議，亦不受影響。

The plaintiff filed a case under the opening and middle sections of Article 767, Paragraph 1 of the Civil Code against the Taoyuan City Government asking for the removal of the asphalt surface and return of his land. We conclude that the case by its nature is a dispute arising from a relationship governed by private law and shall be adjudicated by the Taiwan Taoyuan District Court, even though the means of attack and defense of the two parties involved disputes arising from relationships in public law.

查原告係本於土地所有權依民法第 767 條第 1 項前段及中段規定，起訴請求桃園市政府刨除柏油路面並返還土地，核其性質，屬私法關係所生之爭議，其訴訟應由普通法院臺灣桃園地方法院審判，縱兩造攻擊防禦方法涉及公用地役關係存否之公法關係爭議，亦不受影響。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Chong-Wen CHANG filed a concurring opinion, in which Justice Sheng-Lin JAN and Justice Jau-Yuan HWANG both joined.

Justice Jui-Ming HUAN Gfiled a concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion, in which Justice Beyue SU CHEN joined.

Justice Ming-Cheng TSAI filed an opinion dissenting in part.

Justice Tzong-Li HSU filed a dissenting opinion.

Justice Chang-Fa LO filed a dissenting opinion.

Justice Horng-Shya HUANG filed a dissenting opinion.

本號解釋湯大法官德宗提出之部分協同意見書；林大法官俊益提出之協同意見書；許大法官志雄提出之協同意見書；張大法官瓊文提出，詹大法官森林、黃大法官昭元加入之協同意見書；黃大法官瑞明提出之協同意見書；詹大法官森林提出，陳大法官碧玉加入之協同意見書；蔡大法官明誠提出之部分不同意見書；許大法官宗力提出之不同意見書；羅大法官昌發提出之不同意見書；黃大法官虹霞提出之不同意見書。

J. Y. Interpretation No.759（December 29, 2017）*

【Jurisdiction Over Compensation for Survivors of Employees in Enterprises Formerly Owned by Taiwan Province】

ISSUE: Which court shall adjudicate disputes where surviving relatives of staff employed by the former Taiwan Provincial Water Supply Company Ltd. claim survivors' compensation ?

RELEVANT LAWS:

J.Y. Interpretations Nos. 270, 305, 448, 466, 691, 695, and 758（司法院釋字第二七０號、第三０五號、第四四八號、第四四六號、第六九一號、第六九五號及第七五八號解釋）；Article 7, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act（司法院大法官審理案件法第七條第一項第一款）；Article 178 of the Administrative Litigation Act（行政訴訟法第一七八條）；The Taiwan Provincial State-owned Enterprise Employees Temporary Appointment Rules（臺灣地區省（市）營事業機構人員遴用暫行辦法）；The Taiwan Provincial Government Subordinate Enterprise Employees Retirement Remuneration and Reward Rules（臺灣省政府所屬省營事業機構人員退休撫卹及資遣辦法）；Article 84 of the Labor Standards Act（勞動基準法第84條）；Article 50 of the Enforcement Rules of the Labor Standards

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* Translated by Yen-Chi LIU

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Act（勞動基準法施行細則第 50 條）

KEYWORDS:

dual system of litigation（二元訴訟制度）, state-owned enterprise（公營事業機構）, appointment（遴用）, civil servant who also has the legal status of a worker（公務員兼具勞工身分者）, survivor's compensation（撫卹金）, jurisdiction（審判權）**

HOLDING: Disputes where surviving relatives of staff employed by the former Taiwan Provincial Water Supply Company Ltd. under the "Taiwan Provincial State-owned Enterprise Employees Temporary Appointment Rules" claim survivors' compensation according to the "Taiwan Provincial Government Subordinate Enterprise Employees Retirement Remuneration and Reward Rules" shall be adjudicated by ordinary courts.

解釋文：（前）臺灣省自來水股份有限公司依（前）「臺灣地區省（市）營事業機構人員遴用暫行辦法」遴用之人員，依據「臺灣省政府所屬省營事業機構人員退休撫卹及資遣辦法」請求發給撫卹金發生爭議，其訴訟應由普通法院審判之。

REASONING: In the case-at-issue (Taiwan Chiayi District Court Labor Litigation No. 29 Ruling of 2010, hereafter the Final Ruling), the father (YEN Yi-Cai) of the plaintiffs (YEN Ya-Ying, YEN Pei-Na, YEN Yu-Man, YEN Po-Chi

解釋理由書：原因事件（臺灣嘉義地方法院 99 年度勞訴字第 29 號民事裁定，下稱確定裁定）原告（顏雅霙、顏珮娜、顏玉滿、顏伯奇、顏廷育）之父（顏益財）原任嘉義縣東石鄉鄉長，於中華民國 79 年 3 月 1 日任滿退職，

and YEN Ting-Yu) was discharged from his post as mayor of Dongshi Township, Chiayi County on March 1, 1990, and was granted a discharge pension pursuant to the "Act Governing Discharge Pension for Mayors of Cities and Townships of Taiwan Province". Afterwards YEN Yi-Cai was appointed engineer and director of the administration department of the fifth district by the Taiwan Provincial Water Supply Company Ltd. (reorganized as the Taiwan Water Supply Company Ltd., hereafter the Water Supply Company) under the "Taiwan Provincial State-owned Enterprise Employees Temporary Appointment Rules" (amended and promulgated on November 15,1990, and repealed on March 2, 2017, hereafter the Appointment Rules). He died in office on September 20, 2005. The plaintiffs filed a case with the Chiayi District Court, claiming survivors' compensation and its accumulated interest against the Water Supply Company under the "Taiwan Provincial Government Subordinate Enterprise Employees Retirement Remuneration and Reward Rules" (promulgated on December 17,1991, hereafter the Retirement Re-

依「臺灣省縣市長鄉鎮長縣轄市長退職酬勞金給予辦法」獲核發退職酬勞金在案。嗣再依臺灣地區省（市）營事業機構人員遴用暫行辦法（79 年 11 月 15 日修正發布，106 年 3 月 2 日廢止，下稱省營事業機構人員遴用辦法）經遴用為臺灣省自來水股份有限公司（後改制為台灣自來水股份有限公司，下稱省自來水公司）第五區管理處工程師兼主任，於 94 年 9 月 30 日病逝於任內。原告於 99 年 9 月 28 日向臺灣嘉義地方法院（下稱嘉義地院）起訴，請求省自來水公司依「臺灣省政府所屬省營事業機構人員退休撫卹及資遣辦法」（80 年 12 月 17 日訂定發布，下稱省營事業機構人員退撫辦法）發給撫卹金及其利息。

muneration and Reward Rules).

The Chiayi District Court ruled that YEN Yi-Cai was an employee of a Taiwan Provincial state-owned enterprise, and could be classified as a "civil servant who also has the legal status of a worker" according to Article 84 of the Labor Standards Act, and that laws relevant to public functionaries should apply in this case. The claim for survivors' compensation by the plaintiffs under Articles 6 and 12 of the Retirement Remuneration and Reward Rules is thus an exercise of their right in public law to request property. The court held that any dispute should be adjudicated in accordance with the procedures regarding administrative remedies, ordinary courts having no jurisdiction in the matter. Therefore, the court then ruled the case should be transferred to the Kaohsiung High AdministrativeCourt according to Article 31-2, Paragraph 2 of the Civil Procedural Act. The ruling was final because the two parties did not appeal.

嘉義地院審理認為，顏益財為臺灣省政府所屬省營事業之人員，屬勞動基準法第 84 條所稱「公務員兼具勞工身分者」，應適用公務員法令之規定辦理撫卹。原告依省營事業機構人員退撫辦法第 6 條及第 12 條規定，向被告請求發給撫卹金，乃公法上財產請求權之行使，如有爭議應循行政爭訟程序尋求救濟，普通法院無權審判，爰依民事訴訟法第 31 條之 2 第 2 項之規定，以確定裁定移送高雄高等行政法院審理，因當事人均未提出抗告而告確定。

The Kaohsiung High Administrative Court, however, held that YEN Yi-Cai

嗣高雄高等行政法院審理認為，顏益財雖由省自來水公司依省營事業機

was appointed by the Water Supply Company under the Appointment Rules but he was not a public functionary appointed under the law. According to J.Y. Interpretation No. 270, Yen was neither eligible to apply for retirement pursuant to the Public Functionary Retirement Act, nor could his inheritors claim survivors' compensation according to the "Act Governing the Payment of Compensation to Surviving Dependents of Public Functionaries". Furthermore, Yen was neither a proxy designated by a government agency or a public juridical person serving the Company on its behalf under Article 27 of the Company Act, nor was he a company person with an official rank appointed by competent authorities under the law. Pursuant to J.Y. Interpretation No. 305, the employment contract between Yen and the Water Supply Company was therefore governed by private law. The claim by Yen's inheritors for survivors' compensation against the Water Supply Company was a private dispute and should be adjudicated by ordinary courts. The Kaohsiung High Administrative Court therefore petitioned for a unified interpretation pursuant to Article

構人員遴用辦法遴用，究非屬依法任用之公務人員，依本院釋字第 270 號解釋，無從依公務人員退休法辦理退休，自亦無從適用公務人員撫卹法請領撫卹金。又顏益財亦非屬依公司法第 27 條經國家或其他公法人指派在公司代表其執行職務，或依其他法律逕由主管機關任用、定有官等，在公司服務之人員，依本院釋字第 305 號解釋，其與省自來水公司間應屬私法關係。是其訴請省自來水公司發給撫卹金乃屬私法爭議，應由普通法院審理。高雄高等行政法院因就其受理訴訟之權限，與普通法院確定裁定適用同一法令所持見解有異，爰依司法院大法官審理案件法（下稱大審法）第 7 條第 1 項第 1 款及行政訴訟法第 178 條規定，聲請本院統一解釋。核其聲請，合於大審法第 7 條第 1 項第 1 款統一解釋之要件及行政訴訟法第 178 條規定，爰予受理，作成本解釋，理由如下：

7, Paragraph 1, Subparagraph 1 of the Constitutional Interpretation Procedure Act as well as Article 178 of the Administrative Litigation Act. This Court granted the petition since it met the requirements of the said Acts. Our holding is as below.

The State adopts a dual system of litigation and the Legislative Yuan has the discretion to draw a line between civil jurisdiction and administrative jurisdiction by examining the nature of a case and the function of the currently existing litigation system (for instance, its court organization, assignment of personnel, procedural rules as well as immediate and effective protection of the people's rights and so on) (*see* J.Y. Interpretations Nos. 448, 466 and 691). If the law does not provide jurisdiction, courts shall decide legal remedies based upon the nature of disputes as well as the function of the currently existing litigation system. In other words, disputes arising from relationships governed by private law shall be determined by ordinary courts; disputes arising from relationships governed by public law shall be adjudicated by administrative

按我國目前係採二元訴訟制度，關於民事訴訟與行政訴訟審判權之劃分，應由立法機關通盤衡酌爭議案件之性質及既有訴訟制度之功能（諸如法院組織及人員之配置、相關程序規定、及時有效之權利保護等）決定之（本院釋字第 448 號、第 466 號及第 691 號解釋參照）。法律未有規定者，應依爭議之性質並考量既有訴訟制度之功能，定其救濟途徑。亦即，關於因私法關係所生之爭議，原則上由普通法院審判；因公法關係所生之爭議，原則上由行政法院審判（本院釋字第 448 號、第 466 號、第 691 號、第 695 號及第 758 號解釋參照）。

courts (*see* J.Y. Interpretations Nos. 448, 466, 691,695 and 758).

Moreover, Article 84 of the Labor Standards Act provides that: “In the case of a civil servant who also has the legal status of a worker, civil service laws and regulations shall govern such matters as appointments or dismissals, wages and salaries, rewards and punishments, retirement, survivors’ compensationand insurance (including for occupational accidents). If other labor conditions are more favorable than the relevant provisions of the Act, the more favorable parts shall apply.” The former part of Article 50 of the Enforcement Rules of the Labor Standards Act stipulates that: “A civil servant who concurrently has the status of a worker provided in Article 84 of the Act denotes a person who, under relevant civil service statutes and administrative regulations, is appointed, assigned, invited or selected to work as an employee in any business (or industry) provided in Article 3 of the Act and receives remuneration for it.” Article 2, Subaragraph 5 of the Retirement Remuneration and Reward Rules provides

次按勞動基準法第 84 條本文明定：「公務員兼具勞工身分者，其有關任（派）免、薪資、獎懲、退休、撫卹及保險（含職業災害）等事項，應適用公務員法令之規定」。同法施行細則第 50 條前段規定：「本法第 84 條所稱公務員兼具勞工身分者，係指依各項公務員人事法令任用、派用、聘用、遴用而於本法第 3 條所定各業從事工作獲致薪資之人員」。省營事業機構人員退撫辦法第 2 條第 5 款並規定：「本辦法所稱各機構人員，係指左列省營事業機構員額編制表或預算員額表所列公務員兼具勞工身分之人員：……五、臺灣省自來水股份有限公司」。依確定裁定卷附資料，顏益財係依省營事業機構人員遴用辦法遴用之人員，省自來水公司屬勞動基準法第 3 條所定之各（事）業，而顏氏生前所任職務（省自來水公司第五區管理處工程師兼主任）為省自來水公司員額編制表所列「公務員兼具勞工身分」之人員，乃確定裁定到庭兩造所不爭。

that: "A member of staff provided for in the Rules is a civil servant who also has the legal status of a worker as listed in the Province-owned Enterprise Personnel Chart or in the Budget Personnel Chart as follows:… …(5) Taiwan Provincial Water Supply Company Ltd." According to the docket of the Final Ruling, YEN Yi-Cai was appointed by a province-owned enterprise. The Water Supply Company is an enterprise under Article 3 of the Labor Standards Act and Yen's position (as an engineer and director of the administration department of the fifth district in the Water Supply Company) was a "civil servant who also has the legal status of a worker" listed in the personnel chart of the Water Supply Company. This fact was not in dispute in the Final Ruling.

The above Article 84 of the Labor Standards Act provides that "civil service laws and regulations shall govern" survivors' compensation for the surviving relatives of a civil servant who also has the legal status of a worker, but they do not stipulate that disputes arising from the said matter shall be adjudicated by either

前揭勞動基準法第84條本文固謂：公務員兼具勞工身分者，其有關撫卹等事項，「應適用公務員法令之規定」，惟其並未規定因此所生之爭議，究應由普通法院抑或行政法院審判。揆諸前揭本院解釋先例，爰應依爭議之性質定審判權之歸屬。關於公營事業機構與所屬人員間之關係，本院釋字第305號解釋

ordinary courts or administrative courts. The relationship between a state-owned enterprise and its personnel, as set out in J.Y. Interpretation No. 305, in addition "the relationships with government agencies who assign or appoint persons who are assigned by the state or other public legal persons to serve the companies on their behalf according to Article 27 of the Company Act and those who are directly appointed and awarded official ranks by the agencies-in-charge to serve the companies, are still relationships of public law." "State-owned enterprises that are formed according to the Company Act are private legal persons, and their relationships with their employees are contractual ones under private law." As a result, in state-owned enterprises established under the Company Act, except for the above-mentioned personnel, the relationship between the staff and the enterprise is of private law. Although the authorities concerned promulgated the "Retirement Remuneration and Reward Rules" to unify requirements regarding retirement and application for compensation, this only demonstrates the supervision of the au-

釋示：除「依公司法第 27 條經國家或其他公法人指派在公司代表其執行職務或依其他法律逕由主管機關任用、定有官等、在公司服務之人員，與其指派或任用機關之關係，仍為公法關係」者外，「公營事業依公司法規定設立者，為私法人，與其人員間，為私法上之契約關係，雙方如就契約關係已否消滅有爭執，應循民事訴訟途徑解決」。是依公司法設立之公營事業中，除前述特定人員以外，其他人員與其所屬公營事業間之法律關係為私法關係。雖主管機關就省營事業機構人員之退休撫卹發布省營事業機構人員退撫辦法，使其人員之退休撫卹有一致之標準，惟其僅係主管機關對公營事業之監督關係，並不影響公營事業與該人員間之私法關係屬性；且勞動基準法第 84 條亦未改變公營事業人員與所屬公營事業間原有之法律關係。據上，本件原因事件原告之父與（前）省自來水公司間之關係既為私法上契約關係，而請求發給撫卹金係本於契約關係所生之請求，且前揭退撫辦法亦為上開私法契約關係之一部，是原告依前揭退撫辦法之規定，向（前）省營事業機構請求發給撫卹金發生爭議，應屬私法關係所生之爭議，應由普通法院臺灣嘉義地方法院審判之。

thorities concerned and does not change the nature of the relationship between state-owned enterprises and their employees. Article 84 of the Labor Standards Act also does not change the relationship between state-owned enterprises and their employees. Accordingly, in the case-at-issue the relationship between the father of the plaintiffs and the Water Supply Company is one of private law and thus the claim for survivors' compensation should be based on the employment contract. The above-mentioned "Retirement Remuneration and Reward Rules" are therefore part of a contractual relationship and disputes arising from them shall be of private law and adjudicated by the ordinary court: the Taiwan Chiayi District Court.

Justice Jeong-Duen TSAI filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion, in which Justice Sheng-Lin JAN joined.

本號解釋蔡大法官烱燉提出之協同意見書；陳大法官碧玉提出之協同意見書；許大法官志雄提出之協同意見書；黃大法官瑞明提出，詹大法官森林加入之協同意見書；湯大法官德宗提出，吳大法官陳鐶加入之不同意見書。

Justice Dennis Te-Chung TANG filed a dissenting opinion, in which Justice Chen-Huan WU joined.

RELATIVE LAWS or REGULATIONS INDEX

Ⅰ：Interpretations Nos. 1~233
Ⅱ：Interpretations Nos. 234~392
Ⅲ：Interpretations Nos. 393~498
Ⅳ：Interpretations Nos. 499~570
Ⅴ：Interpretations Nos. 571~622
Ⅵ：Interpretations Nos. 623~669
Ⅶ：Interpretations Nos. 670~716
Ⅷ：Interpretations Nos. 717~759

Laws or Regulations **Page No.**

1969 the Administrative Proceedings Act (五十八年舊行政訴訟法) Ⅲ-1
1992 Amendments to the Constitution (八十一年憲法增修條文) Ⅲ-740

A

Accounting Act (會計法) Ⅰ-474
Act for Controlled Drugs (管制藥品管理條例) Ⅳ-467
Act for Examination Supervision (監試法) Ⅱ-391
Act for Rebuilding Old Quarters for Military Dependents (公布之國軍老舊眷村改建條例) Ⅷ-134
Act for the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (三一九槍擊事件真相調查特別委員會條例) Ⅴ-209
Act for the Establishment and Administration of the Financial Restructuring Fund (金融重建基金設置及管理條例) Ⅶ-69
Act for Upgrading Industries (促進產業升級條例) Ⅲ-145,399,733；Ⅳ-91,154；Ⅴ-603
Act Governing Costs of Civil Actions (民事訴訟費用法) Ⅰ-288
Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers, Act Governing Land Grants to Anti-Communist and Anti-Soviet Soldiers (反共抗俄戰士授田條例) Ⅱ-296,562
Act Governing Fees of Civil Actions (民事訴訟費用法) Ⅰ-325
Act Governing Judicial Personnel (司法人員人事條例) Ⅴ-469
Act Governing Offences Punished by the Police Offences

(違警罰法) Ⅰ-394,408；VII-232
Act Governing Preferential Treatment to Military Soldiers and Their Dependents (軍人及其家屬優待條例) Ⅲ-546
Act Governing Reduction of Farm Rent to 37.5 Percent (耕地三七五減租條例) Ⅰ-136,253,256,263；Ⅱ-529；Ⅳ-636
Act Governing Relations between People of the Taiwan Area and Mainland Area (臺灣地區與大陸地區人民關係條例) Ⅲ-536,695,852；Ⅳ-236；Ⅴ-764；VII-550,607
Act Governing Relations between the People of the Taiwan Area and the Mainland Area (臺灣地區與大陸地區人民關係條例) VII-288,549,550
Act Governing Relations with Hong Kong and Macau (香港澳門關係條例) Ⅲ-536
Act Governing Replacement of Any Vacant Seat of the First Term National Assembly (第一屆國民大會代表出席遞補補充條例) Ⅰ-235
Act Governing Teachers (教師法) VII-410
Act Governing the Administration of Examination (典試法) Ⅱ-391
Act Governing the Administration of Post Offices (郵政法) Ⅲ-314
Act Governing the Allocation of Government Revenues and Expenditures (財政收支劃分法) Ⅰ-593；Ⅱ-1,6,459,524,627；Ⅲ-859；Ⅳ-533
Act Governing the Appointment of Armed Forces Military Officers and Sergeants (陸海空軍軍官士官任官條例) Ⅲ-140
Act Governing the Collection of Community Development Fees by Construction Projects (工程受益費徵收條例) Ⅰ-593
Act Governing the Compensation and Fees for the National Assembly Delegates (國民大會代表報酬及費用支給條例) Ⅲ-267
Act Governing the Conferment of Academic Degrees (學位授予法) Ⅱ-705；Ⅳ-651
Act Governing the Control and Prohibition of Gun, Cannon, Ammunition and Knife (槍砲彈藥刀械管制條例) Ⅲ-666；Ⅳ-308
Act Governing the Conversion of State Owned Enterprises into Private Enterprises (公營事業移轉民營條例) Ⅰ-127；Ⅱ-549
Act Governing the Dates for Enforcement of Laws (法律施行日期條例) Ⅰ-114
Act Governing the Development of New Urban Centers (新市鎮開發條例) Ⅳ-105
Act Governing the Employment of Contract-based Employees

(聘用人員聘用條例) Ⅴ-585
Act Governing the Employment of Teachers (教育人員任用條例) Ⅶ-411
Act Governing the Enforcement of the Conscription Act (兵役法施行法) Ⅳ-317
Act Governing the Handling of and Compensation for the 228 Incident (二二八事件處理及補（賠）償條例) Ⅵ-17
Act Governing the Handling of Land Grant Certificates to Soldiers (戰士授田憑據處理條例) Ⅱ-396,562；Ⅲ-334
Act Governing the Issuance of Short -Term Government Bonds of 1959 (中華民國四十八年短期公債發行條例) Ⅰ-160
Act Governing the Management of Police Officers (警察人員管理條例) Ⅴ-53
Act Governing the Management of State-owned Enterprises (國營事業管理法) Ⅰ-77,127,173
Act Governing the Payment of Compensation to Surviving Dependents of Public Functionaries (before the implementation of the new retirement regulations on July 1, 1995) (八十四年七月一日公務人員退撫新制實施前之公務人員撫卹法) Ⅲ-493
Act Governing the Pension of Special Political Appointees (政務人員退職酬勞金給與條例) Ⅴ-327
Act Governing the Pension of Special Political Officials (政務官退職酬勞金給與條例) Ⅲ-493；Ⅴ-327
Act Governing the Promotion of Public Functionaries (公務人員陞遷法) Ⅳ-411
Act Governing the Punishment for Damaging National Currency (妨害國幣懲治條例) Ⅰ-112,189
Act Governing the Punishment for Violation of Road Traffic Regulations (道路交通管理處罰條例) Ⅱ-231；Ⅲ-174,179；Ⅳ-129,342,662；Ⅴ-194,569
Act Governing the Punishment of Offences Against Military Service (妨害兵役治罪條例) Ⅳ-176
Act Governing the Punishment of Police Offences (違警罰法) Ⅰ-408；Ⅱ-86
Act Governing the Recompense for the Discharge of Special Political Appointees (政務人員退職撫卹條例) Ⅴ-328
Act Governing the Reconstruction of Old Villages for Military Personnel and Their Dependents (國軍老舊眷村改建條例) Ⅲ-764

Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law (戒嚴時期人民受損權利回復條例)Ⅲ-710；Ⅳ-588,692；VI-17
Act Governing the Reduction of Farm Rent to 37.5 Percent (耕地三七五減租條例) Ⅲ-272；Ⅴ-106,121,152
Act Governing the Rehabilitative Measures for Offenses of Caching and Receiving Stolen Property (竊盜犯贓物犯保安處分條例) Ⅲ-666
Act Governing the Replacement and Resettlement of Veterans (國軍退除役官兵就業安置辦法) Ⅰ-558
Act Governing the Relations Between People of the Taiwan Area and the Mainland Area (臺灣地區與大陸地區人民關係條例) VII-607
Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions (後備軍人轉任公職考試比敘條例) Ⅲ-140；Ⅳ-269
Act Governing the Retirement of Public School Teachers and Employees (學校教職員退休條例) VIII-181
Act Governing the Retirement of School Teachers and Staff (學校教職員退休條例) Ⅱ-235,452；Ⅲ-616；Ⅴ-328
Act Governing the Service of Armed Forces Officers and Sergeants (陸海空軍軍官士官服役條例) Ⅴ-328
Act of Assignment for Officers and Noncommissioned Officers of the Armed Forces (陸海空軍軍官士官任職條例) VII-445
Act of Compensation for Wrongful Detentions and Executions (冤獄賠償法) Ⅲ-778；Ⅳ-692；VI-17；VII-1
Act of Compensation for Wrongfully Handled Rebellion and Communist Espionage Cases during the Period of Martial Law (戒嚴時期不當叛亂暨匪諜審判案件補償條) VI-17
Act of Eminent Domain (土地徵收條例) Ⅳ-143,168；Ⅴ-106
Act of Encouragement of Investment (獎勵投資條例) Ⅰ-518,582；Ⅱ-373,607,745；Ⅲ-145,259,399,506,567,845；Ⅳ-84,91,672；VI-415
Act of Investment by Foreign Nationals (外國人投資條例) Ⅲ-145
Act of Military Academy Attendance Rules (軍事學校學員生修業規則) VII-635
Act of Investment by Overseas Chinese (華僑回國投資條例) Ⅲ-145

Act of Military Service System (兵役法) VII-634
Act of Military Service for Officers and Noncommissioned Officers of the Armed Forces (陸海空軍軍官士官服役條例) VII-445
Act of Military Education (軍事教育條例) VII-635
Act of Naming (姓名條例) Ⅲ-52
Act of Negotiable Instruments (票據法) Ⅰ-553；Ⅱ-15
Act of Secured Transactions (動產擔保交易法) Ⅰ-669
Act of the Encouragement of Investment promulgated on September 10, 1960 (中華民國四十九年九月十日公布施行之獎勵投資條例) Ⅴ-106
Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting, as amended on May 1, 2006 (中華民國九十五年五月一日修正公布之三一九槍擊事件真相調查特別委員會條例) VI-166
Act of the Supervision of Temples (監督寺廟條例) Ⅰ-115,536；Ⅴ-17
Act on the Protection of Communicatory Electric Equipment and Facilities during Wartime (戰時交通電業設備及器材防護條例) Ⅰ-18
Additional Articles of the Constitution (憲法增修條文) VII-549,607；VIII-63,281,591
Administrative Appeal Act (訴願法) Ⅰ-231,263,354,683；Ⅱ-167,282,325,558,721；Ⅲ-329；Ⅳ-485,565；Ⅴ-682,806；VI-602；VIII-413
Administrative Court Judgment No. Pan-673 of 1974 (行政法院六十三年判字第六七三號判例) Ⅲ-146
Administrative Court Precedent 53-Pan-No.229 (行政法院五十三年判字第二二九號判例) Ⅱ-359,581
Administrative Court Precedent 57-Pan-414 (行政法院五十七年判字第四一四號判例) Ⅱ-483
Administrative Court Precedent 59-Pan-400 (行政法院五十九年判字第四００號判例) Ⅱ-483
Administrative Court Precedent A. D.72 of 1959 (行政法院四十八年判字第七十二號判例) Ⅴ-432
Administrative Court Precedent P. T. 96 (1959) (行政法院四十八年判字第九十六號判例) Ⅲ-278
Administrative Execution Act (行政執行法) Ⅰ-224,640；Ⅳ-619；Ⅴ-302,806,814

Administrative Interpretation of the Ministry of Finance,
Tai-Cai-Shui-Tze No. 761126555
(財政部字第七六一一二六五五五號函) VII-177
Administrative Interpretation of the Ministry of Finance,
Tai- Cai-Shui-Tze No. 910453902
(財政部財稅字第九一０四五三九０二號函) VII-177
Administrative Penalty Act (行政罰法) VIII-533
Administrative Procedure Act (行政程序法) Ⅳ-269,357,515,730；Ⅴ-210,470,682
VI-166,333,397,415,534；VII -24,512, 580,582
Administrative Proceedings Act (行政訴訟法) Ⅰ-75,163,231,263,354,408,479,510,
527,599,640,683；Ⅱ-109,167,325,558,635,721；
Ⅲ-1,19；Ⅳ-357,425,565,619；Ⅴ-470,646,764,806；
VI-113,60；VIII-107,326
Administrative Order of the Ministry of Finance (財政部行政命令) VII-24
Administrative Letter No. 820570901
(財政部財政部之台財稅字第八二〇五七〇九〇一號函) VII-58,288,289
Administrative Litigation Act (行政訴訟法) VII-203；VIII-107,352,693,699
Administrative Procedure Law (行政訴訟法) VII-279
Agricultural Development Act (農業發展條例) Ⅱ-58,676；Ⅲ-113,288；VI-208
Agricultural Industry Development Act as amended on August 1, 1983
(農業發展條例（七十二年八月一日修正公布）) Ⅳ-680
Agricultural Industry Development Act as amended on January 26, 2000
(農業發展條例（八十九年一月二十六日修正公布）) Ⅳ-681
Administrative Court Precedent 57-Pan-414
(行政法院五十七年判字第四一四號判例) Ⅱ-483
Administrative Court Precedent 59-Pan-400
(行政法院五十九年判字第四００號判例) Ⅱ-483
Administrative Court Precedent A. D.72 of 1959
(行政法院四十八年判字第七十二號判例) Ⅴ-432
Administrative Court Precedent P. T. 96 (1959)
(行政法院四十八年判字第九十六號判例) Ⅲ-278
Administrative Execution Act (行政執行法) Ⅰ-224,640；Ⅳ-619；Ⅴ-302,806,814

Administrative Interpretation of the Ministry of Finance,
Tai-Cai-Shui-Tze No. 761126555
(財政部字第七六一一二六五五五號函) VII-177
Administrative Interpretation of the Ministry of Finance,
Tai- Cai-Shui-Tze No. 910453902
(財政部財稅字第九一0四五三九0二號函) VII-177
Administrative Letter No. 820570901
(財政部財政部之台財稅字第八二〇五七〇九〇一號函) VII-58,288,289
Administrative Litigation Act (行政訴訟法) VII-203；VIII-413,699
Administrative Procedure Act (行政程序法) Ⅳ-269,357,515,730；Ⅴ-210,470,682
VI-166,333,397,415,534；VII -24,308,512,582
Administrative Proceedings Act (行政訴訟法) Ⅰ-75,163,231,263,354,408,479,510,
527,599,640,683；Ⅱ-109,167,325,558,635,721；
Ⅲ-1,19；Ⅳ-357,425,565,619；Ⅴ-470,646,764,806；
VI-113,602
Administrative Order of the Ministry of Finance (財政部行政命令) VII-24
Administrative Procedure Law (行政訴訟法) VII-279
Agricultural Development Act (農業發展條例) Ⅱ-58,676；Ⅲ-113,288；VI-208
Agricultural Industry Development Act as amended on August 1, 1983
(農業發展條例（七十二年八月一日修正公布）) Ⅳ-680
Agricultural Industry Development Act as amended on January 26, 2000
(農業發展條例（八十九年一月二十六日修正公布）) Ⅳ-681
Agricultural Industry Development Act as amended on January 6, 1986
(農業發展條例（七十五年一月六日修正公布）) Ⅳ-681
Air Pollution Control Act (空氣污染防制法) Ⅲ-278,299；Ⅳ-129
Amendment, Amended Constitution, Amendment of the Constitution,
Amendments to the Constitution (憲法增修條文) Ⅱ-367,420,447,498,617,650,657,
715,781；Ⅲ-89,185,560,586,608,635,660,675,695,764,
852；Ⅳ-201,288,439,459,524,533,565,611,703；Ⅴ-1,
75,121,209,327,346,408,469,633,682,764,788；VI-65,
147,319,332；VII-79,160,550,610；VIII-41,150,243
Amnesty Act (赦免法) Ⅱ-228

Anti-Corruption Act during the Period for Suppression of the Communist Rebellion (動員戡亂時期貪污治罪條例) Ⅰ-364,427
Appraisal Standards of Compensation for Crops, Lumber and Fish in the Case of Taipei City's Exercise of Eminent Domain (臺北市辦理徵收土地農林作物及魚類補償遷移費查估基準) Ⅱ-516
Arbitration Act (仲裁法) Ⅴ-356
Armed Forces Criminal Act (陸海空軍刑法) Ⅰ-90,91,108
Armed Forces Officers Service Act (陸海空軍軍官服役條例) Ⅱ-81；Ⅲ-616
Armed Forces Punishment Act (陸海空軍懲罰法) Ⅱ-139
Assembly and Demonstration Act (集會遊行法) VIII-29
Assembly and Parade Act (July 27, 1992) (集會遊行法(81.07.27)) Ⅲ-423
Audit Act (審計法) Ⅰ-84,474；Ⅱ-6

B

Banking Act (銀行法) Ⅰ-608；Ⅱ-273；Ⅲ-785,794；VII-69
Bankruptcy Act (破產法) Ⅱ-268,305
Betrayers Punishment Act (懲治判亂條例) Ⅰ-119,139；Ⅳ-595
Budget Act (預算法) Ⅰ-688；Ⅲ-608；Ⅳ-201；Ⅴ-210,470；VI-166
Business Accounting Act (商業會計法) Ⅲ-531,733；VI-449
Business Tax Act (營業稅法) Ⅰ-303,502；Ⅱ-15,72,90,477,627Ⅲ-36；Ⅳ-56,70,194；VI-511；VIII-681
Building Act (建築法) VII-58

C

Case Assignment Directions of the Criminal Divisions of the Taiwan Taipei District Court (臺灣臺北地方法院刑事庭分案要點) VI-561
Categories and Criteria of Productive Industries Eligible for Encouragement (生產事業獎勵項目及標準) Ⅲ-567
Central Government and Public School Employee Welfare Subsidies Payments Guidelines (中央公教人員生活津貼支給要點) Ⅱ-235
Central Government Development Bonds and Loans Act (中央政府建設公債及借款條例) Ⅱ-750

Central Government Development Bonds Issuance Act
(中央政府建設公債發行條例) Ⅱ-459
Central Police University General Regulation in Respect of the 2002 Graduate School Admission Examinations for Master's Programs
(中央警察大學九十一學年度研究所碩士班入學考試招生簡章) VI-50
Certified Public Accountant Act (會計師法) Ⅰ-118,137；Ⅱ-282；Ⅲ-340；VII -38
Certified Public Bookkeepers Act (記帳士法) VI-449
Child and Juvenile Sexual Transaction Prevention Act
(兒童及少年性交易防制條例) Ⅴ-346,747；VI-1
Child Welfare Act (兒童福利法) Ⅳ-148
Chinese Herbal Doctor Certification Regulation (中醫師檢覈辦法) Ⅳ-494
Civil Associations Act (人民團體法) VIII-98,222
Civil Aviation Act (民用航空法) Ⅱ-363；Ⅳ-122
Civil Code (民法) Ⅰ-22,33,46,50,60,64,73,81,97,99,101,123,157,160,171,175,209,239,256,272,275,301,318,360,386,411,623；Ⅱ-37,265,321,442,467,539,544,601,617,657,676,750；Ⅲ-57,113,124,145,161,288,372,518,526；Ⅳ-70,79,524,556,636,642；Ⅴ-292,454,511,788,806；VI-458；VII-15,91,232,314；VIII-119,413,450
Civil Code on Inheritance (民法繼承編) VI-617
Civil Code, Part of Rights in Rem (民法物權編) Ⅰ-297
Civil Education Act (國民教育法) Ⅱ-524,627
Civil Organizations Act (人民團體法) Ⅲ-726；VI-319；VIII-98
Civil Servants Election and Recall Act (公職人員選舉罷免法) VIII-63
Clause 4 of the Guidelines for the Use of Irrigation Reservoirs in Respect of the Taiwan Province Shimen Irrigation Association (for the approval and record of the Water Conservancy Administration of the Department of Reconstruction, Taiwan Provincial Government on May 7, 1998)
(臺灣省石門農田水利會灌溉蓄水池使用要點第四點（臺灣省政府建設廳水利處八十七年五月七日核備)) VI-100
Code of Civil Procedure (民事訴訟法) Ⅰ-50,79,269,285,325,339,372,442,452,479,485,507,577,599,662,678；Ⅱ-28,109,567；Ⅲ-1,19,168,745；Ⅴ-36,292,470,646,806；

VI-65,113,602
Code of Civil Procedure before amended on February 1, 1968 (中華民國五十七年二月一日修正前民事訴訟法) Ⅱ-52
Code of Criminal Procedure (as amended on December 26, 1945) (刑事訴訟法) Ⅰ-105,184；VI-65,217；VI-268,560
Code of Criminal Procedure (刑事訴訟法) Ⅰ-50,69,79,85,87,95,166,187,250,269,281,285,299,316,369,401,449,464,479,695；Ⅱ-19,52,78,176,286,305,316,325,781；Ⅲ-19；Ⅳ-137,324,373,713；Ⅴ-158,302,346,367,646,764；VIII-575
Code of Criminal Procedure of the Republic of China promulgated on January 1, 1935 (re-named the Code of Criminal Procedure and re-numbered Article 346 by amendment made on January 28, 1967) (中華民國二十四年一月一日公布之中華民國刑事訴訟法（五十六年一月二十八日修正時改為刑事訴訟法，條次改為第三百四十六條）) Ⅱ-332
Code of Criminal Procedure (刑事訴訟法) VII-126
Commercial Organizations Act (商業團體法) VI-306
Commodity Tax Act (貨物稅條例) Ⅰ-258；Ⅱ-114,250,486；VI-407；VII-346,347,625
Communication Protection and Monitoring Law (通訊保障及監察法) VI-135
Communicable Disease Control Act (傳染病防治法) VII-261
Company Act (公司法) Ⅰ-103,192,397；Ⅱ-318,325,373；Ⅲ-259,812；Ⅳ-84；Ⅴ-603
Compulsory Enforcement Act, Compulsory Execution Act (強制執行法) Ⅰ-30,65,69,97,467；Ⅱ-96,268,305；Ⅲ-77；Ⅳ-79；Ⅴ-302,408；VII-472
Computer-Processed Personal Data Protection Act (電腦處理個人資料保護法) VII-232
Condominiums and Residential Buildings Act (公寓大廈管理條例) Ⅴ-454
Conscription Act (兵役法) Ⅰ-90,91；Ⅱ-81；Ⅲ-411,572,801
Conscription Regulation (徵兵規則) Ⅲ-411
Constitution (憲法) Ⅰ-1,3,6,12,13,15,17,23,24,28,30,31,35,36,38,40,43,44,55,56,58,62,65,69,71,78,93,129,131,133,135,143,152,155,166,203,242,269,291,322,333,339,343,349,354,372,377,389,394,405,415,420,432,452,457,467,474,479,488,492,496,499,502,507,510,515,518,523,

530,553,564,577,582,587,598,608,613,617,629,636,640,644,658,
662,672,678,683,688,695；Ⅱ-1,6,10,15,25,28,32,37,41,67,72,81,
86,90,100,104,109,114,120,124,127,130,139,142,145,148,153,158,
162,167,171,176,180,186,193,197,200,205,214,219,228,231,235,239,
245,250,253,257,262,268,273,278,282,286,289,294,299,305,312,316,
321,325,332,338,346,354,359,363,367,373,378,396,402,410,414,420,
436,438,442,447,473,483,489,493,498,509,516,520,524,529,534,539,
544,549,554,562,567,578,581,589,601,612,617,622,627,635,640,646,
650,663,668,676,692,698,705,715,721,727,733,745,750,755,760,769,
773,781；Ⅲ-1,9,19,30,36,46,52,57,66,71,77,81,89,96,104,113,117,
124,133,140,145,155,161,168,174,179,185,259,267,272,288,293,299,
314,324,329,340,346,353,359,364,380,387,392,399,406,411,417,423,
486,499,512,526,531,536,546,552,560,567,572,578,586,598,608,616,
622,628,640,650,660,666,675,690,695,700,710,719,726,733,740,745,
751,758,764,772,778,785,801,812,820,828,834,840,845,859；Ⅳ-1,56,
62,70,79,84,91,99,105,114,122,129,137,148,154,168,176,185,194,201,
236,243,249,281,288,308,324,342,348,357,366,384,398,411,425,439,
450,459,467, 477,485,493,524,533,548,556,565,580,588,611,629,636,
651,662,672,680,692,703,713,730；Ⅴ-1,11,17,36,53,67,75,91,106,
121,152,158,186,194,209,282,292,302,327,346,356,376,391,408,423,
432,454,469,511,531,569,585,603,614,625,633,646,659,667,682,719,
732,741,747,764,777,788,814；VI-1,17,39,50,65,99,113,127,135,147,
192,208,217,244,252,268,280,289,298,306,319,332,350,365,372,384,
397,407,415,426,439,449,458,467,487,500,511,520,534,545,560,594,602,
VII-1,15,24,38,58,69,79,91,100,110,126,137,160,167,176,203,210,220,232,
261,279,288,300,314,332,346,362,373,386,399,410,427,445,460,471,485,
495,511,549,580,607,616,364,649；VIII-29,41,57,63,77,88,98,107,119,150,
162,181,195,205,222,231,243,251,260,281,303,352,369,383,395,412,433,
450,482,508,532,574,591,625,638,659

Constitutional Interpretation Procedure Act (司法院大法官審理案件法) Ⅱ-447,459,498,581,650,668,781；Ⅲ-19,52,57,104,359,546,616,778；Ⅳ-1,201,288,373,439,459,485,692,703,713；

Ⅴ-67,107,121,158,210,327,367,442,469,531,603,614,646,747,764,788；
VI-50,135,147,319,332,458,560；VII-1,69,117,127,232,288,580,616,634,649；
Constitutional Court Procedure Act
(司法院大法官審理案件法) VIII-1,150,341,369,383,450,575,693,433,699,741
Construction Act (建築法) Ⅲ-9；Ⅳ-398
Control Act (監察法) VI-166
Control Yuan Yuan-Tai-Diao-Yi-Zi No. 1030800021 dated January 21, 2014
(監察院一0三年一月二十一日院台調壹字第一0三0八000二一號函) VIII-370

Cooperative Act (合作社法) Ⅰ-608；Ⅱ-197
Corporate Act, Corporation Act (公司法) Ⅰ-16,103,189
Court Organic Act (法院組織法) Ⅰ-23,93,110,163,343；Ⅱ-781；Ⅳ-324,411；
VI-66,560；VIII-162
Credit Cooperatives Act (信用合作社法) Ⅲ-785,794
Criminal Code (刑法) Ⅰ-13,16,67,82,98,105,112,116,119,145,150,177,181,187,
199,245,250,267,279,294,305,309,313,336,438,544,669；Ⅱ-56,142,622,
733,760；Ⅲ-104,346,666；Ⅳ-114,467,580,595,713；Ⅴ-11,210,391,
408,747；VI-1,127,520；VII-110,126,279,374；VIII-482
Criminal Procedure Code (刑事訴訟法) Ⅰ-309；VII-1,91,279；VIII-260,533
Criminal Procedure Act (刑事訴訟法) VIII-57
Criteria for the Physical Examination of Flight Personnel
(航空人員體格檢查標準) Ⅳ-122
Criteria of Fines for Emission of Air Pollutants by Transportation Means
(交通工具排放空氣污染物罰鍰標準) Ⅲ-278
Customs Act (關稅法) Ⅰ-617,636；Ⅱ-219,402,520,627；VI-372,407；
VIII-413,625
Customs Anti-Smuggling Act (海關緝私條例) VIII-625
Customs Smuggling Control Act (海關緝私條例) Ⅰ-75,587；Ⅲ-387,840；Ⅳ-236
VI-372

D

Decrees for Amnesty and Punishment Reduction of Criminals

(罪犯赦免減刑令) Ⅰ-119；Ⅳ-595
Deed Tax Act (契稅條例) Ⅰ-397；Ⅲ-758；VIII-413
Department of Ethnology of National Chengchi University Qualification Exam Outline for Master's Degree Candidates
(國立政治大學民族學系碩士班碩士候選人資格考試要點) Ⅳ-651
Detention Act (羈押法) VI-426,439；VIII-42
Deposit Insurance Act (存款保險法) VII-69
Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases (法務部審核死刑案件執行實施要點) Ⅴ-158
Directive B.T.E.T. No. 0932334207 dated July 19, 2004, of the Ministry of Civil Service
(銓敘部九十三年七月十九日部退二字第 0932334207 號函) Ⅴ-328
Directive Ref. No. (60)-TSYFT-368 issued on June 2, 1971, by the Department of Taxation, Ministry of Finance
(財政部賦稅署六十年六月二日（60）台稅一發字第三六八號箋函) Ⅱ-687
Directive Ref. No. (66)-TNYT-730275 issued by the Ministry of the Interior
(內政部（六六）台內營字第七三0二七五號函) Ⅱ-104
Directive Ref. No. (67)-TNYT-759517 issued by the Ministry of the Interior
(內政部（六七）台內營字第七五九五一七號函) Ⅱ-104
Directive Ref. No. (71)-TTST-37277 issued on October 4, 1982, by the Ministry of Finance
(財政部七十一年十月四日（七一）台財稅字第三七二七七號函) Ⅱ-509
Directive Ref. No. T77LB2-6530 issued by the Council of Labor Affairs on April 14, 1988; Directive Ref. No. T79LB3-4451 issued by same on March 10, 1990; Directive Ref. No. T82LB315865 issued by same on March 16, 1993 (行政院勞工委員會七十七年四月十四日台七七勞保二字第六五三0號函、七十九年三月十日台七九勞保三字第四四五一號函、八十二年三月十六日台八二勞保三字第一五八六五號函) Ⅴ-633
Directive Ref. No. TTS-36761 issued by the Ministry of Finance on October 5, 1978 (財政部六十七年十月五日台財稅字第三六七六一號函) Ⅴ-625
Directive Ref. No. TTS-780432772 issued by the Ministry of Finance on April 7, 1990; Directive Ref. No. TTS-821491681 issued by same on July

19, 1993; Directive Ref. No. TTS-841641639 issued by same on August 16, 1995; Directive Ref. No. TTS-871966516 issued by same on September 23, 1998; Directive Ref. No. TTS-0910450396 issued by same on January 31, 2002 (財政部民國七十九年四月七日台財稅第七八０四三二七七二號函、八十二年七月十九日台財稅第八二一四九一六八一號函、八十四年八月十六日台財稅第八四一六四一六三九號函、八十七年九月二十三日台財稅第八七一九六六五一六號函、九十一年一月三十一日台財稅字第０九一０四五０三九六號函) Ⅴ-614

Directive Ref. No. TTS-801799973 issued by the Ministry of Finance on February 11, 1992; Directive Ref. No. TTS-871934606 issued by same on March 19, 1998
(財政部八十一年二月十一日台財稅字第八０一七九九九七三號函、八十七年三月十九日台財稅字第八七一九三四六０六號函) Ⅴ-732

Directive Reference No. TTS-861893588 issued by the Ministry of Finance on April 23, 1997
(財政部八十六年四月二十三日台財稅第八六一八九三五八八號函) Ⅴ-423

Directive T. 62 N. 6795 (Executive Yuan, August 9,1973)
(行政院六十二年八月九日台六十二內字第六七九五號函) Ⅱ-698

Directive T.67.N.No.6301 (Executive Yuan, 1978)
(行政院六十七年台六十七內字第六三０一號函) Ⅲ-57

Directive T.69.N.No.2072 (Executive Yuan, 1980)
(行政院六十九年台六十九內字第二０七二號函) Ⅲ-57

Directive T.T.S.T. No. 37365 dated December 2, 1977, of the Ministry of Finance (財政部六十六年十一月二日台財稅字第三七三六五號函) Ⅱ-286

Directive T.T.S.T. No. 7530447 dated March 21, 1986, of the Ministry of Finance
(財政部七十五年三月二十一日台財稅字第七五三０四四七號函) Ⅱ-245

Directives for Levying Business Tax on Goods Auctioned or Sold by Courts or Customs or Other Authorities
(法院、海關及其他機關拍賣或變賣貨物課徵營業稅作業要點) Ⅱ-627

Directives for the Operational Procedure of the Commission on the Disciplinary Sanction of Functionaries (公務員懲戒委員會處務規程) Ⅴ-470

Division of Financial Revenue and Expenditure Act (財政收支劃分法) Ⅱ-200
Domestic Violence Prevention Act (家庭暴力防治法) Ⅳ-619
Drug Control Act (毒品危害防制條例，肅清煙毒條例) Ⅲ-700；Ⅳ-137,467,548
Drugs and Pharmacists Management Act (藥物藥商管理法) Ⅰ-502

E

Education Basic Act (教育基本法) Ⅳ-651
Educators Appointment Act (教育人員任用條例) Ⅱ-205,312,343；Ⅲ-89,598
Emergency Decree Execution Outline of September 25, 1999 (中華民國八十八年九月二十五日緊急命令執行要點) Ⅳ-459
Employment Insurance Act (勞工保險條例) Ⅳ-703
Employment Services Act (就業服務法) Ⅳ-629
Encouraging Consolidation Regulation (獎勵重劃辦法) VIII-303
Enforcement Act of the Civil Code: Part IV: Family (民法親屬編施行法) Ⅴ-788
Enforcement Act of the Code of Civil Procedure (民事訴訟法施行法) Ⅰ-452；Ⅴ-36
Enforcement Act of the Conscription Act (兵役法施行法) Ⅲ-411,572,801
Enforcement Act of the Land Act (土地法施行法) Ⅲ-117；Ⅴ-107
Enforcement Act of the Obligations of the Civil Code (民法債編施行法) Ⅰ-97
Enforcement Act of the Part of Family of the Civil Code (民法親屬編施行法) Ⅲ-124
Enforcement Guidelines for the Use Permission of Non-Urban Land of Taiwan Province (臺灣省非都市土地容許使用執行要點) Ⅲ-417
Enforcement Notes for Business Tax Act (營業稅法實施注意事項) VII-472
Enforcement of the Equalization of the Urban Land Rights Act (實施都市平均地權條例) Ⅰ-382
Enforcement Regulations regarding Selection and Training of Reserve Ranking Officers and Reserve Noncommissioned Officers for Military Services (預備軍官預備士官選訓服役實施辦法) VII-635
Enforcement Rules and Review Procedures for Directors' and Supervisors' Shareholding Percentages at Publiclyheld Corporations (公開發行公司董事、監察人股權成數及查核實施規則) VI-252
Enforcement of Government Procurement Act(政府採購法施行細則) VIII-42

Enforcement Rules for the Act Governing Relations between Peoples from the Taiwan Area and the Mainland Area
(臺灣地區與大陸地區人民關係條例施行細則) VII-550
Enforcement Rules of the Act for Rebuilding Old Quarters for Military Dependents (國軍老舊眷村改建條例施行細則) VIII-135
Enforcement Rules of the Act for Upgrading Industries
(促進產業升級條例施行細則) Ⅲ-733；Ⅴ-603；Ⅳ-154
Enforcement Rules of the Act Governing the Handling of Land Grant Certificates to Soldiers (戰士授田憑據處理條例施行細則) Ⅲ-334
Enforcement Rules of the Act Governing the Promotion of Public Functionaries (公務人員陞遷法施行細則) Ⅳ-411
Enforcement Rules of the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law
(戒嚴時期人民受損權利回復條例施行細則) Ⅳ-588
Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions
(後備軍人轉任公職考試比敘條例施行細則) Ⅲ-140
Enforcement Rules of the Act of Encouragement of Investment
(獎勵投資條例施行細則) Ⅰ-518,582；Ⅲ-146,259；Ⅳ-84
Enforcement Rules of the Administrative Execution Act
(行政執行法施行細則) Ⅴ-806
Enforcement Rules of the Agricultural Development Act
(農業發展條例施行細則) Ⅱ-676
Enforcement Rules of the Agricultural Industry Development Act as amended on September 7, 1984
(農業發展條例施行細則（七十三年九月七日修正發布）) Ⅳ-681
Enforcement Rules of the Armed Forces Officers Service Act
(陸海空軍軍官服役條例施行細則) Ⅱ-81
Enforcement Rules of the Business Tax Act (營業稅法施行細則) Ⅱ-627
Enforcement Rules for the Detention Act (羈押法施行細則) VI-426；VIII-57
Enforcement Rules of the Employment Insurance Act
(勞工保險條例施行細則) Ⅳ-703

Enforcement Rules of the Equalization of Land Rights Act
(平均地權條例施行細則) Ⅱ-239
Enforcement Rules of the Estate and Gift Taxes Act Ⅰ-644；Ⅱ-442,509；
(遺產及贈與稅法施行細則) Ⅳ-384；Ⅴ-423,625
Enforcement Rules of the Examination Act (考試法施行細則) Ⅰ-349
Enforcement Rules of the Factory Act (工廠法施行細則) Ⅰ-665
Enforcement Rules of the Government Employee Insurance Act
(公務人員保險法施行細則) Ⅱ-378
Enforcement Rules of the Government Employee Retirement Act
(公務人員退休法施行細則) Ⅱ-214；Ⅵ-475
Enforcement Rules of the Handling Act Governing the Handling of Land Grant Certificates to Soldiers (戰士授田憑據處理條例施行細則) Ⅱ-396
Enforcement Rules of the Household Registration Act
(戶籍法施行細則) Ⅰ-415；Ⅴ-53,531
Enforcement Rules of the Income Tax Act
(所得稅法施行細則) Ⅱ-594；Ⅲ-161；Ⅳ-91；Ⅴ-614,732；Ⅵ-467
Enforcement Rules of the Labor Insurance Act
(勞工保險條例施行細則) Ⅲ-552,690；Ⅶ-160
Enforcement Rules of the Labor Pension Act (勞工退休金條例施行細則) Ⅴ-531
Enforcement Rules of the Labor Standards Act
(勞動基準法施行細則) Ⅲ-834；Ⅷ-699
Enforcement Rules of the Land Tax Act (土地稅法施行細則) Ⅴ-777
Enforcement Rules of the Lawyer's Act (律師法施行細則) Ⅰ-110
Enforcement Rules of the Lodgment Act (提存法施行細則) Ⅱ-467
Enforcement Rules of the Narcotics Control Act
(麻醉藥品管理條例施行細則) Ⅱ-682
Enforcement Rules of the National Health Insurance Act
(全民健康保險法施行細則) Ⅲ-683；Ⅶ-79
Enforcement Rules of the Passport Act (護照條例施行細則) Ⅴ-531
Enforcement Rules of the Professionals and Technologists Examinations Act (門職業及技術人員考試法施行細則) Ⅶ-137,138
Enforcement Rules of the Prison Act (監獄行刑法施行細則) Ⅷ-638,659

Enforcement Rules of the Pharmaceutical Affairs Act (藥事法施行細則) Ⅲ-155
Enforcement Rules of the Physicians Act (醫師法施行細則) VIII-508
Enforcement Rules of the Public Functionaries Appointment Act as amended and promulgated on December 10, 1996
(中華民國八十五年十二月十日修正發布之公務人員任用法施行細則) Ⅴ-659
Enforcement Rules of the Public Functionaries Insurance Act
(公務人員保險法施行細則) Ⅱ-61,190；Ⅲ-690
Enforcement Rules of the Public Functionaries Merit Evaluation Act
(公務人員考績法施行細則) Ⅴ-186
Enforcement Rules of the Public Functionaries Remuneration Act
(公務人員俸給法施行細則) Ⅲ-751；Ⅴ-585；Ⅳ-62
Enforcement Rules of the Public Functionaries Retirement Act
(公務人員退休法施行細則) Ⅴ-719；Ⅳ-603
Enforcement Rules of the Recompense Act
(政務人員退職撫卹條例施行細則) Ⅴ-328
Enforcement Rules of the Referendum Act (公民投票法施行細則) Ⅴ-531
Enforcement Rules of the Regulation on the Lease of Private Farmland in the Taiwan Provinces (臺灣省私有耕地租用辦法施行細則) Ⅴ-122
Enforcement Rules of the Specialist and Technician Examination Act
(專門職業及技術人員考試法施行細則) Ⅳ-494
Enforcement Rules of the Trademark Act (商標法施行細則) Ⅰ-41,126
Enforcement Rules of the University Act (大學法施行細則) Ⅱ-705；Ⅲ-512
Enforcement Rules for the Valueadded and Non-value-added Business Tax Act (加值型及非加值型營業稅法施行細則) VI-500；VII-387,471
Enforcement Rules of the Zoning Act (區域計畫法施行細則) Ⅲ-417；Ⅳ-348
Equalization of Land Rights Act (平均地權條例) Ⅰ-382,457,499,573,690；Ⅱ-32,239,354；Ⅳ-105；Ⅴ-106；VI-415；VII-58；VIII-303
Estate and Gift Tax Act, Estate and Gift Taxes Act (遺產及贈與稅法) Ⅰ-644；Ⅱ-354,442,509,676；Ⅲ-124,288；Ⅳ-384,681；Ⅳ-384,681；Ⅴ-423,625,814；VI-365；VIII-413
Estate Tax Act (遺產稅法) Ⅰ-96
Estate Tax Act (遺產稅及贈與稅法) VIII-413

Examination Act (考試法) Ⅰ-116,558；Ⅱ-162
Examination and Admission Guidelines for the Volunteer Reserve Military Officer and Reserve Noncommissioned Officer Examination (2010) (中華民國九十九年國軍志願役專業預備軍官預備士官班考選簡章壹) VII-634
Explanation of the Taipei City Urban Plan No. 373130 issued on November 6, 1989 by the Taipei City Government (臺北市政府78年11月6日府工二字第373130號臺北市都市計畫說明書二) VIII-433
Examination Rules on the Professional and Technical Special Examination for Doctors of Chinese Medicine (專門職業及技術人員特種考試中醫師考試規則) VII-138
Executive Yuan, Department of Health (行政院衛生署) VII-262,581
Executive Yuan Ordinance Tai-Ching-Tze No. 9494 (December 7, 1967) (行政院五十六年十二月七日台經字第九四九四號令) Ⅱ-373
Executive Yuan Yuan-Tai-Jiao-Zi No. 1030133300 dated May 5, 2014 (行政院一0三年五月五日院臺交字第一0三0一三三三00號函) VIII-370

F

Factory Act (工廠法) Ⅰ-665
Fair Trade Act (公平交易法) Ⅳ-515；Ⅴ-511
Fair Trade Commission Interpretation Kung-Yen-Hse-Tze No. 008 of March 23, 1992 (八十一年三月二十三日行政院公平交易委員會公研釋字第00八號解釋) Ⅴ-512
Farmers Association Act (農會法) Ⅲ-46
Farmers Health Insurance Act (農民健康保險條例) Ⅲ-46
Finance Correspondence Instruction Tai-Tsai-Shui-Zhi No. 861892311 issued on April 19, 2007(財政部八十六年四月十九日台財稅字第八六一八九二三一一號函) VI-511
Finance Memorandum Tai Tsai Shui No.890457254 of October 19, 2000 (財政部八十九年十月十九日台財稅字第八九0四五七二五四號函) VI-501
Financial Statement Act (決算法) Ⅰ-474；Ⅱ-6
Firearms, Knives and Other Weapons Control Act (槍炮彈藥刀械管制條例) VI-626
first civil tribunal meeting of the Supreme Court on January 14, 1997

(最高法院八十六年一月十四日第一次民事庭會議決議) Ⅴ-36
Firearms, Knives and Other Weapons Control Act (槍炮彈藥刀械管制條例) Ⅵ-626
Foreign Exchange Control Act (管理外匯條例) Ⅶ-24
Forest Law (森林法) Ⅶ-325
Fu-Gong-Second-Zi Announcement No. 81086893 of Taipei City Government on December 14, 1992 (臺北市政府81年12月14日府工二字第81086893號公告) Ⅷ-353

G

Gangster Prevention Act (檢肅流氓條例) Ⅱ-733；Ⅳ-249；Ⅵ-217
General Principles for the Installation and Implementation of Juvenile Detention Houses (少年觀護所設置及實施通則) Ⅵ-545
General Principles for the Installation and Implementation of Juvenile Correction Houses（少年矯正學校設置及教育實施通則） Ⅵ-546
German Civil Code (德國民法) Ⅴ-293
Government Bills No. 4969, L.Y. Bill-Related Documents yuan-tzung-161 of June 22, 1994（立法院八十三年六月二十二日議案關係文書院總第一六一號政府提案第四九六九號） Ⅷ-575
Government Procurement Act (政府採購法) Ⅷ-41
Governing the Forms of Official Documents (公文程式條例) Ⅰ-185
Governing the Punishment of Police Offences (違警罰法) Ⅶ-232
Government Employee Insurance Act (公務人員保險法) Ⅱ-378
Grand Justices Council Adjudication Act (司法院大法官會議法) Ⅰ-343,349,354,364,389,442,471,488；Ⅱ-210
Guidelines for Administering the Term and Transfer of Division's Leading Judges of the High Court and Any Inferior Courts and their Branches (高等法院以下各級法院及其分院法官兼庭長職期調任實施要點) Ⅳ-412
Guidelines for Review of Recording of Superficies Acquired by Prescription, Ministry of Interior, August 17, 1988, Section 5, Paragraph 1 (內政部七十七年八月十七日發布時效取得地上權登記審查要點第五點第一項) Ⅱ-262
Guidelines for Review on the Registration of Superficies Acquired by Prescription; Guidelines for the Review of Recording of Superficies Acquired

by Prescription (時效取得地上權登記審查要點) Ⅲ-113,518
Guidelines for Handling Applications of Call (Put) Warrants by Issuers (發行人申請發行認購（售）權證處理準則) VII-300
Guidelines for the Audit of Income Taxes on Profit-Making-Enterprises (營利事業所得稅查核準則) Ⅲ-380；VI-467
Guidelines for the Collection of Fees Imposed by the Taiwan Province Irrigation Associations (amended and issued on March 24, 1989) (臺灣省農田水利會各項費用徵收要點 (七十八年三月二十四日修正發布)) VI-99
Guidelines for the Nationals' Temporary Entry into, Long-term Residence in, and Listing on the Household Registry of the Country (國人入境短期停留長期居留及戶籍登記作業要點) Ⅲ-536
Guidelines for the Review of Cases Involving Enterprises Issuing Warning Letters for the Infringement of Copyright, Trademark, and Patent Rights (審理事業發侵害著作權、商標權或專利權警告函案件處理原則) Ⅳ-515
Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants (會計師辦理公開發行公司財務報告查核簽證核准準則) Ⅰ-649

H

Habeas Corpus Act (提審法) Ⅱ-781
Handling Notes for Levying Business Tax for Court-, Administrative Execution Agency- or Customs-auctioned or -sold Goods (法院行政執行機關及海關拍賣或變賣貨物課徵營業稅作業要點) VII-472
Highway Act (公路法) Ⅴ-376
House Dues Act (房捐條例) Ⅱ-640
House Tax Act (房屋稅條例) Ⅱ-158,640；Ⅳ-392
Household and Po lice Separation Implementation Plan (戶警分立實施方案) Ⅴ-54
Household Registration Act (戶籍法) Ⅰ-415；Ⅲ-161,536；Ⅴ-53,442,531；VIII-451
Household-Police Alliance Implementation Plan (戶警合一實施方案) Ⅴ-53

I

Immigration Act (入出國及移民法) Ⅳ-176,611；VII-495

Implemental Guidelines on Remuneration of Public-Funded Students of National Yan-Ming Medical School and Assignment after Their Graduation (國立陽明醫學院醫學系公費生待遇及畢業後分發服務實施要點) Ⅱ-534
Implemental Measures for Regulations for the Supervision and Guidance of Civil Associations at All Levels (督導各級人民團體實施辦法) VIII-98
Implementation Plan for the Processing of the Overall Replacement of ROC Identity Cards in 2005 (issued by the Ministry of the Interior as per Directive Ref. No. TNHT-0940072472)
(九十四年全面換發國民身分證作業程序執行計畫（內政部九十四年三月四日台內戶字第０九四００七二四七二號函頒）) Ⅴ-442
Implementation Plan for the Relocation of Residents in the Bi Shan, Yun An and Ge To Villages of the Shrdiang County, Feitsui Reservoir Catchment Area (翡翠水庫集水區石碇鄉碧山、永安、格頭三村遷村作業實施計畫) Ⅳ-450
Implementing Regulation of Periodic Comprehensive Review of Urban Plans (都市計畫定期通盤檢討實施辦法) VIII-352
Implementing Regulations of the Act Governing the Retirement of Public Teachers and Employees (學校教職員退休條例施行細則) VIII-181
Implementing Rules for the Supervision of Construction Business issued by the Kinmen War Zone Executive Committee
(金門戰地政務委員會管理營造業實施規定) Ⅳ-398
Imposition of Fine Standards for Air Pollution Exhausted by Motor Vehicles (交通工具排放空氣污染物罰鍰標準) Ⅳ-129
Income Tax Act (所得稅法) Ⅰ-233,382,518,530,623,629；Ⅱ-67,286,346,373,385,432,594,687；Ⅲ-145,161,309,828,845；Ⅳ-91,105；Ⅴ-91,423,614,625,732,741；VI-280,397,467；VII-38,288,300,314,332,399,427；VIII-395
Income Tax Law (所得稅法) VII-460
Income Tax Act as amended on January 29, 1963
(中華民國五十二年一月二十九日修正公布之所得稅法) Ⅱ-388
Indigenous Peoples' Employment Rights Protection Act
(原住民族工作權保障法) VIII-41
Instructions on the Recordation of Private Farmland Lease Contracts in the

Taiwan Provinces (臺灣省辦理私有耕地租約登記注意事項) Ⅴ-122
Insurance Act (保險法) Ⅲ-71；Ⅴ-67；VIII-326
International Covenant on Economic, Social and Cultural Rights (經濟社會文化權利國際公約) VII-511
International Labor Conventions (國際勞工公約) Ⅳ-524
International Labor Organization's Indigenous and Tribal Peoples Convention (國際勞工組織原住民和部落人民公約) VIII-42
Interpretation No. 287 (司法院釋字第二八七號解釋) Ⅲ-828
Interpretation No. 291 (司法院釋字第二九一號解釋) Ⅲ-518
Interpretation Nos. 393, 396, 418 and 442 (司法院釋字第三九三號、第三九六號、第四一八號及第四四二號解釋) Ⅳ-137
Interpretation No 603 (司法院釋字第六０三號解釋) VI-135
Interpretation Yuan Tze No. 192 (司法院院字第一九二號解釋) Ⅰ-297
Interpretation Yuan Tze No. 2684 (司法院院字第二六八四號解釋) Ⅰ-90
Interpretation Yuan Tzu No. 781 (司法院院字第七八一號解釋) Ⅰ-82
Interpretation Yuan-je Tze No. 2936 of the Judicial Yuan (司法院院解字第二九三六號解釋) Ⅰ-325
Interpretation Yuan-je Tze No. 3735 (司法院院解字第三七三五號解釋) Ⅰ-248
Interpretation Yuan-je Tzu No. 2903 (司法院院解字第二九０三號解釋) Ⅰ-226
Interpretation Yuan-je Tzu No. 2990 (司法院院解字第二九九０號解釋) Ⅰ-75
Interpretation Yuan-je Tzu No. 3239 (司法院院解字第三二三九號解釋) Ⅰ-73,275
Interpretation Yuan-je Tzu No. 3364 (司法院院解字第三三六四號解釋) Ⅰ-67
Interpretation Yuan-je Tzu No. 3534 (司法院院解字第三五三四號解釋) Ⅰ-279
Interpretation Yuan-je Tzu No. 3827 (司法院院解字第三八二七號解釋) Ⅰ-222
Interpretation Yuan-je Tzu No. 3991 (司法院院解字第三九九一號解釋) Ⅰ-288
Interpretation Yuan-Tze No. 1516 (司法院院字第一五一六號解釋) Ⅰ-301
Interpretation Yuan-Ttze No. 1963 (司法院院字第一九六三號解釋) Ⅰ-250
Interpretation Yuan-Tze No. 1963, first paragraph (司法院院字第一九六三號第一項解釋) Ⅰ-294
Interpretation Yuan-Tze No. 2292 (司法院院字第二二九二號解釋) Ⅰ-87
Interpretation Yuan-Tze No. 2320 (司法院院字第二三二０號解釋) Ⅰ-272
Interpretation Yuan-Tze No. 339 and 1285

(司法院院字第三三九號及第一二八五號解釋) Ⅰ-540
Interpretation Yuan-Tze No.1008, part II
(司法院院字第一００八號解釋之二) Ⅰ-201
Interpretation Yuan-Tze No.1464 (司法院院字第一四六四號解釋) Ⅰ-89
Interpretation Yuan-Tze No.2822 (司法院院字第二八二二號解釋) Ⅰ-91
Interpretation Yuan-Tzu No. 1833 (司法院院字第一八三三號解釋) Ⅰ-209
Interpretation Yuan-Tzu No. 2704 (司法院院字第二七０四號解釋) Ⅱ-52
Interpretation Yuan Zi No. 2702 of the Judicial Yuan
(司法院院字第二七０二號解釋) VII-110
Items and Quantities of the Controlled Articles (管制物品項目及其數額) VII-117

J

J. Y. Explanation Yuan-Tze No. 1232 (司法院院字第一二三二號解釋) Ⅰ-212
J. Y. Interpretations Number 399,Nos 582, 622,675 and 698
(司法院釋字第三九九號、第五八二號、第六二二號、第六七五號、
第六九八號解釋) VII-616
J. Y. Interpretation No. 110 (司法院釋字第一一０號解釋) Ⅱ-52
J. Y. Interpretation No. 123 (司法院釋字第一二三號解釋) Ⅰ-294
J. Y. Interpretation No. 135 (司法院釋字第一三五號解釋) Ⅱ-176
J. Y. Interpretation No. 154 (司法院釋字第一五四號解釋) Ⅲ-19
J. Y. Interpretation No. 156 (司法院釋字第一五六號解釋) Ⅰ-683
J. Y. Interpretation No. 170 (司法院釋字第一七０號解釋) Ⅱ-286
J. Y. Interpretation No. 177 and No. 185
(司法院釋字第一七七號、第一八五號解釋) VIII-107
J. Y. Interpretation No. 181 (司法院釋字第一八一號解釋) Ⅱ-19
J. Y. Interpretation No. 216 (司法院釋字第二一六號解釋) Ⅳ-324
J. Y. Interpretation No. 218 (司法院釋字第二一八號解釋) Ⅱ-594
J. Y. Interpretation No. 225 (司法院釋字第二二五號解釋) Ⅰ-678
J. Y. Interpretation No. 243 (司法院釋字第二四三號解釋) Ⅱ-294
J. Y. Interpretation No. 252 (司法院釋字第二五二號解釋) Ⅱ-477；VI-298
J. Y. Interpretation No. 259 (司法院釋字第二五九號解釋) Ⅱ-127
J. Y. Interpretation No. 264 (司法院釋字第二六四號解釋) Ⅱ-773

J. Y. Interpretation No. 269 (司法院釋字第二六九號解釋) Ⅱ-325
J. Y. Interpretation No. 270 (司法院釋字第二七０號解釋) Ⅳ-603
J. Y. Interpretation No. 275 (司法院釋字第二七五號解釋) Ⅲ-840；Ⅳ-105
J. Y. Interpretation No. 279 (司法院釋字第二七九號解釋) Ⅳ-533
J. Y. Interpretation No. 282 (司法院釋字第二八二號解釋) Ⅱ-299
J. Y. Interpretation No. 291 (司法院釋字第二九一號解釋) Ⅱ-544
J. Y. Interpretation No. 297 (司法院釋字第二九七號解釋) Ⅲ-499
J. Y. Interpretation No. 31 (司法院釋字第三十一號解釋) Ⅰ-328；Ⅱ-130
J. Y. Interpretation No. 311 (司法院釋字第三一一號解釋) Ⅱ-442
J. Y. Interpretation No. 323 (司法院釋字第三二三號解釋) Ⅱ-483
J. Y. Interpretation No. 342 (司法院釋字第三四二號解釋) Ⅱ-715
J. Y. Interpretation No. 362 (司法院釋字第三六二號解釋) Ⅳ-556
J. Y. Interpretation No. 39 (司法院釋字第三十九號解釋) Ⅰ-275
J. Y. Interpretation No. 396 (司法院釋字第三九六號解釋) Ⅲ-486
J. Y. Interpretation No. 400 (司法院釋字第四００號解釋) Ⅴ-454
J. Y. Interpretation No. 407 (司法院釋字第四０七號解釋) Ⅳ-515
J. Y. Interpretation No. 420 (司法院釋字第四二０號解釋) Ⅲ-578；Ⅳ-56
J. Y. Interpretation No. 423 (司法院釋字第四二三號解釋) Ⅳ-129
J. Y. Interpretation No. 443 (司法院釋字第四四三號解釋) Ⅲ-812
J .Y. Interpretation: No. 443, 479, and 659
(司法院釋字第四四三號、第四七九號、第六五九號解釋) VIII-98
J. Y. Interpretation No. 444 (司法院釋字第四四四號解釋) Ⅳ-348
J. Y. Interpretation No. 445 (司法院釋字第四四五號解釋) VIII-29
J. Y. Interpretation No. 446 (司法院釋字第四四六號解釋) Ⅴ-646
J. Y. Interpretation No. 453 (司法院釋字第四五三號解釋) VI-449
J. Y. Interpretation No. 454 (司法院釋字第四五四號解釋) Ⅳ-176
J. Y. Interpretation No. 461 (司法院釋字第四六一號解釋) Ⅲ-859
J. Y. Interpretation No. 471 (司法院釋字第四七一號解釋) Ⅳ-308
J. Y. Interpretation No. 474 (司法院釋字第四七四號解釋) VIII-88
J. Y. Interpretation No. 476 (司法院釋字第四七六號解釋) Ⅳ-467
J. Y. Interpretation No. 485 (司法院釋字第四八五號解釋) Ⅳ-493
J. Y. Interpretation No. 491 (司法院釋字第四九一號解釋) Ⅴ-186

J. Y. Interpretation No. 509 (司法院釋字第五０九號解釋) VI-319
J. Y. Interpretation No. 511 (司法院釋字第五一一號解釋) Ⅳ-662
J. Y. Interpretation No. 514 (司法院釋字第五一四號解釋) Ⅴ-603
J. Y. Interpretation No. 525 (司法院釋字第五二五號解釋) Ⅴ-327
J. Y. Interpretations No.525, No. 529, No. 589, No. 605, No 620
(司法院大法官釋字第五二五號 、第五二九號、第五八九號、
第六０五號、第六二０號解釋) VIII-1
J. Y. Interpretation No. 527 (司法院釋字第五二七號解釋) Ⅳ-565
J. Y. Interpretation No. 543 (司法院釋字第五四三號解釋) Ⅴ-1
J. Y. Interpretation No. 552 (司法院釋字第五二二號解釋) VII-117
J. Y. Interpretation No. 560 (司法院釋字第五六０號解釋) Ⅴ-633
J. Y. Interpretation No. 564 (司法院釋字第五六四號解釋) Ⅳ-730
J. Y. Interpretation No. 585 (司法院釋字第五八五號解釋) Ⅴ-442；VI-166
J. Y. Interpretations No. 644 (司法院釋字第六四四號解釋) VIII-222
J. Y. Interpretation No. 663 (司法院釋字第六六三號解釋) VI-602
J. Y. Interpretation No. 76 (司法院釋字第七十六號解釋) Ⅱ-223
J. Y. Interpretation No.107 (司法院釋字第一０七號解釋) Ⅰ-386
J. Y. Interpretation No.122 (司法院釋字第一二二號解釋) Ⅰ-389
J. Y. Interpretations No. 160, No. 243, No. 266, No. 298, No. 323, No. 378, No. 382, No.392, No. 393, No. 396, No.418, No. 430, No. 442, No. 448, No. 462, No. 466, No. 512, No. 574, No. 629, and No. 639
(司法院釋字第一六０號，第二四三號，第二六六號，第二九八號，第三二三號，第三七八號，第三八二號，第三九二號，第三九三號，第三九六號，第四一八號，第四三０號，第四四二號，第四四八號，第四六二號，四六六號，五一二號，五七四號，六二九號，及第六三九號解釋) VI-426
J. Y. Interpretation: Nos. 177, 185, 503, 706, 725, 741, 742, 747
(司法院釋字第一七七號、第一八五號、第五０三號、第七０六號、第七二五號、第七四一號、第七四二號及第七四七號解釋) VIII-681
J. Y. Interpretation Nos. 185, 494 & 578
(司法院釋字第一八五號、第四九四號、第五七八號解釋) VIII-119
J. Y. Interpretation Nos. 311, 472, 588, 616, 660, 693, and 745

(司法院釋字第三一一號、第四七二號、第五八八號、第六一六號、第六六０號、第六九三號及第七四五號) VIII-413
J. Y. Interpretation Nos. 313, 400, 448 and 600 (司法院大法官會議解釋釋字第三一三號、第四００號、第四四八號與六００號解釋) VII-24
J. Y. Interpretation: Nos. 325, 585, and 633 (司法院釋字第三二五號、第五八五號、第六三三號解釋) VIII-162
J. Y. Interpretations Nos. 362, 552, 554, 618, 689, 696, and 710 (司法院釋字第三六二號、第五五二號、第五五四號、第六一八號、第六八九號、第六九六號、第七一０號解釋) VII-607
J.Y. Interpretation Nos. 371, 572, 584, 590, 649, 659, 702 (司法院釋字第三七一號、第五七二號、第五八四號、第五九０號、第六四九號、第六五九號、第七０二號解釋) VII-580
J.Y. Interpretation Nos. 371,572, 590, 404, 510, 584 (司法院釋字第三七一號、第五七二號、第五九０號、第四０四號、第五一０號、第五八四號) VIII-482
J. Y. Interpretation Nos. 371, 514, 572, 576, 580, 590, 606, and 641 (司法院釋字第三七一號、第五一四號、第五七二號、第五七六號、第五八０號、第五九０號、第六０六號、第六四一號解釋) VII-649
J. Y. Interpretation Nos. 380, 382, 418, 462, 563, 626, 653, and 667 (司法院釋字第三八０號、第三八二號、第四一八號、第四六二號、第五六三號、第六二六號、第六五三號、第六六七號解釋) VII-167
J. Y. Interpretation Nos. 384 and 588 (司法院釋字第三八四號、第五八八號解釋) VII-91
J .Y. Interpretation Nos. 384, 392, 436, 445, 567, 574,588, 653, 654 (司法院釋字第三八四號、第三九二號、第四三六號、第四四五號、第五六七號、第五七四號、第五八八號、第六五三號、第六五四號解釋) VIII-260
J. Y. Interpretation Nos. 384, 443, 497, 523, 558, 559, 588, 612, 618, 636, 676, 680, 689, 690, 708 (司法院釋字第四四三號、第四九七號、第五二三號、第五五八號、第五五九號、第六一二號、第六三六號、第六七六號、第六八０號、第六八九號、第六九０號、第七０八號解釋) VII-551
J. Y. Interpretation Nos. 394, 426, 443, 524, 533, 545, 550, 612, 734, 743 (司法院釋字第394號、第426號、第443號、第524號、第533號、

第545號、第550號、第612號、第734號及第743號解釋 VIII-260
J. Y.Interpretations Number 399,Nos 582, 622,675 and 698
(司法院釋字第三九九號、第五八二號、第六二二號、第六七五號、第六九八號解釋) VII-616
J. Y.Interpretations Nos. 400, 443, 488, 689 and 709
(司法院釋字第四００號、第四四三號、第四八八號、第六八九號、第七０九號解釋) VIII-303
J. Y. Interpretations Nos. 400, 448, 466, and 695 (司法院釋字第四００號、第四四八號、第四六六號、第六九五號解釋第七０九號解釋) VIII-693
J. Y. Interpretation Nos. 400 and 709
(司法院釋字第四００號、第七０九號) VIII-205
J.Y. Interpretation Nos. 414, 577 and 623
(司法院釋字第414號、第577號、第623號解) VIII-383
J. Y. Interpretation Nos. 426, 472, 473, 524 and 538
(司法院釋字第四二六號、第四七二號、第四七三號、第五二四號、第五三八號解釋) VII-79
J.Y. Interpretation Nos. 443, 584, 612, 634, 637, 649, 682, 694, 701, 719, 722, 727, 745 & 749 (司法院釋字第四四三號、第五八四號、第六一二號、第六三四號、第六三七號、第六四九號、第六八二號、第六九四號、第七０一號、第七一九號、第七二二號、第七二七號、第七四五號及第七四九號) VIII-508
J. Y. Interpretation Nos. 509, 613 and 617
(司法院釋字第五０九、六一三及六一七號解釋) VII-100
J. Y. Interpretation Nos. 514, 606, 682, 694, 701 and 716 (司法院釋字第五一四、六〇六、六八二、六九四、七〇一、及七一六號解釋) VIII-41
J.Y. Interpretation Nos. 682, 694 and 701
(司法院釋字第六八二號、第六九四號、第七０一號) VIII-77
J. Y. Interpretation Nos. 371, 572, 587, 590, 603 and 656
(司法院釋字第三七一號、第五七二號、第五八七號、第五九０號、第六０三號、第六五六號解釋) VI-545
J. Y. Interpretation Nos. 399, 486, 509, 577, 587, and 603
(司法院釋字第三九九號、第四八六號、第五０九號、第五七七號、

第五八七號、第六０三號解釋) VI-458
J. Y. Interpretation Nos. 110 and 400
(司法院釋字第一一０號、第四００號解釋) Ⅲ-293
J. Y. Interpretation Nos. 115, 466 and 524
(司法院釋字第一一五號、第四六六號、第五二四號解釋) Ⅳ-425
J. Y. Interpretation Nos. 137 and 216
(司法院釋字第一三七號、第二一六號解釋) Ⅲ-52
J. Y. Interpretation Nos. 137, 216 and 407
(司法院釋字第一三七號、第二一六號、第四０七號解釋) Ⅴ-282
J. Y. Interpretation Nos. 144,366, and 662
(司法院釋字第一四四號解釋、第三六六號解釋、第六六二號解釋) VII-110
J. Y. Interpretation Nos. 154, 271, 374, 384, 396, 399, 442, 482, 512 and 569
(司法院釋字第一五四號、第二七一號、第三七四號、第三八四號、第三九六號、第三九九號、第四四二號、第四八二號、第五一二號、第五六九號解釋) Ⅴ-158
J. Y. Interpretation Nos. 195, 217, 367 and 385 (司法院釋字第一九五號、第二一七號、第三六七號、第三八五號解釋) Ⅲ-146
J. Y. Interpretation Nos. 210, 313, 367, 385, 413, 415 and 458
(司法院釋字第二一０號、第三一三號、第三六七號、第三八五號、第四一三號、第四一五號、第四五八號解釋) Ⅳ-680
J. Y. Interpretation Nos. 243, 266, 269, 298, 323, 382, 423, 430 and 459 (司法院釋字第二四三號、第二六六號、第二六九號、第二九八號、第三二三號、第三八二號、第四二三號、第四三０號及第四五九號解釋) Ⅲ-598
J. Y. Interpretation Nos. 243, 382, 392, 418, 430, 462, 639, 653, 663, and 667
(司法院釋字第二四三號、第三八二號、第三九二號、第四一八號、第四三０號、第四六二號、第六三九號、第六五三號、第六六三號、第六六七號解釋) VII-126
J. Y. Interpretations Nos. 252, 397, 607, 620, 622, 625, 635, 641, 642, 660 and 674 (司法院大法官會議解釋釋字第二五二號、第三九七號、第六０七號、第六二０號、第六二二號、第六二五號、第六三五號、第六四一號、第六四二號、第六六０號與六七四號解釋) VII-176
J. Y. Interpretation Nos. 264, 325, 391, 461, 509, 535 and 577

(司法院釋字第二六四號、第三二五號、第三九一號、第四六一號、第五0九號、第五三五號、第五七七號解釋) Ⅴ-209
J. Y. Interpretation Nos. 313 & 367.
(司法院釋字第三一三號、第三六七號解釋) Ⅲ-9
J. Y. Interpretation Nos. 317, and 517
(司法院釋字第三一七號、第五一七號解釋) VII-38
J. Y. Interpretations No. 520 and 342
(司法院釋字第五二0號解釋、第三四二號解釋) VI-332
J. Y. Interpretation Nos. 362 and 552
(司法院釋字第三六二號、第五五二號解釋) Ⅳ-580
J. Y. Interpretations Nos. 388 and 585
(司法院釋字第三八八號、第五八五號解釋) VI-65
J. Y. Interpretation Nos. 367, 443 and 547
(司法院釋字第三六七號、第四四三號、第五四七號解釋) Ⅳ-636
J. Y. Interpretation Nos. 392, 442, 512, 574, 585, 599, 653 and 654
(司法院釋字第三九二號、第四四二號、第五一二號、第五七四號、第五八五號、第五九九號、六五三號與六五四號解釋) VI-560
J. Y. Interpretation Nos. 394, 514 and 525
(司法院釋字第三九四號、第五一四號、第五二五號解釋) Ⅳ-398
J. Y. Interpretation Nos. 420 and 493
(司法院釋字第四二0號、第四九三號解釋) Ⅲ-845
J. Y. Interpretations No. 459, 610 and 639
(司法院釋字第四五九號、六一0號與六三九號解釋) VI-534
J.Y. Interpretation Nos. 485, 488, and 596
(司法院釋字第485、488及596號解釋) VII-69
J. Y. Interpretation Nos. 575, 585 and 599
(司法院釋字第五七五號、第五八五號、第五九九號解釋) Ⅴ-531
J. Y. Interpretation Nos. 68 and 129
(釋字第六十八號、釋字第一二九號解釋) Ⅳ-595
J. Y. Interpretation Nos.162 and 243
(司法院釋字第一六二號及第二四三號解釋) Ⅲ-30
J. Y. Interpretation Nos.367, 390, 443 and 454 (司法院釋字第三六七號、第

三九０號、第四四三號、第四五四號解釋) Ⅲ-726
J. Y. Interpretations Nos. 380, 382, 450 and 563 (司法院釋字第三八０號、第三八二號、第四五０號、第五六三號解釋) VI-50
J. Y. Interpretations Nos. 414, 432, 521, 577, 594, 602 and 617 (司法院釋字第四一四號、第四三二號、第五二一號、第五七七號、第五九四號、第六０二號、第六一七號解釋) VI-1
J. Y. Interpretations Nos. 420, 460, 496 and 597 (司法院釋字第四二０、四六０、四九六、五九七號解釋) VI-39
J. Y. Interpretations Nos. 443 and 488 (司法院釋字第四四三號、第四八八號解釋) VIII-181
J. Y. Interpretation Nos. 443, 498, 550, 584, 711, 716, and 719 (司法院釋字第四四三號、第四九八號、第五五０號、第五八四號、第七一一號、第七一六號、第七一九號解釋) VIII-281
J. Y. Interpretation Nos. 443, 620, 622, 640, and 650 (司法院釋字第四四三號、第六二０號、第六二二號、第六四０號、第六五０號解釋) VI-467
J. Y. Interpretations Nos. 457, 485, 682, 694, 701, 719 and 722 (司法院釋字第四五七號、第四八五號、第六八二號、第六九四號、第七０一號、第七一九號、第七二二號) VIII-134
J. Y. Interpretations Nos. 709, 689, 663, 652, 579, 516 and 400 (司法院釋字第七０九號、第六八九號、第六六三號、第六五二號、第五七九號、第五一六號、第四００號解釋) VIII-195
J. Y. Interpretation Nos.77 and 231 (司法院釋字第七七號及第二三一號解釋) Ⅱ-120
J. Y. Interpretation Yuan Tze No.1956 (司法院院字第一九五六號解釋) Ⅴ-454
J. Y. Interpretation Yuan-je Tze No. 2986 (司法院院解字第二九八六號解釋) Ⅱ-343
J. Y. Interpretation Yuan-je Tze No. 4034 (司法院院解字第四０三四號解釋) Ⅱ-781
J. Y. Interpretation Yuan-je Tzu No.790 (司法院院解字第七九０號解釋) Ⅱ-176
J. Y. Interpretation Yuan-Je-Tze No. 3027 (司法院院解字第三０二七號解釋) Ⅱ-332
J. Y. Interpretation Yuan-Tze No. 1446 (司法院院字第一四四六號解釋) Ⅱ-321

J. Y. Interpretation Yuan-Tze No. 2185 (司法院院字第二一八五號解釋) Ⅰ-336
J. Y. Interpretation Yuan-Tze No. 2446 (司法院院字第二四四六號解釋) Ⅴ-36
J. Y. Interpretation Yuan-Tze No. 47 (司法院院字第四七號解釋) Ⅱ-78
J. Y. Interpretation Yuan-Tze No. 667 (司法院院字第六六七號解釋) Ⅳ-595
J. Y. Interpretation Yuan-Tze No.1919 (司法院院字第一九一九號解釋) Ⅱ-698
J. Y. Interpretation Yuan-Tze No.626 (司法院院字第六二六號解釋) Ⅰ-544
J. Y. Interpretations No. 13 and 76
(司法院釋字第十三號及第七十六號解釋) Ⅱ-420
J. Y. Interpretations No. 188 and 208
(司法院釋字第一八八號、第二0八號解釋) Ⅰ-577
J. Y. Interpretation No.565 and No.635
(司法院釋字第五六五號及第六三五號解釋) Ⅵ-365
J. Y. Interpretations No. Yuan-Jieh-tzi 2939
(司法院院解字第二九三九號解釋) Ⅱ-56
J. Y. Interpretations No. Yuan-Tzi 1387
(司法院院字第一三八七號解釋) Ⅱ-56
J. Y. Interpretations Nos. 1, 15, 17, 20, 30, 74, 75, 207, 261, 325, 328, 342 and 387 (司法院釋字第一號、第一五號、第一七號、第二0號、第三0號、第七四號、第七五號、第二0七號、第二六一號、第三二五號、第三二八號、第三四二號、第三八七號解釋) Ⅲ-185
J. Y. Interpretations Nos. 155 and 205
(司法院釋字第一五五號、第二0五號解釋) Ⅱ-493
J. Y. Interpretations Nos. 177, 185, 188, 201 and 582 (司法院釋字第一七七號、第一八五號、第一八八號、第二0一號、第五八二號解釋) Ⅴ-367
J. Y. Interpretations Nos. 187 and 201
(司法院釋字第一八七號及第二0一號解釋) Ⅱ-41
J. Y. Interpretations Nos. 187, 201, 243, 266, 295, 298, 312, 323 and 338
(司法院釋字第一八七號、第二0一號、第二四三號、第二六六號、第二九五號、第二九八號、第三一二號、三二三號、三三八號解釋) Ⅱ-721
J. Y. Interpretations Nos. 210, 217, 268, 274, 313, 345, 346 and 360
(司法院釋字第二一0號、第二一七號、第二六八號、第二七四號、第三一三號、第三四五號、第三四六號、第三六0號解釋) Ⅱ-628
J. Y. Interpretations Nos. 217, 315 and 367

(司法院釋字第二一七號、第三一五號、三六七號解釋) Ⅱ-640
J. Y. Interpretations Nos. 224 and 288
(司法院釋字第二二四號及第二八八號解釋) Ⅱ-402
J. Y. Interpretations Nos. 242, 507 and 554
(司法院釋字第二四二號、第五０七號、第五五四號解釋) Ⅳ-713
J. Y. Interpretations Nos. 280, 433 and 575
(司法院釋字第二八０號、第四三三號、第五七五號解釋) Ⅴ-408
J. Y. Interpretations Nos. 282 and 299
(司法院釋字第二八二號、第二九九號解釋) Ⅲ-267
J. Y. Interpretations Nos. 347 and 580
(司法院釋字第三四七號、第五八０號解釋) Ⅴ-152
J. Y. Interpretations Nos. 347, 399, 516, 582 and 620 (司法院釋字第三四七號、第三九九號、第五一六號、第五八二號、第六二０號解釋) Ⅴ-814
J. Y. Interpretations Nos. 371 and 572
(司法院釋字第三七一號、第五七二號解釋) Ⅴ-346
J.Y. Interpretation Nos. 371, 572, 587, 590, 603 and 656
(司法院釋字第三七一號、第五七二號、第五八七號、第五九０號、第六０三號、第六五六號解釋) VI-545
J. Y. Interpretations Nos. 394 and 402
(司法院釋字第三九四號、第四０二號解釋) Ⅴ-777
J. Y. Interpretations Nos. 396, 442 and 512
(司法院釋字第三九六號、第四四二號、第五一二號解釋) Ⅴ-36
J. Y. Interpretations Nos. 404, 485 and 510
(司法院釋字第四０四號、第四八五號、第五一０號解釋) Ⅴ-194
J. Y. Interpretations Nos. 420, 460 and 519
(司法院釋字第四二０號、第四六０號、第五一九號解釋) Ⅴ-423
J. Y. Interpretation Nos. 110, 400, 425 and 516
(司法院釋字第第一一０號、第四００號、第四二五號、第五一六號解釋) VI-415
J. Y. Interpretations Nos. 436 and 477
(司法院釋字第四三六號、第四七七號解釋) VI-18
J. Y. Interpretation Nos. 443, 620, 622, and 640
(司法院釋字第四四三號、第六二０號、第六二二號及第六四０號解

釋) VI-397
J. Y. Interpretation Nos. 506, 650
(司法院釋字第五０六號，第六五０號解釋) VI-407
J. Y. Interpretation Nos. 620, 622 and 625
(司法院釋字第六二○號、第六二二號、第六二五號解釋) VII-58
J. Y. Interpretations Nos. 384, 392, 396, 436, 442, 512, 567, and 574
(司法院釋字第三八四號、第三九二號、第三九六號、第四三六號、第四四二號、第五一二號、第五六七號及第五七四號解釋) VI-268
J. Y. Interpretation Nos. 384, 400, 425, 487, 516, 588, 624, 652 and 665
(司法院釋字第三八四號、第四００號、第四二五號、第四八七號、第五一六號、第五八八號、第六二四號、第六五二號、第六六五號解釋) VII-1
J. Y. Interpretations Nos. 432, 476, 521, 551, 576 and 594
(司法院釋字第四三二號、第四七六號、第五二一號、第五五一號、第五七六號、第五九四號解釋) Ⅴ-511
J. Y. Interpretations Nos. 443, 454 and 485
(司法院釋字第四四三號、第四五四號、第四八五號解釋) Ⅳ-450
J. Y. Interpretations Nos. 443, 542 and 575
(司法院釋字第四四三號、五四二、五七五號解釋) Ⅴ-719
J. Y. Interpretations Nos. 6 and 11 (司法院釋字第六號、第十一號解釋) Ⅰ-48
J. Y. Interpretations Nos. 65, 200, 445, 490 and 491 (司法院釋字第六十五號、第二００號、第四四五號、第四九０號、第四九一號解釋) Ⅴ-17
J. Y. Interpretations Nos. Yuan-je Tze 3015 and Yuan-je Tze 3080
(司法院院解字第三零一五號、院解字第三零八零號解釋) Ⅰ-427
J. Y. Interpretations Nos.187, 201 and 266
(司法院釋字第一八七號、第二０一號、第二六六號解釋) Ⅱ-359
J. Y. Interpretations Yuan Tze Nos. 364 and 1844, section (3)
(司法院院字第三六四號解釋及院字第一八四四號解釋(三)後段) Ⅳ-713
J. Y. Yuan-Tze No. 2810 (司法院院字第二八一０號解釋) Ⅳ-485
J.Y. Interpretation No. 12 (司法院釋字第十二號解釋) Ⅰ-60,64
J.Y. Interpretation No. 13 (司法院釋字第十三號解釋) Ⅰ-377
J.Y. Interpretation No. 131 (司法院釋字第一三一號解釋) Ⅰ-360

J.Y. Interpretation No. 154 (司法院釋字第一五四號解釋) Ⅰ-365
J.Y. Interpretation No. 3 (司法院釋字第三號解釋) Ⅰ-432
J.Y. Interpretation No. 331 (司法院釋字第三三一號解釋) Ⅳ-1
J.Y. Interpretation No. 356 (司法院釋字第三五六號解釋) Ⅴ-741
J.Y. Interpretation No. 371 (司法院釋字第三七一號解釋) Ⅴ-11
J.Y. Interpretation No. 380 (司法院釋字第三八0號解釋) Ⅲ-512
J.Y. Interpretation No. 382 (司法院釋字第三八二號解釋) VII-167
J.Y. Interpretation No. 43 (司法院釋字第四十三號解釋) Ⅰ-237,307
J.Y. Interpretation No. 432 (司法院釋字第四三二號解釋) Ⅳ-477
J.Y. Interpretation No. 476 (司法院釋字第四七六號解釋) Ⅳ-548
J.Y. Interpretation No. 530 (司法院釋字第五三0號解釋) Ⅳ-411
J.Y. Interpretation No. 92 (司法院釋字第九十二號解釋) Ⅰ-195
J.Y. Interpretation No. 96 (司法院釋字第九十六號解釋) Ⅰ-364
J.Y. Interpretation No.154 (司法院釋字第一五四號解釋) Ⅰ-372,488
J.Y. Interpretation No.177 (司法院釋字第一七七號解釋) Ⅰ-471
J.Y. Interpretation No.180 (司法院釋字第一八0號解釋) Ⅰ-499
J.Y. Interpretation No.187 (司法院釋字第一八七號解釋) Ⅰ-540
J.Y. Interpretation No.32 (司法院釋字第三十二號解釋) Ⅰ-171
J.Y. Interpretation No.414 (司法院釋字第四一四號解釋) Ⅴ-75
J.Y. Interpretation No.63 (司法院釋字第六十三號解釋) Ⅰ-189
J.Y. Interpretation No.67 (司法院釋字第六十七號解釋) Ⅰ-137
J.Y. Interpretation No.68 (司法院釋字第六十八號解釋) Ⅰ-139
J.Y. Interpretation No.98 (司法院釋字第九八號解釋) Ⅰ-544
J.Y. Interpretations Nos. 156, 396, 400, 503, 574, 653, 739 and 741 (司法院釋字第一五六號、第三九六號、第四00號、第五0三號、第五七四號、第六五三號、第七三九號、第七四一號解釋) VIII-352
J.Y. Interpretations Nos. 177, 185, 503, 709, and 725 (司法院釋字第一七七號、第一八五號、第五0三號、第七0九號、第七二五號解釋) VIII-341
J.Y. Interpretations Nos. 242, 362, 365, 552, 554, 585, 601and 647 (司法院釋字第二四二號、第三六二號、第三六五號、第五五二號、第五五四號、第五八五號、第六0一號、第六四七號) VIII-450
J.Y. Interpretation Nos. 265, 454 and 497 (司法院釋字第二六五號、第四五四號、第四九七號解釋) Ⅳ-611

J.Y. Interpretations Nos. 270, 305, 448, 466, 691, 695, and 758
(司法院釋字第二七０號、第三０五號、第四四八號、第四四六號、
第六九一號、第六九五號及第七五八號解釋) VIII-699
J.Y. Interpretations Nos. 317, 572, 590, 607, 615, 625, 635, 660, 674, 682,
685, 693 and 722 (司法院釋字第三七一號、第五七二號、第五九０號、
第六０七號、第六一五號、第六二五號、第六三五號、第六六０號、
第六七四號、第六八二號、第六八五號、第六九三號、第七二二號) VIII-395
J.Y. Interpretation Nos. 380, 382 and 450
(司法院釋字第三八０號、第三八二號、第四五０號解釋) Ⅳ-651
J.Y. Interpretation Nos. 391 and 394
(司法院釋字第三九一號及第三九四號解釋) Ⅲ-299
J.Y. Interpretations Nos. 396, 418, 442, 512, 574, 639, 653, 665
(司法院釋字第三九六號、第四一八 號、第四四二號、第五一二號、
第五七四號、第六三九號、第六五三號及第六六五號解釋) VIII-574
J.Y. Interpretations Nos. 400, 440, 445, 503, 709, 732, 737, 741, 742
(司法院釋字第400號、第440號、第445號、第503號、第709號、
第732號、第737號、第741號、第742號) VIII-433
J.Y. Interpretations Nos. 420, 460, 496, 519, 565, 597, 607, 622 and 625
(司法院釋字第四二０、四六０、四九六、五一九、五六五、五九
七、六０七、六二二、六二五號解釋) VI-208
J.Y. Interpretations Nos. 443, 509, 568, 631, 644, 678, 710, 734, 744 (司法院釋
字第四四三號、第五０九號、第五六八號、第六三一號、第六四四號、
第六七八號、第七一０號、第七三四號及第七四四號解釋) VIII-659
J.Y. Interpretations Nos. 443, 614, 658, and 707
(司法院釋字第四四三號、第六一四號、第六五八號、第七0七號) VIII-369
J.Y. Interpretations Nos. 503 and No. 604 of the Judicial Yuan
(司法院釋字第五０三號及第六０四號) VIII-625
J.Y. Interpretation Nos. 466, 472,473 and 524 (司法院釋字第四六六號、第
四七二號、第四七三號、第五二四號解釋) Ⅳ-357
J.Y. Interpretation Nos. 635, 625, 622, 607 (司法院釋字第六三五號、第六
二五號、第六二二號、第六０七號解釋) VI-487
J.Y. Interpretations Nos. 653, 691 and 736
(司法院釋字釋字第六五三號、第六九一號、第七三六號解釋) VIII-638

J.Y. Interpretation Y.J.T. No. 2911 (司法院院解字第二九一一號解釋) V-806
J.Y. Interpretation Y.T. No. 1924 (司法院院字第一九二四號解釋) V-806
J.Y. Interpretations No. 384 and 559
(司法院釋字第三八四號、第五五九號解釋) V-302
J.Y. Interpretations No.177 and 185
(司法院釋字第一七七號及第一八五號解釋) I-510
J.Y. Interpretations No.30 and No.75
(司法院釋字第三十號、第七五號解釋) I-568
J.Y. Interpretations Nos. 177, 185, 188, 371, 392, 396, 530, 572, 585 and 590
(司法院釋字第一七七號、第一八五號、第一八八號、第三七一號、第三九二號、第三九六號、第五三0號、第五七二號、第五八五號、第五九0號解釋) V-469
J.Y. Interpretations Nos. 205, 371, 572 and 590 (司法院釋字第二0五號、第三七一號、第五七二號、第五九0號解釋) V-764
J.Y. Interpretations Nos. 268 and 406
(司法院釋字第二六八號、第四0六號解釋) V-432
J.Y. Interpretations Nos. 391 and 585
(司法院釋字第三九一號解釋、第五八五號解釋) V-682
J.Y. Interpretations Nos. 394, 402 and 619
(司法院釋字第三九四號、第四0二號、第六一九號解釋) VI-252
J. Y. Interpretations Nos. 404, 433, 510, 584, 596, 612, 618 and 634
(司法院釋字第四0四號、第四三三號、第五一0號、第五八四號、第五九六號、第六一二號、第六一八號、第六三四號解釋) VI-244
J.Y. Interpretations Nos. 407, 432, 521, 594 and 602 (司法院釋字第四0七號、第四三二號、第五二一號、第五九四號、第六0二號解釋) V-747
J.Y. Interpretations Nos. 432, 476, 521 and 551 (司法院釋字第四三二號、第四七六號、第五二一號、第五五一號解釋) V-391
J.Y. Interpretations Nos. 483, 485, 501, 525 and 575 (司法院釋字第四八三號、第四八五號、第五0一號、第五二五號、第五七五號解釋) V-585
J.Y. Interpretations Nos. 574, 596, 629 and 672 (司法院釋字第五七四號、第五九六號、第六二九號、第六七二號解釋) VIII-532
J.Y. Interpretations Nos.177 and 185
(司法院釋字第一七七號、第一八五號解釋) V-292

J.Y. Interpretations Yuan-je-Tze Nos. 2920 and 3808
(司法院院解字第二九二0號解釋及第三八0八號解釋) Ⅰ-305
J.Y. Order No. Y.T.T.H.Y.-25746 issued on October 22, 2001
(司法院九十年十月二十二日(九十)院臺廳行一字第二五七四六號令) Ⅵ-113
J. Y. Yuan-Tze No. 274 (司法院院字第二七0四號解釋) Ⅵ-415
Judgment P.T. No.98 (Ad. Ct. 1961) (行政法院五十年判字第九八號判例) Ⅰ-488
Judicial Interpretations Nos. 374, 410, 554 and 577
(司法院釋字第三七四號, 第四一0號, 第五五四號, 第五七七號解釋) Ⅴ-788
Judicial Yuan Explanation No. 2044 (司法院院字第二0四四號解釋) Ⅰ-108
Judicial Yuan Interpretation Nos. 141, 400, 562
(司法院釋字第一四一號、第四0 0號、第五六二號解釋) Ⅶ-15
Judicial Yuan Interpretation No. 547 (2002.06.28)
(司法院釋字第五四七號解釋) Ⅶ-137
Judicial Yuan Yuan-Tai-Da-Er-Zi No. 1040024712 dated September 11, 2015
(司法院一0四年九月十一日院台大二字第一0四00二四七一二號函) Ⅷ-370
Junior College Act (專科學校法) Ⅲ-598
Juvenile Act (少年福利法) Ⅳ-148
Juvenile Delinquency Act (少年事件處理法) Ⅷ-107
Juvenile Proceeding Act (少年事件處理法) Ⅵ-545

L

Labor Insurance Act (勞工保險條例) Ⅱ-210,350,764；Ⅲ-552；Ⅳ-524,629；Ⅴ-633；Ⅶ-160
Labor Pension Act (勞工退休金條例) Ⅴ-408；Ⅷ-326
Labor Safety and Health Act (勞工安全衛生法) Ⅰ-665
Labor Standards Act (勞動基準法) Ⅱ-167,171,549；Ⅲ-552,834；Ⅴ-91,400,408,788；Ⅷ-119,326,699
Labor Union Act (工會法) Ⅱ-663
Land Act (土地法) Ⅰ-209,217,256,613,623,690；Ⅱ-10,104,402,473, 516, 529,539,554,589,640,668,698；Ⅲ-57,113,117,293, 719；Ⅳ-143, 168,366,642,681；Ⅴ-107,122,152,432,454；Ⅵ-415；Ⅷ-206,369

Land Expropriation Act (土地徵收條例) VIII-195,205,433
Land Registration Regulation (土地登記規則) VII-15
Land Tax Act (土地稅法) Ⅰ-420,457,523；Ⅱ-32,354,585；Ⅲ-578；Ⅳ-392；Ⅴ-777 VI-39；VI-208；VII-58
Land-to-the-Tiller Act (實施耕者有其田條例) Ⅰ-231
Lawyer's Act (律師法) Ⅰ-110,177；Ⅱ-692
Law Governing Adjudication by the Grand Justices of Judicial Yuan (司法院大法官審理案件法) VII-580
Law Governing the Legislative Yuan's Power (立法院職權行使法) VIII-162
Law Prohibiting Conflicts of Interests for Civil Servants (公職人員利益衝突迴避法) VII-650
Letter of Financial Supervisory Commission: 102.3.22-Gin-Guan-Bao-Shou-Tze No. 1020543170 (金融監督管理委員會一〇二年三月二十二日金管保壽字第一〇二〇五四三一七〇號函) VIII-327
Letter Ruling Fa Zheng Jue Zi No. 0930041998 (法務部法政決字第〇九三〇〇四一九九八號函釋) VII-650
Legislative Yuan Functioning Act (立法院職權行使法) Ⅳ-201,459；VI-147
Legislative Yuan Organization Act (立法院組織法) VIII-243
Legislative Yuan Power Exercise Act (立法院職權行使法) VIII-243
Legislator Election and Recall Act (立法院立法委員選舉罷免法) Ⅰ-328
Local Government Systems Act (地方制度法) Ⅲ-859；Ⅳ-288,534,565；VIII-281
Lodgment Act (提存法) Ⅰ-73,148,275；Ⅱ-467

M

Management Guidelines (事務管理規則) Ⅳ-603
Maritime Commercial Act (海商法) Ⅰ-197
Martial Law (戒嚴法) Ⅱ-180；VI-18
Mass Rapid Transit Act (大眾捷運法) VIII-205,369
Measures for the Deduction, Deposit and Management of the Workers' Retirement Funds (勞工退休準備金提撥及管理辦法) Ⅴ-91
Measures Governing the Sale and Lease of Public Housing and the Tender for Sale and Lease of Commercial Services Facilities and Other Buildings

(國民住宅出售、出租及商業服務設施暨其他建築物標售標租辦法) Ⅳ-426
Medical Service Act (醫療法) Ⅲ-81
Military Justice Act (軍事審判法) Ⅰ-91；Ⅲ-364；VI-18；VII-1
Mining Act (礦業法) Ⅱ-727
Ministry of Civil Service Ordinance No.97055 of June 4, 1987, Ordinance No.1152248 of June 6, 1995, Ordinances No.35064 of November 15, 1975 (銓敘部七十六年六月四日台華甄四字第九七０五五號函，八十四年六六日台中審字第一一五二二四八號函，六十四年十一月十五日台謨甄四字第三五０六四號函) Ⅳ-269
Ministry of Finance Directive No. Tai-Tsai-Shui 821498791 of October 7, 1993 (財政部八十二年十月七日台財稅第八二一四九八七九一號函) VI-208
Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 10104020320 (財政部中華民國一０一年六月二十五日台財稅第一０一０四０二０三二０號函) VIII-77
Ministry of Finance Directive Tai-Tsai-Shui-33756, May 10, 1980 }(財政部六十九年五月十日台財稅第三三七五六號函) VI-39
Ministry of Finance Directive Tai-Tsai-Shui-35521, August 9, 1979 (財政部六十八年八月九日台財稅第三五五二一號函) VI-39
Ministry of Finance dated December 20, 1977 (Tai-Tzai-Sue-Zu No. 38572) (財政部六十六年十二月二十日台財稅字第三八五七二號函) Ⅱ-486
Ministry of Finance Directive (67) Tai-Tsai-Shui-Tze No. 32252 (April 7, 1978) (財政部六十七年四月七日(67)台財稅字第三二二五二號函) Ⅰ-629
Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 33523 (May 2,1980) (財政部六十九年五月二日 (69)台財稅字第三三五二三號函) Ⅰ-629
Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) (財政部六十九年八月八日（六九）台財稅字第三六六二四號函) Ⅱ-90
Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) (財政部中華民國七十二年二月二十四日(72)台財稅字第三一二二九號函) Ⅰ-623
Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 841637712 (July 26, 1995) (財政部中華民國八十四年七月二十六日台財稅字第八四一六三七七一二號函) VI-298
Ministry of Finance Directive Ref. No. TTS-871925704, January 22, 1998;

and Directive Ref. No. TTS-09404540280, June 29, 2005
(財政部八十七年一月二十二日台財稅字第八七一九二五七０四號函,
九十四年六月二十九日台財稅字第０九四０四五四０二八０號函) Ⅴ-788
Ministry of Finance directive Tai-Tsai-Shui No. 62717 dated November 8, 1984 (財政部七十三年十一月八日台財稅第六二七一七號函) Ⅳ-681
Ministry of Finance directive Tai-Tsai-Shui No. 830625682 of November 29, 1994 (財政部八十三年十一月二十九日台財稅字第八三０六二五六八二號函) Ⅳ-681
Ministry of Finance directive Tai-Tsai-Shui-Tze No. 7637376 (May 6, 1987)
(財政部七十六年五月六日台財稅字第七六三七三七六號函) Ⅱ-477
Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 770553105
(June 27, 1988)
(財政部七十七年六月二十七日台財稅字第七七０五五三一０五號函) Ⅱ-594
Ministry of Finance in its directive (69) Tai-Tsai-Shui- Tze No. 36624
(August 8, 1980)
(財政部六十九年八月八日台財稅字第三六六二四號函) Ⅱ-477
Ministry of Finance in its directive Tai-Tsai-Shui-Tze No. 31627 (March 14, 1983) (財政部七十二年三月十四日台財稅字第三一六二七號函) Ⅲ-578
Ministry of Finance Letter of Tai-Tsai-Shui No.790445422
(財政部80年4月8日台財稅第790445422號函) VIII-413
Ministry of Finance Letter of Tai-Tsai-Shui No. 811680291
(81年10月9日台財稅第811680291號函) VIII-413
Ministry of Finance Letter of Tai-Tsai-Shui No. 811688010
(82年1月5日台財稅第811688010號函) VIII-413
Ministry of Finance Order: 2014.1.7 Tai-Tsai-Shuei No.10204671351
(財政部中華民國103年1月7日台財稅字第10204671351號令) VIII-681
Ministry of Finance Ordinance Tai-Tsai- Shui-Fa-Tze No. 13055 (December 10, 1967) (財政部五十六年十二月十日台財稅發字第一三０五五號令) Ⅱ-373
Ministry of Interior directive (61) Tai-Nei-Ti-Tze No. 491660 (November 7, 1972)
(內政部六十一年十一月七日（六一）台內地字第四九一六六０號函) Ⅱ-581
Ministry of Justice Letter of 1994-Fa-Lu-Jue-17359 of August 11, 1994

(法務部八十三年八月十一日（八三）法律決字第一七三五九號函) VIII-351
Ministry of Justice Letter of Fa-Lu-10000043630 of January 2, 2012
(法務部一０一年一月二日法律字第一０００００四三六三０號函) VIII-451
Ministry of Justice Letter of Fa-Lu-10103103830 of May 14, 2012
(法務部一０一年五月十四日法律字第一０一０三一０三八三０號函) VIII-451
Ministry of Justice Letter of Fa-Lu-10203506180 of May 31, 2013
(法務部一０二年五月三十一日法律字第一０二０三五０六一八０號函) VIII-451
Ministry of Transportation and Communications Jiao-Lu-Zi No. 1025005474 dated May 20, 2013
(交通部一0二年五月二十日交路字第一0二五00五四七四號函) VIII-370
Ministry of the Interior by Announcement Tai (82) Nei-Jing-Tze No.8270020 (January 15, 1993) (內政部八十二年一月十五日台（八二）內警字第八二七００二０號公告) Ⅳ-730
Ministry of the Interior Directive (74) Tai-Nei-Ying-Tze No. 357429 (December 17, 1985) (內政部七十四年十二月十七日（七四）台內營字第三五七四二九號函) Ⅲ-9
Ministry of the Interior Letter of Tai-Nei-Hu-1010195153 of May 21, 2012 dated May 20, 2013 (內政部一０一年五月二十一日台內戶字第一０一０一九五一五三號函) VIII-451
Ministry of the Interior Tai （80） Nei-Di-Zi No. 891630 dated January 24, 1991) (內政部八十年一月二十四日台（八0）內地字第八九一六三0號) VIII-369

N

Narcotics Control Act (麻醉藥品管理條例) Ⅱ-682；Ⅳ-467
Narcotics Elimination Act (肅清煙毒條例) Ⅲ-700；Ⅳ-467
Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion (戡亂時期肅清煙毒條例) Ⅰ-515；Ⅳ-548
National Communications Commission Organic Act (國家通訊傳播委員會組織法) Ⅶ-100
National Chengchi University Master's Degree Examination Outline Regulation (國立政治大學研究生學位考試要點) Ⅳ-651
National General Mobilization Act (國家總動員法) Ⅰ-205

National Health Insurance Act (全民健康保險法)
Ⅲ-675,683；Ⅳ-256,357,533；Ⅶ-79；VIII-88,591
National Security Act (國家安全法) Ⅲ-536；Ⅳ-611
Navigation Business Act (航業法) Ⅱ-414
Nei-Di-Zi No. 8007241 dated December 18, 1991
(八十年十二月十八日台（八0）內地字第八00七二四一號) VIII-369
Nei-Di-Zi No. 8104860 dated April 21, 1992
(八十一年四月二十一日台（八一）內地字第八一0四八六0號函) VIII-369

Non-contentious Matters Act (非訟事件法) Ⅰ-467
Notices Regarding the Application for Removal or Route Change of Lanes or Alleys Not Subject to Urban Planning by Taipei City
(台北市非都市計畫巷道廢止或改道申請須知) Ⅱ-104
Nos. 185 and 366 of the Judicial Interpretations
(司法院釋字第一八五號、第三六六號解釋) VI-520

O

Oath Act (宣誓條例) Ⅰ-533；Ⅱ-100
Official Notice of Tainan City Ref. No. Huan-fei 09104023431 issued on December 9, 2002 by theTainan City Government (臺南市政府九十一年十二月九日南市環廢字第０九一０四０二三四三一號公告) VIII-231
Official Notice of the Tainan CityGovernment Ref. No. Huan-guan 10000507010 issued on January 13, 2011 by the Tainan City Government (臺南市政府一００年一月十三日南市府環管字第一０００五０七０一０號公告) VIII-231
Operational Guidelines Governing the Public Insurance Pension Payment Amount Preferential Deposit to Retired School Teachers and Staff
(學校退休教職員公保養老給付金額優惠存款要點) VIII-2
Operational Guidelines Governing the Public Insurance pension payment amount preferential deposit to Retired Public Functionaries
(退休公務人員公保養老給付金額優惠存款要點) VIII-1
Operation Guidelines on the Examination, Reward, and Discipline Concerning the Execution of Planned Budgets by the Executive Yuan and All of Its

Affiliated Agencies
(行政院暨所屬各機關計畫預算執行考核獎懲作業要點) Ⅳ-201
Operational Guidelines for the Restoration of over-cultivated, state-owned Woodland (國有林地濫墾地補辦清理作業要點) VII-325
Operating Procedures on the Issuance of Electronic Gaming Arcade Classification Identification for the Electronic Gaming Industry
(電子遊戲場業申請核發電子遊戲場業營業級別證作業要點) VIII-281
Operating Regulations of Military Service for Selecting Voluntary Personnel as Officers, Noncommissioned Officers and Soldiers of the Armed Forces
(陸海空軍軍官士官士兵志願留營入營甄選服役作業規定) VII-446
Operation Rules Governing Special Task Forcefor Surveillance and Request of Judiciary and Organic Law and Statutes Committee, Legislative Yuan
(立法院司法及法制委員會監聽調閱專案小組運作要點) VIII-162
Ordinance T.86 N. No.38181 (Executive Yuan, October 6, 1997)
(行政院八十六年十月六日台八十六內字第三八一八一號函) Ⅲ-392
Organic Act of General Staff Headquarters of Ministry of National Defense
(國防部參謀本部組織法) Ⅲ-586
Organic Act of National Audit Office (審計部組織法) Ⅰ-474；Ⅱ-6
Organic Act of the Administrative Court (行政法院組織法) Ⅴ-788；Ⅳ-324,411
Organic Act of the Central Police University
(中央警察大學組織條例) VI-50
Organic Act of the Commission on the Disciplinary Sanction of Functionaries
(公務員懲戒委員會組織法) Ⅳ-324
Organic Act of the Control Yuan (監察院組織法) Ⅱ-6
Organic Act of the Irrigation Association (May 17, 1990)
(農田水利會組織通則) Ⅳ-185；VI-99
Organic Act of the Judicial Yuan (司法院組織法) Ⅳ-324,439；Ⅴ-469
Organic Act of the Ministry of the Interior (內政部組織法) VI-50
Organic Act of the National Assembly (國民大會組織法) Ⅰ-533；Ⅱ-100,715
Organic Act of the National Audit Office (審計部組織法) Ⅱ-578
Organic Act of the National Communications Commission
(國家通訊傳播委員會組織法) Ⅴ-682
Organic Act of the National Institute of Compilation and Translation

(國立編譯館組織條例) Ⅰ-31
Organic Act of the National Security Council (國家安全會議組織法) Ⅲ-186
Organic Regulation of the Commission for the Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Taiwan Provinces (臺灣省推行三七五減租督導委員會組織規程) Ⅴ-122
Organic Regulation of the Commissions for Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Counties and Cities of the Taiwan Provinces
(臺灣省各縣市推行三七五減租督導委員會組織規程) Ⅴ-122
Organic Regulation of the Irrigation Association of the Taiwan Province (May. 27, 1995) (八十四年五月二十七日臺灣省農田水利會組織規程) Ⅳ-185；Ⅵ-99
Organic Regulation of the Irrigation Association of the Taiwan Province (Dec. 24, 1998) (八十七年十二月二十四日臺灣省農田水利會組織規程) Ⅳ-185
Organic Regulation of the Irrigation Association of the Taiwan Province (Jan. 31, 1986) (七十五年一月三十一日臺灣省農田水利會組織規程) Ⅳ-185
Organized Crime Prevention Act (組織犯罪防制條例) Ⅳ-308,595
Outline for Officials who Possess Police Appointment Qualifications and Wish to Return to Their Police Posts in the Transfer of the Household Registration Unit after the Household and Police Separation
(戶警分立移撥民（戶）政單位具警察官任用資格人員志願回任警察機關職務作業要點) Ⅴ-54
Outlines for Compensation Received by the Witness(es) and Expert Witness(es) for Their Services, Travel Expenses and Testimonies
(法院辦理民事事件證人鑑定人日費旅費及鑑定費支給要點) Ⅳ-325
Outlines for Evaluating Teachers of National Cheng Kung University
(國立成功大學教師評量要點) Ⅷ-251
Outlines for Facilitating Deadlines of Case Handling for All Courts
(各級法院辦案期限實施要點) Ⅳ-325
Outlines for Handling Civil Preventive Proceedings
(民事保全程序事件處理要點) Ⅳ-324
Outlines for Handling Compulsory Enforcement Regarding Properties Unregistered after Succession

(未繼承登記不動產辦理強制執行聯繫要點) Ⅳ-325
Outline for Simplified Tax Audits of Businesses, Cram Schools, Kindergartens and Nursery Schools promulgated by the Ministry of Finance, Bureau of Revenue, Northern District of Taiwan
(財政部臺灣省北區國稅局書面審核綜合所得稅執行業務者及補習班幼稚園托兒所簡化查核要點) VI-280
Outlines for the Courts' Handling of Defendants' Bail in Criminal Procedures
(法院辦理刑事訴訟案件被告具保責付要點) Ⅳ-325
Outlines for the Courts' Handling of Expedited Cases in Criminal Procedure
(法院辦理刑事訴訟簡易程序案件應行注意事項) Ⅳ-325
Outlines for the Prosecutors' Offices Handling Compensation Received by Witness(es) and Expert Witness(es) for Their Services, Travel Expenses and Testimonies in Criminal Cases (各級法院檢察署處理刑事案件證人鑑定人日費旅費及鑑定費支給要點) Ⅳ-326

P

Pan Zi Precedent No. 615 of the Supreme Administrative Court
(最高行政法院九十七年判字第六一五號判例) VIII-107
Paragraph 1, of the Administrative Sanction Act (行政罰法) VI-252,372
Patent Act (專利法) Ⅰ-599；Ⅳ-99,515
Personal Data Protection Act (電腦處理個人資料保護法) VII-232
Persons with Disabilities Rights Protection Act
(身心障礙者權益保障法) VIII-41
Pharmaceutical Affairs Act (藥事法) Ⅲ-81,155
Pharmacist Act (藥師法) Ⅰ-502；Ⅲ-81；VII-580
Physically and Mentally Disabled Citizens Protection Act
(身心障礙者保護法) VI-384
Physician Act (醫師法) Ⅰ-564；Ⅲ-81；Ⅳ-477,493；VII-137；VIII-508
Points of Attention for Securities Exchange Tax Statute
(證券交易稅條例實施注意事項) VII-300
Police Act (警察法) Ⅱ-338；Ⅳ-730；VII-373
Police Duty Act (警察勤務條例) Ⅳ-373
Police Duties Enforcement Act (警察職權行使法) VII-374

Practitioner Cost Standard (執行業務者費用標準) VIII-396
Precautionary Matters on Courts' Handling Criminal Procedures (法院辦理刑事訴訟案件應行注意事項) Ⅳ-325
Precautionary Matters on Handling Civil Procedures (辦理民事訴訟事件應行注意事項) Ⅳ-324
Precautionary Matters on Handling Compulsory Enforcement (辦理強制執行事件應行注意事項) Ⅳ-79,324
Precautionary Matters on the Courts' Application of the Act Governing Disputes Mediation of Cities, Towns and Suburban Communities (法院適用鄉鎮市調解條例應行注意事項) Ⅳ-325
Precautionary Matters on the Courts' Expedited Handling of Serious Criminal Offenses (法院辦理重大刑事案件速審速結注意事項) Ⅳ-325
Precautionary Matters on the Courts' Handling of Civil Mediations (now abrogated) (法院辦理民事調解暨簡易訴訟事件應行注意事項) (已廢止) Ⅳ-324
Precautionary Matters on the Imposition of Capital Gain Tax for Securities (證券交易所得課徵所得稅注意事項) Ⅳ-672
Precautionary Matters on the Payment of Compensation to Those Who after Receipt of Pension or Living Subsidy Voluntarily Resume Public Service (退休俸及生活補助費人員自行就任公職支領待遇注意事項) Ⅲ-616
Precautionary Matters on the Submission of Application and Issuance of Self-Tilling Certificates (自耕能力證明書之申請及核發注意事項) Ⅴ-152；Ⅱ-529
Precedent of Administrative Court 62-Pan-Tze No. 252 (行政法院六十二年判字第二五二號判例) Ⅱ-193；VIII-326
Precedent P.T. No. 19 (Ad. Ct. 1951) (行政法院四十年判字第十九號判例) Ⅱ-41
Precedent P.T. No. 229 (Ad. Ct. 1964) (行政法院五十三年判字第二二九號判例) Ⅱ-41
Precedent P.T. No. 398 Ad. Ct. 1962 (行政法院五十一年判字第三九八號判例) Ⅲ-599
Precedent P.T. No. 414 (Ad. Ct. 1968) (行政法院五十七年判字第四一四號判例) Ⅱ-41
Precedent P.T. No. 6 (Ad. Ct. 1952) (行政法院四十一年判字第六號判例) Ⅱ-721
Precedent P.T. Nos. 30 and 350 (Ad. Ct. 1973)

(行政法院六十二年判字第三０號及三五０號判例) Ⅱ-193
Precedent S.T. No. 2423 (Sup. Ct., 1942) and Precedent T.S.T. No. 419 (Sup. Ct., 1957) (最高法院三十一年上字第二四二三號、四十六年台上字第四一九號判例) Ⅴ-367
Precedent T.K.T. No. 242 (Sup. Ct. 1961)
(最高法院五十年台抗字第二四二號民事判例) Ⅰ-339
Precedent T.S.J. No. 1005 (Sup. Ct., 1940)
(最高法院二十九年上字第一００五號判例) Ⅱ-567
Precedent T.S.T. No. 1065 (Sup. Ct., 1959)
(最高法院四十八年度台上字第一０六五號判例) Ⅱ-539
Precedent T.T. No. No. 19 (Ad. Ct. 1965)
(行政法院五十四年判字第十九號判例) Ⅱ-41
Precedent T.T.T. No.170 (Sup. Ct 1971)
(最高法院六十年台再字第一七０號判例) Ⅰ-442
Precedents P.T. No.398 (Ad. Ct. 1962)
(行政法院五十一年判字第三九八號判例) Ⅱ-41
Preschool Education Act (幼稚教育法) Ⅱ-459
Presidential and the Vice-Presidential Election and Recall Act
(總統副總統選舉罷免法) Ⅱ-760；Ⅴ-531
Private School Act (私立學校法) Ⅰ-360,568；Ⅱ-705；VI-487
Precautionary Matters on Handling Compensation for Wrongful Detention and Execution Cases (辦理冤獄賠償事件應行注意事項) VI-17
Prison Act (監獄行刑法) VII-91,126,279；VIII-638,659
Professionals and Technologists Examinations Act
(專門職業及技術人員考試法) VII-137
Professional and Technical Personnel Examinations Act
(專門職業及技術人員考試法) VIII-509
Provisional Act for Senior Citizens' Welfare Living Allowances
(敬老福利生活津貼暫行條例) Ⅴ-408
Provisional Act Governing the Monopolistic Sale on Cigarettes and Wines in Taiwan Province (臺灣省內菸酒專賣暫行條例) Ⅱ-25
Provisional Act Governing the Salary and Allowance for the President, Vice-

President and Special Political Appointees
(總統副總統及特任人員月俸公費支給暫行條例) Ⅲ-493；Ⅴ-469
Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives
(金融主管機關受託統一管理信用合作社暫行辦法) Ⅰ-608
Provisional Regulation Governing Prevention and Relief of SARS
(嚴重急性呼吸道症候群防治及紓困暫行條例) VII-261
Provisional Rules for the Supervision of the Construction Business issued by Lianjiang County (連江縣營造業管理暫行規定) Ⅳ-398
Public Functionaries Appointment Act (公務人員任用法) Ⅰ-98,116,179,226,260,364；Ⅱ-171；Ⅲ-751；Ⅳ-62,588,603；Ⅴ-53,659；VI-166
Public Functionaries Appointment Act as amended and promulgated on November 14, 1996
(中華民國八十五年十一月十四日修正公布之公務人員任用法) Ⅴ-659
Public Functionaries Disciplinary Act, Public Functionaries Discipline Act
(公務員懲戒法) Ⅰ-150,229,260；Ⅲ-19,346,486,751；Ⅴ-186,470,646,682
Public Functionaries Examination Act (公務人員考試法) Ⅲ-324
Public Functionaries Insurance Act (公務人員保險法) Ⅱ-61,190；Ⅲ-353,690
Public Functionaries Merit Evaluation Act (公務人員考績法) Ⅱ-41,153；Ⅲ-812；Ⅴ-186,585
Public Functionaries Protection Act (公務人員保障法) Ⅲ-751
Public Functionaries Remuneration Act (公務人員俸給法) Ⅱ-61；Ⅲ-751；Ⅳ-62
Public Functionaries Retirement Act (before January 20, 1993 Amendment)
(中華民國八十二年一月二十日修正前公務人員退休法) Ⅲ-493
Public Functionaries Retirement Act (pre-January 20, 1993)
(中華民國八十二年一月二十日前修正公務人員退休法) Ⅳ-281
Public Functionaries Retirement Act, Public Functionary Retirement Act
(公務人員退休法) Ⅰ-222,405；Ⅱ-61,171；Ⅲ-616；Ⅳ-603；Ⅴ-328,408,719；VI-475
Public Functionary Service Act (公務員服務法) Ⅰ-14,20,48,121,125,173,195,226,272,360,488；Ⅱ-41,343；Ⅴ-470；VI-244
Public Housing Act (國民住宅條例) Ⅳ-425

Public Notarization Act (公證法) Ⅰ-467
Public Officials Election and Recall Act (公職人員選舉罷免法) Ⅱ-447,489；Ⅲ-66, 406,859；Ⅳ-425,485；Ⅴ-531
Public Officials Election and Recall Act During the Period of National Mobilization for Suppression of the Communist Rebellion (動員戡亂時期公職人員選舉罷免法) Ⅱ-257
Publication Act (出版法) Ⅰ-203；Ⅱ-278；Ⅲ-104
Publications Regulation Guidelines (出版品管理工作處理要點) Ⅱ-278

R

Radio Regulations of International Telecommunication Union (聯合國所屬國際電信聯合會) VII-100
Referendum Act (公民投票法) VI-333
Rehabilitative Disposition Execution Act (保安處分執行法) VII-126
Regulation for Exit of Draftees (役男出境處理辦法) Ⅲ-411
Regulations Establishing Committees for the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools (高級中學以下學校教師評審委員會設置辦法) VII-411
Regulation for Handling of the Veterans Affairs Commission-Owned Housing and Farmlands Vacated by Married Veterans after Their Hospitalization, Retirement or Death as proclaimed by the Veterans Affairs Commission, the Executive Yuan (行政院國軍退除役官兵輔導委員會發布之「本會農場有眷場員就醫、就養或死亡開缺後房舍土地處理要點」) Ⅲ-560
Regulation for Registration of Social Entities (社會團體許可立案作業規定) Ⅲ-726
Regulations for Subsidies on Public Transportation (大眾運輸補貼辦法) VI-511
Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination (六十三年特種考試臺灣省基層公務人員考試規則) Ⅰ-349
Regulation for the Correction of Birth Date on Household Registration Record (更正戶籍登記出生年月日辦法) Ⅰ-415
Regulations for the Joint Development of Land Adjacent to or Contiguous with the Mass Rapid Transit System (大眾捷運系統土地聯合開發辦法) VIII-205

Regulation for the Suspension of Pension Payment on Military Officers and Sergeants Who Assume Public Service
(支領退休俸軍官士官就任公職停發退休俸辦法) Ⅲ-616
Regulation for the Taiwan Province Basic-Level 1990 Civil Servants Specific Examination (七十九年特種考試臺灣省基層公務人員考試規則) Ⅱ-493
Regulations for the Collection of Commodity Tax (貨物稅稽徵規則) VII-346
Regulations Governing Business Income from Professional Practice
(執行業務所得查核辦法) VIII-77
Regulation Governing Contracted Employees of the Government
(雇員管理規則) Ⅰ-226
Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions
(全民健康保險醫事服務機構特約及管理辦法) VIII-591
Regulation Governing the Division of the Power of Adjudication between Military Courts and Ordinary Courts during the Period of Martial Law in the Taiwan Area (臺灣地區戒嚴時期軍法機關自行審判及交法院審判案件劃分辦法) VI-18
Regulation Governing Examination Sites (試場規則) Ⅴ-532
Regulation Governing Factory Set-up Registration (工廠設立登記規則) Ⅱ-581,769
Regulation Governing Land Registration (土地登記規則) Ⅱ-262,544,698；Ⅴ-432,454；VII-15
Regulation Governing Matters of Family (家事事件處理辦法) Ⅳ-325
Regulation Governing Military Type Item Import Duty Exemption
(軍用物品進口免稅辦法) VI-407
Regulation Governing Private Schools (私立學校規程) Ⅰ-272
Regulation Governing Road Traffic Safety
(道路交通安全規則) Ⅰ-655；Ⅲ-174；VII-374
Regulation Governing Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion
(動員戡亂時期勞資糾紛處理辦法) Ⅰ-640
Regulation Governing the 1983 Specific Examination for the Replacement of Veterans as Public Functionaries

(七十二年特種考試退除役軍人轉任公務人員考試規則) Ⅰ-558
Regulation Governing the Adjudication of the Grand Justices Council (司法院大法官會議規則) Ⅰ-50,105
Regulation Governing the Administration of Post Offices (郵政規則) Ⅲ-314
Regulation Governing the Appropriation and Advances of Arrear Wages (積欠工資墊償基金提繳及墊償管理辦法) Ⅴ-400
Regulations Governing the Approval of Entry of People from the Mainland Area into the Taiwan Area (大陸地區人民申請進入臺灣地區面談管理辦法) VII-550
Regulation Governing the Assessment of Income Earned by a Practitioner (執行業務所得查核辦法) VIII-396
Regulation Governing the Assessment of Income Tax Returns of Profit-making Enterprises (營利事業所得稅結算申報查核準則) Ⅱ-67
Regulation Governing the Assignment of Persons Passing the Civil Tests (考試及格人員分發辦法) Ⅰ-558
Regulation Governing the Cases Randomly Selected for Reviewing on Profit-making-Enterprise Tax Return (營利事業所得稅結算申報書面審核案件抽查辦法) Ⅱ-67
Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees (汽車燃料使用費徵收及分配辦法) Ⅴ-376
Regulation Governing the Compulsory Enforcement of Lands and Houses in the Taiwan Area (臺灣地區土地房屋強制執行聯繫辦法) Ⅳ-325
Regulation Governing the Courts' Handling of Attorneys' Requests for Case Files (各級法院律師閱卷規則) Ⅳ-325
Regulation Governing the Court's Safeguarding of Secrets in Handling Cases Involving State Secrets (法院辦理涉及國家機密案件保密作業辦法) VI-66
Regulation Governing the Customs Supervision of Containers (海關管理貨櫃辦法) Ⅰ-636；Ⅱ-414
Regulation Governing the Deliberation and Review of Administrative Appeals by the Administrative Appeal Review Committees of the Executive Yuan and Its Subordinate Agencies (行政院暨所屬各行政機關訴願審議委員會審議規則) Ⅳ-485
Regulation Governing the Discipline of Communist Espionage for Purpose of

Preventing Recidivists during the Period of National Mobilization for the Suppression of the Communist Rebellion
(戡亂時期預防匪諜再犯管教辦法) Ⅳ-692
Regulation Governing the Disposition of Affairs of the Administrative Court
(最高行政法院處務規程) Ⅴ-788
Regulations Governing the Detention of Foreign Nationals
(外國人收容管理規則) VII-496
Regulation Governing the Enforcement of Protection Orders and Handling of Domestic Violence Cases by Police Authorities
(警察機關執行保護令及處理家庭暴力案件辦法) Ⅳ-619
Regulation Governing the Evaluation of Performance by Members of Public School Faculty and Staff (公立學校教職員成績考核辦法) Ⅱ-41
Regulation Governing the Fringe Benefits and Mutual Assistance for Civil and Teaching Personnel of Central Government
(中央公教人員福利互助辦法) Ⅱ-359
Regulation Governing the Handling of Armed Forces Non-Duty Officers
(陸海空軍無軍職軍官處理辦法) Ⅱ-562
Regulation Governing the Handling of Financial Penalties Cases
(財務案件處理辦法) Ⅱ-253
Regulation Governing the Implementation of Cadastral Surveys
(地籍測量實施規則) Ⅴ-455
Regulation Governing the Implementation of Urban Land Consolidation
(市地重劃實施辦法) VIII-303
Regulation Governing the Lease of State-owned Arable Land in Taiwan Provinces (臺灣省公有耕地放租辦法) Ⅲ-499
Regulation Governing the Levy of Taxes on Commodity, Regulation Governing the Levy of Commodity Tax (貨物稅稽徵規則) Ⅰ-333；Ⅱ-114
Regulation Governing the Management and Use of Provincial and City Government Budget Balancing Funds Held by the Central Government for General Distribution
(中央統籌分配稅款平衡省市預算基金收支保管及運用辦法) Ⅲ-608
Regulation Governing the Management and Use of the Industrial Park Devel-

opment and Administration Fund
(工業區開發管理基金收支保管及運用辦法) Ⅳ-155
Regulation Governing the Management of the Business of Civil Aviation
(民用航空運輸業管理規則) Ⅱ-363
Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers (計程車駕駛人執業登記管理辦法) VIII-483
Regulation Governing the Medical Services Covered under National Health Insurance (全民健康保險醫療辦法) Ⅳ-256
Regulation Governing the Military Array (召集規則) Ⅲ-801
Regulation Governing the Public Functionaries' Request for Leave
(公務員請假規則) Ⅰ-93
Regulations Governing the Qualifications and Management of Vision-Impaired Engaged in Massage Occupation
(視覺障礙者從事按摩業資格認定及管理辦法) VI-384
Regulation Governing the Recognition of Seniority of Personnel Transferred between Administrative Agencies, Public Schools and Public Enterprises for the Purpose of Accessing Office Ranking and Level Ranking
(行政、教育、公營事業人員相互轉任採計年資提敘官職等級辦法) Ⅳ-62
Regulation Governing the Reduction of Expenditure of the Productive Industry Outlays for Research and Development as Investment
(生產事業研究發展費用適用投資抵減辦法) Ⅲ-399
Regulation Governing the Reduction of Expenditures for Corporate Research and Development, Talent Training and Establishing International Brand as Investment (公司研究與發展人才培訓及建立國際品牌形象支出適用投資抵減辦法) Ⅲ-399
Regulation Governing the Reduction or Exemption of Land Tax
(土地稅減免規則) Ⅲ-578；Ⅴ-777；Ⅳ-392
Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit (限制欠稅人或欠稅營利事業負責人出境實施辦法) Ⅱ-520,628
Regulation Governing the Retirement of the Factory Workers of Taiwan Province (臺灣省工廠工人退休規則) Ⅰ-496

Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants (會計師檢覈辦法) Ⅰ-649
Regulation Governing the Review of the Grades upon the Application of Civil Service Test Participants (應考人申請複查考試成績處理辦法) Ⅱ-391
Regulation Governing the Review of the Medical Services Rendered by the Medical Organizations for National Health Insurance (全民健康保險醫事服務機構醫療服務審查辦法) Ⅳ-256
Regulation Governing the Review on Medical Services of National Health Insurance Medical Care Institutions (全民健康保險醫事服務機構醫療服務審查辦法) VIII-88
Regulation Governing the Review on National Health Insurance Medical Expense Declaration and Payment as well as Medical Services (全民健康保險醫療費用申報與核付及醫療服務審查辦法) VIII-89
Regulation Governing the Screening of Qualification of University, Independent College and Junior College Teachers (大學、獨立學院及專科學校教師資格審定辦法) Ⅲ-598
Regulations Governing the Selection and Assembly of Private School Consultative Committee Members (私立學校諮詢委員會委員遴聘及集會辦法) VI-487
Regulation Governing the Selection of the Teachers and Staff for Provincial, County and Municipal Level Schools in Taiwan Province (臺灣省省縣市立各級學校教職員遴用辦法) Ⅰ-550
Regulation Governing the Supervision and Taking-Over of Financial Institutions (金融機構監管接管辦法) Ⅲ-785
Regulation Governing the Supervision of Amusement Parks (遊藝場業輔導管理規則) Ⅳ-148
Regulation Governing the Supervision of Business Registration for Business Passenger Vehicle (營業小客車駕駛人執業登記管理辦法) Ⅴ-532
Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters (保險代理人經理人公證人管理規則) Ⅲ-71
Regulations Governing the Supervision of Insurance Solicitors (保險業務員管理規則) VIII-326
Regulation Governing the Supervision of Land Scriveners

(土地登記專業代理人管理辦法) Ⅱ-589
Regulation Governing the Supervision of Taipei City Roads (臺北市市區道路管理規則) Ⅲ-392
Regulation Governing the Supervision of the Pawn Business (典押當業管理規則) Ⅰ-46
Regulation Governing the Supervision of the Practitioners of Odontrypy (鑲牙生管理規則) Ⅰ-564
Regulation Governing the Taxpayer's Application for Deferred or Installment Payment of Tax (納稅義務人申請延期或分期繳納稅捐辦法) VIII-413
Regulation Governing the Training of Public Functionaries Passing High Level or Ordinary Level Civil Test (公務人員高等暨普通考試訓練辦法) Ⅲ-324
Regulation Governing the Use of Uniform Invoices (統一發票使用辦法) Ⅱ-15
Regulation Governing the Utilization Control of Non-Urban Land (非都市土地使用管制規則) Ⅲ-417；Ⅳ-348
Regulation Governing Toy Guns (玩具槍管理規則) Ⅳ-730
Regulation of Military Service for Selecting Voluntary Personnel as Officers and Noncommissioned Officers of the Armed Forces (陸海空軍軍官士官志願留營入營甄選服役規) VII-445
Regulation of the Departmental Affairs of District Court and Its Regional Branches (地方法院及其分院處務規程) VI-561
Regulation of the National Assembly Proceedings (國民大會議事規則) Ⅱ-715；Ⅳ-1
Regulations on Score Calculation for the Professionals and Technologists Examinations (專門職業及技術人員考試總成績計算規則) VII-138
Regulation on Conscription (徵兵規則) Ⅲ-752
Regulation on the Assessment of Air Pollution Control Fees (空氣污染防制費收費辦法) Ⅲ-299
Regulation on the Improvement of Household Registration in the Taiwan Area during the Rebellion-Suppression Period (戡亂時期臺灣地區戶政改進辦法) Ⅴ-53
Regulation on the Joint Endorsements and the Verification Thereof for the Presidential and Vice Presidential Election

(總統副總統選舉連署及查核辦法) Ⅲ-940
Regulation on the Lease of Private Farmland in the Taiwan Provinces (臺灣省私有耕地租用辦法) Ⅴ-122
Regulations on the Preliminary Qualification Examination for Doctors of Chinese Medicine (中醫師考試檢定考試規則) VII-138
Regulations on the Professional and Technical Special Examination for Doctors of Chinese Medicine (特種考試中醫師考試規則) VII-138
Regulations on the Qualification Screening Examination for Doctors of Chinese Medicine (特種考試中醫師考試規則) VII-138
Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs (公民營廢棄物清除處理機構管理輔導辦法) Ⅴ-667
Regulation on the Supervision of the Construction Business (營造業管理規則) Ⅲ-9；Ⅳ-398
Regulations on the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools (公立高級中等以下學校教師成績考核辦法) VII-411
Regulation Regarding Supplementary Compensation for Government Employees and Teachers' Pension and other Cash Benefits (公教人員退休金其他現金給與補償金發給辦法) Ⅳ-281
Relief Order for Important Businesses (重要事業救濟令) Ⅰ-205
Resolution of the 8th Supreme Court Civil Law Convention (April 22, 1986) (最高法院七十五年四月二十二日第八次民事庭會議決議) Ⅱ-668
Resolution of the Joint Meeting of the Supreme Administrative Court on March 26, 2002 (最高行政法院九十一年三月二十六日庭長法官聯席會議決議) Ⅴ-788
Resolution Ref. No. TS-431 of the Committee on the Discipline of Public Functionaries (公務員懲戒委員會再審字第四三一號議決案例) Ⅲ-486
Resolution of the First Joint Meeting of Chief Judges and Judges of the Administrative Court in July, 1998 (行政法院八十七年七月份第一次庭長評事聯席會議決議) VII-177
Resolution of the Joint Meeting of the Supreme Administrative Court Division-Chief Judges and Judges Meeting, November 2007

(最高行政法院九十年十一月份庭長法官聯席會議暨法官會議決議) VI-113
Review of Recording of Superficies Acquired by Prescription
(時效取得地上權登記審查要點) Ⅱ-544
Robbery Punishment Act (懲治盜匪條例) Ⅱ-142
Road Traffic Management and Penalty Act (道路交通管理處罰條例) VIII-482
Road Traffic Management Penalties Regulation (道路交通管理處罰條例) VII-373
Road Traffic Safety Regulation (道路交通安全規則) VII-374
Rule 9(1) of the Judicial Yuan Directive on Precautionary Matters on Handling Compulsory Enforcement, as amended on October 18, 1982
(司法院中華民國七十一年十月十八日修正之辦理強制執行應行注意事項第九則(一)) Ⅱ-268
Rules Governing Enforced Deportation of People from Mainland China Hong Kong, and Macau
(大陸地區人民及香港澳門居民強制出境處理辦法) VII-551
Rules Governing Imported and Exported Goods Inspection
(進出口貨物查驗準則) VI-372
Rules Governing Investment Advisory Enterprises
(證券投資顧問事業管理規則) VI-192
Rules Governing Staff Members of Industrial and Commercial Organizations
(工商團體會務工作人員管理辦法) VI-306

S

Seamen Service Regulation (海員服務規則) Ⅰ-197
Securities Exchange Act (證券交易法) Ⅰ-649；Ⅳ-243；Ⅴ-282；VI-192；VI-252
Securities Investment Trust and Advisor Act (證券投資信託與顧問法) VI-192
Self-Governance Act for Provinces and Counties (省縣自治法) Ⅲ-740
September 25, 1999 Emergency Decree Execution Guidelines
(中華民國八十八年九月二十五日緊急命令執行要點) Ⅴ-1
September 25, 1999 Emergency Decree
(中華民國八十八年九月二十五日緊急命令) Ⅴ-1
Smuggling Punishment Act (懲治走私條例) Ⅰ-199；VII-117
Social Order Maintenance Act (社會秩序維護法) Ⅳ-425,730；VI-1,594；VII-232

Soil and Groundwater Pollution Remediation Act (土壤及地下水污染整治法) VII-624
Specialist and Technician Examination Act (專門職業及技術人員考試法) Ⅳ-494；VI-449
Specialist and Technician Interview and On-Site Examination Certification Regulation (專門職業及技術人員檢覈面試及實地考試辦法) Ⅳ-494
Stamp Tax Act (印花稅法) Ⅰ-89
Standard Act for the Laws and Rules (中央法規標準法) Ⅰ-375,415；Ⅱ-15,498,668, 769；Ⅲ-690；Ⅳ-62,79,325,493；Ⅴ-17；Ⅶ-24
Standards for Advanced Payment of Allowances for Judicial Personnel of Various Courts and the Ministry of Judicial Administration per Executive Yuan Directive T-(41)-S.S.T.-51 (行政院臺（四一）歲三字第五一號代電司法院及司法行政部之司法人員補助費支給標準) Ⅴ-470
Standards Applicable for Education, Culture, Public Charity Organizations or Groups on Their Exemption from Income Taxation (教育文化公益慈善機關或團體免納所得稅適用標準) VII-428
Standards for Reducing Penalties in Cases of Tax Violations (稅務違章案件減免處罰標準) VII-616
State Compensation Act (國家賠償法) Ⅰ-672；Ⅱ-467；Ⅲ-650；VI-17
Statute for Control of Hygiene and Safety of Cosmetic (化粧品衛生管理條例) VIII-383
State Secrets Protection Act (國家機密保護法) VI-66
Statute for Narcotics Elimination (肅清煙毒條例) VII-127
Statute on Juvenile Correction Schools (少年輔育院條例) VI-545
Statute on the Management of Electronic Game Arcades (電子遊戲場業管理條例) VI-350
Statute of Progressive Execution of Penalty (行刑累進處遇條例) VII-279
Statutes Governing Ancestor Worship Guilds (祭祀公業條例) VIII-150
Supervisory Regulation Governing Multi-level Sales (多層次傳銷管理辦法) Ⅴ-512
Supplemental Regulation on Laws and Regulations of Eminent Domain (土地徵收法令補充規定) Ⅲ-293
Supplementary Regulations of the Amendments to Recording Acts and Regulations (更正登記法令補充規定) Ⅴ-432

Supreme Administrative Court in its judgment Pan-Tze No. 156 (2002)
(最高行政法院九十一年判字第一五六號判決) Ⅳ-703
Supreme Administrative Court order T. T. 27 (Supreme Administrative Court, 1983) (行政法院七十二年度裁字第二十七號裁定) Ⅰ-527
Supreme Administrative Court Precedent P.T. 35 (1971)
(行政法院六十年判字第三十五號判例) Ⅱ-625
Supreme Administrative Court precedent T. T. 23 (Supreme Administrative Court, 1972) (行政法院六十一年度裁字第二十三號判例) Ⅰ-527
Supreme Administrative Court Precedent T. T. 26
(Supreme Administrative Court, 1958)
(行政法院四十七年度裁字第二十六號判例) Ⅱ-558
Supreme Administrative Court's Precedent P.T. 1451 (Supreme Administrative Court,1987) (行政法院七十六年判字第一四五一號判例) Ⅲ-1
Supreme Administrative Court's Precedent P.T. No.229 (Supreme Administrative Court 1964) (行政法院五十三年判字第二二九號判例) Ⅰ-540
Supreme Administrative Court's Precedent P.T. No.610 (Supreme Administrative Court 1973) (行政法院六十二年判字第六一0號判例) Ⅰ-510
Supreme Administrative Court's Precedent P.T. No.98 (Supreme Administrative Court 1961) (行政法院五十年判字第九八號判例) Ⅰ-540
Supreme Administrative Court's Precedent T.T. 36
(Supreme Administrative Court 1966)
(行政法院五十五年裁字第三六號判例) Ⅱ-52
Supreme Administrative Court's Precedent T.T. 41 (Supreme Administrative Court 1973) (行政法院六十二年裁字第四一號判例) Ⅰ-683
Supreme Administrative Court's Precedents P. T. 270 (Supreme Administrative Court, 1969) and T. T. 159 (Supreme Administrative Court, 1972)
(行政法院五十八年判字第二七0號及六十一年裁字第一五九號判例) Ⅲ-499
Supreme Court criminal judgment T.F.T 147 (Sup. Ct., 1990)
(最高法院七十九年台非字第一四七號刑事判決) Ⅳ-714
Supreme Court precedent judgment Ref. No. (45)-Tai-Shang-205
(最高法院四十五年台上字第二0五號判例) Ⅳ-636
Supreme Court Precedent No.3231 (1936)

(最高法院二十五年上字第三二三一號判例) Ⅱ-176
Supreme Court Precedent T.F.T. No. 10 (Sup. Ct., 1985), Precedent T.S.T. No. 5638 (Sup. Ct., 1984), Precedent T.S.T. No. 1578 (Sup. Ct., 1958), Precedent T.S.T. No. 809 (Sup. Ct., 1957), Precedent T.S.T. No. 419 (Sup. Ct., 1957), Precedent T.S.T. No. 170 (Sup. Ct., 1957), Precedent S.T.F.T. No. 29 (Sup. Ct., 1949), Precedent S.T. No. 824 (Sup. Ct., 1945), Precedent S.T. No. 2423 (Sup. Ct., 1942), Precedent S.T. No. 3038 (Sup. Ct., 1941), Precedent S.T. No. 1648 (Sup. Ct., 1940); Precedent S.T. No. 1875 (Sup. Ct., 1931), Precedent S.T. No. 1087 (Sup. Ct., 1929)
(最高法院七十四年台覆字第一0號、七十三年台上字第五六三八號、四十七年台上字第一五七八號、四十六年台上字第八0九號、四十六年台上字第四一九號、四十六年台上字第一七0號、三十八年穗特覆第二九號、三十四年上字第八二四號、三十一年上字第二四二三號、三十年上字第三0三八號、二十九年上字第一六四八號、二十年上字第一八七五號、十八年上字第一0八七號判例) Ⅴ-158
Supreme Court Precedent T.F.T. No. 20 (Supreme Court, 1980)
(最高法院六十九年台非字第二0號判例) Ⅱ-333
Supreme Court Precedent T.S.T. 2617 (Supreme Court 1964)
(最高法院五十三年台上字第二六一七號判例) Ⅱ-332
Supreme Court Precedent T.S.T. No. 1166 (Supreme Court, 1987) and T. S. T. No. 2490 (2000) (最高法院七十六年台上字第一一六六號判例、八十九年台上字第二四九0號判決) Ⅴ-67
Supreme Court Precedent Year 23-No.3473 (1934) and Precedent Year 75-No.2071 (1986) (最高法院二十三年上字第三四七三號、七十五年台上字第二0七一號判例) Ⅴ-292
Supreme Court Precedents S. T. 2333 (Sup. Ct., 1940), the first paragraph, and F. T. 15 (Sup. Ct., 1940) (最高法院二十九年上字第二三三三號判例前段、二十九年非字第一五號判例) Ⅳ-714
Supreme Court under (74) Tai-Kang-Tze No. 174
(最高法院七十四年台抗字第一七四號判例) Ⅴ-36
Supreme Court's Precedent K. T. No.127 (Sup. Ct.1940)
(最高法院二十九年抗字第一二七號判例) Ⅰ-507

Supreme Court's Precedent S. T. 362 (Supreme Court 1937)
(最高法院二十六年判字第三六二號判例) Ⅱ-109
Supreme Court's Precedent S.T. 4554 (Supreme Court, 1934)
(最高法院二十三年上字第四五五四號判例) Ⅱ-657
Supreme Court's Precedent T. S. T.1702 (Supreme Court 1958)
(最高法院四十七年臺上字第一七0二號判例) Ⅰ-275
Supreme Court's Precedent T.S.T. 1128 (Sup. Ct. 1981)
(最高法院七十年台上字第一一二八號判例) Ⅰ-452
Supreme Court's Precedent T.S.T. No. 1799 (Sup. Ct. 1981)
(最高法院七十年臺上字第一七九九號判例) Ⅱ-286
Supreme Court's Precedent T.T. 592 (Supreme Court, 1964)
(最高法院五十三年台上字第五九二號判例) Ⅲ-372
Swiss Civil Code (瑞士民法) Ⅴ-293

T

T. N. T. No. 661991, Ministry of the Interior, January 5, 1989
(內政部七十八年一月五日台內字第六六一九九一號令) Ⅲ-293
Tai-Nei-Di-Zi No. 1020246881 dated July 10, 2013
(一0二年七月十日台內地字第一0二0二四六八八一號函) VIII-370
Tai Tsai Suei Tze Ordinance No. 23798 (台財稅字第二三七九八號令) Ⅱ-67
Tai-Shui-Yi-Fa No. 861912671 Directive by the Department of Taxation, Ministry of Finance dated August 16, 1997 (財政部賦稅署八十六年八月十六日台稅一發第八六一九一二六七一號函) Ⅲ-380
Tai-Tsai-Shui No. 7549464 Directive of Ministry of Finance dated August 16, 1986
(財政部七十五年八月十六日台財稅字第七五四九四六四號函) Ⅲ-399
Tai-Tsai-Shui-Tze-No. 35995 Directive of the Ministry of Finance dated September 6, 1977 (財政部六十六年九月六日台財稅字第三五九九五號函) Ⅲ-309
Taipei City Electronic Gaming Arcades Installation and Management Self-governing Ordinance (臺北市電子遊戲場業設置管理自治條例) VIII-281
Taipei County Electronic Gaming Arcades Installation Self-governing Ordinance (臺北縣電子遊戲場業設置自治條例) VIII-281

Taiwan Province Operational Outlines of Review on the Application for Altering the Non-urban Lands in Mountain Slope Conservation Zones, Scenic Zones, and Forest Zones belonging to Type D Building (Kiln) Lands for Non-industrial (Kiln) Use (promulgated on September 16, 1994; ceasing to apply from July 1, 1999)
(臺灣省非都市土地山坡地保育區、風景區、森林區丁種建築（窯業）用地申請同意變更作非工（窯）業使用審查作業要點（八十三年九月十六日發布，八十八年七月一日起停止適用）) Ⅳ-348
Taiwan Provincial Government Subordinate Enterprise Employees Retirement Remuneration and Reward Rules (臺灣省政府所屬省營事業機構人員退休撫卹及資遣辦法) VIII-699
Taiwan Provincial Regulation for the Registration of Lease of Farm Land (臺灣省耕地租約登記辦法) Ⅳ-636
Taiwan Provincial State-owned Enterprise Employees Temporary Appointment Rules (臺灣地區省（市）營事業機構人員遴用暫行辦法) VIII-699
Taiwan Provincial Tax Bureau Directive (67) Shui-Yi-Tze No. 596 (February 3, 1978) (台灣省稅務局六十七年二月三日(67)稅一字第五九六號函) Ⅰ-629
Taoyuan County Electronic Gaming Arcades Installation Self-governing Ordinance (桃園縣電子遊戲場業設置自治條例) VIII-281
Tax Evasion Act, Tax Levy Act, Tax Collection Act (稅捐稽徵法)
Ⅰ-658；Ⅱ-67,90, 245,354,477,520,627；Ⅲ-733；Ⅳ-70,269,392；Ⅴ-814；VI-39,280,289,298,534；VII-38,176,210,386,616；VIII-413
Teachers' Act (教師法) VII-485；VIII-251
Technician Act (技師法) Ⅲ-133
Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion
(動員戡亂時期臨時條款) Ⅰ-328,533；Ⅱ-130,223,367
Telecommunications Act (電信法) VII-100
Tobacco Control Act (菸害防制法) Ⅴ-75
Trade Act (貿易法) Ⅳ-236
Trademark Act (商標法) Ⅰ-41,201；Ⅱ-646；Ⅲ-772,812；Ⅴ-391
The Letter Ruling Tai Cai Shui Zi No. 1020014746 issued by the Ministry

of Finance on November 4, 2013 (財政部（74.4.23）台財稅第14917號函、財政部（102.11.4）台財稅第1020014746號函) VIII-396
The Letter Ruling Tai Cai Shui Zi No. 14917 issued by Ministry of Finance on April 23, 1985 (執行業務者費用標準) VIII-396
The Ministry of Finance Letter Tai-Tsai-Shui-09600090440 of March 6, 2007 (財政部中華民國九十六年三月六日台財稅字第０九六０００九０四四０號函) VIII-533

U

UN Convention on the Rights of the Child (聯合國兒童權利公約) Ⅴ-292
the Child
UNCITRAL Model Law on International Commercial Arbitration (1985) (一九八五年聯合國國際商務仲裁法範本) Ⅴ-356
Uniform Punishment Standard Forms and Rules for Handling the Matters of Violating Road Traffic Regulations, Uniform Punishment Standard Forms and Rules for Handling the Matters regarding Violation of Road Traffic Regulations (違反道路交通管理事件統一裁罰標準及處理細則) Ⅳ-129；Ⅴ-569
Uniform Punishment Standard of Forms for Violating Road Traffic Regulations (違反道路交通管理事件統一裁罰標準表) Ⅳ-129
Universal Declaration of Human Rights (世界人權宣言) Ⅱ-657
Universal Postal Convention, Final Protocol (萬國郵政公約最後議定書) Ⅲ-314
University Act (大學法) Ⅱ-705；Ⅲ-512,598；Ⅳ-651
United Nations Convention on the Elimination of All Forms of Discrimination Against Women (聯合國消除對婦女一切形式歧視公約) VIII-151
United Nations Convention on the Rights of (兒童權利公約) VI-1
United Nations Convention on the Law of the Sea (聯合國海洋法公約) VII-100
United Nations Declaration on the Rights of Indigenous Peoples (聯合國原住民族權利宣言) VII-551；VIII-42
United Nations International Covenant on Civil and Political Rights (聯合國公民與政治權利國際公約) VIII-42
Urban Planning Act (都市計畫法) Ⅰ-322,354；Ⅱ-104,429,473,607

Ⅲ-96,117,392,506；Ⅳ-143；VIII-303,352,369
Urban Planning Act on September 6, 1973 (六十二年九月六日都市計畫法) Ⅱ-32
Urban Roads Act (市區道路條例) Ⅰ-613
Urban Renewal Act (都市更新條例) VII-511,512；VIII-303
Usage Rules for Government Unified Invoices (統一發票使用辦法) VII-472

V

Value-Added and Non-Value-Added Business Tax Act
(加值型及非加值型營業稅法) Ⅱ-573；VI-407,500,511；
VII-176,220,386,387,471；VIII-625,681

W

Waste Disposal Act (廢棄物清理法) Ⅴ-667；VII-624；VIII-231
Water Conservancy Act (水利法) Ⅱ-429；VI-99
Waste Management Act Taiwan Implemention Rules
(廢棄物清理法臺灣省施行細則) VII-624
Water Pollution Control Act (水污染防治法) Ⅲ-417
Witness Protection Act (證人保護法) VI-217
Water Supply Act (自來水法) Ⅲ-417；Ⅳ-450
Wildlife Conservation Act as amended and promulgated on October 29, 1994
(八十三年十月二十九日修正公布之野生動物保育法) Ⅲ-622
Wildlife Conservation Act as enacted and promulgated on June 23, 1989
(七十八年六月二十三日制定公布之野生動物保育法) Ⅲ-622

Y

Yuan-Tai-Jiao-Zi No. 1040050323 dated September 21, 2015
(一0四年九月二十一日院臺交字第一0四00五0三二三號函) VIII-370

Z

Zoning Act (區域計畫法) Ⅲ-417；Ⅳ-348

KEYWORDS INDEX

Ⅰ：Interpretations Nos. 1~233
Ⅱ：Interpretations Nos. 234~392
Ⅲ：Interpretations Nos. 393~498
Ⅳ：Interpretations Nos. 499~570
Ⅴ：Interpretations Nos. 571~622
Ⅵ：Interpretations Nos. 623~669
Ⅶ：Interpretations Nos. 670~716
Ⅷ：Interpretations Nos. 717~759

A

ability-to-pay principle (量能課稅) Ⅷ-396
a constitution violation; a violation of the Constitution (違憲) Ⅱ-524
a couple's aggregate income (夫妻所得總額) Ⅶ-333
a designated area (一定區域) Ⅰ-115
administrative fine, administrative penalty (行政罰) Ⅶ-25,100,177
administrative monetary penalty (罰鍰) Ⅷ-533
adjacent lands (毗鄰地區土地) Ⅷ-206
adjustment mechanism (調整機制) Ⅷ-414
a legal duty to act (作為義務) Ⅱ-193
a less restrictive means (較小侵害手段) Ⅴ-75
a local public group (地方公共團體) Ⅰ-115
a majority of people (多數人) Ⅰ-313
a majority of shareholders (過半數股東) Ⅰ-192
a man and a woman (一男一女) Ⅷ-451
a meeting of shareholders (股東大會) Ⅰ-192
a member of the Control Yuan (監察委員) Ⅰ-143,242
a new system of administrative proceeding (行政訴訟新制) Ⅳ-426
a person in *flagrante delicto* (現行犯) Ⅰ-166
a procedural violation of the law which apparently does not affect the outcome of the trial decision (訴訟程序違背法令而顯於判決無影響者) Ⅱ-19
a prosecutorial order; an order rendered by a prosecutor (檢察官命令) Ⅱ-56
a reasonably necessary and proper means (合理必要之適當手段) Ⅴ-75
a specific majority of people (特定之多數人) Ⅰ-313
a statute or regulation is unconstitutional but invalid only after a prescribed period of time (違憲法令定期失效) Ⅷ-107
abolish (廢止) Ⅲ-133
abuse of litigation (濫訴) Ⅰ-343
abuse of parental rights (親權濫用) Ⅰ-411
abuse of the process (濫行起訴) Ⅰ-662
academic achievement (學業成績) Ⅳ-652
academic freedom (學術自由) Ⅲ-515,599
academic performance review (學術審議) Ⅲ-599
accessory contract (從契約) Ⅰ-669
access to dossier information (卷證資訊獲知) Ⅷ-261
account (會計科目) Ⅱ-273
accountant (會計師) Ⅲ-340,531
accountants' discipline (會計師懲戒) Ⅱ-282
Accounting Clerks (會計書記人員) Ⅰ-110

accounting matter (會計事務) Ⅰ-110
accounting offices (會計師事務所) Ⅰ-649
account payables (應付未付費用) VI-468
accounts receivable (催收款) Ⅱ-273
accrual basis, accrual basis accounting (權責發生制) Ⅱ-687；VI-468；VIII-78
accruing the increased land value to the public (漲價歸公) Ⅱ-239
accused (刑事被告) Ⅱ-333
acquire the qualifications (資格取得) Ⅱ-162
Act Governing Teachers (教師法) VII-411
act in breach of duty under administrative law (違反行政法上義務之行為) Ⅲ-9
act of contract (契約行為) Ⅲ-499
action for a retrial, action for retrial (再審之訴, 再審) Ⅰ-442；Ⅱ-52；Ⅲ-1
active preferential measures (積極優惠措施) VIII-42
active service military officer (現役軍官) Ⅲ-329
acts that pollute the environment (污染環境行為) VIII-232
actual cost (實際成本) Ⅰ-630
actual price of the deal (實際成交價格) Ⅰ-630
actual taxpaying ability (實質稅負能力) Ⅳ-673；VI-209
actual transfer current value (移轉現值) Ⅰ-457
added value (附加價值) Ⅲ-36
additional payment (加發薪給) Ⅱ-549
ad hoc collegiate bench (特別合議庭) VI-66
addressee (收件人) Ⅲ-315
addressee (相對人) Ⅲ-278
adequate standard of living (適足居住) VII-512
adjacent land (鄰地) VI-40；VIII-206
adjacent mining territory (鄰接礦區) Ⅱ-727
adjudication (裁決) Ⅰ-640,690
adjudication of bankruptcy (破產宣告) Ⅱ-268
adjudicative body (審判機關) Ⅰ-91；Ⅳ-426
administer of corporate affairs (執行公司業務) Ⅰ-143
administration cost (行政成本) Ⅴ-54
administration sanction (行政官署) Ⅰ-185
administrative (行政救濟) Ⅱ-402
administrative act, administrative action (行政處分) Ⅰ-203,322,354,599,683；Ⅱ-42；Ⅲ-278,329；Ⅳ-270,373；VI-534
administrative action (行政訴訟) Ⅱ-294；Ⅲ-572
administrative agencies, administrative agency (行政機關) Ⅱ-663；Ⅲ-52；Ⅳ-63；VI-298
administrative appeal (訴願) Ⅰ-683；Ⅱ-359, 558,721；Ⅲ-329 2 ,572,399
administrative areas (行政區域) Ⅲ-726
administrative cases (行政訴訟) Ⅰ-377
administrative construction, administrative interpretation (行政解釋) Ⅰ-617；Ⅳ-85
administrative contract (行政契約) Ⅱ-534；Ⅳ-357；VIII-592
administrative control (行政管制) Ⅴ-391
administrative court (行政法院) Ⅰ-408；Ⅱ-193, 325；Ⅲ-52,499；Ⅳ-426；Ⅴ-400；VII-325
administrative decision (行政處分) Ⅰ-263；VII-167
administrative disciplinary action (行政制裁) VI-253
administrative discretion (行政裁量) Ⅴ-570
Administrative Enforcement Agency, Ministry of Justice (法務部行政執行署) Ⅳ-620

administrative enforcement, administrative execution (行政執行) Ⅰ-640；Ⅴ-303,806
administrative fine (行政罰鍰) Ⅴ-806；Ⅶ-25,177
administrative grant (給付行政) Ⅳ-451
administrative law (行政法) Ⅱ-363
administrative litigation (行政爭訟, 行政訴訟) Ⅰ-683；Ⅳ-289,485 Ⅰ-75,322,354,488,540,587；Ⅱ-42, 153, 359, 410,483,721,733；Ⅲ-599,628；Ⅵ-113；Ⅶ-127,325
administrative measure (行政措施) Ⅰ-655；Ⅳ-451
administrative objective (行政上之目的) Ⅱ-477
administrative orders of statutory interpretation (有關法規釋示之行政命令) Ⅰ-291
administrative ordinances (行政命令) Ⅰ-617；Ⅳ-450
administrative penalty, administrative sanction (行政罰) Ⅰ-89；Ⅱ-193,769；Ⅳ-148；Ⅵ-253,373；Ⅶ-101；Ⅷ-533
administrative procedure (行政訴訟程序) Ⅱ-167
administrative proceeding, Administrative Proceedings (行政訴訟) Ⅰ-408；Ⅳ-357；Ⅶ-325
administrative regulation (行政法規) Ⅳ-270
administrative relief, administrative remedy (行政救濟) Ⅰ-658；Ⅲ-179,387
administrative rule (行政規則) Ⅱ-253
administrative unity (行政一體) Ⅴ-682
administrative violations (行政責任) Ⅱ-312
administrative year (施政年度) Ⅱ-120
admissibility of evidence (證據能力) Ⅴ-159
adopted child, adopted children (養子女) Ⅰ-50,101
adopted daughter, adoptive daughter (養女) Ⅰ-99,101
adoptee (被收養人) Ⅰ-22,60
adopter (收養人) Ⅰ-22,60
adoption (收養) Ⅰ-60；Ⅳ-70
adoptive parents (養父母) Ⅰ-50,101
adoptive relationship (收養關係) Ⅰ-171
adulterer (姦夫) Ⅳ-714
adulteress (姦婦) Ⅳ-714
adultery (通姦) Ⅳ-580,714
advance funds (墊償基金) Ⅴ-400
advance public welfare (增進公共利益) Ⅲ-852
advance-notice salary (預告工資) Ⅱ-549
adverse possession (以取得標的不動產所有權為目的之占有) Ⅰ-209
adverse side effects (副作用) Ⅱ-682
advertising of medical treatment (醫療廣告) Ⅰ-564
advertisements (廣告) Ⅷ-232
advisory and management over industry and commerce (工商輔導及管理)Ⅷ-282,585
advocacy of communism or secession of territory (主張共產主義或分裂國土) Ⅲ-423
affairs of the party (黨務) Ⅰ-13
affirmative action (優惠措施) Ⅴ-585
affirmative defense (阻卻違法) Ⅳ-114
affordability (量能) Ⅶ-80
after-tax earning (稅後盈餘) Ⅱ-745
a graduate from an overseas department of dentistry (國外牙醫學畢業生) Ⅷ-509

age difference (年齡差距) Ⅳ-70
agency-in-charge (主管機關)
Ⅱ-727；Ⅲ-52；Ⅴ-283；VI-193,253,407
agent ad litem (訴訟代理人) Ⅰ-452；Ⅱ-28
agential bank (代理國庫銀行) Ⅰ-148
agreement (協定) Ⅱ-438
agreement on responsivities of contract violation (約定違約責任) VIII-592
agricultural crops (農作改良物) Ⅴ-107
agricultural development (農業發展) Ⅱ-585
agricultural development policies (農業發展政策) Ⅱ-529
agricultural improvement (農作改良物) Ⅱ-640
agricultural land (農業用地) Ⅱ-676；Ⅲ-288；Ⅳ-681
agricultural land tax levy (田賦) VII-59
agricultural resources (農業資源) Ⅴ-122
aiding or abetting bribery (幫助或教唆) Ⅰ-181
air gun/air-propelled gun (空氣槍) VI-626
air pollutants (污染, 空氣汙染物) Ⅲ-278,299
air pollution control fee (空氣污染防制費) Ⅲ-299
air pollution control fund (空氣污染防制基金) Ⅲ-299
alcohol concentration (酒精濃度) VII-374
alien employee (受聘僱之外國人) Ⅳ-629
allege unilaterally (片面主張) Ⅲ-2
alter (變造) Ⅰ-112
alteration (變更) Ⅰ-199
alteration of designation (變更編定) Ⅳ-349
amend (修改) Ⅱ-715
amend a recording (更正登記) Ⅴ-432
amending, amendment (補正) Ⅰ-452；Ⅱ-544；Ⅲ-745
amendment of the ruling content (法令內容變更) Ⅰ-427
amendment registration of right to real estate (不動產權利變更登記) Ⅲ-758
amendments to the Constitution (修憲) Ⅱ-367
amnesty (赦免) Ⅳ-596
amount of compensation (訴訟求償金額) Ⅰ-372
amount of tax evaded (漏稅額) Ⅱ-477
an action for disavowal (否認生父之訴) Ⅴ-293
amount to be deducted for donation (捐贈列舉扣除額) VII-461
an administrative act (行政處分) Ⅲ-599
an appeal against the defedant's interest (不利於被告之上訴) Ⅱ-176
an auction sale ordered by the courts (法院所為之拍賣) Ⅱ-286
an exemption amount (免稅額) VII-315
an inconsistency between a prior and later interpretation (前後釋示不一致) Ⅱ-245
an indecent act (猥褻罪) Ⅰ-313
an oath (宣誓) Ⅱ-100
an opportunity for education (受教育機會) Ⅱ-721
ancestor (被繼承人) Ⅰ-99
ancestor worship guild (祭祀公業) VIII-151
annual expense (歲費) Ⅰ-40
annual income (年度所得) VI-468；VII-39
annual maintenance fees of minor water inlets or outlets (小給（排）水路養護歲修費) Ⅳ-186
anonymous balloting (無記名投票) Ⅳ-2

antecedent and subsequent parties to transaction (交易前後手) Ⅱ-90
anti-social behavior (反社會性行為) Ⅳ-467
apparent erroneous application of provisions of law (適用法規顯有錯誤) Ⅰ-442
appeal (上訴, 訴願, 訴訟救濟) Ⅰ-105,322, 354,540；Ⅲ-406；Ⅳ-137,373
appeal and re-appeal (申訴再申訴) VIII-251
appeal for retrial (再審) Ⅰ-599
appear before the authority (到案) Ⅲ-279
appellate brief (上訴書狀) Ⅱ-333
append (補充) Ⅳ-557
applicable mutatis mutandis (準用) Ⅰ-452
application (申請期間) VIII-196
application by analogy (類推適用) Ⅴ-187
application for correction of the household registration record (戶籍登記更正之申請) Ⅰ-415
application for retrial (請求再審) VIII-342
application period (申請期間) Ⅲ-733
apply for court remedy in time (及時請求法院救濟) VII-262
applying the law (法律適用) Ⅱ-19
appoint, appointment (任用, 任命, 遴用) Ⅱ-326；Ⅲ-140,324,660；Ⅳ-63,439,603；VIII-700
appointment and removal (任免) Ⅱ-326
appointment by examination (考試及格任用) Ⅱ-205
appointment by examination (考試用人) Ⅲ-89
apportionment (分攤) Ⅲ-828
apportionment by way of attachment (依附式之比例代表制) Ⅳ-2
appraisal of compensation for eminent domain (徵收補償費之查估) Ⅱ-516
apprenticeship (實習) Ⅰ-349
appropriate organization (適當組織) VII-513
appropriate themes (題意正確) VIII-660
approval and record (核備) VIII-119
approval of tax payment in kind (實物抵繳之核准) Ⅱ-509
Approval System (許可制) VIII-30
arable land (耕地) Ⅳ-682
arbitral award (仲裁判斷) Ⅴ-356
arbitrarily expanded or abridged (任意擴張、縮減) Ⅳ-682
arbitration (仲裁) Ⅴ-356
architect (建築技師) Ⅲ-133
area of Martial (戒嚴地域) Ⅰ-139
areas of practice (執業範圍) Ⅲ-133
Armed Forces Non-Duty Officers (無職軍官) Ⅲ-334
arrear (積欠工資) Ⅴ-400
arrest (拘提, 逮捕) Ⅰ-695；Ⅱ-78,733, 782；Ⅴ-303
arrest or detain (逮捕拘禁) Ⅰ-269
article produced as evidence (證物) Ⅲ-1
assembly (議會) Ⅰ-474
assessment (核定) VI-534,561
assess tax (課稅) Ⅲ-288
assessed income/tax (核定所得額／稅額) Ⅴ-741
assessed land value (規定地價) VI-40
assessed value (評定價格) Ⅰ-629
assessed value of house (房屋評定價格) Ⅱ-594
assessment by imputation (推計核定) Ⅱ-594
assign (指派, 分發) Ⅱ-326；Ⅲ-324

assigned claim (承受債權) V-400
associate representative (副代表) Ⅰ-12
association (結社團體) VIII-222
at any event (一律) VIII-483
at least one opportunity to file an appeal for remedy (至少一次上訴救濟機會) VIII-575
attempt to evade recall (意圖避免召集) Ⅳ-176
Auction Record (拍賣筆錄) VIII-681
auction sale (拍賣) Ⅱ-628
audit (審計) Ⅱ-273
audit institutes (審計機關) Ⅰ-44
Audit report (審計報告) Ⅰ-84；Ⅰ-474
auditing post (審計職務) Ⅰ-118
auditing power (審計權) Ⅱ-6
Auditor General (審計長) Ⅱ-578
authority (職權, 主管機關) Ⅰ-568；Ⅱ-318
authority in charge of relevant matters (目的事業主管機關) Ⅲ-133
authority to institute disciplinary sanction (懲戒權) Ⅲ-346
authorize (授權) V-432
authorized by legislative law (由法律授權) Ⅳ-730
automobile accident (道路交通事故) Ⅱ-231
automobile fuel use fees (汽車燃料使用費) V-376
autonomous entity (自主意思團體) Ⅲ-772
autonomous power of internal organization, autonomous right to internal organization (自主組織權) Ⅲ-512；Ⅳ-288
autonomous resolution of disputes arising from private causes (私法紛爭自主解決) V-356
Autonomy in private law (司法自治) VII-15
autonomy of private law (私法自治) VIII-151
autonomy to choose a spouse (自主選擇結婚對象) VIII-451
autonomous right to information (資訊自主權) V-283
autonomy (自主權, 自主決定) Ⅳ-652；VIII-223
award-winning bidder (得標廠商) VIII-42
avert imminent crisis (避免緊急危難) Ⅲ-852

B

bad debt (呆帳) Ⅱ-273
bankrupt (破產、破產人) Ⅱ-268
bankruptcy estate (破產財團) Ⅱ-268,305
bankruptcy proceeding/procedure (破產程序) Ⅱ-268
Balancing of Interests (利益衡量) VII-233
basic ethical orders (基本倫理秩序) VIII-451
basic point of land value subject to progressive taxation (累進起點地價) VI-40
basic rights to right to interest (利息基本權) V-424
basic training (基礎訓練) Ⅲ-324
basis of accounting (會計基礎) VIII-78
basis of right of claim (請求權基礎) VIII-693
be commuted to/into a fine (易科罰金) Ⅰ-309
bearer (執票人) Ⅰ-553
bearer share (不記名股票) V-604
being hired by the government after retiring from the government (再任或轉任) VIII-182
behavior constraint (行為制約) Ⅲ-299
behavior or personality disorder (行動與性格異常) Ⅱ-682
behavioral punishment (行為罰) Ⅱ-477
benefit arising from appeal (上訴利益) V-37
benefit of legitimate reliance

(信賴利益) Ⅴ-328
benefits for military personnel (軍人福利) Ⅲ-764
bequest (遺產) Ⅰ-99
best interests (最佳利益) Ⅵ-546
bigamous marriage (重婚（婚姻）) Ⅳ-556
bigamus (重婚者) Ⅳ-556
bigamy (重婚（行為）) Ⅱ-601；Ⅳ-556
bill of no confidence (不信任案) Ⅳ-2
bills of referendum (公民投票案) Ⅵ-333
binding (既判力) Ⅱ-567
binding force of judgment (判決之確定力) Ⅲ-2
binding force/effect (拘束力) Ⅱ-635
biological defects (生理缺陷) Ⅵ-51
biological parents (生父母) Ⅰ-50
biological siblings (親兄弟) Ⅰ-50
bis in idem (一行為二罰) Ⅷ-533
blank tax-payment certificate (空白完稅照) Ⅰ-333
boarding house (宿舍) Ⅳ-603
bodily freedom (身體自由) Ⅵ-426
body corporate (法人) Ⅱ-167
Body Right (身體權) Ⅶ-233
body subject to tax declaration and payment (申報繳納之主體) Ⅱ-628
bona fide assignee (善意受讓人) Ⅰ-485
bona fide third parties, bona fides third party (善意第三人) Ⅰ-69；Ⅱ-539,750
bond (公債) Ⅱ-459
bond certificates (公債債票) Ⅱ-750
bonded factory (保稅工廠) Ⅱ-219
bonded factory or bonded warehouse supervised by Customs (海關管理之保稅工廠或保稅倉庫) Ⅳ-194
bonus (獎金) Ⅴ-512
branch office (分公司) Ⅱ-745
Brokerage (居間) Ⅷ-327
brokers and adjusters (經理人及公證人) Ⅲ-71
breach of the administrative law obligations (違反行政法上義務) Ⅷ-533
budget (預算) Ⅱ-120,273,338；Ⅲ-608；Ⅴ-210；Ⅵ-167
budgetary bill (預算案) Ⅱ-773；Ⅳ-202；Ⅴ-471
building line (建築線) Ⅲ-96
building occupation permit (建築物使用執照) Ⅱ-262
building permit (建築執照) Ⅲ-96
burden of proof (舉證責任) Ⅰ-623；Ⅱ-346；Ⅳ-596
burden to be performed (應履行之負擔) Ⅷ-533
Bureau of National Health Insurance (中央健康保險局) Ⅳ-357
burial compensation (喪葬津貼) Ⅳ-629
business accounting bookkeeper (商業會計記帳人) Ⅲ-531
business accounting matters (商業會計事務) Ⅲ-531
Business entity, business (營利事業) Ⅱ-90；Ⅲ-380；Ⅴ-604；Ⅶ-177
business income tax (營利事業所得稅) Ⅲ-400；Ⅴ-615
business license (營業執照) Ⅰ-502
business operator, business entity (營業人) Ⅱ-90；Ⅲ-36；Ⅶ-177
business revenue appraisal (推計銷售額) Ⅱ-72
Business Tax (營業稅) Ⅰ-303；Ⅱ-1,477；

Ⅳ-56；Ⅶ-177
Business Tax Payment Slip for Court-auctioned or -sold Goods (法院拍賣或變賣貨物營業稅繳款書) Ⅶ-472
business tax rate (營業用稅率) Ⅳ-392

C

cabinet (內閣) Ⅲ-186
cadastral resurvey (地籍重測) Ⅵ-39
cadastral survey (地籍測量) Ⅴ-455
cadastre (地籍) Ⅴ-432
campaigning for re-election (競選連任) Ⅱ-760
cancel the insurance (退保) Ⅳ-704
cancel/terminate the lease (撤佃) Ⅴ-122
cancellation of certificate of registration (撤銷登記證書) Ⅲ-10
call (put) warrants (認購（售）權證) Ⅶ-301
Categorical Characteristics (類型特徵) Ⅷ-327
cap (上限) Ⅲ-346
capability of causing injuries or death (殺傷力) Ⅵ-626
capacity pf public functionary (公務員身分) Ⅱ-42
capacity to be a party (當事人能力) Ⅱ-167,325
capital (資本) Ⅰ-77；Ⅴ-604
capital gain tax for securities (證券交易所得稅) Ⅳ-672
capital increase (增資) Ⅲ-733；Ⅴ-604
capital market (資本市場) Ⅳ-672
capital of the government (政府資本) Ⅰ-77
capital surplus (資本公積) Ⅱ-373
capped annual increase (年功俸) Ⅲ-752
carriage contract (運送契約) Ⅲ-840
case assignment (分案) Ⅵ-561
case integration (併案) Ⅵ-561
cash basis (收付實現制) Ⅱ-687
cash basis accounting (收付實現制) Ⅷ-78
catchment area (集水區) Ⅳ-450
caucus (黨團) Ⅵ-333
causal relation (因果關係) Ⅵ-127
cause for retrial (再審理由) Ⅰ-573
cause of inheritance (繼承原因) Ⅲ-372
cause of taxation (課稅原因) Ⅰ-623
caused accident (肇事) Ⅶ-374
censor (監督) Ⅰ-242
Central Election Committee (中央選舉委員會) Ⅵ-333
central governing authority (中央主管機關) Ⅱ-273,727；Ⅲ-133,531；Ⅴ-604
central governing authority in charge of relevant business (中央目的事業主管機關) Ⅴ-512,604
central government (中央政府) Ⅱ-200
central government agency (中央機關) Ⅰ-78
central government development bond (中央政府建設公債) Ⅱ-750
Central Government's budgets (中央政府總預算) Ⅲ-267
central representative authorities (中央民意機關) Ⅱ-420
certificate of qualification (合格證書) Ⅴ-668
certificate of self-tilling ability (自耕能力證明書) Ⅱ-698；Ⅴ-152
certificated (銓敘合格) Ⅰ-137
certification (認可) Ⅲ-531
certification (檢覈) Ⅳ-494
certified doctor (合法資格醫師) Ⅰ-564
civic association (人民團體) Ⅵ-319
compelling public interests

(特別重要之公共利益) VIII-383
competition neutrality (競爭中立) VII-428
complete assessment (整體評價) VIII-434
chairman of the board of directors, chairman, president (董事長) Ⅰ-353；Ⅴ-283
chair person (理事長) VIII-222
change of organization (變更組織) Ⅰ-397
change of subordinate institutions (改隸) Ⅴ-54
change of temple administrator (寺廟管理人之撤換) Ⅰ-536
charter (章程) VIII-222
chattel mortgage (動產抵押) Ⅰ-669
check and balance (制衡) Ⅲ-860
check and balance of powers (權力制衡原則, 權力制衡) Ⅲ-186；VI-135,333
checks (支票) Ⅰ-553
checks and balances (權力制衡) VI-148
chemical synthesis (化學合成) Ⅱ-682
Chief Commissioner of the Public Functionaries Disciplinary Commission (公務員懲戒委員會委員長) Ⅰ-377
chief executive officer, general manager (總經理) Ⅴ-283
chief judge (一、二審院長) Ⅳ-412
Chief of the General Staff (參謀總長) Ⅲ-586
Child (兒童) VI-1
childcare worker (教保人員) Ⅱ-456
Chinese family ethics (家庭倫理) Ⅳ-70
Chinese herbal doctor (中醫師) Ⅲ-81；Ⅳ-494
Chinese medicine (中藥) Ⅲ-81
chui-fu (贅夫) Ⅲ-146
Civil Action (民事訴訟) VII-325
civil administration system (民政系統) Ⅴ-54
civil association (人民團體) VIII-98,222
civil aviation (民用航空) Ⅳ-122
civil cases (民事訴訟) Ⅰ-377
civil court (民事法院) Ⅱ-325
civil death (褫奪公權, 褫奪公權刑) Ⅰ-150,177
civil dispute (民事紛爭) Ⅴ-356
civil engineer (土木工程科技師) Ⅲ-133
civil litigation (民事訴訟) Ⅰ-231；Ⅲ-628
civil office (文官職務) Ⅱ-81
civil proceedings incidental to a criminal action (刑事附帶民事訴訟) Ⅳ-714
civil servant, public functionary (公務員, 公務人員) Ⅰ-13,14,15,16,20, 78,143, 260,272,488；Ⅴ-54,283, 585；Ⅲ-19,140；VI-244
civil servant who also has the legal status of a worker (公務員兼具勞工身分者) VIII-700
civil servants (專業人員, 公職人員) Ⅳ-63；VII-650
Civil Servants Election and Recall Act (公職人員選舉罷免法) VIII-63
civil service discipline (文官懲戒) Ⅲ-812
civilian housing (平民住宅房屋) Ⅱ-158
civilian shareholder (民股) Ⅰ-173
claim (請求權) Ⅴ-512
claim for restitution of inheritance (繼承回復請求權) Ⅲ-372
claim for (工資債權) Ⅴ-400
claim in bankruptcy (破產債權) Ⅱ-268
claim regarding the distribution of the remainder of marital property (剩餘財產差額分配請求權) Ⅴ-789
clarity requirement of the law (法律明確性原則) Ⅲ-812
classification of the construction industry (營造業分級) Ⅳ-399
classified management (分級管理) VI-2

clear and material defect (明顯之重大瑕疵) V-765
clear and present danger (明顯而立即之危險) Ⅲ-423
clearly and grossly flawed (重大明顯瑕疵) Ⅳ-2
clear and specific authorization (明確授權) VI-397,467
clearly erroneous in the application of law (適用法律顯有錯誤) Ⅰ-343
clerical error (誤寫) Ⅰ-79
co-acquirer (共同取得人) V-283
co-defendant (共同被告) V-367
Co-existence (兼容並蓄) VIII-29
cohabitation (同居) Ⅰ-33
collaterals (質物／抵押物) Ⅰ-97
collecting taxes evaded and rendering a fine (補徵及裁罰) Ⅱ-67
collection (催收) Ⅱ-273
collection accuracy (稽徵正確) V-732
Color Display (彩色顯示器) VII-363
Color Television Set (彩色電視機) VII-363
lection expediency (稽徵便宜) V-732
Collective Action (集體行動) VIII-29
collective bargaining (團體交涉) Ⅱ-663
combat duty (作戰任務) Ⅲ-329
combination of sentences for multiple offence (數罪併罰) Ⅰ-187,309,544
combination of years of service (年資併計) V-719
combining the number of years working for government for two jobs as the basis for calculating pension (年資合併計算) VIII-182
commercial organization (商業團體) VI-306
commercial speech (商業言論, 經濟性言論) Ⅲ-155；V-75；VI-1,193；VIII-383
commission (佣金) V-512
Commission on the Disciplinary Sanctions of Functionaries (公務員懲戒委員會) Ⅲ-20
commissioned (實授) Ⅲ-324
commissioned matters (委辦事項) Ⅲ-860
commissioned prosecutor (實任檢察官) Ⅰ-93
Committee on Land Values and Normal Land Values of the Special Municipality or County/City (直轄市或縣 (市) 政府地價及標準地價評議委員會) VI-415
commodity tax (貨物稅) Ⅰ-258；VII-363；VIII-626
Commodity Tax Act (貨物稅條例) VII-347
common area of a building under divided ownership (區分所有建築物共同使用部分) Ⅱ-581
common area; area in common use (共用部分) V-455
Common Idea (社會通念) VII-233
common property (共有物) Ⅰ-301；Ⅲ-518；Ⅳ-643
Communism (共產主義) VI-319
compensation for expropriation (徵收補償) VIII-196,434
compensation for wrongful imprisonment (冤獄賠償) VI-18

Communication Protection and Monitoring Law (通訊保障及監察法) VI-135
Communication Security and Surveillance Act (通訊保障及監察法) VIII-163
Community development fees (工程受益費) Ⅰ-593

community of living (生活共同體) Ⅳ-580
commutation of imprisonment to penalties (易科罰金) Ⅰ-245
commutation to labors (易服勞役) Ⅰ-245
companies not yet traded in the over-thecounter market (未上櫃公司) Ⅳ-384
compatible (相容) Ⅰ-568
compel windup or merger (勒令停業清理或合併) Ⅲ-794
compensation (報酬, 補償費) Ⅱ-223；Ⅵ-415
compensation (補償, 補償金, 補償費, 賠償) Ⅰ-217,382,613；Ⅳ-105；Ⅴ-107,512
compensation for relocation (拆遷補助費) Ⅴ-615
compensation for wrongful imprisonment (冤獄賠償) Ⅰ-672
Compensation for Wrongful Detention (冤獄賠償) Ⅶ-2
compensatory (給付性) Ⅳ-451
competent agency (主管機關) Ⅵ-373
competent educational administration authorities (主管教育行政機關) Ⅱ-312
competent taxing authority (主管稽徵機關) Ⅱ-442
competent taxing authority (管轄稽徵機關) Ⅴ-604
competition neutrality (競爭中立) Ⅶ-428
compiler (編纂) Ⅰ-31
complaint (申訴制度) Ⅵ-426
compound single intent (複合之單一故意) Ⅵ-127
Comprehensive income tax (綜合所得稅) Ⅷ-396
compulsory buyback (強制收買) Ⅳ-155
compulsory education (國民教育) Ⅱ-524
compulsory enforcement, compulsory execution enforcement (強制執行) Ⅰ-30,65, 467,658；Ⅱ-268；Ⅲ-77；Ⅳ-426；Ⅴ-806
compulsory insurance (強制保險) Ⅲ-675
compulsory labor (強制勞動) Ⅲ-666
compulsory quarantine (強制隔離) Ⅶ-262
Compulsory Stoppage (強制制止) Ⅷ-30
compensation in land rather than cash (抵價地) Ⅷ-196
computation of retirement seniority (退休年資採計) Ⅵ-475
contagious diseases (傳染病) Ⅶ-262
concentrated quarantine(集中隔離) Ⅶ-262
concrete indications of the violation of law (對違背法令有具體之指摘) Ⅲ-168
concrete reasoning (具體理由) Ⅴ-11
concurrent imposition of criminal punishment and disciplinary sanction (刑懲併行) Ⅴ-647
concurrent occupation (兼任) Ⅰ-28
concurrent serving, concurrently serving (兼職) Ⅰ-35,43,44,121
condemnation (徵收) Ⅱ-10
condemnor (需用土地人) Ⅰ-217
conditional sale (附條件買賣) Ⅰ-669
conduct of offering a bribe (行賄行為) Ⅰ-364
conducts of unfair competition (不公平競爭行為) Ⅳ-515
conference of school affairs (校務會議) Ⅳ-652
Conference of the Alteration of Judicial Precedents (變更判例會議) Ⅰ-343
confession (自白) Ⅴ-159
confidence (秘密) Ⅱ-273
confinement (留置) Ⅳ-249

Confiscation, confiscate (沒入, 沒收) Ⅰ-82；Ⅱ-250,628；VII-25,100
conflict of interest (利益衝突) VI-244；VII-650
conflict or contravention (牴觸) Ⅰ-510
congress (國會) Ⅱ-420
congressmen (中央民意代表) Ⅱ-447
convey and record (轉載) VII-15
conscription (徵兵) Ⅲ-572
consecutive charges (連續舉發) Ⅴ-570
consent power approval (同意權) VI-148
conservator (存款人) Ⅲ-785
consignees (收貨人) Ⅱ-628
consignment of juveniles to their statutory guardians (責付) VI-546
consignor/shipper (發貨人) VI-373
consolidation (合併辦理) VII-203
consolidation committee (重劃會) VIII-304
consolidation project (重劃計畫) VIII-304
consolidation range (重劃範圍) VIII-304
consolidated income tax (綜合所得稅) Ⅱ-388；Ⅳ-105
conspires with others before the fact (事前同謀) Ⅰ-214
constituent elements (構成要件) Ⅲ-10
constitution (憲法) Ⅱ-650,
Constitutional Court VII-581
Constitutional democratic order (自由民主憲政秩序) VIII-63
constitutional interpretation (解釋憲法) Ⅰ-515
constitutional interpretation (憲法疑義之解釋) Ⅳ-439
constitutional or statutory authorization (憲法或法律之根據) Ⅰ-71
constitutional order (憲政秩序) Ⅴ-54
constitutional order of freedom and democracy, constitutional structure of a free democracy (自由民主憲政秩序) Ⅳ-326；Ⅴ-471,765
constitutional practice (憲政慣例) Ⅲ-586
constitutional review (違憲審查) Ⅴ-470
constitutional state *(Rechtsstaat)* (法治國家) Ⅴ-54
constitutional system of "separation of powers" and "checks and balances" among the five branches of the Central Government (五權分治，彼此相維之憲政體制) Ⅰ-432
constitutional value system (憲法之價值體系) Ⅴ-765
constitutionality (合憲) Ⅲ-700
construction as a whole (整體性闡釋) Ⅳ-682
construction improvement, constructional improvement (建築改良物) Ⅱ-640；Ⅳ-643
construction industry (營造業) Ⅲ-10
construction regulation (建築管理) Ⅱ-262
Constructive blood relative (擬制血親) Ⅰ-123
constructive robbery (準強盜罪) VI-127
Consumption tax (消費稅) VII-220
Consumers' Recognition (消費者認知) VII-363
contagious diseases (傳染病) VII-262
container (貨櫃) Ⅰ-636
container yard (貨櫃集散站) Ⅱ-414
continuation (繼續、連續) Ⅰ-212
continued service（連續任職） Ⅱ-452
contract-based employee (聘用人員) Ⅴ-585
contract suspension (停止特約) VIII-592
contracted healthcare providers (特約醫事服務機構) Ⅳ-357
contractual relationship (契約關係) Ⅱ-325

contributed property (原有財產) Ⅲ-124
control (管制) Ⅶ-25
control power (監察權) Ⅰ-24；Ⅱ-6
Control Yuan (監察院) Ⅰ-6,28,58,62,133；Ⅱ-139,223；Ⅲ-660；Ⅴ-210；Ⅵ-148
conversion of state owned enterprises into private enterprises (公營事業移轉民營) Ⅱ-549
converted into fines, conversion to fine (易科罰金) Ⅱ-622；Ⅶ-110
convicted by confirmed and irrevocable judgment (確定判決有罪) Ⅴ-195
Copies (清涼飲料品) Ⅷ-163
Cool Drinks (清涼飲料品) Ⅶ-347
cooperative (合作社) Ⅱ-197
co-owned land (共有土地) Ⅳ-643
co-owners; co-owner, owners in common (共有人) Ⅰ-301；Ⅱ-539；Ⅲ-518；Ⅳ-643
co-ownership (共有) Ⅰ-301
co-ownership (共有權) Ⅳ-643
core content of fundamental rights (基本權核心內涵) Ⅷ-63
corporate affairs (公司職務) Ⅰ-16
corporate autonomy (企業自主) Ⅱ-325
corporate culture (企業文化) Ⅴ-283
corporation limited by shares (股份有限公司) Ⅰ-16
corporation, company (公司) Ⅴ-604
correct tax voucher system (正確課稅憑證制度) Ⅱ-90
correction and training programs (告誡列冊輔導處分) Ⅱ-733
correction of technical errors (更正訴訟程序性之錯誤) Ⅰ-237
correctional judgment (判決更正) Ⅰ-79
corrective measure (懲處處分) Ⅴ-187
correlated cases (相牽連案件) Ⅵ-561
correspondence monitoring (通訊監察) Ⅵ-135
corroborative evidence (補強證據) Ⅴ-159
corruptive act, corruptive conduct (貪污行為) Ⅰ-260,364
cosmetic surgery (美容外科) Ⅱ-764
cost of taxation , Cost of Tax Collection (稽徵成本) Ⅶ-333,399
cost of land improvement (土地改良費用) Ⅴ-107
counterfeit, forged (偽造) Ⅰ-112,189
county (縣) Ⅱ-120
county council (縣議會) Ⅰ-71
court (法院) Ⅱ-781
court costs (裁判費) Ⅰ-325,507,662
court costs and expenses (訴訟費用) Ⅰ-678
court ministerial business (司法行政事務) Ⅳ-412
court of first instance (初審法院) Ⅳ-137
court of general jurisdiction (普通法院) Ⅲ-499；Ⅶ-325
court of last resort (終審法院) Ⅳ-137
court of last instance in its final judgment or ruling (確定終局裁判) Ⅷ-342
court of the third instance (第三審法院) Ⅱ-316
court order to make apologies on newspapers (判命登報道歉) Ⅵ-458
court order to suspend the litigation procedure (裁定停止訴訟程序) Ⅴ-346
court's discretion (法院裁量) Ⅳ-249
creation of encumbrance (設定負擔) Ⅳ-643

credit cooperative (信用合作社) Ⅰ-608；Ⅲ-785
credit provisions (比敘條例) Ⅳ-270
creditor (債權人) Ⅱ-268
creditor's rights (債權人之權利) Ⅰ-69
criminal activities of an organied pattern (組織型態之犯罪活動) Ⅳ-596
criminal cases (刑事訴訟,刑事案件) Ⅰ-377；Ⅳ-137
Criminal Code (刑法) VII-374
criminal complaint (刑事告訴) Ⅳ-714
criminal defamation (誹謗罪) Ⅳ-114
criminal liability, criminal wrongdoing (刑事責任) Ⅰ-197；Ⅱ-312
criminal penalty (刑罰) VII-101
criminal perjury (刑法偽證罪) Ⅰ-369
criminal procedure, criminal litigation (刑事訴訟) VI-18；VII-127
criminal prosecution (刑事上之訴究) Ⅱ-760；VI-66
criminal punishment , criminal penalty (刑罰) Ⅰ-553；Ⅲ-666；VII-100；VIII-533
criminal record (犯罪紀錄) VIII-483
criminal sanction (刑罰,刑罰制裁) Ⅳ-467；Ⅴ-391
criminal syndicate (犯罪組織) Ⅳ-595
criminally illegal and culpable (刑事違法且有責) VII-210
criminally unlawful (刑事違法且有責) VII-210
criteria for classification (分類標準) VI-51
criteria of fines (裁罰標準) Ⅲ-279
crops (地上物) Ⅳ-106
cross the border (入出境) VII-25
cumulative turnover tax (累積型轉手稅) Ⅲ-36
current value (現值) Ⅱ-640
custody (管收) Ⅴ-303
custom (習慣) Ⅰ-115
Customs Office (海關) VI-373；VII-25
customary constitution (憲法慣例) Ⅲ-186
customer (顧客) Ⅱ-273
Customs, Customs House (海關) Ⅱ-402；Ⅲ-840
customs declaration (報關) Ⅳ-194
customs duties, customs duty (關稅) Ⅱ-219,402；Ⅲ-840；VI-373；VIII-626
customs import duty (海關進口稅) Ⅱ-414

D

daily conversion rate (折算一日金額) Ⅰ-245
database (資料庫) Ⅴ-532
date of actual income (payment) (實際所得（給付）日期) Ⅱ-687
Date of drawing (發票日) Ⅱ-15
date of final judgment (裁判確定日) Ⅲ-486
date of proclamation (公布日) Ⅰ-375
date of service of judgment (裁判書送達日) Ⅲ-486
deadline for arrival at each authority (依限應到達各主管官署之日) Ⅰ-114
death benefits (死亡給付) Ⅴ-634
death penalty, death sentence (死刑) Ⅰ-515；Ⅲ-700；Ⅴ-159
debt (債務) Ⅲ-695
debtor (債務人) Ⅱ-268
debts of the prisoner (受刑人所負債務) Ⅰ-69
deceased (被繼承人) VI-617
decedent (被繼承人) Ⅲ-372

decedent estate (遺產) Ⅳ-384
decedent's estate (被繼承人財產, 遺產) Ⅲ-372；Ⅴ-807
decision of recording of a demerit (記過處分) Ⅱ-42
decision of removal from office (免職處分) Ⅱ-42
decision of sanction (懲戒處分) Ⅲ-340,346
declaration (申報, 諭知) Ⅰ-499；Ⅲ-840；Ⅵ-373；Ⅷ-108 Ⅶ-25
declaration period (申報期限) Ⅷ-78
declaratory instruction (準則性釋示) Ⅱ-727
declared death (宣告死亡) Ⅱ-442
declared sentence (宣告刑) Ⅶ-110
decriminalization of defamation (誹謗除罪化) Ⅳ-114
deduct (扣抵) Ⅲ-36
deductions of medical expenses (扣減醫療費用) Ⅷ-592
Deduction or Exemption of Customs Duties (關稅減免) Ⅵ-407
deemed administrative act (視同行政處分) Ⅰ-683
defamation (妨害名譽罪) Ⅰ-369
default (屆期未受清償) Ⅰ-239
default penalty (滯納金, 怠金) Ⅳ-704；Ⅷ-414
defect in formality (程式欠缺) Ⅱ-333
defense counsel at trial below (被告之原審辯護人) Ⅱ-333
defined term of office (任期保障) Ⅴ-328
defining prescription (定義性規定) Ⅳ-682
definition and allocation of authority and duty (劃定職權與管轄事務) Ⅳ-731
defrauding others by misrepresentation (以詐術使人陷於錯誤) Ⅰ-305
degree of culpability (可歸責程度) Ⅶ-2
degree of proof (證明力) Ⅰ-623
degree of relationship (親等) Ⅴ-283
delay of the proceedings (延滯訴訟) Ⅰ-452
delayed interest (遲延利息) Ⅶ-160
delayed payment (遲延給付) Ⅶ-160
delegate of National Assembly (國民大會代表) Ⅰ-129
delegate of provinces and counties/heien council (省縣議會議員) Ⅰ-129
delegate to the National Assembly, delegates of the National Assembly (國民大會代表) Ⅰ-56,131；Ⅱ-299,715；Ⅲ-66
delegated affairs (委辦事項) Ⅳ-288
delegation (委託) Ⅲ-831
Delegation of Law (法律授權) Ⅵ-407
delegation rules (委辦規則) Ⅳ-289
delete the recordation (塗銷登記) Ⅱ-698
deliberation (審議) Ⅰ-377,474
delineate (列舉) Ⅲ-349
delinquency in tax payment (欠繳稅款) Ⅱ-520
delivery (郵件投遞) Ⅲ-315
demarcate (區劃) Ⅱ-727
demarcation of national, provincial and county tax revenues (國稅與省稅、縣稅之劃分) Ⅱ-1
demerit recorded (記過) Ⅲ-347
democratic country, democratic nation (民主國家) Ⅰ-133；Ⅱ-420
democratic politics (民主政治) Ⅱ-755
demotion (降級) Ⅲ-346
denial of parole (撤銷假釋) Ⅶ-279

dentists examinations (牙醫師考試) VIII-509
dental technician (鑲牙生) Ⅰ-564
denial of parole (鑲牙生) VII-279
departure notice or authorization (開航通知書) Ⅰ-197
dependents (受扶養親屬) Ⅱ-388
deportation (驅逐出國) VII-496
deposit (存款, 保證金) Ⅱ-250,273
deposit insurance (存款保險) VII-70
deposit liabilities (存款債務) VII-70
depository service (寄存送達) VI-603
depreciation deductions (按年提列折舊) VII-428
deprivation of citizen's right, deprivation of civil rights (褫奪公權) Ⅰ-98；Ⅱ-228
deprivation of personal freedom (人身自由之剝奪) VII-262
designated appointment rank (委任) Ⅴ-659
designated heir (指定繼承人) VI-617
destroy criminal evidence (湮滅罪證) Ⅰ-166
destroy evidence (湮滅證據) VI-127
details and technical matters (細節性及技術性事項) Ⅲ-10
detainee (受羈押被告) VI-426
detention (拘禁, 羈押, 收容) Ⅰ-69；Ⅱ-733, 782；VI-426,546；VII-91,210,496,551；VIII-260
Detention Act (羈押法) VI-439
detention hearing at investigatory stage (偵查中羈押審查程序) VIII-260
detention house (看守所) VI-426；VIII-57
detention, to detain, detain (羈押) Ⅱ-305；Ⅳ-249；VI-268,561；VIII-57
deportation (驅逐出國) VII-496
development bonds (建設公債) Ⅱ-459
development of businesses (興闢業) Ⅱ-607；Ⅲ-506
dien (典, 典權) Ⅰ-239；Ⅳ-643
dien-holder (典權人) Ⅰ-239
Difference of Occupational Nature (職業性質之差異) VII-581
difference of the compensation amount (補償費差額) VI-415
different opinion (歧異見解) Ⅱ-325
different treatment (差別待遇) VIII-451
differential prescriptions/treatments (差別規定/待遇) Ⅳ-672
differential tax treatment (差別之租稅對待) VI-208
differential treatment (差別待遇) Ⅴ-585；VI-373；VII-210,315,333；VIII-151
direct compulsory measure (直接強制處分) Ⅰ-224
direct deduction method (直接扣抵法) Ⅲ-36
direct purchaser (直接買受人) Ⅱ-90
direct purchaser/seller (直接買受人/出賣人) Ⅱ-477
direct seller (直接銷售人) Ⅱ-90
direct trial (直接審理) Ⅴ-303
directive (函釋) Ⅴ-1
directly record (逕行登記) Ⅴ-432
director (社長, 董事, 理事) Ⅰ-20,143,173, 195, 272,360；Ⅴ-283；VI-253；VIII-222
Directorate General of Postal Remittances and Saving Bank (郵政儲金匯業局) Ⅱ-354
disaster relief (災難救助) Ⅴ-1
disband (解散組織) Ⅳ-596
discharge (免職, 退伍, 清償) Ⅰ-239,260；Ⅲ-329

discharge decision (免職之懲處處分) Ⅲ-812
discharge or similar action (退學或類此之處分行為) Ⅱ-721
disciplinary action (懲戒案件) Ⅰ-377
disciplinary actions or other management measures taken by the prison (監獄處分或其他管理措施) VIII-638
disciplinary authority (懲戒機關) Ⅲ-30
disciplinary measure, disciplinary measures (懲戒處分) Ⅱ-42,294；Ⅲ-30；Ⅴ-187
disciplinary sanction (懲戒) Ⅲ-19
Disciplinary Sanctions of Public Functionaries (公務員懲戒委員會) Ⅱ-139
disciplinary warning (申誡) Ⅲ-347
discipline of public functionaries (公務員懲戒) Ⅲ-486
discrepancies (歧異) Ⅰ-17
discretion (裁量, 裁量權) Ⅱ-727；Ⅳ-130；VII-635
discretionary investment account (全權委託) VI-193
discretion of the Legislature (立法形成) VIII-575
discrimination (差別待遇) Ⅲ-579；VI-51,365；VII-399
dismissal (免職) Ⅰ-377
dismissal from one's post (休職) Ⅲ-346
dismissal from public service (撤職) Ⅲ-346
dismissal judgment (不受理判決, 免訴判決) Ⅰ-85,401
dispensations not in compliance with prescriptions (未依處方箋記載調劑) VIII-592
dispersal and restraining order (解散及制止命令) Ⅲ-424
disposal activity (處分行為) Ⅰ-690
disposition of deferred prosecution (緩起訴處分) VIII-533
disposition that terminates the personality of a legal entity as well as elements and procedures of such disposition (法人人格消滅處分之要件及程序) Ⅱ-197
dispute (爭執) Ⅱ-325
dispute resolution (爭議解決) Ⅱ-663
disqualification from professional practice for a fixed period of time (定期禁業) VIII-483
dissolved company (解散之公司) Ⅲ-820
Dissuasion (勸阻) VII-233
distributed state farmland (配耕國有農場土地) Ⅲ-560
distribution and readjustment of land (土地分配與整理) Ⅴ-122
distribution of earnings (盈餘所得分配) Ⅰ-518
Distribution of funds (款項發還) Ⅰ-73
dividend (股利) Ⅲ-36,146；Ⅴ-604
division of the power of adjudication (審判權劃分) Ⅲ-499
divisionally owned building (區分所有建築物) Ⅴ-455
divisions leading judge (庭長) Ⅳ-412
divorce (離婚) Ⅱ-601
divorce by consent (協議離婚) Ⅳ-557
dock pay (扣薪) VIII-251
Doctor of Chinese Medicine (中醫師) VII-138
doctrine of adjudicative neutrality (審判獨立) Ⅳ-412
doctrine of indivisibility of prosecution (告訴不可分原則) Ⅳ-714
doctrine of legal reservation, doctrine of

reservation to law (法律保留原則) Ⅲ-20；Ⅳ-256,412；Ⅴ-512
doctrine of Legitimate Expectation (信賴保護原則) Ⅷ-533
doctrine of national sovereignty (國民主權原理) Ⅴ-283,356
doctrine of proportionality (比例原則) Ⅵ-385
doctrine of punishment commensurate with a crime (罪刑相當原則) Ⅵ-127
doctrine of statutory taxation (租稅法定主義) Ⅲ-578
doctrine of strict proof (嚴格證明法則) Ⅴ-159
doctrine of taxation (租稅法定主義) Ⅳ-672
doctrine of taxation as per law, doctrine of taxation per legislation (租稅法律主義) Ⅱ-373；Ⅲ-380；Ⅳ-681；Ⅵ-280
domain of the country (國家疆域) Ⅳ-611
domestic violence (家庭暴力, 家庭暴力案件) Ⅱ-657；Ⅳ-619
domicile (住所) Ⅰ-530；Ⅲ-46,146
double jeopardy (一行為重複處罰、一事不再理) Ⅲ-802
double jeopardy (重複追訴) Ⅳ-74
double punishment (重複處罰) Ⅱ-354；Ⅳ-74
double taxation (重複課稅, 雙重課稅) Ⅴ-376,424,626
draft (徵兵) Ⅳ-317
drawer (發票人) Ⅰ-553
driver's license (駕駛執照) Ⅶ-374
driving under influence (酒後駕車) Ⅶ-374
drug (毒品) Ⅰ-515；Ⅳ-548
drug addiction (毒品成癮) Ⅳ-467
drug commercial (藥物廣告) Ⅲ-155
druggist (藥商) Ⅰ-502
dual litigation system, dual system of litigation (二元訴訟制度) Ⅲ-499,628；Ⅷ-700
dual-status (兼營) Ⅲ-36
due exercise of authority (職權之正當行使) Ⅰ-415
due process (正當程序, 正當法律程序) Ⅳ-2；Ⅵ-268；Ⅶ-127,233
due process in administrative procedures (正當行政程序) Ⅶ-512；Ⅷ-196
due process of court (依法移送法院辦理) Ⅰ-30
due process of law, due process (正當法律程序) Ⅲ-179,486,812；Ⅴ-159,210, 303, 647；Ⅵ-167,217,534,561,603；Ⅶ-91,262, 446,496,551；Ⅷ-260
due process of law in the administrative procedure (正當行政程序) Ⅷ-303
dummy (人頭) Ⅴ-512
duration on selection (選定期間) Ⅵ-617
during the time period for professional practice (執業期中) Ⅷ-483
duty (義務) Ⅱ-745
duty free export processing zones (免稅出口區) Ⅳ-194
duty of loyalty (忠誠義務) Ⅴ-765
duty of obedience (服從義務) Ⅲ-329
duty of tax payment (租稅義務) Ⅴ-814
duty of tax payment (納稅義務) Ⅲ-845
duty of trial or prosecution (審判或追訴職務) Ⅰ-672
duty to adjudicate the case (依法審判之義務) Ⅰ-372
duty to disclose (標示義務) Ⅴ-76
duty to give reasons (提出理由之義務) Ⅲ-599
duty to make monetary payment under

public law (公法上金錢給付義務) Ⅴ-806
duty to pay tax (納稅之義務) Ⅱ-286
duty to withhold money for taxation (扣繳義務) Ⅶ-617
duty under administrative law (行政法義務) Ⅵ-253
duty-paying value (完稅價格) Ⅰ-258；Ⅱ-402

E

each instance of court (各級法院) Ⅴ-11
economic benefit (經濟利益) Ⅴ-512
economic crisis (經濟危機) Ⅳ-459
economic effect of the collection procedure (稽徵程序經濟效能) Ⅴ-732
economic purposes of taxation (租稅之經濟意義) Ⅴ-424
editor (編輯人) Ⅰ-14
education (教育) Ⅲ-608
educational enterprises (教育事業) Ⅱ-663
educational responsibilities (教育職務) Ⅱ-312
educator (教育人員) Ⅰ-550；Ⅱ-312
effect in personam (對人之效力) Ⅳ-714
effect in public law (公法效果) Ⅷ-120
effect of an interpretation (解釋效力) Ⅶ-203
effect of public notice and credibility (公示力及公信力) Ⅴ-455
effective date (生效日) Ⅰ-114,375
Effective Protection of Assembly (有效保護集會) Ⅷ-29
effectiveness (實效性) Ⅴ-442
effects of a judicial interpretation (解釋之效力) Ⅴ-293
elected central representatives (中央民意代表) Ⅰ-328
elected representative (民意代表) Ⅰ-78,568
election (遴選, 選舉) Ⅱ-447；Ⅲ-406；Ⅳ-412
election and recall (選舉與罷免) Ⅱ-257
Electronic Game Arcade (電子遊戲場) Ⅵ-350
Electronic gaming arcades (電子遊戲場業) Ⅷ-282
element (構成要件) Ⅲ-346
element of the crime, elements of crime (犯罪構成要件) Ⅰ-214；Ⅴ-512
eligibility for taking an examination (應考資格) Ⅷ-509
emergency decrees (緊急命令) Ⅳ-459；Ⅴ-1
eminent domain (土地徵收, 公用徵收) Ⅱ-10；Ⅲ-293；Ⅵ-415
eminent domain proceedings (徵收) Ⅰ-217
employee of a state-owned enterprise (公營事業人員) Ⅴ-719
employers (雇主) Ⅰ-665
Employment (僱傭) Ⅷ-327
employment contract (聘僱契約) Ⅰ-550
employment fund (就業基金) Ⅷ-42
employment insurance (勞工保險) Ⅳ-629
employment relationship (勞雇關係) Ⅴ-409
empowering administrative act (受益行政處分) Ⅳ-270
enabled by law (法律授權) Ⅳ-130
enabling statue (母法) Ⅳ-130；Ⅲ-279；Ⅴ-283,604
encouragement of investment (獎勵投資) Ⅰ-518；Ⅱ-607；Ⅲ-506,845；Ⅳ-91
end of the Presidential term (每屆總統任滿) Ⅰ-38
ending a cultivated land lease contract (耕地租賃契約之終止) Ⅰ-256
enforceability (執行力) Ⅴ-807

enforcement title (執行) VII-127
enforcement title (執行名義) Ⅰ-97；Ⅲ-77；Ⅳ-620
enforcing authority (執行機關) Ⅰ-69
enter into recognizance (具結) Ⅴ-159
entire or partial judgment (判決書全部或一部) Ⅰ-369
entitlement (應有部分) VII-15
equal and harmonious sexual values and mores of society (平等和諧之社會性價值秩序) Ⅴ-747
equal protection (平等保障) Ⅲ-140,546；VI-268
equal protection of law (法律之平等保護) Ⅲ-812
equal protection principle (平等保護原則) Ⅲ-802；Ⅳ-494
equal rights, equal protection (平等權) VII-39,138
Equal rights of the people (人民平等權) Ⅰ-558
equal standing in substance before the law (法律上地位實質平等) Ⅳ-672
equal taxation principle (租稅公平原則) Ⅱ-72
equality in form (形式上平等) Ⅴ-195
equality in substance before the law (法律上地位之實質平等) Ⅴ-195
equality in taxation (課稅公平) Ⅰ-644
equality of claim (債權平等) Ⅲ-758
equality of legal standing (法律上地位平等) Ⅰ-452
erase the recordation (塗銷登記) Ⅰ-239
erroneous application of law and regulation (法規適用錯誤) Ⅲ-20
erroneous application of law, error in law (適用法規錯誤) Ⅰ-479,527
escape arrest (脫免逮捕) VI-127
escape soldier crime (軍人脫逃罪) Ⅰ-108
escaped soldier (軍人脫逃) Ⅰ-108
especially critical public interest (特別重要之公共利益) VI-385
essentially military materials (軍中重要物品) Ⅰ-108
estate (遺產) Ⅲ-372
estate of inheritance (繼承財產) Ⅲ-372
estate tax (遺產稅) Ⅰ-644；Ⅱ-354,509 Ⅳ-681；Ⅴ-625
estate value (遺產價值) Ⅴ-625
estimated income (估計所得額) Ⅱ-594
estoppel (禁反言) Ⅳ-289
ethics standards (道德標準) Ⅳ-114,122
evaluation (考核) Ⅱ-326
evaluative and indefinite concepts of law (評價性之不確定法律概念) Ⅴ-747
evasion of tax (逃漏稅) Ⅰ-644
evasion, omission, or under-reporting of taxable income (匿報、短報或漏報) Ⅱ-67
evidence (證物) Ⅱ-567
Excessive Restriction (過度限制) VII-581
Exception under Certain Conditions (一定條件之例外) VII-581
excessive and disproportionate punishment (過當處罰) VI-626
ex officio (依職權) Ⅱ-558
ex post facto laws (溯及既往法律) Ⅴ-76
ex post facto principle (法律不溯及既往原則) VIII-533
ex works value (出廠價格) Ⅰ-258
examination (考試, 詰問, 考選)

Ⅱ-391；Ⅲ-531；Ⅴ-159；VII-635
examination for professionals and technicians (專門職業與技術人員考試) Ⅱ-162
examination organ (考試機關) Ⅰ-349
Examination Yuan (考試院) Ⅰ-6；Ⅱ-493；Ⅲ-133
examinations for public functionaries (公務人員考試) Ⅱ-162
exceed (逾越) Ⅲ-20；Ⅴ-283,512,604；VI-253
Examine Automatically (自動勾稽) VII-387
exclusive trademark rights (商標專用權) Ⅲ-772
exclusively owned portion (專有部分) Ⅴ-455
exclusiveness (排他性) VIII-451
excused/excusable from punishment (免除其刑) Ⅳ-596
executable sentence (執行刑) VI-521
executed punishment, execution (執行刑) Ⅰ-309；Ⅱ-622
execution fees (執行費) Ⅰ-288
executive privilege (行政特權) Ⅴ-210
Executive Yuan (行政院) Ⅰ-328；Ⅱ-25,145,438,755；Ⅳ-202
executive-governed municipality (直轄市) Ⅱ-120
exempt, exemption (免除) Ⅲ-174,324
exemption (免稅額, 解除) Ⅰ-268,582
Exemption of punishment (免除其刑) Ⅰ-279
exercise of administrative discretion (行政裁量權之行使) Ⅱ-148
exercise of public authority (公權力之行使) Ⅳ-426
exercise of rights or hedging (履約或避險交易) VII-301
Exercising the Freedom of Occupation (執行職業自由) VII-581
exemption from drafting upon completion of military service (服役期滿解除召集) VII-446
exit restrictions (出境限制) Ⅱ-520
expanded interpretation (擴張解釋) Ⅳ-714
expedient disposition of conditional non-prosecution (附條件之便宜不起訴處分) VIII-533
expedient measures (權宜措施) Ⅳ-603
expenditure (支出, 經費) Ⅰ-135；Ⅳ-202
expenditures in the budgetary bill (預算案支出) Ⅱ-145
expenses for land improvement (土地改良費用) Ⅱ-239
expire (屆滿) Ⅱ-745
explanatory administrative rule (解釋性行政規則) Ⅴ-282
explore (探勘) Ⅱ-727
Explicit Authorization (明確授權) VII-581
Explicitness of Law (法律明確性) VII-347
export (出口) Ⅲ-840；VII-117
expressio unius est exclusio alterius (明示規定其一者應認為排除其他) Ⅰ-6
expression of intent (意思表示) Ⅱ-326
expressions of subjective opinions (主觀意見之表達) Ⅴ-75
expropriate, expropriation, eminent domain (徵收, 公用徵收) Ⅱ-406；Ⅲ-117；Ⅳ-106,143,168,366；Ⅴ-107；VIII-370,434
expropriation of land surface rights (徵收地上權) VIII-434
expulsion (退學) VII-167
extension period (延展期間) Ⅲ-733

extensive application (擴張適用) Ⅱ-90
external legal consequence (對外法律效果) Ⅲ-278
extinctive prescription (消滅時效, 除斥期間) Ⅰ-386；Ⅴ-293
extra budget (追加預算) Ⅲ-608
extraordinary appeal (非常上訴) Ⅰ-50,316, 401,464,479；Ⅱ-19,180；Ⅲ-20；VIII-109,342
extraordinary remedial proceeding (非常救濟程序) Ⅲ-2
extraordinary session (臨時會) Ⅰ-55；VIII-243
extraordinary session of the National Assembly (國民大會臨時會) Ⅱ-367
extraordinary-appeal procedure (非常上訴程序) Ⅱ-176
extrinsic freedom in form (形式上外在自由) Ⅲ-423

F

fabricating evidence to bring fictitious action (捏造證據誣告) Ⅳ-548
face value (票面金額) Ⅱ-373
facilitating the exercise of people's rights in a timely manner (從速實現人民權利) Ⅱ-96
fact finding (事實認定) Ⅱ-19
factories (工廠) Ⅰ-665
factory registration certificate (工廠登記證) Ⅳ-392
factory set-up (工廠設立) Ⅱ-769
faculty evaluation (教師評審) Ⅲ-599
faculty promotion review (教師升等評審) Ⅲ-599
fair compensation (合理補償, 相當補償) Ⅲ-57；Ⅳ-168；VI-415
fair rent taxation (租稅公平原則) Ⅰ-457,523
fair taxation (稅負公平) Ⅱ-90
fair trial (公平審判) Ⅲ-20；Ⅴ-159,356
failure-to-pay surcharge (滯納金) VIII-414
false accusation (栽贓, 誣告罪) Ⅰ-369；Ⅳ-548
false entries of tax payment on purchases (虛報進項稅額) Ⅱ-477
false or improper advertising (不正當之廣告) Ⅰ-564
falsification of public seal (偽造公印) 145
family council (親屬會議) Ⅰ-411
family farm (家庭農場) Ⅲ-288；Ⅳ-681
family funeral allowance (眷屬喪葬補助津貼) Ⅱ-235
family meeting (親屬會議) VI-617
family law (親屬法) Ⅱ-617
family system (家庭制度) Ⅳ-580；VII-608
family well being (家庭幸福) Ⅳ-70
farmland tax (田賦) VI-40
farm lease (農地租約) Ⅲ-272
Farmers Association (農會) Ⅲ-46
farmland (耕地) Ⅴ-107
farmland for farmers (農地農有) Ⅱ-529
farmland lease and tenancy committee (耕地租佃委員會) Ⅴ-122
female workers' night work (女性夜間工作) VIII-119
felony (重罪) VI-561
filing (申報) Ⅴ-282
filing a business registration (辦理營利事業登記) VI-350
filing of final tax return (結算申報) Ⅲ-146
final account (決算) Ⅱ-273

final acquittal adjudication (無罪判決確定) VII-2
final and binding judgment, final and last judgment (確定終局判決, 確定終局裁判) Ⅱ-325,692；Ⅲ-20,329；Ⅴ-604
final and conclusive criminal decision (刑事確定裁判) Ⅴ-647
final appeal (第三審) Ⅰ-452
final business income tax return (營利事業所得稅結算申報) Ⅲ-380
final court decision (案件已確定者，即確定判決) Ⅱ-180,601
final court decision (裁判確定) Ⅰ-544
final disposition (終局解決) Ⅱ-635
final income tax return (結算申報) Ⅴ-741
final instance, final judgment, final judgment of the case (確定判決) Ⅰ-150,369,464
financial crisis (財政危機) Ⅳ-459
financial institution (金融機構) Ⅰ-608；Ⅲ-785
Financial Restructuring Fund (金融重建基金) VII-70
Financial Supervisory Commission of the Executive Yuan (行政院金融監督管理委員會) VII-70
fine (罰金, 罰鍰) Ⅰ-553；Ⅱ-250；Ⅲ-387
fine conversion (易科罰金) VI-521
fingerprints (指紋) Ⅴ-442,532
firearms (槍炮) VI-626
first appeal (第二審) Ⅰ-452
first offender (初犯者) Ⅳ-467
First Reading (一讀) Ⅱ-715
fiscal crisis (財政危機) Ⅱ-459
fiscal revenue (財政收入) VII-333
Figure (政治人物) VII-233
Five-Yuan System (五院制度) Ⅰ-58
fixed structures (土地定著物) VIII-232
flee from scene of the car accident (車禍逃逸) Ⅳ-342
flexibility of budget execution (執行預算之彈性) Ⅳ-202
force majeure (不可抗力) Ⅰ-269
forced expression (強制表意) VI-458
forced labor (強制工作) Ⅳ-308
forcible seizing of another person's belongings (搶劫) Ⅴ-194
forcible taking (搶奪) VI-127
foreclosure (抵押權之實施) Ⅰ-97
foreign currency (外幣) VII-25
foreign company (外國公司) Ⅱ-459,745
foreign exchange (外匯) VII-25
foreign nationals (外國人) VII-496
forfeit (沒入) Ⅱ-628
forged identification (偽造身分) Ⅰ-90
forgeries, forgery (偽造) Ⅰ-189；Ⅲ-1
forgery and alteration of documents (偽造、變造文書) Ⅰ-438
formal act (要式行為) Ⅰ-669
for-profit enterprise (營利事業) VII-177
foundation (財團法人) Ⅲ-400,579
framing (誣陷) Ⅳ-548
fraud (詐欺) VIII-483
fraud offense (信用罪) Ⅰ-369
fraudulent act (詐術) Ⅰ-305
fraudulent alteration (變造) Ⅲ-1
free development of character (人格自由) VII-233,333
free development of personality (人格自由發展) VII-608

Freedom from Intrusion (不受侵擾之自由) VII-233
freedom of active expression (積極表意之自由) V-75
freedom of assembly (集會自由) Ⅲ-423；VIII-29
freedom of association (結社自由) Ⅰ-608；Ⅲ-726；VI-319；VIII-98,151,222
freedom of choice (選擇自由) Ⅲ-400
freedom of communications (通訊傳播自由) V-682
freedom of confidential communications (秘密通訊自由) V-211
freedom of contract (契約自由) V-67,122,512；VI-306；VII-650；VIII-120,151
freedom of expression (表現自由) Ⅲ-423；VIII-660
Freedom of Formation (形成自由) VIII-29
Freedom of General Behavior (一般行為自由) VII-233
freedom of instruction (講學自由) Ⅱ-705
freedom of marriage (結婚自由權利，婚姻自由) Ⅱ-601；Ⅳ-557；VIII-451
freedom of movement (遷徙自由, 行動自由) Ⅲ-537；VII-374
Freedom of Movement (行動自由) VII-233,374
Freedom of News Gathering (新聞採訪) VII-233
freedom of occupation (職業自由) V-194；VI-2,193；VII-233,581；VIII-98,483
freedom of passive non-representation, freedom of passive omission (消極不表意自由) V-75,210
freedom of person (人身自由) VI-626
freedom of personality (人格自由) Ⅳ-580
freedom of privacy of correspondence (秘密通訊自由) VI-135
freedom of press (新聞自由) Ⅲ-104；VII-233
freedom of publication (出版自由) Ⅰ-203；Ⅲ-104
freedom of religious association (宗教結社之自由) V-17
freedom of religious belief (宗教信仰自由, 信仰宗教自由) Ⅲ-579,802；V-17
freedom of research (研究自由) Ⅱ-705
freedom of residence (居住自由) Ⅲ-537,852；VII-512；VIII-206,303
freedom of residence and migration, freedom of residence and movement (居住遷徙自由, 居住與遷徙自由) Ⅱ-148；Ⅳ-176,611；VIII-639
freedom of sexual behavior (性行為自由) Ⅳ-580
freedom of speech (言論自由) Ⅰ-389；Ⅱ-612 Ⅲ-104,155；V-747；VI-1,193,319；VII-100；VIII-232,383
freedom of study (學習自由) Ⅱ-705
freedom of teaching (教學自由, 講學自由) Ⅱ-705；Ⅲ-512；Ⅳ-652
freedom of the press (出版自由) V-747
freedom of work (工作之自由) VI-244
freedom right (自由權) Ⅲ-622
freedom to adopt (收養子女之自由) VII-608
freedom to choose an occupation (選擇職業之自由) V-194；VI-244
freedom to choose one' s vocation (職業選擇自由) VII-411
Freedom to Exercise One's Profession (執行職業自由) VII-233

freedom to operate a business, freedom to run business, freedom to carry on business, freedom to conduct business, freedom to operate (營業自由)Ⅳ-148,399；Ⅴ-604；Ⅶ-617,650, Ⅷ-282
freedom to operate business (營業自由) Ⅷ-42
freedom to withhold expression (不表意自由) Ⅵ-458
fringe benefits and mutual assistance fund (福利互助金) Ⅱ-359
Fukien Province (福建省) Ⅲ-740
fulfillment of prison term (時效完成) Ⅶ-91
fulfillment of the prescription (時效完成) Ⅱ-262
Full-time Pharmacist (藥師專任) Ⅶ-581
full-time workers (專任員工) Ⅲ-552
function of behavioral law (行為法之功能) Ⅳ-731
functional orders (職權命令) Ⅵ-306
fund (經費) Ⅱ-120
fundamental national policies (基本國策) Ⅴ-634
fundamental national policies to protect laborers under the Constitution (憲法保護勞工基本國策) Ⅶ-160
fundamental procedural right (程序性基本權) Ⅴ-647
fundamental right (重要基本權) Ⅷ-451
fundamental rights (基本權利) Ⅳ-467
fundamental rights of the people (人民基本權) Ⅲ-772
funds flow (資金流程) Ⅱ-346
further proceedings (繼續審判) Ⅰ-678

G

gangster (匪徒) Ⅰ-139
gender (性別) Ⅷ-151
gender discrimination (性別歧視) Ⅱ-617
gender equality, gender equity (男女平等) Ⅱ-617；Ⅲ-124；Ⅳ-580；Ⅷ-151
general authorization (概括授權) Ⅲ-9；Ⅳ-619,681；Ⅴ-604,668
general clauses of law, generalized provision (概括條款, 法律概括條款) Ⅲ-279,340,424；Ⅳ-236
general criminal intent (概括之犯意) Ⅰ-336
general force and effect (一般效力) Ⅴ-367
general law (普通法) Ⅱ-640；Ⅲ-146
general freedoms of action (一般行為自由) Ⅷ-483
general methods of interpretation of law (一般法律解釋方法) Ⅵ-209
general public interest (公共利益) Ⅱ-312
General regulation for student admission (招生簡章) Ⅵ-50
general resignation (總辭) Ⅲ-186
general tax principles (稅法通則) Ⅱ-200
Gesetzesvorbehaltprinzip (the principle of legislative reserve) (法律保留原則) Ⅷ-509
Gesetzesvorbehalt principle (法律保留) Ⅷ-592
gift (贈與) Ⅲ-288；Ⅳ-384
gift tax (贈與稅) Ⅱ-676；Ⅲ-288；Ⅳ-681；Ⅴ-814
gift tax exemption (免徵贈與稅) Ⅲ-288；Ⅵ-365
good faith (善意（誠實）) Ⅱ-601
goods (貨物) Ⅲ-36
governing authority (主管機關) Ⅳ-731

government (大學自治) VII-167
government and public school employees (公教人員) Ⅱ-235
government contracted employees (雇員) Ⅰ-226
government employee insurance (公務人員保險) Ⅲ-353,690
government employee retirement (公務人員退休) Ⅱ-214
government employees (公職人員) Ⅳ-588
government employment (公職) Ⅰ-31,173
government fund (公費) Ⅰ-40
Government Information Office (新聞局) Ⅱ-278
government official, government positions, government post (官吏) Ⅰ-1,12,35,131
government published land value (公告地價) Ⅱ-32
government procurement (政府採購) VIII-42
government-declared current land value, government-declared value of land (土地公告現值) Ⅱ-354；Ⅴ-122
government-declared current value (公告現值) Ⅰ-457
government-owned bank (公營銀行) Ⅱ-273
governor (省長) Ⅲ-740
graduation requirements (畢業條件) Ⅳ-652
graft (貪污) Ⅰ-116
Grand Justices (大法官) Ⅱ-650；Ⅳ-439
gross income (收入總額) Ⅵ-397
gross legislative flaw (立法上之重大瑕疵) VIII-451
groundless judgment (無根據之判決) Ⅰ-105
grounds for discipline (懲戒事由) Ⅴ-471
guarantee deposit (保證金) Ⅱ-489；Ⅳ-56
guaranteed obligation (被保證債務) Ⅰ-699
guarantor (保證人) Ⅰ-699
guaranty agreement (保證契約) Ⅰ-699
guaranty executed by a reliable business establishment (殷實商保) Ⅱ-250

H

habeas corpus (人身保護令狀) Ⅱ-782
handling (處理) Ⅲ-77
Hatch List (艙口單) Ⅲ-840
head office (總公司) Ⅱ-745
Health Care Providers (醫療院所) VII-399
health insurance for farmers (農民健康保險) Ⅲ-46
Hearing, hearings (聽證) VII-513；VIII-304,592
heir (繼承人) Ⅱ-676；Ⅲ-288,372
heir apparent (法定繼承人) Ⅰ-99
hereditary chronic disease (先天性痼疾) Ⅱ-764
High Court (高等法院) Ⅰ-155
High Degree of Professional and Technical Distinction (高度專業及技術之差異性) VII-581
high level civil service examination (高等考試) Ⅲ-324
highest adjudicative Organ (最高司法審判機關) Ⅳ-326
highest appellate court (第三審法院) Ⅳ-137
highest judicial administrative Organ (最高司法行政機關) Ⅳ-326
highly addictive effects (成癮性) Ⅱ-682
Hire of Work (承攬) VIII-327
hit and run (肇事逃逸) Ⅱ-231

hit-and-run accident (駕車肇事逃逸) Ⅳ-342
holders (持有人) Ⅱ-628
holidays (休假) Ⅷ-119
Homeland Security (國土保安) Ⅶ-325
homestead; residence for own use (自用住宅) Ⅲ-578
honest filing of income taxes (誠實申報) Ⅱ-67
Hoodlum elimination (檢肅流氓) Ⅵ-217
hoodlums (流氓) Ⅳ-249
hot pursuit and arrest without a warrant (逕行逮捕) Ⅰ-166
hourly pay for teaching (授課鐘點費) Ⅷ-396
house dues (房捐) Ⅱ-640
house of worship (神壇) Ⅲ-578
house tax (房屋稅) Ⅱ-158,594,640
household (家屬) Ⅲ-161
household registration office (戶政機關) Ⅵ-333
household registry (戶籍) Ⅲ-146,537；Ⅳ-611
household registry functionary (戶政人員) Ⅴ-54
household unit (家計單位) Ⅶ-333
human dignity (人性尊嚴) Ⅵ-458,546；Ⅶ-233,607,451
husband and wife (一夫一妻) Ⅷ-451
hsien (county) (縣) Ⅲ-572

I

identity (同一性) Ⅴ-432
identity verification (身分辨識) Ⅴ-532
illegal conduct (違法行為) Ⅳ-477
illegal parking (違規停車) Ⅴ-570
illness benefits (普通疾病補助費) Ⅱ-350
immediate assistance (及時救護, 立即救護) Ⅱ-231；Ⅳ-342
immediate family member (直系血親) Ⅰ-50
immediate relevance (直接關聯性) Ⅴ-195
immediate relief (緊急救助) Ⅴ-1
imminent danger (迫在眉睫的危險) Ⅳ-459
imminent necessity (急迫必要性) Ⅴ-442
immovable property (不動產) Ⅰ-175
immunity of speech (言論免責權) Ⅲ-359
immutable characteristics (難以改變之個人特徵) Ⅷ-451
impeachment (彈劾) Ⅰ-24；Ⅱ-139
impeachment power (彈劾權) Ⅱ-420
implementation of the Constitution (行憲) Ⅰ-13,15
implementation of the Constitution (憲法實施) Ⅰ-38
import (進口) Ⅲ-840；Ⅵ-373；Ⅶ-117
import duty (進口稅) Ⅰ-636；Ⅷ-626
importer (進口人) Ⅵ-373
important affairs of the State (國家重要事項) Ⅴ-210
important public interest, important public interests (重要公共利益) Ⅵ-51；Ⅷ-451,483
imposition of administrative fines (科處行政罰鍰) Ⅱ-363
imposition of disciplinary sanction after criminal punishment (刑先懲後) Ⅴ-647
impossibility (客觀上不能) Ⅱ-544
imprisonment (有期徒刑，自由刑，徒刑) Ⅰ-544；Ⅱ-622；Ⅳ-137；Ⅶ-110,127,210；Ⅷ-483
imprisonment (徒刑) Ⅰ-145
improper conduct (不當行為) Ⅳ-477
improper conferral of benefits

(利益輸送) VII-650
in accordance with the procedure prescribed by law (符合法定程序) Ⅱ-733
in commission of an offense (犯罪在實施中) Ⅰ-166
in contravention to (牴觸) Ⅱ-325,745；Ⅲ-133；Ⅴ-512,604；VI-193
in writing (書面) Ⅰ-101
in-active-service soldiers (現役軍人) Ⅲ-364,406
inaugurate (就職) Ⅰ-38
Incidental Assembly (偶發性集會) VIII-29
incapable teachers (不適任教師) VII-411
incidental assembly or parade (偶發性集會遊行) Ⅲ-424
income derived from the trading of property, income from property transaction, income from transactions in property (財產交易所得) Ⅰ-630；Ⅱ-286；Ⅳ-672
income earned by a practitioner (執行業務所得) VIII-396
income from interest (利息所得) Ⅰ-623；Ⅴ-424
income from professional practice (執行業務所得) VIII-77
income from securities transactions (證券交易所得) Ⅳ-672
income replacement rate (所得替代率) VIII-2
income tax (所得稅) Ⅰ-382,518,582；Ⅱ-745；Ⅲ-309,733,828；Ⅳ-91；Ⅴ-626；VI-397
income tax exemption (所得稅免稅額) Ⅲ-161
income tax filing amount (申報所得額) VI-280
income tax return (所得稅結算申報書) VI-280
income year (所得歸屬年度) Ⅱ-687
incompetency (不能勝任職務) Ⅰ-377
incontravention of (牴觸) VI-373
incorrect land value criteria (地價標準認定錯誤) VI-415
incorrect location of the survey stake (樁位測定錯誤) Ⅱ-186
increase of capitalization (equity reinjection or re-capitalize) (增資) Ⅳ-91
indefinite concept of law (不確定法律概念) Ⅲ-340；Ⅳ-236；Ⅴ-512；VII-347
indemnity for loss of mails (郵件損失補償) Ⅲ-315
Indemnification (補償) VII-2
independent adjudication (獨立審判) Ⅰ-71
Independent agency (獨立機關) Ⅴ-682
independent appeal (獨立上訴) Ⅱ-333
independent exercise of function (獨立行使職權) Ⅴ-328
indictable only upon complaint (告訴乃論) Ⅳ-580
indictment (起訴) Ⅰ-157；Ⅱ-782
indigenous people (原住民) VIII-42
indigenous tribes (原住民族) VIII-42
indirect evidence (間接證據) Ⅱ-346
indirect measure (間接處分) Ⅰ-224
individual consolidated income (個人所得總額) VII-333
individual income (個人所得) VII-39
individual owner (區分所有人) Ⅴ-455
individual rights (人民權利) Ⅱ-253
individual's physical freedom (人民身體自由) Ⅱ-86

individualized law (個別性法律) Ⅳ-202
Industrial zone development and administration fund (工業區開發管理基金) Ⅳ-155
infeasibility (不可能實行) Ⅲ-174
informer (告發人) Ⅱ-78
infringe, infringement (侵害) Ⅱ-325；Ⅳ-515
infringement analysis report (侵害鑑定報告) Ⅳ-99
infringer (加害人) Ⅳ-99
inhabitable living environment (適足居住環境) VIII-303
inheritance (繼承) Ⅰ-123；Ⅲ-372；Ⅴ-814
inheritance in subrogation (代位繼承) Ⅰ-99
inheritance tax (遺產稅) Ⅱ-676；Ⅴ-789
inheritor, heir, successor (繼承人) Ⅰ-99,123
Initial Qualifying Examinations (檢定考試) VII-138
initial survey and registration (第一次測量及登記) Ⅴ-455
initiative (創制權) Ⅰ-56
injury benefits (普通傷害補助費) Ⅱ-350
Input Tax Certificate (進項稅額憑證) VIII-681
input tax, Input Tax (進項稅額) Ⅲ-36；VI-501；VII-387
Input certificate (進項憑證) VII-472
In school (在校就學) VII-288
inspection (查驗) VI-373
inspection and perusal (檢閱) VIII-660
Inspection Card (工作檢查證) Ⅱ-278
inspection certificate (查驗證) Ⅰ-333
Installment plan (分期付款) Ⅰ-233
institutional protection (制度性保障) Ⅴ-471； VII-608
institutional protection mechanism (學術自由之制度性保障) Ⅱ-705
institutional safeguard (制度性保障) VII-333
insufficiency of evidence (證據不足) Ⅲ-2
insurance (保險) Ⅲ-71
insurance agents (保險代理人) Ⅲ-71
Insurance Company (保險公司) VIII-327
insurance contingency (保險事故) Ⅴ-634
insurance fund (保險基金) Ⅳ-629
insurance payment (保險給付) Ⅳ-703
insurance premium (保險費) Ⅳ-629,704
insurance premium old age benefit (養老給付保險金) Ⅲ-353
insurance relations (保險關係) Ⅳ-704
Insurance Solicitor (保險業務員) VIII-327
insurant (要保人) Ⅴ-67
insured, insured person (被保險人) Ⅱ-190；Ⅲ-552；Ⅳ-629,704；Ⅴ-67
insured entity (保險單位) Ⅳ-704
insured event, insured peril (保險事故) Ⅱ-378；Ⅳ-629
insured payroll-related amount (被保險人之量能負擔) Ⅲ-683
Insured Premium Table t (投保金額分級表) VII-80
Insured Salary Grading Table of Labor Insurance (勞工保險投保薪資分級表) Ⅲ-683
insured unit (投保單位) Ⅳ-629；Ⅲ-552
insured years (保險年資) Ⅱ-190
insurer (保險人) Ⅳ-704；Ⅴ-67
insurrectional organization (判亂組織) Ⅰ-139
integrity of the system (體系正義) VII-220
intellectual property right (智慧財產權) Ⅳ-515
intent, intention(故意) Ⅰ-89；VII-635
intent to commit a crime jointly

(以自己共同犯罪之意思) Ⅰ-214
intention or recklessness (故意或重大過失) Ⅶ-2
interest (利息) Ⅰ-233；Ⅷ-2
interests (利益) Ⅰ-582
interests for late payment (滯納利息) Ⅷ-414
interest rate (利率) Ⅷ-2
interests protected under the law (法律上之利益) Ⅲ-772
interference with sexual freedom (妨害性自主) Ⅴ-194
interim disposition (暫時處分) Ⅷ-89
interim period (過渡期間) Ⅳ-596
interim provision (過渡條款) Ⅴ-122
interlocutory appeal (抗告) Ⅵ-268
internal order (職務命令) Ⅱ-42
internal regulations (規約) Ⅷ-151
internal structure (內部組織) Ⅷ-223
International Labor Organization's Indigenous and Tribal Peoples Convention (國際勞工組織原住民和部落人民公約) Ⅷ-42
international trade (國際貿易) Ⅵ-373
international trade customs (國際貿易習慣) Ⅵ-373
interpellation (質詢) Ⅲ-586
Interpretation (解釋) Ⅰ-471
interpretation of an amendment (變更解釋) Ⅰ-427
Interpretation with a Judicial Deadline/ Interpretation with a Sunset Provision (定期失效解釋) Ⅷ-353
Interpretations sought by individuals (人民聲請解釋) Ⅷ-107
interpretation of the law as a whole (法律整體解釋) Ⅲ-9
interpretative administrative regulations (解釋性之行政規則) Ⅳ-682
interpretative administrative rule (釋示性行政規則) Ⅴ-424
interruption of the period of limitation of criminal prosecution (刑事追訴權時效中斷) Ⅳ-714
integrity of the system (體系正義) Ⅶ-220
interview (面試) Ⅳ-494
intimacy (親密性) Ⅷ-451
intimidation for the purpose of gaining property (恐嚇取財) Ⅴ-194
intrinsic freedom in essence (實質上內在自由) Ⅲ-423
investigatory secrecy (偵查不公開) Ⅷ-261
investigation (調查、偵查) Ⅱ-782
investigation power (調查權) Ⅱ-420
Investigation Files (偵查卷證) Ⅷ-163
Investigation Power (偵查權) Ⅷ-163
investigative authority (偵查權) Ⅰ-166
investor protection (投資人保護) Ⅵ-192
Invite for Bid (招標) Ⅵ-407
involuntary confession (非任意性自白) Ⅴ-159
involuntary disincorporation order (解散命令) Ⅱ-197
involuntary retirement (命令退休) Ⅰ-222
irregular course of business (不合營業常規) Ⅱ-346
irrevocability (不可廢止性) Ⅱ-567
irrevocable (確定) Ⅲ-20
irrevocable final decision (確定終局裁判) Ⅰ-339
irrevocable judgment (確定判決) Ⅰ-116,452,678

Irrigation Association (農田水利會) Ⅳ-186；VI-100
irrigation group (水利小組) Ⅳ-186
issuance of self-tilling certificates (自耕能力證明書之核發) Ⅱ-529
issue (發行) Ⅴ-604
issuer (發行人) Ⅰ-160
itemized deduction, Itemized Deductions (列舉扣除額) Ⅴ-732；VII-399

J

jaywalking (不守交通規則穿越馬路) Ⅲ-174
joint computation of tax liability (合併計算) VII-333
joint defendants (共同被告) Ⅳ-714
joint development (聯合開發) VIII-206,370
joint offenders (共犯) Ⅳ-714
joint owners (公同共有人) Ⅲ-518；VI-534
joint ownership (公同共有) Ⅳ-643
joint ownership (tenancy in common (分別共有) VII-15
joint relationship (公同關係) Ⅰ-301
joint tax liability (全部應繳納稅額) VII-333
joint tax return (合併申報) Ⅱ-388；VII-333
jointly filing tax return and paying tax liability (合併報繳) VII-333
Journalist (記者) VII-233
Judge (法官) Ⅰ-23；Ⅱ-650
judge in the constitutional context (憲法上法官) Ⅴ-471
judgeship (法官身分) Ⅳ-412
Judgment (判決) Ⅰ-510
judgment of "not guilty" (無罪判決) Ⅴ-647
judgment that is illegal in substance (判決違法) Ⅰ-464
judicial administrative disposition (司法行政處分) VII-127
judicial authority based on constitutional principles (司法權建制之憲政原理) VII-446
judicial autonomy (司法自主, 司法自主性) Ⅳ-326,412
judicial beneficiary right (司法受益權) Ⅲ-179,486
judicial conduct (審判事務) Ⅳ-412
judicial independence (審判獨立) Ⅳ-326；Ⅴ-470；VII-446
Judicial Interpretation(Constitutional Interpretation) declaring a statute or regulation unconstitutional but invalid only after expiry of a prescribed period of time (定期失效解釋) VIII-342
Judicial Interpretations that supplement previous Interpretations (補充解釋) VIII-342
judicial legislation (司法法規) Ⅰ-432
judicial organ (司法機關) Ⅱ-781
Judicial personnel (司法人員) Ⅰ-110
judicial power (司法權) Ⅰ-432；Ⅴ-471
judicial precedent (判例) VII-210
judicial reform (司法改進) Ⅰ-432
judicial relief (司法救濟) Ⅱ-294；Ⅲ-179；Ⅴ-647
judicial remedy (訴訟救濟, 司法救濟) Ⅲ-1；VIII-551
judicial resources (司法資源) Ⅳ-714
judicial review (司法審查, 法官保留) Ⅱ-210,650；Ⅴ-512；VII-551
judicial separation (裁判分居、裁判別居) Ⅰ-318
Judicial Yuan (司法院) Ⅰ-6,155；Ⅲ-660
judiciary interpretation (司法解釋) Ⅲ-700

Junior Rank Personnel (薦任) Ⅰ-118
junior-grade public servants (基層公務人員) Ⅰ-349
jural relations (權利義務關係) Ⅱ-635
jurisdiction (審判權) Ⅱ-325；Ⅳ-426；Ⅴ-400；VIII-693,700
jurisdiction of the central government (中央權限) Ⅱ-338
jurisdictional dispute (權限爭議) Ⅱ-338
jurisdictional territory (實施區域) Ⅳ-629
juvenile (少年) VI-1
juvenile delinquency (虞犯) VI-546
juvenile detention house (少年觀護所) VI-546
Juvenile offence (少年事件) VI-546
just compensation (公平補償, 補償地價) Ⅱ-52,516
J.Y. Interpretation No. 325 (釋字第三二五號解釋) VIII-163
J. Y. Interpretation No. 371 (釋字第三七一號解釋) VII-210
J. Y. Interpretation No. 382 (釋字第三八二號解釋) VII-167
J. Y. Interpretation No. 572 (釋字第五七二號解釋) VII-210

K

Kaohsiung City (高雄市) Ⅱ-25
kidnap (擄人) Ⅱ-142
kidnapping for ransom (擄人勒贖) Ⅴ-194
kindergarten (幼稚園) Ⅱ-456
Kinmen-Matsu area (金馬地區) Ⅳ-317

L

labor (勞工) Ⅲ-834
labor conditions (勞動條件) Ⅱ-663
Labor Contract (勞動契約) VIII-327
labor disputes (勞資糾紛) Ⅰ-640
labor insurance, labor insurance program (勞工保險, 勞工保險給付) Ⅱ-210,350,764；Ⅲ-552；Ⅳ-524；Ⅴ-634；VII-160
labor insurance payments (勞工保險給付) VII-160
labor unions (工會) Ⅱ-663
labor relations (勞動關係) VIII-120
labor right (勞工權益) VIII-120
Labor Standards Act (勞動基準法) VIII-119
laches of duties (廢弛職務) Ⅲ-346
land administration office (主管地政機關) Ⅰ-217
land administration office (地政機關) Ⅰ-623；Ⅱ-698
land designated for public facilities reservation (公共設施保留地) Ⅱ-32
land distribution and readjustment (土地分配與整理) Ⅱ-699
land expropriation (徵收) VIII-206
land for public facilities (公共設施用地) Ⅱ-429
land for public use (公用地役關係) VIII-693
land grant certificates for soldiers, land grant certificates to soldiers (戰士授田憑證) Ⅱ-396,562；Ⅲ-334
land improvement (土地改良物) Ⅱ-640
land reserved for public facilities (公共設施保留地) VII-461
leading sponsor (領銜提案人) VI-333
land policies (土地政策) Ⅱ-529
land price (地價) Ⅴ-107
land recording (土地登記) Ⅴ-432

land reform (土地改革) Ⅴ-122
land registration professional broker card (代理他人申報土地登記案件專業人員登記卡) Ⅱ-589
land scrivener (土地登記專業代理人) Ⅱ-554
land tax (土地稅) Ⅱ-585
land transferred without compensation (土地無償移轉) Ⅰ-420
land value at the time of transfer (移轉現值) Ⅱ-32
land value increment tax, land value tax (or capital gain tax) (土地增值稅) Ⅰ-420,451,499,523；Ⅱ-32,239, 354,585；Ⅲ-579,719；Ⅴ-107；VI-39
land value tax (地價稅) Ⅴ-777；VII-59
land-holding farmer (自耕農) Ⅴ-122
landowner (土地所有人, 土地所有權人) Ⅰ-217；Ⅴ-107；VIII-693
land-ownership map (地籍圖) Ⅱ-668
Land-to-the-Tiller Act (實施耕者有其田條例) Ⅰ-231
lands required for the mass rapid transit system (大眾捷運系統需用土地) VIII-370
larceny (竊盜罪, 竊盜) Ⅰ-85；VI-127；VIII-483
late declaration (逾期申報) Ⅱ-354
late fee (滯納金) VII-160
late filing surcharge (滯報金) Ⅴ-741
late performance (給付遲延) VIII-414
law (法律) Ⅱ-650
Law Governing the Legislative Yuan's Power (立法院職權行使法) VIII-163
law not applied to or wrongly applied to judgment (判決不適用法規或適用不當) Ⅲ-168
law then in force (當時有效之法令) Ⅳ-681
lawful and accurate judicial interpretation (合法適當之見解) Ⅰ-291
lawyer's discipline (律師懲戒) Ⅱ-692
lay off (資遣) Ⅱ-549
learning living skills (學習生活技能) Ⅱ-86
Lease (租賃契約) VII-325
lease contract (租賃契約) Ⅰ-263
leased farm land, leasehold farmland (出租耕地) Ⅳ-105；Ⅴ-107
leave (請假) Ⅰ-93
lectures and courses (講習) VI-193
legal acts (法律行為) Ⅲ-772
legal capacity (權利能力) Ⅲ-772
Legal Clerks (司法事務人員) Ⅰ-110
legal consequence (法律效果) Ⅲ-10
legal effect (法律效果) VIII-99
Legal foundation of taxation (租稅法律主義) VII-301
legal marriage (法律上婚姻關係) VI-365
legal matter (司法事務) Ⅰ-110
legal person (法人) Ⅲ-772；VI-253
legal principle of the reservation of law (法律保留原則) Ⅱ-705
legal procedure (法定程序) Ⅰ-408；Ⅲ-20
legal remedy (法律救濟) Ⅱ-402
legal review (法律審查) Ⅱ-316
legal support obligation (法定扶養義務) Ⅲ-161
legalism on taxation (租稅法律主義) Ⅰ-523
legalitatsprinzip (法安定性原則) Ⅴ-37
legislation (立法) Ⅱ-253
affairs (議會事項) Ⅰ-244
legislative authority (立法形成自由) VIII-135

legislative body (立法機關) Ⅳ-426
legislative delegation(立法授權) Ⅳ-85,468
legislative discretion (立法裁量，立法裁量決定，立法形成) Ⅰ-672；Ⅱ-316,640,687；Ⅲ-640； VII-110,110,347,513
legislative discretion (立法形成自由) Ⅴ-293,409,747
legislative formation (立法形成) VIII-304
legislative immunities (議員言論免責權) Ⅰ-248
legislative intention (立法意旨) Ⅳ-704
legislative power (立法權) Ⅰ-432；Ⅱ-210；Ⅲ-77
legislative process (立法程序) Ⅰ-432
legislative purpose (立法本意) Ⅰ-179
Legislative Yuan (立法院) Ⅰ-28,58,133,328；Ⅱ-145,223,438,447,755；Ⅲ-186；Ⅳ-202；VI-148；VIII-163,243
Legislative Yuan Sitting (立法院院會) VI-333
Legislative Yuan's power to investigate (立法院調查權) Ⅴ-210；VI-167
Legislator (立法委員) Ⅰ-40
legislators (議員) Ⅰ-248
legislature (立法機關) Ⅲ-640
legislature (議會) Ⅱ-273
legitimate building (合法建物) Ⅱ-262
legitimate child (婚生子女) Ⅰ-123；Ⅴ-293
legitimate reliance (信賴保護) Ⅳ-399
Legitimate Reason (正當理由) VII-233
Leistungsverwaltung (給付行政) Ⅴ-719
lessee (承租人) Ⅳ-636；Ⅴ-107,122
lessor (出租人) Ⅳ-636；Ⅴ-107,122
levy (徵收, 稽徵) Ⅰ-593；Ⅲ-36；VII-177
levy of commodity tax (貨物稅之徵收) Ⅱ-114
levy tax (課稅) Ⅴ-604
lexi fori (審判地法、法院地法) Ⅰ-85
li executive (里長) Ⅳ-565
liability of the accident (肇事責任) Ⅱ-231
libel (加重誹謗) Ⅳ-114
license suspension (吊銷) VII-374
life imprisonment (無期徒刑) Ⅰ-544；Ⅲ-700；Ⅳ-137；Ⅴ-11
Light rail (輕便軌道) Ⅰ-18,175
likelihood of confusion (商品近似造成混淆) Ⅱ-646
limitation (消滅時效) Ⅲ-690
limitation on distance (距離限制) VIII-282
limitation period of prosecution (追訴時效) Ⅳ-596
limiting pensions due to the retirement of public school teachers and employees (退休金限制) VIII-182
Limited to One Location (限於一處) VII-581
lineal ascendant (直系尊親屬) Ⅳ-714
lineal relatives (直系親屬) Ⅳ-714
linear descendants (直系血親卑親屬) VI-617
inter-spousal gift (配偶間相互贈與) VI-365
liquidation proceedings (清算程序) Ⅲ-820
listed securities (上市證券) Ⅳ-384
listed stocks (上市股票) Ⅳ-672
litigants (當事人) Ⅱ-567
litigated benefit (爭訟利益) Ⅳ-485
Litigation (爭訟) Ⅳ-485
litigation (訴訟) Ⅲ-329
litigation in forma pauperis (訴訟救助) Ⅰ-678
litigation restriction (訴訟限制) Ⅰ-372
livelihood or sustainability of life (生存或生活上之維持) VII-315
living a common life (經營共同生活) VIII-451

living together (共同生活) Ⅲ-161
loan (放款) Ⅱ-273
loans (借款) Ⅰ-582
local administrative agency, local administrative body (地方行政機關) Ⅲ-859；Ⅳ-288,731
Local Council (地方議會) Ⅰ-389
local currency (地方貨幣) Ⅰ-112
local government agency (地方機關) Ⅰ-78
local legislative body (地方立法機關) Ⅲ-860；Ⅳ-288
local self-governance, local selfgovernment (地方自治) Ⅱ-120,127；Ⅲ-740,859；Ⅳ-565
local self-governing body (地方自治團體) Ⅲ-859；Ⅳ-288,534
local tax (地方稅) Ⅱ-524
Location of Practice (職業處所) Ⅶ-581
lodged property (提存物) Ⅱ-467
lodgment (提存) Ⅰ-148,275；Ⅱ-467
logical construction (當然解釋) Ⅰ-683
long established custom (慣行) Ⅳ-186
Long-term care (長期照護) Ⅶ-399
long-term liberal sentence (長期自由刑) Ⅴ-11
long-term residency (長期居留) Ⅲ-537
long-term use (長期使用) Ⅱ-682
loss (遺漏) Ⅴ-432
low-income (低收入) Ⅱ-158

M

magistrate (縣長) Ⅲ-572
Main Function (主要功能) Ⅶ-363
maintain social order (維持社會秩序) Ⅲ-852
maintenance of livelihood (基本生活之維持) Ⅱ-214
Maintenance of Social Order (社會秩序維持) Ⅷ-29
maintenance workers (工友) Ⅱ-663
Major Public Interest (重大公益) Ⅶ-325
make a fresh start (自新) Ⅳ-596
making false entries (登載不實事項) Ⅰ-438
malfeasance (瀆職) Ⅰ-181
malicious accusation (誣告罪) Ⅰ-95
mailing and receiving letters (發受書信) Ⅷ-660
manager (經理, 經理人) Ⅰ-20,143
mandate (委任) Ⅱ-326
mandatory death penalty (死刑) Ⅱ-142
mandatory defense (強制辯護) Ⅷ-261
mandatory deportation (強制出境) Ⅶ-551
mandatory regulations (強制規定) Ⅷ-120
manifest (載貨清單) Ⅲ-840
manslaughter (故意殺人) Ⅴ-194
marital obligation of fidelity (貞操義務) Ⅰ-318
marital obligation to cohabit (同居義務) Ⅰ-318
marital relationship (婚姻關係) Ⅶ-333
marital union property (聯合財產) Ⅲ-124
marriage and family (婚姻與家庭) Ⅶ-333
maritime accident (海上事故) Ⅰ-197
market price (時價) Ⅱ-354
market wholesale value (市場批發價格) Ⅰ-258
marketable securities (有價證券) Ⅳ-672
marriage (婚姻) Ⅰ-22,64；Ⅱ-37,657；Ⅳ-580
married daughter (已婚女兒) Ⅰ-99
massage (按摩) Ⅵ-385
mass media (大眾傳播) Ⅱ-612

Mass Rapid Transit SystemFacilities (捷運設施) VIII-206
massnahmegesetz or law of measures (措施性法律) Ⅱ-773；Ⅳ-202
material objects admissible as evidence (物證) Ⅱ-52
material relevance (重要關聯) VII-428
matrimonial cohabitation (婚姻共同生活；夫妻同居, 夫妻共同生活) Ⅳ-557,580
matter of formality (程式問題) Ⅱ-333
matters of details and techniques (細節性、技術性事項) Ⅳ-349
means of attack and defense (攻擊防禦方法) VIII-693
measures handling breach of contract (違約之處理) VIII-592
measures of remediation (補救措施) Ⅳ-270
mechanization of agriculture (農業機械化) Ⅴ-152
media (傳播) Ⅳ-114
mediation (調解) Ⅱ-52,663
medical and health care (醫療保健) Ⅳ-534
medical care benefits (醫療給付) Ⅱ-764
medical examination (醫師考試) Ⅳ-494
Medical Expenses (醫藥費) VII-399
medical fitness (體格合適性) Ⅳ-122
medical license (醫師證書) Ⅳ-494
medical reimbursement frauds (詐領醫療費用) VIII-592
medical service (醫療服務) Ⅲ-81；VII-581
medical service points (醫療服務點數) VIII-89
medical treatment (醫療) Ⅱ-682
Member of legislative Yuan, members of the Legislature, Member of the Legislative Yuan (立法委員) Ⅰ-1,56；Ⅲ-66,359
member of the Control Yuan (監察委員) Ⅰ-31,40
members of the National Assembly (國民大會代表) Ⅰ-56,533
membership fee (入會費) Ⅳ-56
mere differences in legal interpretations (法律見解歧異) Ⅰ-479
merger of sentences for multiple offenses (數罪併罰) Ⅵ-521；VII-110
merit evaluation (考績, 晉級) Ⅱ-153；Ⅲ-752；Ⅴ-187
Mental Disability (失智症) VII-399
methamphetamine (安非他命) Ⅱ-682
method of assessment by imputation (推計核定方法) Ⅰ-629
method of deduction from expenses (費用還原法) Ⅱ-72
method of tax payment (納稅方法) Ⅲ-146；Ⅰ-623
military (軍職) VII-635
military conscription duties (兵役義務) Ⅰ-90
Military Dependents' Village Reconstruction Act (眷改條例) VIII-135
military education (軍事教育) VII-635
military judge (軍事審判官) VII-445
military institution (軍事機關) Ⅰ-139
military noncommissioned officer (士官) Ⅲ-140
military officer (軍官) Ⅲ-140
military officers (武職人員) Ⅳ-588
Military Organ (軍事機關) Ⅵ-407
military personnel in active service (現役軍人) Ⅱ-81
military personnel in the reserved forces service, military reserve personnel (後

備軍人) Ⅱ-81；Ⅲ-140；Ⅳ-270
military reserve personnel combination of creditable service (後備軍人轉任公職時併計軍中服役之年資) Ⅲ-546
military service (兵役, 服兵役) Ⅲ-802；Ⅳ-176,317；VII-635
military serviceman (軍人) Ⅱ-139
military trial (軍事審判) Ⅲ-364,406；VI-18
military tribunals (軍事審判機關) Ⅲ-710
Military Type Item (軍用物品) VI-407
minimum amount of fine (罰鍰最低額) Ⅳ-130
minimum living expense (最低生活費) Ⅲ-272
mining rights (礦業權) Ⅱ-727
mining territory (礦區) Ⅱ-727
Ministry of Audit (審計部) Ⅰ-84
Ministry of Economic Affairs (經濟部) Ⅱ-727
Ministry of Examination (考選部) Ⅱ-554
Ministry of Finance (財政部) VI-298,397,407
Ministry of Personnel (銓敘部) Ⅱ-171
minor child (未成年子女) Ⅳ-619；Ⅴ-283
minor offense (情節輕微) VII-635
minority cultural group (少數性文化族群) Ⅴ-747
misapplication of law (適用法規錯誤) Ⅰ-510
misdemeanor (失職行為) Ⅲ-346
mis-loaded and mis-shipped (誤裝錯運) VI-373
missing person (失蹤人) Ⅱ-442
mitigate damages (防止損害範圍之擴大) Ⅱ-231
mitigate damages (減輕損害) Ⅳ-342
mitigating measures (緩和措施) Ⅴ-54
Mobile Medical Service (巡迴醫療工作) VII-581
mobile pollution sources (移動污染源) Ⅲ-299
Modifications based on Periodic Comprehensive Review (定期通盤檢討之變更) VIII-353
modified land description registration (土地標示變更登記) VI-39
monetary fine (罰金) Ⅱ-622
monetary loss (詐財損失) Ⅰ-305
monetary payment (金錢給付) Ⅳ-619
Monitoring (監聽) VII-233
monogamous marriage (一夫一妻之婚姻制度) VI-365
monogamy (一夫一妻婚姻, 一夫一妻婚姻制度) Ⅱ-37,601；Ⅳ-556
monopolistic enterprises (獨佔性企業) Ⅱ-171
monthly paid pension for discharge (月退職酬勞金) Ⅴ-329
monthly retirement payment (月退休金) Ⅴ-329
monthly salary (月俸) Ⅲ-493
mortgage (抵押權) Ⅰ-239,297
mortgage registration (抵押權設定登記) Ⅱ-321
mortgage right (抵押權) VII-15
mortgaged property (抵押物) Ⅰ-467
mortgagee (抵押權人) Ⅰ-239,467
mortgagor (抵押人) Ⅰ-467
motion (移請) Ⅲ-19
motion for retrial (聲請再審, 再審) Ⅰ-316,577
motion of objection (聲明異議) Ⅲ-38
motion to set aside a court ruling (抗告) VI-561
motion to stay enforcement (請求停止執行) Ⅱ-558
motorization of transportation means

(交通工具機動化) Ⅴ-152
nullum capitagium sine lege (租稅法律主義) Ⅵ-397
nullification of professional practice registration (廢止執業登記) Ⅷ-483
multi-level sale, pyramid scheme (多層次傳銷) Ⅴ-512
multiple conducts (數行為) Ⅷ-626
multiple insurance (複保險) Ⅴ-67
municipality (市) Ⅱ-120
munitions industries (軍火工業) Ⅱ-663
mutates mutandis (準用) Ⅴ-512
mutual agreement (雙方合議) Ⅰ-101

N

narcotic addiction (毒癮) Ⅲ-700
narcotic drugs (麻醉藥品) Ⅱ-682
nation has suffered severe calamities (國家遭遇重大變故) Ⅱ-148
National Assembly (國民大會) Ⅰ-28,38,55, 133,155,235,533；Ⅱ-100,223, 447,715；Ⅲ-267；Ⅳ-439
national currency (國幣) Ⅰ-112
national health insurance (全民健康保險) Ⅲ-675,683；Ⅳ-256,357,534；Ⅶ-80； Ⅷ-89
National Health Insurance Contract (全民健保特約) Ⅷ-592
National Institute of Compilation and Translation (國立編譯館) Ⅰ-31
national legislative bodies (中央民意機構) Ⅱ-130
national morality (國民道德) Ⅳ-652
National representatives (中央民意代表) Ⅱ-130
national security (國家安全) Ⅲ-586,802
national tax (國稅) Ⅱ-200
National Tax Administration Taipei Bureau (臺北市國稅局) Ⅱ-594
national tort claim (國家賠償) Ⅲ-710；Ⅳ-693
National Treasury (國庫) Ⅱ-750；Ⅲ-267
natural death (自然死亡) Ⅱ-442
natural person (自然人) Ⅲ-772
nature of case (事件之性質) Ⅳ-426
nature of the thing (事件之本質) Ⅱ-442
necessary actions (必要處置) Ⅲ-794
necessary dispositions (必要處置) Ⅶ-262
necessary extent (必要程度) Ⅷ-223
necessary expenses (必要費用) Ⅷ-396
necessary measures (必要措施, 必要處分) Ⅳ-342；Ⅴ-346
necessary statutory procedure (法定程序) Ⅶ-91
necessity of protection of rights (權利保護必要) Ⅳ-485
Necessary Reasonable Exception (必要合理之例外規定) Ⅶ-581
negative construction (消極性釋示) Ⅲ-578
negative qualification (消極資格) Ⅰ-179；Ⅶ-635
negligence (過失) Ⅱ-193；Ⅶ-635
negotiability (流通功能) Ⅰ-553
net asset value (資產淨值) Ⅱ-346；Ⅴ-625
News Reporter (新聞採訪者) Ⅶ-233
Newsworthy (新聞價值) Ⅶ-233
new pension system (退撫新制) Ⅷ-2
New Taiwan Dollar (新臺幣) Ⅰ-112,189
No crime and no punishment without pre-existing law (罪刑法定主義) Ⅳ-243
Nominate, nomination (提名) Ⅲ-660；Ⅳ-439；Ⅵ-148

no-confidence motion (不信任案) VIII-243
non- administrative act (非行政處分) Ⅲ-278,499
non-agricultural use (非農業使用) Ⅳ-681
non-appealable (不得抗告) Ⅰ-507
non-appellable judgment (終審判決) Ⅰ-50
non bis in idem (行為不二罰) VIII-533
non-business revenues (非營業收益) Ⅴ-615
non-deposit liabilities (非存款債務) VII-70
non-gratuitous principle (有償主義) Ⅰ-325,662
non-immediate family member (非直系血親) Ⅰ-50
non-operating income (非營業收入) Ⅲ-845
non-partisan (超出黨派) Ⅳ-412
non-performance of contract (債務不履行) VIII-592
non-performing loans (逾期放款) Ⅱ-273
non-prosecutorial disposition (不起訴處分) Ⅰ-87,95,139
non-reported or under-reported sales amount (短報或漏報銷售額) VI-501
non-retroactivity (向將來發生效力) Ⅴ-367
non-salary income of a married couple (夫妻非薪資所得) VII-333
non-urban land use control (非都市土地使用管制) Ⅳ-349
not carry out the plan (不實行使用) Ⅱ-10
not guilty (無罪) Ⅰ-309
notice of lodgment (提存通知書) Ⅱ-467
notification (通知書) Ⅲ-278
notification of the auction date (拍賣期日通知) Ⅱ-96
notification of cadastral changes (地籍異動通知) VI-39
nulla poena sine culpa (no culpability carries no penalty) (無責任即無處罰) VII-210
nullify/set aside the decision (撤銷原決定) Ⅱ-635
nullum crimen sine lege, nulla poena sine lege; no crime and no punishmentwithout a law, principle of no crlme withowt a previous penal law (罪刑法定主義, 罪刑法定原則) Ⅲ-347；Ⅴ-391,512；VII-117
number of conducts (行為數) VIII-626
number of stockholders present (出席股東人數) Ⅰ-192
number of seats of political party proportional representatives (政黨比例代表席次) VIII-64
number of votes required (表決權數) Ⅰ-192

O

objection (異議) Ⅱ-186；Ⅳ-373；Ⅳ-270；VII-127,233
objective-means substantial nexus (目的—手段實質關連性) VI-385
objective unlawfulness (客觀不法) VI-127
obligation of living together (同居義務) Ⅲ-526
obligation of monetary payment under
obligation of protection (保護義務) VIII-151
obscene publications (猥褻出版品) Ⅲ-104
obscenity (猥褻) Ⅲ-104；Ⅴ-747
Observing (監看) VII-233
obstruction or misleading of investigation or trial (妨礙誤導偵查審判) VII-2
obviously excessive (顯然過苛) VIII-414
occupation (職業) Ⅲ-329
occupational association (職業團體) VIII-99

occupational trustworthiness (職業信賴) Ⅴ-194
odd shaped lots (畸零地) Ⅶ-59
odontrypy (鑲補牙) Ⅰ-564
offence of punishment commutable to fine punishment (得易科罰金之罪) Ⅰ-309
offender of abstract danger (抽象危險犯) Ⅳ-176
offense of actual injury; Veretzungsdelikte (實害犯) Ⅵ-2
offense indictable only upon complaint (告訴乃論之罪) Ⅳ-714
offense of danger danger; Geahrdungsdelikte (危險犯) Ⅵ-2
offense of fraud, fraud (詐欺罪, 詐欺) Ⅰ-305；Ⅷ-483
offense of rebellion (內亂罪) Ⅰ-260
offense of receiving stolen property (贓物罪) Ⅰ-166
offense of treason (外患罪) Ⅰ-260
offenses against freedoms (妨害自由) Ⅷ-483
offenses against morality (妨害風化) Ⅷ-483
offenses against internal and external security (內亂、外患罪) Ⅲ-710
offenses with the same criminal elements (構成犯罪要件相同之罪名) Ⅰ-336
offering bribes (行賄) Ⅰ-181
offsets of the period of suspended contract (停約之抵扣) Ⅷ-592
Offsetting Output Tax (扣抵銷項稅額) Ⅶ-472
office of hsiang, township, city, or precinct (鄉、鎮、市、區公所) Ⅱ-262
Office of Military Training (軍訓室) Ⅲ-512
office workers (事務性工人) Ⅰ-665
official affairs (公務) Ⅰ-78；Ⅴ-54
official degree (正式學籍) Ⅶ-288
official duties under public law (公法上職務關係) Ⅴ-765
official notice (公告) Ⅰ-199；Ⅷ-232
official rank (官等) Ⅱ-326
old-age benefits (老年給付) Ⅱ-350
one's adopted son (養子) Ⅰ-64
one's mother's adopted daughter (母之養女) Ⅰ-64
on-site examination (實地考試) Ⅳ-494
onsolidated income (綜合所得) Ⅴ-604
open competitive examination (公開競爭之考試) Ⅱ-205；Ⅲ-89
open up receive (放領) Ⅰ-163
operating a motor vehicle (駕駛汽車) Ⅶ-374
operation facility (營業場所) Ⅷ-282
opinion of the law (法律上見解) Ⅱ-52
opposite party (相對人) Ⅳ-620
opposite-sex marriage (異性婚姻) Ⅷ-451
oral argument (言詞辯論) Ⅰ-105,281；Ⅱ-567,581
oral trial (言詞審理) Ⅴ-303
order an amendment (命為補正) Ⅱ-333
Order of Dismissal[to Dismiss] (命令解散) Ⅷ-30
order of disposition (處分命令) Ⅱ-294
order of human relationship (人倫秩序) Ⅳ-580
order of financial credibility (金融信用秩序) Ⅶ-70
order to exit within a specified period (限期離境) Ⅲ-537
ordinances and regulations (規章) Ⅰ-71
ordinary court (普通法院)

Ⅰ-231；Ⅳ-426；Ⅴ-400
ordinary level civil service examination (普通考試) Ⅲ-324
ordinary public officers (常業文官) Ⅳ-588
ordre public and morality (善良風俗) Ⅵ-594
order of financial credibility (金融信用秩序) Ⅶ-70
organized crime (組織犯罪) Ⅳ-308,595
original acquisition (原始取得) Ⅰ-630
original compensation disposition (原補償處分) Ⅵ-415
original credentials (原始證件) Ⅰ-415
Original Documents (文件原本) Ⅷ-163
original evidence (原始憑證) Ⅰ-474；Ⅵ-298
original property (固有財產) Ⅴ-807
original sentence (原審判決) Ⅰ-50
other appropriate measures (另為適當處置) Ⅶ-617
other cash payment (其他現金給與) Ⅲ-493
other constitutional rights (其他基本權利) Ⅶ-167
other group (其他團體) Ⅲ-712
other income (其他所得) Ⅳ-106
other party to the adultery (相姦者) Ⅳ-580
other serious reasons (其他重大事由) Ⅰ-101
other relatives or family members (其他親屬或家屬) Ⅶ-315
outdoor assembly and parade (室外集會遊行) Ⅲ-423
output tax (銷項稅額) Ⅲ-36；Ⅷ-681
Over-Cultivation (濫墾) Ⅶ-325
overdraw (濫行簽發) Ⅰ-553
overdue charge (滯納金) Ⅲ-675
overhead bridge (人行天橋) Ⅲ-174
overlap of boundary (界址重疊) Ⅵ-39
overregulation (限制過當) Ⅶ-608
overseas Chinese (華僑) Ⅳ-494
overseas Chinese herbal doctor's examination certificate (華僑中醫師考試證明書) Ⅳ-494
overseas Chinese herbal doctor's license (華僑中醫師考試及格證書) Ⅳ-494
overseas commission (國外佣金) Ⅲ-380
over shipment (溢裝) Ⅵ-373
overtime wages (加班費) Ⅷ-119
over-the-counter medicine (限醫師指示使用) Ⅲ-81
over-the-counter medicine (成藥) Ⅰ-502
over-the-counter securities (上櫃證券) Ⅳ-384
owner of superficies (地上權人) Ⅱ-262；Ⅲ-518
ownership in common (分別共有, 共有) Ⅳ-643；Ⅴ-455

P

paid position (有給職) Ⅰ-40
paid-in capital (已收資本) Ⅳ-91
paper review (書面審查) Ⅵ-280
pardon (特赦, 赦免) Ⅰ-279；Ⅱ-228
parental rights (親權) Ⅱ-617
parliament (國會) Ⅰ-133
parliamentary autonomy (議會自治, 國會自治) Ⅱ-498；Ⅴ-210
parliamentary power of decision-making participation (國會參與決策權) Ⅳ-202
parole (假釋) Ⅴ-11；Ⅶ-127,279
parolees (假釋出獄人) Ⅴ-195
parties of the contract (契約當事人) Ⅰ-81
partition of common property

(分割共有物) Ⅱ-581
partition of jointly owned property (共有物分割) VII-15
partitioned for the purpose of recordation (分割登記) Ⅱ-581
part-time workers (非專任員工) Ⅲ-552
party-recommended candidate for public office (政黨推薦之公職候選人) Ⅱ-489
passing of a resolution to discipline (懲戒處分議決) Ⅰ-229
passive interest (消極利益) Ⅱ-354
patent (專利) Ⅳ-515
patentee (專利權人) Ⅳ-99
pawn business (典押當業) Ⅰ-46
pawnee (質權人) Ⅰ-97
pay tax (納稅) Ⅱ-745；Ⅲ-36
payable on demand (見票即付) Ⅱ-15
payment by subrogation (代位償付) Ⅴ-107
payment of deed tax (繳納契稅) Ⅲ-758
payment of recompense of discharge (退撫給與) Ⅴ-329
payout, compensate (賠付) VII-70
Peaceful Expression of Opinion (和平表達意見) VIII-29
pecuniary fine, pecuniary fines (罰鍰) Ⅰ-89；Ⅴ-211；VI-167,253
pedestrian (行人) Ⅲ-174
pedestrian passageway (行人穿越道) Ⅲ-174
penal policy (刑事政策) VII-110
penalty (違約金) Ⅴ-512
Penalty conversion (刑之易科) Ⅱ-56
penalty for offense against an administrative order, penalty for offense against the order of administration (行政秩序罰；秩序罰) Ⅲ-278,424
Penalty for Tax Evasio (漏稅罰) VII-347
penal policy (刑事政策) VII-110
penal power (刑罰權) VI-426
penalty provision (處罰規定) Ⅰ-199
pension (退休金, 退職金) Ⅱ-61,235；VIII-2
pension benefits (退休(職、伍)給與) VI-475
people from the Mainland Area (大陸地區人民) VII-551
people's association (人民團體) Ⅲ-726
people's freedoms and rights (人民之自由權利) Ⅱ-622
people's property rights (人民之財產權) VI-415
people's right to institute legal proceeding (訴訟權) Ⅳ-426
people's right to life (人民生存權) Ⅰ-550
people's sovereignty (主權在民) VIII-29
perception of clan (宗族觀念) VIII-151
peremptory period (不變期間) Ⅱ-52；Ⅲ-20,745；Ⅴ-647
perform public service (服公職) Ⅲ-329
performance administration (給付行政) Ⅲ-315
period of applicability (施行期間) VIII-2
period of Martial Law (戒嚴時期) Ⅲ-710；VI-18
Period of National Mobilization in Suppression of Communist Rebellion, period of martial, period of national mobilization for suppression of the communist rebellion (動員戡亂時期) Ⅰ-189；Ⅳ-2；VI-18
period of prescription (消滅時效期間) Ⅰ-274
period of prescription of civil claims (民事請求權時效) Ⅳ-715
period of statute of limitations

(告訴期間) Ⅰ-212
Periodic Comprehensive Review (定期通盤檢討) VIII-353
periodical re-election (定期改選) Ⅱ-130
Periodically Impose Tax (週期課徵) VII-387
permanent union (永久結合關係) VIII-451
Permissible Standards (容許標準) VII-581
permission (核准) Ⅰ-91
perpetrator of a criminal offence (犯罪主體) Ⅰ-438
person charged with withholding duty (扣繳義務人) Ⅰ-233
person disciplined (受懲戒處分人) Ⅴ-647
person in an adulterous alliance (相姦之人) Ⅳ-714
person injured by an act of offense (犯罪之被害人) Ⅱ-289
person liable to penalty (受處分人) Ⅱ-250
person who has right to receive (承領人) Ⅰ-163
Persons in a Vegetative State (植物人) VII-399
Persons in long-term care (受長期照護者) VII-399
persons to whom civil servants are related (公職人員之關係人) VII-650
personal dignity (人格尊嚴) Ⅱ-657
personal exclusivity (一身專屬性) Ⅴ-807
personal freedom (人民身體自由, 人身自由, 身體自由, 個人自由) Ⅰ-394, 695；Ⅲ-666；Ⅳ-249,308,548,693；Ⅴ-512,546；VII-91,262；VIII-260
personal insurance (人身保險) Ⅴ-67
personal liberty, physical freedom (人身自由) Ⅳ-619；Ⅴ-302；VII-2,91,127
personal properties (人民財產權) Ⅰ-69
personal safety (人身安全) Ⅱ-657
personality rights (人格權) Ⅲ-772；Ⅴ-293 VI-546；VII-233
personnel ordinances (人事法令) Ⅴ-54
personnel review (人事審查) Ⅱ-410
personnel system (人事制度) Ⅴ-54
petition (聲請) Ⅰ-510；Ⅲ-19,329
petition and statement of reasons for appeal (其上訴狀或理由書) Ⅲ-168
petition for rehearing (聲請再審) Ⅰ-343
petition for review (申請復查) Ⅰ-658
petitioner (呈請人) Ⅰ-126
petitioner (原告) Ⅰ-75
Pharmacological Consultation (藥事諮詢) VII-581
pharmaceutical manufacturers (藥商) Ⅲ-155
pharmacist (藥師) Ⅰ-502
pharmacy (藥局) Ⅰ-502
Physical and Emotional Safety (身心安全) VII-233
physical and psychological dependence (生理及心理上之依藥性) Ⅱ-682
physical examination in connection with military services (兵役體檢) Ⅲ-572
physical freedom, physical liberty (人身自由, 身體自由) Ⅰ-269；Ⅱ-305,733；Ⅲ-700；VII-2,91,127
physician (醫師) Ⅳ-477
place of household registration (戶籍所在地) Ⅱ-442
placed under surveillance (列管) Ⅴ-195
plain violation of the law (當然違背法令) Ⅱ-19
plaintiff (原告) Ⅰ-212
plaintiff petitioning for new trial

(再審原告) Ⅲ-2
planned roads in city planning (都市計畫用地) Ⅲ-392
Police (警察) VII-233
Police Act (警察法) VII-374
police administrative ordinances (警察命令) Ⅳ-731
police check (臨檢) Ⅳ-373
Police Duties Enforcement Act (警察職權行使法) VII-374
police service (警察勤務) Ⅳ-373
police system (警察制度) Ⅱ-338
political appointee, Political Appointees (政務官) Ⅱ-578；Ⅲ-493
Political Figure (政治人物) VII-233
political party (政黨) Ⅰ-13,15
political personnel (政務人員) Ⅴ-471
political question (政治問題) Ⅱ-436；Ⅲ-186
political speech censorship (政治上言論審查) Ⅲ-423
politics of accountability (責任政治) Ⅴ-682
pollution source (污染源) Ⅲ-299
positive (acquisitive) prescription (取得時效) Ⅱ-262；Ⅲ-518
possessor (持有人) Ⅰ-160
postal administration (郵政機關) Ⅲ-315
postal services (郵政事業) Ⅲ-315
power and authority of directors and supervisors (理事監事之職權) VIII-99
power of consent (同意權) Ⅳ-439
power of control (監察權) Ⅴ-329
power of criminal punishment, power to criminal punishment (刑罰權) Ⅰ-464；Ⅱ-289；Ⅲ-347
power of discretion (裁量權) Ⅲ-424
power of inquiry (闡明權) Ⅲ-745
power of rule making (規則制定權) Ⅳ-326
power of supervision (監察權) Ⅰ-143
power to correct (懲處權) Ⅴ-187
power to decide on personnel affairs (人事決定權) Ⅴ-682
power to discipline (懲戒權) Ⅴ-187
power to execute punishment (行刑權) Ⅰ-250
power to issue orders regarding prosecutorial matters (檢察事務指令權) Ⅳ-326
power to make decisions on personnel appointment (人事任免命決定權) Ⅵ-333
power to prosecute (追訴權) Ⅰ-294
Power to Request Documents (文件調閱權) VIII-163
Power to Request Materials for Reference (要求提供資料參考權) VIII-163
power to request production of files (文件調閱權) Ⅴ-210；Ⅵ-167
power-generating equipment (發動機器) Ⅰ-665
practical training (實務訓練) Ⅲ-524
Practice Business without Applying for Business Registration in accordance with Regulations (未依規定申請營業登記而營業) VII-387
Practice Division of Medical Doctor and Pharmacist (醫藥分業) VII-581
precedent (判例) Ⅰ-354,510；Ⅱ-325,567；Ⅲ-20
predictability of law (法律之可預見性) Ⅲ-340
preemption of statute (法律優位) Ⅴ-432
preemption right ((公有地) 優先承購權) Ⅲ-499
preexisting road (既成道路) Ⅲ-57,392
preferential deposit (優惠存款) VIII-2

preferential tax treatment (租稅優惠) Ⅱ-745；VII-399
preferred savings for retirement pensions (退休金優惠存款) Ⅱ-214
preliminary injunction (假處分) Ⅰ-288；Ⅳ-79
preliminary injunction (暫時處分) Ⅴ-210,442；VI-166
Premier (行政院院長) Ⅰ-6；Ⅱ-755；Ⅲ-186
premium (保險費) Ⅱ-210
premium (溢價、溢額) Ⅱ-373
premium income (權利金收入) VII-301
preparatory committee (籌備會) VIII-303
prerequisite issue (先決問題) Ⅴ-11
prerequisite of justice on processes (審級之先決問題) Ⅰ-105
prescribed deadline (法定期限) VIII-414
prescription (時效) Ⅲ-113,518
prescription drugs (西藥處方) Ⅲ-81
prescription drugs (處方用藥) Ⅰ-502
presenting opinions (陳述意見) VII-513
preservation of the institution of marriage and the family (婚姻與家庭之保障) Ⅴ-789
preservation proceeding (保全程序) VI-561
president (董事長, 總統) Ⅰ-272；VI-148
Presidential criminal immunity (總統刑事豁免權) VI-66
presidential state secrets privilege (總統國家機密特權) VI-66
President of the Administrative Court (行政法院院長) Ⅰ-377
presiding judge (庭長) Ⅰ-377
presiding judge (審判長) Ⅳ-412
presume, presumption (推定) Ⅰ-139；Ⅱ-193
presumed to be dead (推定死亡) Ⅱ-442
presumption and calculation (設算) VI-397
presumption of innocence (無罪推定) VI-561
prevent infringement upon the freedoms of other persons (防止妨害他人自由) Ⅲ-852
preventive proceeding (保全程序) Ⅰ-288
preventive system (保全制度) Ⅴ-210,442
previous trial (前審) Ⅱ-109
prima facie review (形式上審查) Ⅱ-698
primary sentence (主刑) Ⅰ-82,98
principal (校長) Ⅰ-568
principle of accountability politics (責任政治原則) VI-167
principle of a constitutional state (法治國原則) Ⅴ-719；VI-114
Principle of ability to pay tax (量能課稅) 424
Principle of Balance of Powers (均權原則) VIII-282
Principle of Clarity and Definiteness (具體明確原則) VI-407
principle of clarity and definiteness of statutory authorization (法律授權明確性) VIII-592
principle of clarity and definiteness of elements of a crime (構成要件明確性原則) Ⅴ-512
principle of clarity and definiteness of law, principle of clarity of law, principle of legal clarity (法律明確性原則, 法律明確性) Ⅲ-340,423,640；Ⅳ-236,256；Ⅴ-17, 75,210, 391；VI-2,114,167,209,217；VII-25,233
principle of clarity and definiteness of punishment (刑罰明確性原則) Ⅳ-243
principle of clarity and definiteness of the law, principle of clarity

(明確性原則) VI-487；VII-411
principle of clarity of authorization of law (法律授權明確性原則) VII-80
principle of clear and specific authorization, principle of unambiguous authorization, principle of clarity of authorization, principle of express delegation (授權明確性原則) Ⅲ-9,622；Ⅳ-399；Ⅴ-376,570；VI-114
Principle of Constitutional Delineation between the Central and Local Authorities (中央與地方權限劃分原則) VIII-282
principle of de minimis non curat lex (微罪不舉原則) VI-350
principle of democracy (民主原則) Ⅴ-210
principle of double jeopardy (一罪不二罰原則) Ⅴ-570
principle of due process of law (正當法律程序原則) VIII-303
principle of equal taxation, principle of equality in taxation, principle of equality of fair taxation, principle of fair taxation (租稅公平原則, 租稅公平主義, 租稅平等原則) Ⅰ-630；Ⅱ-388,594；Ⅱ-388,594；Ⅳ-106,673；Ⅴ-615；VI-365；VII-333
principle of equality of actual taxation (實質課稅之公平原則) Ⅲ-579
principle of equality, principle of equity, principle of fairness (公平原則, 平等原則) Ⅱ-32；Ⅲ-57,7789,380,695；Ⅳ-281,398,451,588；Ⅴ-1,37,210, 376,409, 424, 585,615,765,789；VI-18,373,594,603；VII-203,210,220,301,333,363,581；VIII-42,78,135,304
principle of expertise evaluation (專業評量之原則) Ⅲ-599
principle of gender equality (男女平等原則) Ⅲ-560
principle of Gesetzesvorbehalt (statutory reservation) (法律保留原則) VIII-533
principle of good faith (誠信原則) Ⅱ-534
principle of judgment per evidence (證據裁判原則) Ⅴ-159
principle of judicial independence (司法獨立原則) Ⅴ-470
principle of lawful designation of judges (法定法官原則) VI-561
principle of legal clarity (法律明確性原則) VII-262
principle of legal reservation, principle of power reservation, principle of preservation of law principle of reservation of law, principle of statutory reservation (Gesetzesvorbehalt) (法律保留原則) Ⅲ-9,417,423；Ⅳ-85,106, 130, 349,515,534,681,730；Ⅴ-17,54, 159,187,376,432,634,659,719,777；VI-50,100,114,253,475；VII-80,486,635；VIII-304
principle of legal clarity (法律明確性原則) VII-262
principle of legitimate expectation (保護原則) VIII-2
principle of minimum infringement (最小侵害原則) VI-135
principle of necessity (必要性原則) Ⅳ-366
Principle of New and Lenient Criminal Punishment (刑罰從新從輕原則) Ⅴ-11
principle of non-continuance upon expiry

of term (屆期不連續原則) Ⅴ-210
principle of non-retroactivity (保護原則) VIII-2
(法律不溯及既往原則) Ⅴ-37；VI-114
principle of objective net value (客觀淨值) VIII-396
principle of prior judicial review (法官保留原則) VII-496
principle of statutory reservation (法律保留原則) VII-80,581；VIII-89,282
Principle of Statutory Taxpaying (租稅法律主義) VII-472
principle of openness and transparency (公開透明原則) Ⅳ-2
principle of prohibition against retroactive laws (法律不溯及既往原則) VII-625
principle of prohibition against retroactive law (禁止法律溯及既往原則) VIII-2
principle of protection of reliability (信賴保護原則) VII-625
principle of proportionality, proportional principle (比例原則) Ⅱ-148；Ⅲ-117,392, 423,552,622,666,700,778,794,802；Ⅳ-99, 308, 373, 398,451,467,580, 611,622；Ⅴ-17, 187, 210,302,376,532,570,747,765,789；VI-1,100, 167,193,218,289,298,350,439, 546,561,626；VI-2；VII-2,25,39,100,177,220,233,262,374, 411, 512,581,617,635,716,512,581,607,617, 625,635,650；VIII-2,42,223,282,304,383, 414,483,533,592
principle of protection (保護主義) Ⅰ-438
principle of public disclosure (公開原則) Ⅴ-283
principle of reliance protection (信賴保護原則) VI-114
principle of religious equality (宗教平等原則) Ⅴ-17
principle of religious neutrality (宗教中立原則) Ⅴ-17
principle of res judicata (一事不二罰原則) VI-253
principle of revenue-cost-expenses matching (收入與成本費用配合原則) VI-468
principle of rule of law (法治原則) Ⅴ-210,328
principle of separation of powers and checks and balances (權力分立與制衡原則) Ⅴ-210；VI-166
principle of specialization (專業原則) Ⅲ-81
principle of stability of the law (法安定性原則) Ⅴ-367；VI-114
Principle of Statutory Reservation (法律保留原則) VI-581；VIII-98
principle of statutory tax payment, principle of taxation by law, principle of tax per legislation (租稅法定主義, 租稅法律主義, 租稅法律原則) Ⅰ-582,623,636；Ⅱ-32,594,628；Ⅲ-36,146,161,259,288；Ⅳ-106,392；Ⅴ-424,615,625, 732,789；VI-407,467,501；VII-347
principle of substantive equality (實質平等原則) Ⅴ-471
principle of superiority of law (法律優越原則) Ⅴ-17
principle of sovereignty of and by the people (國民主權原則) VIII-63
Principle of taxation by law (屬地主義，租稅法律主義) VII-39,59,177,363,387,461
principle of taxation in accordance with law

(租稅法律主義) VIII-396,414
principle of territorialism (屬地主義) Ⅰ-438
principle of the democratic republic (民主共和國原則) VIII-63
principle of the polluter pays (污染者付費原則) Ⅲ-299
principle of the prohibition of retroactive law or ex post facto law (法律不溯及既往原則) VIII-151
principle of the protection of reliance, principle of trust protection, protection of trust principle, principle of legitimate expectation (Der Grundsatz des Vertrauenschutzes), principle of protection reliance (信賴保護原則) Ⅱ-601；Ⅳ-270,317,557；Ⅴ-37, 328,585,789
principle of the punishment fitting the crime (罪刑相當原則) Ⅴ-512
principle of the stability of law (法安定性原則) VIII-151
printed public document (公印文書) Ⅰ-67
prior (first) marriage (前婚姻) Ⅳ-557
prior actual and continuous use (實際使用在先) Ⅰ-41
prior application (優先適用) Ⅱ-90
prior application for approval (事前申請許可) Ⅲ-423
Prior Approval or Notification (事前許可或報備) VIII-29
prior censorship (事前審查) Ⅲ-155；VIII-383
prior restraint of speech (言論事前審查) VIII-660
prior to the delivery of an interpretation (解釋公布日前) VII-203
prisoners , prisoner (受刑人) VII-91,127
prison discipline (監獄紀律) VIII-660
prison inmate (受刑人) VIII-660
privacy (私密性, 隱私) Ⅲ-579；VII-233
privacy of correspondence (秘密通訊) VIII-660
private cause of action (告訴乃論) Ⅰ-87
private corporate bodies, private corporate body (私法人) Ⅱ-325；Ⅲ-400
Private Sphere (私密領域) VII-233
Private Enterprises (私人企業) Ⅰ-127
private farmland (私有農地) Ⅱ-698
private land owner (私有土地所有權人) Ⅳ-366
private law (私法) Ⅲ-499
private legal relationship, Private Law Relations (私權關係) Ⅳ-186 ；VII-325
private prosecution (自訴) Ⅰ-281,401；Ⅱ-289；Ⅳ-714
private prosecutor (自訴人) Ⅴ-647
private school (私立學校) Ⅰ-272,360
privately owned enterprise (民營公司) Ⅰ-143
Privatization (民營化／私有化) Ⅰ-127
privilege of immunity (免責權) Ⅲ-66
privileged relationship (特別權力關係) VII-127
probation (緩刑, 證明) Ⅰ-82,116,150
probative value (證明力) Ⅴ-159
procedural decision (程序判決) Ⅱ-176
procedural violation of the law; procedure held to be in some way in violation of the law (訴訟程序違背法令) Ⅱ-19
proceeding for payment or performance (給付訴訟) Ⅳ-357
proceeding for relief, proceeding to redress grievance (訴訟救濟, 申訴) Ⅲ-20,628；VIII-639

proceeding for re-trial (再審程序) Ⅲ-745
proceeding of public summons (公示催告程序) Ⅰ-160
process of law (法定程序) Ⅴ-432
proclamation (宣告) Ⅰ-150
product labeling (商品標示) Ⅴ-75
productive enterprise (生產事業) Ⅱ-373；Ⅲ-400,567
professional agents certificate (專業代理人證書) Ⅱ-589
professional association (職業團體) VIII-222
professional duties (職業上之義務) Ⅲ-340
professional infringement analysis agencies (侵害鑑定專業機構) Ⅳ-99
professional land registration agents (土地登記專業代理人) Ⅱ-589
professional services (專門職業) Ⅲ-531
Professionals and technicians (專門職業及技術人員) VI-449
Professional Knowledge (專業知識) VII-581
professions (專門職業) VII-138
professional joint practice (聯合執行業務) VIII-77
profit-making enterprise, profit-seeking enterprise income (營利事業) VI-298, 397,468；VII-39
progressive tax rate (累進稅率) VI-40；VII-333
prohibition of taking/receiving driver's license (禁止考領) VII-374
prohibitive regulation (禁止規定) Ⅱ-193
prompt compensation (儘速補償) Ⅳ-168
prompt judicial remedy (立即司法救濟) VIII-383
promulgated jointly (會銜發布) Ⅳ-730
pronounced guilty for the first time (初次受有罪判決) VIII-575
pronounced sentence (宣告刑) VI-521
pronouncement of death (死亡宣告) VI-617
proper measure (適當處分) VI-458
property dispute (財產權上之訴訟) Ⅰ-372
property lodged (提存物) Ⅰ-275
property right, property rights (財產權, 財產權利) Ⅰ-536,617；Ⅱ-239,359,539,544,668；Ⅲ-57, 153,353,531,617,772,785；Ⅳ-168, 185,281, 373；Ⅴ-17,76,210,283,432,512,604,615 625；VI-100,289,350,449；VII-25,39,80,177,486；VIII-151,182,196,282,303,370
property tax (財產稅) Ⅱ-640
proportion of agreement (同意比率) VII-513
proportional deduction method (比例扣抵法) Ⅲ-36
proportionality of various political parties (政黨比例) Ⅴ-682
proposal for an amendment (修改案) Ⅱ-715
Prosecution (檢察機關) VIII-163
Proportion of the population (人口比例) VII-608
Prosecutor (檢察官) Ⅰ-23；Ⅱ-781
prosecutors are submissive to the Executive (檢察一體) Ⅳ-326
protection of residence and migration freedom (居住及遷徙自由之保障) VII-551
protection for reliance (信賴保護) Ⅱ-699
protection of property rights (財產權之保障) VII-100
protection of physical freedom (人身自由之保障) VII-496,551
protection of status (身分保障) VII-445
protection of system (制度保障) Ⅴ-36

protection of the right to litigate (訴訟權保障) VIII-575
protection of the right to institute legal proceedings (訴訟權保障) VIII-638
protection order (保護令) Ⅳ-619
protective discipline (保護管束) Ⅳ-467
protective punishment (保護處分) VI-546
protest (聲明異議) Ⅰ-587
province (省) Ⅱ-120,727
province-governed municipality (省轄市) Ⅱ-120
provincial assembly (省議會) Ⅱ-127
provincial government (省政府) Ⅱ-127
provincial tax (省稅) Ⅱ-200
provision stipulating the imprisonment sentence (應處徒刑之規定) VII-210
provisional attachment (假扣押) Ⅳ-79
provisions of law relevant and necessary to a specific case (具體事件相關聯且必要之法條內容) Ⅲ-424
proviso (但書) Ⅱ-28
public affairs (公共事務) Ⅰ-115
public announcement (公示, 公告, 公告期間) Ⅱ-539；Ⅳ-730；VIII-196
public authority , Public Authorities (公權力) Ⅱ-326； Ⅴ-512；VII-325
public debts (公共債務) Ⅱ-459
public defender (公設辯護人) Ⅱ-333
Public Disclosure (公開揭露) VII-233
public document (公文書) Ⅰ-67,438
public easement (公共地役權) Ⅲ-57
public enterprise (公營事業) Ⅱ-171；Ⅳ-63
public expenditure (公費) Ⅰ-121
public facilities (公共設施) Ⅱ-607；Ⅲ-506；Ⅳ-143
Public Figure (公眾人物) VII-233
public functionaries, public functionary, public official, public servant (公務人員, 公務員) Ⅰ-48,98,125,177,222,226, 360,364,438,540；Ⅱ-153,171,343, 359；Ⅲ-140,324,329,346,617,628； Ⅳ-63,588； Ⅴ-646,659；VI-475；VII-233； VIII-2
public functionaries Insurance (公務人員保險) Ⅱ-190
public health insurance (全民健康保險) Ⅳ-477
public hearing (公聽會) VII-513
public housing (國民住宅) Ⅳ-426
public housing community (眷村) Ⅲ-764
public insurance pension payments (公保養老給付) VIII-2
public interest, public interests, public welfare (公共利益, 公益, 公益性) Ⅰ-613,649； Ⅱ-473,663,727； Ⅲ-117,424,531； Ⅳ-70,467,662； Ⅴ-283,328；VI-192,289, ； VIII-2, 449；VII-2,233,325,428,581,635
public interest groups (公益團體) VII-428
public law (公法上金錢給付義務) Ⅴ-303
Public Law Relations (公法關係) VII-325
public law (公法) Ⅲ-499
public law rights (公法上權利) Ⅳ-703
public legal person (公法人) Ⅱ-325；Ⅲ-635；Ⅳ-186；VI-100
public legal relationship (公法關係) Ⅳ-186
public medical service (公醫制度) Ⅳ-534
public necessity (公用需要) Ⅲ-117
public notice (公告) VII-117
public notice of the list of protected

wildlife
(保育類野生動物名錄公告) Ⅲ-622
public office, public service (公職)
Ⅰ-35,36,43；Ⅲ-617
public officials (公職人員) Ⅰ-533；Ⅳ-588
public order and good morals (公共秩序、善良風俗) Ⅲ-778
public places (公共場所) VIII-232
public powers (公權力) Ⅲ-499
public property (公有財產) Ⅲ-499
public prosecution (公訴) Ⅰ-401；Ⅱ-289
public reliance effect (公信力) Ⅴ-432
public safety (公共安全) Ⅲ-133
public school (公立學校) Ⅳ-63
public school educational personnel (公教人員) VIII-2
public schools teachers (公立學校聘任之教師) Ⅱ-343
public school teachers and employees (公立學校教職員) VIII-182
public seals (公印) Ⅰ-438
Public Sphere (公共場域) VII-233
public transportation subsidies (營運補貼) VI-512
public trust and faith (公務信守) Ⅰ-438
public utilities, public utility (公用事業, 公共利益) Ⅲ-133,315；Ⅳ-366
publicly-held corporation (公開發行公司) VI-253
public apology (公開道歉) VI-458
public welfare (公共利益, 公共福祉) Ⅲ-133；Ⅳ-186
Publications Coordinating & Administrative Task Force
(出版品協調執行小組) Ⅱ-278
publicity system (公示制度) Ⅴ-432
public law (公法) Ⅱ-359
publicly (公然) Ⅰ-313
publicly funded medical education (公費醫學教育) Ⅱ-534
publisher (發行人) Ⅰ-14
publisher of a newspaper or magazine (新聞雜誌發行人) Ⅰ-242
punishable act (可罰性之行為) Ⅳ-596
punishment (處罰) Ⅱ-733
punishment for misconduct (行為罰) Ⅴ-741
punishment for tax evasion (漏稅罰) Ⅱ-477；Ⅴ-741
punishment of dismissing from office (受撤職之懲戒處分) Ⅰ-177
punishment of imprisonment or a more severe punishment (有期徒刑以上之刑) VIII-483
punitive (裁罰性) VI-253
punitive administrative action (懲罰性行政處分) Ⅲ-9；Ⅴ-777
purchase and assumption (概括承受) Ⅲ-785
purpose of authorization (授權目的) Ⅴ-668
purpose of legislation (立法本意) Ⅰ-145
purpose-specific (合目的性) Ⅲ-279
pursuit of tax obligations pursuing (追徵) Ⅰ-303

Q

quasi-motion (準抗告) VIII-57
qualification (及格, 資格, 職業資格) Ⅲ-324,531；Ⅳ-63
qualification certificate (及格證書) Ⅰ-349
qualifications for school admission (入學資格) VI-50

qualifications to take examinations (應考資格) VII-139
qualification for employment as school staff (學校職員之任用資格) Ⅱ-205；Ⅲ-89
qualification for practice (執業資格) VII-139
qualification of a judge (法官任用資格) Ⅰ-377
Qualification Screening (檢覈) VII-139
qualification requirements (應考資格) Ⅳ-494
qualifications of specialized technical personnel (專業技術人員資格) Ⅴ-668
quantitative method in criminology (刑事計量學) Ⅴ-195
quarry (開採) Ⅱ-727
quorum (出席人數) Ⅱ-815

R

raise an objection (聲明不服) Ⅴ-647
random sample (抽查) VI-280
rank and pay scale of civil servants (公務人員俸給) Ⅱ-483
ranked military officers (常備軍官) Ⅳ-270
ranking (官階) Ⅲ-140
ratification (批准, 追認) Ⅱ-438；Ⅳ-459
ratio for reaching an agreement (同意比率) VIII-304
rational basis (合理關聯) VIII-414
rational relationship (合理關聯性) VIII-533
real estate scrivener certificate (土地代書登記證明) Ⅱ-589
real property (不動產) Ⅱ-321；Ⅳ-643
realized income (已實現之所得) Ⅱ-687
reasonable and legitimate procedure (合理正當程序) VI-135
reasonable assurance (合理確信) Ⅱ-650
reasonable compensation (合理補償) Ⅲ-293；VII-262
Reasonable Expectation (合理期待) VII-233
reasonable maximum time (合理最長期限) VII-262
reasonable nexus (合理之關聯性) Ⅴ-376
reasonable period of time (相當之期限) VI-415
re-auction (再拍賣) Ⅱ-96
re-assessed land value (重新規定地價) VI-40
Rebel, rebellion (叛亂) Ⅰ-119,267
rebellion (內亂罪) Ⅱ-760；Ⅳ-588
rebuttal evidence (反證) Ⅰ-623；Ⅱ-346
recall (召集, 罷免) Ⅱ-447；Ⅲ-406；Ⅳ-176
recapitalization registration (增資變更登記) Ⅳ-85
Receipt Issued by the ExecutionCourt (執行法院開立之收據) VIII-681
Receipt other than Government Unified Invoice (非統一發票之收據) VII-472
receive (承領) Ⅰ-163
receiving stolen property (贓物) VIII-483
recidivism (累犯) Ⅴ-195
recipient (領受人) Ⅰ-126
reclaim leasehold farmland (收回出租農地) Ⅴ-152
recommendation (推介) VI-193
recommended appointment rank (薦任) Ⅴ-659
reconsideration (再審議, 再議) Ⅰ-299；Ⅴ-646
record of conviction (刑之宣告) VII-635
recordation (recording) of superficies (地上權登記) Ⅱ-262
recordation of transfer of ownership (所有權移轉登記) Ⅱ-698
recording (登記) Ⅲ-518

recording error (登記錯誤) Ⅴ-432
recording of superficies acquired by prescription (時效取得地上權之登記) Ⅱ-544
recording office (登記機關) Ⅱ-698
recurrent right or legal interest (重複發生之權利或法律上利益) Ⅳ-485
recusal (迴避) Ⅵ-561
recusal by a judge (法官迴避) Ⅰ-449
recusal system (迴避制度) Ⅴ-470,647
Reduction of Farm Rent to 37.5 Percent (耕地三七五減租) Ⅳ-636
reduction of punishment (減刑) Ⅳ-596
reduction or exemption (減免) Ⅴ-777
reeducation and disciplinary action (感化教育、感訓處分) Ⅳ-693
re-election (再選舉) Ⅰ-58
reemployed civil servants (再任公務人員) Ⅵ-475
referendum (複決權, 公民投票, 複決) Ⅰ-56；Ⅵ-333
Referendum Act (公民投票法) Ⅵ-333
Referendum Review Committee (公民投票審議委員會) Ⅵ-333
reformatory education (矯正) Ⅱ-86
refundable (可退還的) Ⅳ-56
refusal of reimbursement (不予支付) Ⅷ-592
refusal to take sobriety test (拒絕接受酒測) Ⅶ-374
regardless (不問) Ⅷ-483
regime of compensation-by-law of elected representatives (民意代表依法支領待遇之制度) Ⅱ-299
register loss (掛失) Ⅰ-160
register of land value of owners (地價歸戶冊) Ⅵ-39
registered estate (已登記不動產) Ⅰ-209,386
registered record of absence (曠職登記) Ⅷ-251
registered share (記名股票) Ⅴ-604
registered trademark (註冊商標) Ⅰ-201；Ⅲ-772
registration of change (變更登記) Ⅱ-318
registration of ownership (所有權登記) Ⅴ-455
regular days off (例假) Ⅰ-226；Ⅷ-119
Regulation for the Registration of Lease of Farm Land (耕地租約登記辦法) Ⅰ-263
Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers (計程車駕駛人執業登記管理辦法) Ⅷ-327,483
Regulations Governing the Supervision of Insurance Solicitors (保險業務員管理規則) Ⅷ-327
regulations set and issued due to the authority of administrative agency (職權命令) Ⅳ-349
rehabilitation (勒戒, 感化教育) Ⅳ-467；Ⅵ-546
rehabilitation and compensation (回復原狀及損害賠償) Ⅰ-256
rehabilitative measure (保安處分) Ⅲ-666；Ⅳ-308
rehear (再審議) Ⅲ-19
reinstate the driver's license (再行考領駕駛執照) Ⅳ-342
reinstatement (復職) Ⅰ-229
reinvestment, re-investment (轉投資) Ⅳ-91；Ⅴ-604
reiterate (重申) Ⅱ-727
reject (駁回) Ⅱ-325；Ⅲ-20
related person (關係人) Ⅴ-647

relationship of lifetime association (永久結合關係) Ⅳ-580
relationship of official service under the public law (公法上職務關係) Ⅵ-244
relationship of relatives (親屬關係) Ⅴ-283
relative relationship (牽連關係) Ⅰ-105
relatives living together and sharing the Same Location (同一處所) Ⅶ-581
same property (同財共居親屬) Ⅳ-714
release (釋放) Ⅶ-91
relevance (關聯性) Ⅵ-373
relevant meaning of the law as a whole (法律整體之關聯意義) Ⅲ-10
relevant party (關係人) Ⅰ-126
reliability of interest（信賴利益） Ⅷ-2,428
reliance interest (信賴利益) Ⅱ-699；Ⅳ-494
relief of extraordinary appeal (非常上訴救濟) Ⅳ-137
religious organizations (宗教團體) Ⅲ-579
relocation (遷移) Ⅳ-450
relocation compensation (安遷救濟金) Ⅳ-451
rely upon in effect (實質援用) Ⅶ-428
remain on active duty (繼續服役) Ⅲ-329
remaining at the same pay grade according to the annual performance review (年終成績考核留支原薪) Ⅷ-251
remanded for further proceeding (發回更審) Ⅰ-285
re-measurement (複丈) Ⅵ-40
remediable measures (補救措施) Ⅴ-789
remedial process (救濟程序) Ⅰ-613
Remedy (救濟) Ⅶ-325
remedy in particular cases (個案救濟) Ⅷ-108
remedy in substance (實質救濟) Ⅷ-108
remittance (匯款) Ⅱ-273
removal (免職) Ⅱ-153；Ⅳ-412；Ⅴ-187
Removal from the Manufacturer's Premises at the same time (併同產製出廠) Ⅶ-363
removal of directors from office (解除董事之職務) Ⅵ-487
removal of roads not subject to urban planning (非都市計畫道路之廢止) Ⅱ-104
remove (解任) Ⅱ-326
remuneration (俸給, 報酬) Ⅱ-223；Ⅲ-140,267；Ⅳ-63
remuneration and compensation (待遇及報酬) Ⅱ-299
remuneration rank (俸級) Ⅴ-54
re-nomination (再提名) Ⅲ-186
rent of tenancy (佃租) Ⅴ-122
renewal units (更新單元) Ⅶ-512
rental (租金) Ⅱ-640
reopen the proceeding (重開訴訟程序) Ⅲ-1
repatriation (遣返/遣送回國) Ⅶ-496
repeated perpetration (再犯) Ⅴ-195
replacement of vacant seat (遞補) Ⅰ-235
report (申報) Ⅳ-176
reporter (記者) Ⅰ-20
Reporting Obligation (申報義務) Ⅶ-387
reporting of loss (掛失止付) Ⅱ-750
representation by apportionment (比例代表制) Ⅳ-2
representative body (民意機關) Ⅱ-127
representative democracy (代議民主) Ⅵ-333
representative politics (民意政治) Ⅴ-210；Ⅵ-167
reproduction (繁衍後代) Ⅷ-451
reputation of the prison (監獄信譽) Ⅷ-660
requisition (徵收) Ⅳ-79

rescind (解除) Ⅴ-512
rescission or repeal (cancellation or abolishment) (撤銷或廢止) Ⅳ-270
research and development expenses (研究發展費用) Ⅲ-400
reserve fund for retirement payment (退休準備金) Ⅴ-91
reserve military officers (預備軍官) Ⅳ-270；VII-635
reserve noncommissioned officers (預備士官) VII-635
reserved land for public facilities (公共設施保留地) Ⅱ-473
reservist (後備軍人) Ⅳ-176
reside (居住) Ⅲ-146
residence (住所) Ⅲ-526
resident military householders' resident certificates and related rights and interests (眷舍居住憑證及原眷戶權益) VIII-135
resident students (在學之學生) Ⅴ-152
residential land for own use (自用住宅用地) Ⅲ-578,719
resign (辭職) Ⅰ-1
Resolution of the Joint Meeting of the Civil and Criminal Panels of the Supreme Court (最高法院民刑庭總會決議) Ⅱ-19
resolution (決議) VII-203
resolution to amend its Article of Incorporation (變更公司章程之決議) Ⅰ-192
resolutions of dissolution or merger of the company (公司解散或合併之決議) Ⅰ-192
responsible person, responsible (負責人) Ⅱ-318；VIII-222
responsible person of the corporation (公司負責人) Ⅰ-103
responsive governance (責任政治) Ⅱ-773
restart the trial (回復訴訟程序) Ⅱ-176
restoration of co-ownership (回復共有關係) VII-15
restriction of personal freedom (人身自由之限制) VII-262
restoration of reputation (回復名譽) VI-458
restraint on the right of the people (人民權利限制) Ⅲ-9
restricted area for assembly and parade (集會遊行禁制區) Ⅲ-423
restriction of personal freedom (人身自由之限制) VII-262
restriction on people's rights (對人民權利之限制) Ⅱ-769
restriction on the people's freedoms and rights (人民自由及權利之限制) Ⅳ-730
restrictions on disability benefits (補償金發給之限制) Ⅱ-396
restrictions on entry into the country (入境限制) Ⅱ-148
restrictions on the location of a till's residence and farmland (耕作人住所與農地位置之限制) Ⅱ-529
retake/demand the return of land/ repossess (收回土地) Ⅴ-122
retired from the government for the second time (重行退休) VIII-182
retired non-duty officer in Taiwan away from his military post (在臺離職無職軍官) Ⅱ-562
retirement (退休) Ⅱ-61,359,452；Ⅳ-603；VIII-2
retirement age (退休年齡) Ⅱ-171

retirement annuity, retirement pension (退休金) Ⅰ-488,540；Ⅲ-346；Ⅳ-588；VI-306
retirement income (退休所得) VIII-2
retirement from the military (退役) Ⅱ-81
retirement seniority (退休年資) VI-475
retrial (再審) Ⅰ-479；Ⅱ-180,567；Ⅲ-20,406；Ⅴ-210；VIII-108
retroactive application of law, retroactive application (溯及適用) Ⅳ-596；Ⅴ-76,789
retroactive, retroactivity, retroactive effect (溯及既往, 溯及效力) Ⅰ-96；Ⅱ-228,396；Ⅳ-168；Ⅴ-367
re-trial (再審) VIII-109
return of land (返還土地) VIII-693
revenue (歲入) Ⅰ-593；Ⅳ-202
revenue tax (收益稅) Ⅱ-640
revenues collected and disbursed by professional associations on behalf of members (公會代收轉付) VIII-78
reverse (推翻, 廢棄) Ⅰ-258；Ⅲ-20
review (審核, 審議, 複查) Ⅰ-474；Ⅱ-273,402
review of grades (複查成績) Ⅱ-391
review of judgment (審查原裁判) Ⅲ-406
revocation, revoke (撤銷) Ⅰ-157,163；Ⅱ-727；Ⅳ-477
revocation of driver's license (吊銷駕駛執照) VIII-483
revocation of the probation (撤銷緩刑) Ⅰ-187
revoke the driver's license (吊銷駕駛執照) Ⅱ-231
rewards (獎懲) Ⅱ-171
rezoning (重劃) Ⅰ-690
right of access to the media (接近使用傳播媒體之權利) Ⅱ-612
right of action, right of instituting legal proceedings, right to institute legal proceedings, right of suit, right to bring lawsuits, right to institute legal proceedings, right to litigation, right to sue, right to instigate litigation, right of litigation (訴訟權) Ⅰ-339,372,408,452,640；Ⅱ-41,186,282,325,402,668,692, 721；Ⅲ-19,179,329,406,486,599,745；Ⅳ-99,137,357；Ⅴ-36,159,211,293, 356；VI-114,218,426,439,561,603；VII-127,167
right of an individual to select one's own name (姓名權) Ⅲ-52
right of appeal (上訴, 上訴權/抗告權) Ⅱ-250,333；VI-561
right of association (結社權) Ⅱ-663
right of contract rescission (契約解約權) Ⅴ-512
right of defense (防禦權) VIII-261
right of dien (典權) Ⅰ-297
right of election (選舉權) Ⅲ-640
rights of election, recall, initiative and referendum (選舉、罷免、創制、複決權) VI-333
rights or legal interests (權利或法律上利益) VIII-251
right of employment (工作權) VI-385
right of equality, right of equal protection (平等權) Ⅰ-587；Ⅱ-489,493,640；Ⅲ-640；VI-51,385；VII-2,399；VIII-63
right of exclusion (別除權) Ⅱ-268
right of existence, right to existence (生存權) Ⅲ-272,617；Ⅳ-548；VIII-592

right of information privacy (資訊隱私權) Ⅴ-532
right of instituting legal proceedings (訴訟權) Ⅶ-446
right of inheritance (繼承權) Ⅰ-99；Ⅲ-372
right of marks (標章權) Ⅴ-391
right of military command (軍事指揮權) Ⅲ-329
right of personality (人格權) Ⅲ-52
right of privacy (隱私權) Ⅱ-273；Ⅳ-114,373；Ⅴ-210,532
right of procedural disposition (程序處分權) Ⅴ-356
right of procedural option (程序選擇權) Ⅴ-356
right of property (財產權) Ⅳ-148；Ⅵ-298
right of property under public law (公法上財產權) Ⅴ-329
right of protection of status (身分保障權利) Ⅵ-244
rights of public law (公法上請求權) Ⅷ-89
right of recall (罷免權) Ⅲ-66
right of reputation (名譽權) Ⅵ-458
right of selfgovernment (自治權) Ⅵ-100
Right of Survival (生存權) Ⅶ-399
right of work, Rright to work (工作權) Ⅲ-133,140,812；Ⅳ-122,148；Ⅴ-604,668；Ⅵ-2；Ⅶ-233,411,581,650；Ⅷ-98,483
right on immovable property (不動產權利) Ⅰ-397
right over an immovable (不動產物權) Ⅴ-455
right to administrative appeal, right to file administrative appeal, right to lodge administrative appeal , right of instituting administrative appeals (訴願權) Ⅱ-41,186；Ⅲ-329；Ⅶ-167
right to assume public service, right to hold public office, right to serve in public office (服公職權, 服公職之權利) Ⅰ-415,558；Ⅱ-42；Ⅴ-54,585
right to award and discipline (賞罰權) Ⅲ-329
right to be notified in accordance with the law (受合法通知之權利) Ⅵ-603
right to carry out a voluntary investigation (主動調查權) Ⅳ-715
right to claim in subrogation (代位求償權) Ⅴ-400
right to claim retirement pensions (請領退休金之權利) Ⅴ-409
right to claim the removal of the interference (除去妨害請求權) Ⅰ-386
right to confront with the witness (與證人對質之權利) Ⅱ-733
right to criminal punishment (刑罰權) Ⅳ-548
right to defend (防禦權) Ⅴ-159
right to education (受教育權受, 教育之權利) Ⅵ-51；Ⅶ-167
right to equal treatment (平等權) Ⅷ-396
right to equality (平等權) Ⅷ-451
right to examine the dossier (閱卷) Ⅷ-260
right to health (健康權) Ⅷ-592
Right to hold public office (服公職權) Ⅶ-635
Right to Informational Self-Determination (個人資料自主權) Ⅶ-233
Right to Litigate (訴訟權) Ⅷ-353
right to institute administrative appeals (訴願權) Ⅵ-534
right to institute legal proceedings (訴願權) Ⅷ-260
right to litigation (訴訟權) Ⅶ-127,167

Right to property (財產權)
VII-512,617,625,650；VIII-206,414,533
right to redeem (贖回不動產之權利) Ⅳ-366
right to remain silent (緘默權) Ⅴ-159
right to repossession (回復請求權) Ⅰ-209
right to same-sex marriage
(同性婚姻權) VIII-451
right to self-determination
(自主決定權) VI-458
right to serve in public service
(從事於公務之權利) Ⅲ-812
right to take examinations (應考試權) Ⅰ-558
right to take public examinations and to hold public offices
(應考試服公職權) Ⅳ-485
right to the benefit of justice
(司法上受益權) Ⅱ-28
right to the estate (遺產上權利) Ⅲ-372
right to the exclusive use of trademark
(商標專用權) Ⅲ-820
right to travel (行動自由) Ⅳ-373
right to work (工作權) Ⅰ-415；Ⅲ-599；Ⅴ-194；VI-193,487；VII-374,617,625,650；VIII-98,282
rights guaranteed by the Constitution
(憲法上所保障之權利) Ⅲ-772
rights of lodging complaints and instituting legal proceedings
(訴願及訴訟之權利) Ⅲ-387
rights to defend (防禦權) VI-439
rights to use and collect benefits
(使用收益權) Ⅱ-321
river (河流) Ⅱ-429
roadways (道路) Ⅱ-104；VIII-232
road planning (道路規劃) Ⅱ-104
Road Traffic Management and Penalty Act
(道路交通管理處罰條例) VIII-483
Road Traffic Management Penalties Regulation
(道路交通管理處罰條例) VII-374
Road Traffic Safety Regulation
(道路交通安全規則) VII-374
road traffic regulation
(道路交通管理) Ⅳ-130
robbery (勒贖, 強盜) Ⅱ-142；Ⅴ-194
ROC identity card (國民身分證) Ⅴ-442,532
ROC President (中華民國總統) Ⅲ-660
room for discretion
(自由形成之空間) Ⅳ-704
rule of equal protection
(平等保護原則) Ⅴ-647
rule of income and disbursement realization
(收付實現原則) Ⅰ-623
rule of law or constitutional state
(法治國) VIII-2
rule-of-law nation (法治國) Ⅳ-74；Ⅴ-36,570
rule-of-law state (法治國) VIII-592
ruling (裁定) Ⅰ-322,354,467；Ⅲ-20
ruling nolle prosequi (不起訴處分) Ⅰ-299
running away from home (逃家) VI-546

S

safety of the passengers (乘客安全) VIII-483
Salary / award (薪俸) Ⅰ-121,195
salary cut, salary decrease (減俸)
Ⅲ-346；Ⅴ-470
salary income (薪資所得) VIII-396
Salary Income Special Deduction Amount
(薪資所得特別扣除額) VIII-396
salary level (薪資水準) Ⅱ-456
salary repaid upon reinstatement

(復職補發薪金) Ⅱ-687
sale (變賣) Ⅱ-628
sale and dien (出賣及出典) Ⅰ-253
sale of goods or services (銷售貨物或勞務) Ⅳ-56
sales certificate (銷售收入) Ⅶ-220
sales income (銷售收入) Ⅵ-512
sales tax; business tax (營業稅) Ⅲ-36；Ⅷ-626,681
sales voucher (銷售憑證) Ⅱ-90
Same Location (同一處所) Ⅵ-581
same offenses (同一之罪名) Ⅰ-336
same or similar trademark (相同或近似商標) Ⅰ-41
sanction (制裁) Ⅰ-62
sanction of segregation (隔離處分) Ⅷ-57
satisfying the statutory requirements (符合法定要件) Ⅶ-203
scholastic aptitude evaluation (學力評鑑) Ⅳ-652
school teachers and staff (學校教職員) Ⅱ-452
science and culture (科學與文化) Ⅲ-608
Science-based Industrial Park (科學工業園區) Ⅳ-194
scope defined by the Legislature at its discretion (立法機關自由形成之範圍) Ⅳ-714
scope of "public office" (公職範圍) Ⅰ-40,78
scope of authorization (授權範圍) Ⅴ-668
scope of constitutional interpretation (大法官解釋憲法之範圍) Ⅲ-424
scope of discretion (裁量範圍) Ⅱ-61
scope of legislative discretion (立法形成之範圍) Ⅲ-424；Ⅴ-634
scope of proper and reasonable taxation (正當合理之課稅範圍) Ⅵ-208
second retirement (重行退休) Ⅵ-475
second trial (第二審) Ⅱ-333
secret witness (秘密證人) Ⅱ-733
Secretary General (書記長) Ⅰ-15
secure status, security of status (身分保障) Ⅴ-54,471
securities (有價證券) Ⅵ-192,253
securities exchange (證券交易) Ⅶ-301
securities exchange tax (證券交易稅) Ⅶ-301
securities exchange income tax (證券交易所得稅) Ⅲ-259；Ⅶ-301
securities exchange tax, securities transaction tax (證券交易稅) Ⅲ-259,828；Ⅳ-672
securities investment advisory enterprise (證券投資顧問事業) Ⅵ-192
securities market (證券市場) Ⅳ-672
security (保障, 擔保, 證券) Ⅰ-93,485,658；Ⅱ-402；Ⅲ-387
security in transactions (交易安全) Ⅴ-455
security of the State (國家安全) Ⅳ-459
security transaction (證券交易) Ⅰ-649
seek redress pursuant to the law (依法請求救濟) Ⅲ-772
seized properties (沒收之財產) Ⅰ-69
seizure (查緝) Ⅲ-840
selected heir (選定繼承人) Ⅵ-617
selection (產生方式) Ⅷ-223
selection of filing method for deduction (申報減除方式之選擇) Ⅴ-732
self-cultivation (自耕) Ⅰ-263
self-discipline principle (自律原則) Ⅲ-359
self-expression (表現自我) Ⅳ-114
self-farming landowners (自耕農) Ⅱ-699

self-fulfillment (自我實現) VI-193
self-governance (自律, 地方自治) Ⅱ-715；VIII-282
self-governance (私法自治) VIII-120
self-governing regulations (自治規章) VI-100
self-governing affairs, self-government matters (自治事項) Ⅲ-860；Ⅳ-288
self-governing body (自治團體) VI-100
self-governing financial power (財政自主權) Ⅳ-534
self-governing laws and regulations (自治法規) Ⅳ-288
self-governing rules (自治規則) Ⅳ-289
self-governing statutes (自治條例) Ⅳ-289
self-government (自治) Ⅲ-635
self-government rules (自治規章) VI-51
self-humiliation (自我羞辱) VI-458
Self-implemented urban land consolidation (自辦市地重劃) VIII-303
self-realization (實現自我) Ⅳ-114
self-responsible mechanism (自我負責機制) Ⅳ-534
self-sustainability (自力營生) VIII-396
sender (寄件人) Ⅲ-315
Senior Examination (高等考試) VII-138
seniority (年資, 工作年資) Ⅳ-63；VI-475
Sentencing Act (罪刑法定) Ⅴ-11
separate computation of tax liability (單獨計算稅額) VII-333
separate property (特有財產) Ⅲ-124
separate labor-management agreement (勞雇雙方另行約定) VIII-119
separate ruling (裁定) Ⅰ-369
separating employee (離職人員) Ⅲ-353
separation of five-power system (五權分立制度) Ⅱ-6
Separation (分居) VII-333
separation of household and police (戶警分立) Ⅴ-54
separation of ownership and control (企業所有與企業經營分離) Ⅱ-326
separation of power between the adjudication and the prosecution (審檢分隸) Ⅰ-432
separation of powers (權力分立) Ⅱ-436, 773；Ⅲ-586；Ⅴ-470,682；Ⅳ-326；VI-148,333,521
Separation of Powers and Checks and Balances (權力分立與制衡) VIII-163
serious violation of the law (重大違背法令) Ⅱ-176
serve currently (兼任) Ⅰ-129
service (勞務, 送達) Ⅲ-36；Ⅴ-512；VIII-196
service of judgment (判決之送達) Ⅰ-527
service of process (送達) VI-534,603
serving sentences in jail (刑期開始執行) Ⅰ-260
servitude (地役權) Ⅳ-643
sexual exploitation (性剝削) VI-1
sexual orientation (性傾向) VIII-451
sexual transaction (性交易) VI-1
settle accounts for years of service (年資結算) Ⅱ-549
settlement (和解) Ⅰ-678；Ⅱ-52
set the enforceable sentence (定應執行刑) VII-110
several offences (數罪) Ⅰ-309
severance or separate-management contract (分割或分管契約) Ⅱ-539
severance payments (離職給與) Ⅱ-549

severe harm (重大損害) Ⅴ-442
sexual and marital discrimination (性別及已婚之差別待遇) Ⅲ-560
sexual/gender equality (男女平等) Ⅴ-789
sexually explicit language (性言論) Ⅴ-747
sexually explicit material (性資訊) Ⅴ-747
sexual transactions (性交易行為) VI-594
share the increment of land with people in common, sharing increments with the people in common (漲價歸公) Ⅰ-457,499
shareholder (股東) Ⅴ-604
shareholding percentage (股權成數) VI-253
shares (股票) Ⅴ-625
shares (應有部分) Ⅳ-643
sharing of financial responsibility (財政責任分配) Ⅳ-534
shipwreck (船舶失事) Ⅰ-197
shortage (貨物) Ⅱ-414
short-term imprisonment sentence (短期自由刑) VI-521
significant difference in essence (重大之本質差異) Ⅴ-765
significant impact (重大影響) VII-167
Significant Matter (重大事項) VII-486
significant relevance (重要關聯性) VIII-303
simplifying the taxation procedures (簡化稽徵手續) Ⅱ-67
simultaneously (同時地) Ⅰ-145
single conduct (一行為) VIII-626
Single Electoral Constituency with Two Votes System (單一選區兩票制之並立制) VIII-64
sixteen percent of the government-declared value of the land (土地公告現值之百分之十六) VII-461
skipping classes (逃學) VI-546
slander (一般誹謗) Ⅳ-114
small passenger car (營業小客車) Ⅴ-194
smuggling (走私) Ⅰ-199
smuggling of controlled articles (私運管制物品) VII-117
smuggling goods (私運貨物) Ⅱ-219
snatching (搶奪) Ⅴ-194
sobriety test (酒測) VII-374
social and economic status (社會及經濟地位) Ⅱ-663
social decency (社會風化) Ⅴ-747
social insurance (社會保險) Ⅱ-378；Ⅳ-629；Ⅴ-91,634；VII-160
social insurance program (社會保險制度) Ⅳ-704
social order (社會秩序) Ⅱ-663；Ⅲ-424；Ⅳ-70
social relief and aid (社會救助) Ⅳ-534
social security (社會安全) Ⅳ-524,629,704；Ⅴ-634
social welfare (社會福利) Ⅲ-764
social welfare activities (社會福利事項) Ⅳ-534
social welfare program (社會福利制度) Ⅳ-629
Soil and Groundwater Pollution Remediation Act (土壤及地下水污染整治法) VII-625
solo professional practice (單獨執行業務) VIII-77
Soliciting Insurance (招攬保險) VIII-327
sound development of personality (人格健全發展) VIII-451

Speaker (議長) Ⅰ-568

special examinations (特種考試) VII-138
special (Executive-Yuan-governed) municipality (直轄市) II-120
special budget (特別預算) I-688；III-608
special common levies (特別公課) III-299；IV-155
special duty to the State (對國家之特別義務) VI-244
special law (特別法) II-640；III-146
special political appointee (政務人員) V-329
special power relationship (特別權力關係) VI-426；VII-127
special sacrifice (特別犧牲) III-293,392；VII-2；VIII-434
special tax for education (教育捐) II-524
special tax rate (特別稅率) V-777
specialist (專門職業人員) IV-494
specialty premium for judicial personnel (司法人員專業加給) V-470
specific area (特定地區) I-205
specific deterrence (拘禁) II-733
specific identity (特定身分) I-181,214
specific kind of businesses under certain circumstances (特定情形之某種事業) I-205
speed limit (行車速度) I-655
spirit of democracy (民主精神) VII-513
spirit of law (法意) I-157
sponsor (提案人) VI-333
spouse (配偶) II-37；IV-580,741；V-283
spot check (臨檢) VII-374
stability of law (法安定性) V-647
stability of taxation (租稅安定) V-732
stability of the legal order, stability of the order of law (法律秩序之安定) II-52,245；III-2
Stalking (跟追) VII-233
stall, vendor's stand (攤位) IV-662
stamp duty (印花稅) II-1
standard deduction (標準扣除額) V-732
Standard Land Value Determination Committee (標準地價評議委員會) I-217
standard of classification (分類標準) VIII-151
standard of working condition (勞動條件) III-834
standards of emission (排放標準) III-278
standard of review (審查標準) VIII-451
standing director (常務理事) VIII-223
starting point of the period during which application or petition for review may be filed (移請、聲請再審議期間起算點) III-486
state compensation (國家賠償) I-672；II-467；III-650,778；VI-18；VII-2
state control (國家管制) VIII-120
statements of objective facts (客觀意見之陳述) V-75
state-owned company (公營公司) II-325
state-owned enterprise, state-operated business, state-owned organization (國營事業, 公營事業, 公營事業機構, 公營事業機關) I-16,43,44,48,77,84,127,173,195；II-325；III-315；IV-603；VIII-700
State-owned Woodland (國有林地) VII-325
state secrets privilege (國家機密特權) VI-66
stationary pollution source (固定污染源) III-299
status (身分) III-329
statute of limitation (時效, 消滅時效制度)

Ⅰ-73,294；VIII-89,434
statute of limitations (時效期間) Ⅱ-646
statute of limitations for exercising the power to correct (懲處權行使期間) Ⅴ-187
statute of limitations for exercising the power to discipline (懲戒權行使期間) Ⅴ-187
statutory authorization (法律授權) Ⅱ-524；Ⅲ-36
statutory bill (法律案, 法律提案) Ⅰ-6,432；Ⅱ-773
statutory blood relatives (擬制血親) Ⅰ-64
statutory budget (法定預算) Ⅳ-202
statutory cause for a retrial (法定再審事由) Ⅰ-527
statutory duty (法律上義務) Ⅱ-193
statutory evidentiary methods (法定證據方法) Ⅴ-159
statutory fund (法定經費) Ⅴ-470
statutory heir (法定繼承人) VI-617
statutory investigative procedure (法定調查程序) Ⅴ-159
statutory peremptory period (法定不變期間) Ⅰ-577
statutory period (法定期間) Ⅱ-28
statutory punishment (法定刑) VI-127
statutory reservation (法律保留) VII-138
statutory sentence (法定刑) VII-210
statutory taxpayer (納稅義務人) VII-177
stay (停止執行) Ⅱ-268
stock (股票) Ⅴ-604
stock dividend (股利) Ⅴ-626
stock value (股票價值) Ⅴ-626
stolen property (贓物) Ⅰ-166
strict scrutiny (較為嚴格之審查) VI-51
structural engineer (結構工程科技師) Ⅲ-133
student discipline (學生懲處) Ⅱ-721
student petitions (學生申訴) Ⅳ-652
subdivision of co-owned land (共有土地分割) Ⅰ-420
subject matter of enforcement (執行標的) Ⅴ-807
subject of litigation (訴訟主體) Ⅴ-356
subject of rights (權利主體) Ⅴ-356
subject of the offense (犯罪主體) Ⅰ-669
subjective effect (主觀之效力) Ⅳ-714
subjective eligibility (主觀條件) Ⅴ-194
subjective requirements (or qualifications) (主觀條件) VII-411
subjective unlawfulness (主觀不法) VI-127
Subordination (從屬性) VIII-327
subordinate sentence (從刑) Ⅰ-82
subordinated bank debentures (bonds) (次順位金融債) VII-70
subsequent marriage (後婚姻) Ⅳ-557
substantial certainty effect (實體上確定力) Ⅰ-339
substantial risk (實質風險) VIII-483
substantial public interests (重大公益) Ⅴ-75
substantial relationship, substantial relevance , substantial relation (重要關聯性, 實質關聯) Ⅳ-373；VI-51；VII-315,333,513；VIII-451
substantially related (實質關聯) VIII-483
substantive equality, substantial equality (實質平等) Ⅴ-719,765；VII-70
substantive gender equality (兩性地位實質平等) Ⅲ-560
substantive law judgment (實體判決) Ⅳ-714
substantive taxation (實質課稅) Ⅴ-424
substituting payment or fee in substitute

(代金) VIII-42
substitutional interest (代替利益) Ⅳ-79
substitutional object (代位物) Ⅳ-79
Suburban Community (Town, Precinct) Administration Office's Committee of Farmland Lease (鄉鎮(區)公所耕地租佃委員會) Ⅰ-263
suburban roads (郊外道路) Ⅰ-655
substantive due process (實質正義) VI-289
successful completion of a full internship (實習期滿成績及格) VIII-509
successive acts (連續數行為) Ⅰ-336
successor (派下員) VIII-151
suffrage, suffrage rights (選舉權), (參政權) Ⅱ-489；Ⅲ-66；VIII-63
summon (傳喚) Ⅱ-78
summary procedure (簡易程序) VI-113
sunset provision (落日條款) Ⅴ-329
superficies (地上權) Ⅱ-321；Ⅲ-113,518；Ⅳ-643
supervision (監督) Ⅱ-273
supervisor (監察人) Ⅰ-173,195；Ⅴ-283；VI-253
supervisory power of judicial administration (司法行政監督權) Ⅳ-326
supervisory relationship (監督關係) Ⅱ-326
supplement budget (追加預算) Ⅰ-135
supplement of legal loopholes (法律漏洞之補充) Ⅴ-789
supplemental interpretation (補充解釋) VII-203；VIII-109
supplementary compensation for pension and other cash benefits (退休金其他現金給與補償金) Ⅳ-281
supplementary interpretation (補充性之解釋, 補充解釋) Ⅴ-367,659；VIII-57,352
supplementary orders, supplementary provision, supplementary regulation (補充規定) Ⅱ-628；Ⅳ-459；Ⅴ-604
Support (扶養) VII-315
Supreme Court (最高法院) Ⅱ-567
supreme judicial agency of the country (國家最高司法機關) Ⅰ-377
surcharge for late filing (滯報金) Ⅱ-573
surcharge for non-filing (怠報金) Ⅱ-573
suretyship (保證) Ⅰ-103
surplus (公積) Ⅱ-373
surplus water toll (餘水使用費) VI-100
surrenders (拋棄) Ⅰ-99
survival rights (生存權) Ⅲ-700
survivor allowance (遺屬津貼) Ⅳ-524
survivor relief (撫卹) Ⅱ-171
survivor's benefits (遺屬利益) Ⅳ-524
survivor's compensation (撫卹金) VIII-700
suspect (嫌疑犯) Ⅰ-269
suspend the driver's license (吊銷駕駛執照) Ⅳ-342
suspend the pending procedure (停止訴訟程序) Ⅱ-650
suspense of application (停止受理) Ⅱ-414
suspension (停役) Ⅱ-81
suspension for taking an outside position (外職停役) Ⅱ-81
suspension from office (停職) VI-487
suspension from practice (停業處分) Ⅳ-477
suspension of duty (停止職務) Ⅰ-229
suspension of issuing notice of tax payment (暫緩核發納稅通知書) Ⅲ-758
suspension of punishment (緩刑) Ⅰ-98,260

suspension of professional practice registration certificate (吊扣執業登記證) VIII-483
suspension or discharge of official duties (停職) Ⅰ-377
synthetic narcotics and their precursor compounds (化學合成麻醉藥品類及其製劑) Ⅱ-682
system of guided approval (準則主義許可制) Ⅲ-423
systematic construction (體系解釋) Ⅴ-471
systemic justice of the legal regime (Systemgerechtigkeit; 體系正義) VI-603

T

Taipei Municipal Government (臺北市政府) Ⅳ-565
Taiwan Forestry Bureau (臺灣省林務局) Ⅰ-405
Taiwan Province (臺灣省) Ⅱ-25
Taiwan Provincial Government (臺灣省政府) Ⅰ-665
Taiwan Tobacco and Monopoly Bureau (臺灣省菸酒公賣局) Ⅳ-603
take cognizance of (受理) Ⅱ-558
take into custody (管收) Ⅱ-305
takeover of the bank (接管銀行) Ⅲ-794
taking (徵收) Ⅰ-573,613
tariff number (稅則號別) Ⅱ-402
tax (稅捐, 稅) VI-534；VII-177
tax assessment data (稽徵資料) Ⅱ-90
tax authority (稅捐機關) Ⅲ-380
Tax Avoidance (規避稅負) VII-399
tax base (稅基) VII-428
tax benefit/relief (租稅優惠, 稅捐優惠) Ⅱ-158；Ⅲ-146；Ⅳ-672
tax burden (租稅, 稅負) Ⅲ-146,380,828
tax certification (繳稅證明) Ⅰ-67
tax collection office(稽徵機關) Ⅰ-623；Ⅲ-380
tax credit; credit against tax (抵減稅額) Ⅲ-400
tax deduction (扣除額, 稅捐扣除額) Ⅱ-388；Ⅲ-309
tax deferral (租稅緩課) Ⅴ-604
tax denomination (稅目) Ⅰ-623；Ⅲ-146
tax due (應納稅額) Ⅲ-36；VII-39
tax duty (租稅義務) VI-449
tax exemptions for supporting dependents (扶養親屬免稅額) VII-288,289
tax evasion , Tax Evasion (逃漏稅, 逃漏稅捐, 逃漏稅款, 漏稅) Ⅰ-303；Ⅱ-346,477, 486,573；Ⅲ-36；VII-387
tax exemption (免稅, 免稅額) Ⅱ-388,676；Ⅳ-106；Ⅴ-615
tax fairness (租稅公平) VII-428
tax items (租稅項目) Ⅲ-146
tax levy (稅捐稽徵) Ⅳ-392
Tax Levy Act (稅捐稽徵法) VI-298
tax object (租稅客體) VI-512
tax payable (應納稅額) VI-468
tax payment (稅款) Ⅲ-387
tax plan (稅務規畫) Ⅴ-604
tax privilege (賦稅優惠) Ⅲ-567
tax rate applicable to residential land for own use (自用住宅用地稅率) Ⅲ-719
tax rates, tax rate (稅率) Ⅰ-623；Ⅱ-524；Ⅲ-146
tax reduction and exemption, tax reduction or exemption, tax relief (稅捐減

免, 減稅或免稅, 租稅減免)
Ⅲ-146,259,578；Ⅳ-392,672,681
tax refund (退稅) Ⅲ-719
tax returns (申報納稅) Ⅲ-309
tax withholder (扣繳義務人)
Ⅱ-385,439 ；VII-39
tax withholding (扣繳) Ⅱ-385
tax withholding statement (扣繳憑單) VII-617
taxable income (課稅所得額) Ⅲ-567
taxable objects (租稅客體) Ⅴ-626
taxable year (課稅年度) Ⅰ-530；Ⅲ-146
tax audit (稅務查核) VI-280
taxation (租稅, 課稅) Ⅲ-259；Ⅴ-615
taxation agency (稽徵機關) Ⅱ-67
taxation by capacity (量能課稅) VII-301
taxation decree (課稅處分) Ⅱ-245
taxation obligation (納稅義務) Ⅱ-524
taxation policies (租稅政策) Ⅴ-626
taxation in accordance with the law
(租稅法律主義) VII-428
tax-exempt；tax exemption (免稅) Ⅱ-373
tax filing obligation (申報義務) VI-501
taxi (計程車) VIII-483
taxi driver (計程車駕駛人) VIII-483
taxing authority, tax collection agency ,
tax collection authority
(稅捐稽徵機關, 稽徵機關)
Ⅰ-629；Ⅱ-346,594；Ⅲ-36；
VI-280,298,397,407
taxing power (核課權) Ⅱ-442
taxpayer, taxpayers, taxwithholder (納稅義務人)
Ⅰ-499；Ⅱ-245；Ⅲ-146；Ⅴ-604,741
VI-280,449；VII-39,177,315
taxpayer's participation in the tax collection
procedure
(納稅義務人參與稅負稽徵程序) Ⅴ-732
taxpaying ability (稅負能力) Ⅴ-615
taxpaying bodies, taxpaying body (納稅
主體) Ⅰ-623；Ⅲ-146
Teacher (教師) VII-486
teachers serving concurrently as administrators
of school affairs
(兼任學校行政職務之教師) Ⅱ-343
teachers'morals and dignity (師道) VII-411
teaching evaluation (教師評量) VIII-251
technicians (技工) Ⅱ-663
teleological interpretation (目的解釋) Ⅳ-236
temporary detention (暫時收容) VII-496,551
temporarily maintain the status quo
(定暫時狀態) Ⅱ-558
temporary entry (短期停留) Ⅲ-537
temporary job (臨時工作) Ⅰ-125
temporary measure (暫時性措施) Ⅲ-133
tenancy (租賃) Ⅲ-272
tenant (承租人) Ⅰ-136
tenant farmer, tenant-farmers, tenant
(tien) farmer (農地承租人, 佃農)
Ⅰ-253；Ⅲ-272；Ⅳ-105；Ⅴ-107,122
tenure (終身職) Ⅰ-377
term extension (延長任期) Ⅳ-2
term of contract performance (履約期間) VIII-42
term of the Presidency (總統任期) Ⅰ-38
terminate (終止) Ⅰ-136；Ⅴ-512
terminate unilaterally (一方終止) Ⅰ-171
termination of business (廢止營業) Ⅲ-820
test subjects (應試科目) VII-139
testify (作證) Ⅱ-78
the Administrative Court (行政法院) VII-279
the benefit of not paying on time
(消極利益) VIII-414

the case for which the applicant sought a Constitutional Interpretation（Judicial Interpretation）(原因案件) VIII-342
the cases for which an Interpretation is sought (原因案件) VIII-108
the court ordering detention (裁定羈押之法院) VIII-57
the decision in a grievance proceeding (申訴決定) VIII-57
the full amount of the expenses is listed as capital expenditures (全額列為資本支出) VII-428
the freedom to choose an occupation (職業自由) VII-138
the inability to earn a living (無謀生能力) VII-315
the general principle of legal interpretation (一般法律解釋方法) VII-289
the number of trial instances (審級) VI-268
the partition of national territory (分裂國土) VI-319
the polluter pays for his own pollution (污染者付費) VII-625
the power to design and hold examinations (考試權) VII-138
the principle of clarity of authorization of law (法律授權明確性原則) VIII-232
the principle of clarity on criminal penalties (刑罰明確性原則) VII-117
the principle of clarity and accuracy of authorization of law (授權明確性) VII-117
The principle of double jeopardy (一行為不二罰原則) VIII-626
the principle of matching income with costs and expenses (收入與成本費用配合原則) VII-428
the principle of equality (平等原則) VII-315
the principle of equality of arms (武器平等原則) VIII-261
the principle of legal reservation （the principle of statutory reservation） (法律保留) VIII-370
the principle of presumption of innocence (無罪推定原則) VI-426
the principle of punishment in proportion to responsibility (責罰相當) VII-650
the principle of statutory reservation (法律保留原則) VIII-182,232
the principle of taxation by law (租稅法律主義) VII-289
the professional judgment (專業判斷) VII-139
the principle of proportionality (比例原則) VII-138；VIII-509,533,626
the purpose of enforcing prison sentences (監獄行刑目的) VIII-638
the recognition of academic degrees from the mainland China area (大陸地區學校學歷認可) VII-289
the registration of partition of the jointly owned property (共有物分割登記) VII-15
the principle of legal reservation (法律保留原則) VIII-89
the right of litigation (訴訟權) VIII-57
the right of taking examinations (應考試權) VIII-509
the right to access court files (閱卷權) VI-218
the right to appear and be heard (到場陳述意見之權利) VI-217
the right to confront and examine witnesses

(對質詰問證人的權利) VI-217
the right to defend oneself in a legal action (訴訟上防禦權) VI-218
the right to equal protection (平等權) VIII-509
the right to property (財產權) VIII-89,434,592
the right to take examinations (應考試權) VII-138
the right to work (工作權) VII-138；VIII-509,592
the same law or regulation (據以聲請(案件)) VII-203
the subject case for the petition (同一法令) VII-203
the standards used to determine who passes the examinations and who does not (及格方式) VII-139
the Valueadded and Non-value-added Business Tax Act (加值型及非加值型營業稅法) VI-501
third instance (第三審) Ⅰ-105
threshold for political parties (政黨門檻) VIII-64
tien (佃) Ⅴ-107
tillage (耕地) Ⅰ-573
time for journey to the court (在途期間) Ⅱ-28
time force and effect (時間效力) Ⅴ-367
Timely and Effective Remedy (及時有效救濟) VIII-353
timely and effective remedies (及時有效救濟) VIII-639
timely remedy (適時救濟) VII-127
timely reorganization (限期整理) VIII-99
title transfer documents (權利移轉證書) Ⅰ-239
to convert an imprisonment penalty to a fine sanction (易科罰金) Ⅱ-56
to exercise the right of claims (行使債權) Ⅰ-205
to file an objection (聲明異議) Ⅱ-56
to impose a penalty (罰鍰制裁) VII-617
to perform obligations (履行債務) Ⅰ-205
to terminate the lease contract of leased farmland (出租耕作終止租約) Ⅰ-382
tortious acts, Tort (侵權行為) Ⅰ-672；VII-233
Tolerable Limitation of Common Idea (社會通念所能容忍之界限) VII-233
total amount of the increased land value (土地漲價總數額) Ⅱ-239
total annual consolidated income (全年綜合所得) Ⅰ-530
total annual expenditure (歲出總額) Ⅱ-120
total budget (預算總額) Ⅰ-688；Ⅱ-120；Ⅲ-608
total calculated incremental value of land, total incremental value of land calculated (土地漲價總數額之計算) Ⅰ-457,523
total income (收入總額) Ⅴ-615
total increased price of the land (土地漲價總數額) VI-209
total number of Delegates (代表總額) Ⅰ-152
trademark (商標) Ⅱ-646；Ⅳ-515
Trademark Bureau (商標局) Ⅰ-126
trademark infringement (商標侵害) Ⅲ-772
trademark registration (商標註冊) Ⅰ-41
trademark right (商標權) Ⅴ-319
traffic safety (交通安全) Ⅰ-655
traffic safety lesson (道路交通安全講習) Ⅲ-174
Trained Class B Militiamen (已訓乙種國民兵) Ⅳ-317
training in clinical practice

(臨床實作訓練) VIII-509
transactions in ownership to real property (不動產所有權交易) IV-643
transfer (轉任, 轉嫁) IV-63；VII-220
transfer and promotion (陞遷) V-659
transfer by inheritance (繼承移轉) II-32
transfer to lower rank or lower grade (降級或減俸) III-752
transferee (承受人) II-698
transferee of farmland (農地承受人) V-152
Transfer of Rights (權利變換) VII-512
transition clause, transitional provision, transitory provision (過渡條款) V-37,54,76,329,585,789
transition period (過渡期間) IV-270,399
transparency (透明) IV-2
transportation (運輸, 交通事業) I-18；VIII-206
transport of benefits (利益輸送) VI-244
transshipment manifest (轉運艙單) III-840
traveler (旅客) VII-25
treason (外患罪) II-760；IV-588
treasure bond (國庫債券) III-695
Treasury (國庫) II-467；III-499
treasury bill (國庫券) II-459
treaty (條約) II-438
trial (審問, 審判) II-733,782；V-303；VII-325
trial on matters of fact (訴訟程序事實) II-567
trial-instance (審級制度) V-36
trust receipt (信託占有) I-669
trustee in bankruptcy, bankruptcy trustee (破產管理人) II-305
TV Tuner (電視調諧器) VII-363

U

unalterable (不可補正) II-333
unauthorized possession (無權占有) III-518
unbearable mistreatment cohabitation (不堪同居之虐待) II-657
unconstitutional (違憲) II-86,650
underground facilities (地下設施物) III-392
underground tunnel (人行地下道) III-174
undetected offenses (未曾發覺之犯罪) I-166
underinclusive (規範不足) VIII-451
undistributed earnings, undistributed profits (未分配盈餘) III-733；V-604,626,741
undue profit (不法之利益) I-305
unfair advantage (不當利益) II-516
unfair competition (不正競爭) VI-244
unfavorable effects similar to punishments (類似處罰之不利益效果) VIII-533
unified interpretation (統一解釋) I-3,492；VIII-120,327,370
uniform invoice (統一發票) II-15,90,477；VII-177
uniform serial number (統一編號) II-90
unilateral administrative action (單方行政行為) III-278,499
United Nations (聯合國) I-12
United Nations Declaration on the Rights of Indigenous Peoples (聯合國原住民族權利保障宣言) VIII-42
unity of application of law (法律適用之整體性) IV-682
universal acceptance (概括承受) III-794
university self-government (大學自治) II-705；III-512；IV-652；VI-50；VII-167
unjust enrichment in public law (公法上之不當得利) IV-155
unlawful complaint (告訴不合法) I-87

unlawful speech (不法言論) Ⅰ-248
unlisted companies (未上市公司) Ⅳ-384
unregistered estate (未登記不動產) Ⅰ-209
upgrading industries (產業升級) Ⅳ-91
upper limit of borrowings (舉債之上限) Ⅱ-459
urban lands (市地) Ⅰ-690
urban plan, urban planning (都市計畫) Ⅰ-354；Ⅱ-104,429,473,607；Ⅲ-96,506；Ⅳ-143；VIII-353
Urban Renewal Act (都市更新條例) VII-512
Urban Renewal Business Plan (都市更新事業計畫) VII-512
Urban Renewal Business Summary (都市更新事業概要) VII-512
urban roads (市區道路) Ⅰ-613
Urgent Assembly (緊急性集會) VIII-29
urgent circumstances (急迫情形) Ⅴ-346
urging the performance (督促履行) VIII-414
usufruct (用益物權) Ⅲ-518
use of other modes of transportation (使用其他交通工具) VII-374

V

vacate (註銷, 撤銷, 遷離) Ⅰ-285；Ⅱ-727；Ⅳ-450
vacuum in the law on a particular issue (法規真空) VIII-108
valid legal procedure (正當法律程序) Ⅴ-36
validated taxation (核實課稅) Ⅴ-615
validity of an explanation (解釋之效力) Ⅰ-427
value judgment (價值判斷) Ⅳ-580
value of lease of the land (土地租賃權價值) Ⅴ-107
value of the estate (遺產價值) Ⅱ-354
value-added (加值型) VII-177
value-added sales tax; value-added business tax, (加值型營業稅) Ⅲ-36；VII-472
Value-Added and Non-Value-Added Business Tax Act (加值型及非加值型營業稅法) VII-387
value-added tax (加值稅) Ⅱ-628
value-declared mail (報值郵件) Ⅲ-315
value-insured mail (保價郵件) Ⅲ-315
venue of the court (法院所在地) Ⅱ-28
Verhltinsmigkeitsprinzip (principle of proportionality) (比例原則) Ⅳ-185；VI-253,319,458,487
vested interest (既有利益) Ⅴ-122
vehicle operator (汽車駕駛人) VII-374
Vice President (副總統) Ⅲ-186
vicinity of watercourses (行水區) Ⅱ-429
victim (被害人) Ⅳ-620
violation of constitution (違憲) Ⅰ-17
violation of mandatory or prohibitive regulations (違反強制或禁止之規定) VIII-120
violence and threat (強暴脅迫) VI-127
violent and anti-social behaviors (暴力攻擊及反社會行為) Ⅱ-682
vision-impaired (視障者) VI-385
Vital Matter (重要事項) VII-581
Vital Public Interest or Emergency Case (重大公益或緊急情況) VII-581
voluntarily recuse himself (自行迴避) Ⅱ-109
Voluntarily remain in military camp (志願留營) VII-445
voluntary confession (任意性自白) Ⅴ-159
voluntary payment (自動繳納) Ⅳ-130
Voluntary retirement (自願退休) Ⅰ-222,496

voluntary surrender to the authorities (自首) Ⅳ-596
voting right (表決權) Ⅴ-283
voucher (憑證) Ⅱ-477；Ⅵ-298

W

wages (工資) Ⅷ-119
waive/withdraw the appeal (捨棄/撤回上訴) Ⅴ-647
waiver (抵免) Ⅲ-324
walk across the vehicular traffic lane (穿越車道) Ⅲ-174
war zone (戰區) Ⅰ-655
warning letter (警告函) Ⅳ-515
Waste Disposal Act (廢棄物清理法) Ⅴ-668；Ⅷ-232
water management fee (掌水費) Ⅳ-186
water supply region (水源區) Ⅳ-450
watercourses (河道) Ⅱ-429
weight of evidence (證明力) Ⅲ-2
Welfare (待遇) Ⅶ-486
weighing the merit of each case (斟酌個案情節輕重) Ⅶ-617
welfare agency (福利機構) Ⅵ-546
well-known (世所共知) Ⅰ-201
western medicine (西藥) Ⅲ-81
Where there is a right, there is a remedy (有權利即有救濟) Ⅶ-167；Ⅷ-251,575,639
willful abandonment (惡意遺棄) Ⅰ-33
winning bidder (拍定人) Ⅱ-628
withdraw (取回) Ⅰ-275
withhold (不提出、維持) Ⅱ-567
withholding (停止執行) Ⅰ-467；Ⅳ-202
withholding at source (就源扣繳) Ⅲ-146
within the scope of public officers (在公職範圍內) Ⅰ-40
within the territory of the Republic of China (中華民國境內) Ⅰ-201
witness (證人) Ⅱ-78；Ⅴ-159
work right (工作權) Ⅲ-81
working hours (工作時間) Ⅷ-119
workers (工人) Ⅰ-665
writ of detention (押票) Ⅱ-305
written examination (筆試) Ⅳ-494
written notices (書面通知) Ⅱ-312
written off (轉銷) Ⅱ-273
wrongful imprisonment (冤獄) Ⅲ-778

Y

yuan (元) Ⅱ-78
yung-tien (永佃) Ⅳ-643

Z

zone expropriation (區段徵收) Ⅷ-196

Translators	**Interpretation No.**
Ming-Woei Chang（張明偉）	639(Ⅵ)、683(Ⅶ)、737(Ⅷ)
Wen-Chen Chang（張文貞）	528(Ⅳ)、530(Ⅳ)、535(Ⅳ)
Chen –Hung Chang（張陳弘）	755(Ⅷ)
Chao-Tien Chang（張兆恬）	753(Ⅷ)
Chun-Jen Chen（陳俊仁）	293(Ⅱ)、305(Ⅱ)、381(Ⅱ)、383(Ⅱ)、395(Ⅲ)、411(Ⅲ)、586(Ⅴ)、602(Ⅴ)、606(Ⅴ)、634(Ⅵ)、638(Ⅵ)、648(Ⅵ)、663(Ⅵ)、665(Ⅵ)、672(Ⅶ)、685(Ⅶ)、703(Ⅶ)
Jui-Jen Chen（陳瑞仁）	271(Ⅱ)
Louis Chen（陳春山）	173(Ⅰ)、174(Ⅰ)、180(Ⅰ)、196(Ⅰ)、200(Ⅰ)
John C. Chen（陳傳岳）	100(Ⅰ)、275(Ⅱ)、302(Ⅱ)、304(Ⅱ)、308(Ⅱ)、317(Ⅱ)、339(Ⅱ)、355(Ⅱ)、362(Ⅱ)、366(Ⅱ)、416(Ⅲ)
Tsung-Fu Chen（陳聰富）	251(Ⅱ)、364(Ⅱ)、387(Ⅱ)
Yen-Chia Chen（陳彥嘉）	708(Ⅶ)、709(Ⅶ)、710(Ⅶ)、726(Ⅷ)、732(Ⅷ)、743(Ⅷ)
Chia -Chieh Cheng（鄭家捷）	713(Ⅶ)、733(Ⅷ)
Chin-Chin Cheng（鄭津津）	285(Ⅱ)、360(Ⅱ)、390(Ⅱ)、514(Ⅳ)、549(Ⅳ)、658(Ⅵ)
Chun-Yih Cheng（程春益）	327(Ⅱ)、356(Ⅱ)、633(Ⅵ)、655(Ⅵ)、697(Ⅶ)、706(Ⅶ)、711(Ⅶ)、718(Ⅷ)、724(Ⅷ)、729(Ⅷ)、740(Ⅷ)、741(Ⅷ)、757(Ⅷ)
Chuan-Ju Cheng（鄭川如）	752(Ⅷ)
Chung Jen Cheng（鄭中人）	213(Ⅰ)、492(Ⅲ)、507(Ⅳ)
Eleanor Y.Y. Chin（金玉瑩）	267(Ⅱ)、333(Ⅱ)、721(Ⅷ)、727(Ⅷ)
Raymond T. Chu（朱定初）	132(Ⅰ)、135(Ⅰ)、136(Ⅰ)、138(Ⅰ)、139(Ⅰ)、141(Ⅰ)、170(Ⅰ)、179(Ⅰ)、186(Ⅰ)、188(Ⅰ)、192(Ⅰ)、197(Ⅰ)、198(Ⅰ)、209(Ⅰ)、217(Ⅰ)、218(Ⅰ)、

221(Ⅰ)、225(Ⅰ)、227(Ⅰ)、228(Ⅰ)、
229(Ⅰ)、230(Ⅰ)、240(Ⅱ)、244(Ⅱ)、
249(Ⅱ)、252(Ⅱ)、256(Ⅱ)、288(Ⅱ)、
291(Ⅱ)、292(Ⅱ)、297(Ⅱ)、300(Ⅱ)、
306(Ⅱ)、309(Ⅱ)、311(Ⅱ)、315(Ⅱ)、
318(Ⅱ)、321(Ⅱ)、330(Ⅱ)、335(Ⅱ)、
337(Ⅱ)、353(Ⅱ)、358(Ⅱ)、361(Ⅱ)、
367(Ⅱ)、368(Ⅱ)、369(Ⅱ)、379(Ⅱ)、
393(Ⅲ)、394(Ⅲ)、413(Ⅲ)、423(Ⅲ)、
426(Ⅲ)、428(Ⅲ)、437(Ⅲ)、438(Ⅲ)、
441(Ⅲ)、448(Ⅲ)、451(Ⅲ)、460(Ⅲ)、
482(Ⅲ)、511(Ⅳ)、515(Ⅳ)、517(Ⅳ)、
550(Ⅳ)、552(Ⅳ)、554(Ⅳ)、556(Ⅳ)、
559(Ⅳ)、560(Ⅳ)、562(Ⅳ)、564(Ⅳ)、
565(Ⅳ)、566(Ⅳ)、568(Ⅳ)、569(Ⅳ)、
579(Ⅴ)、580(Ⅴ)、581(Ⅴ)、584(Ⅴ)、
600(Ⅴ)、610(Ⅴ)、616(Ⅴ)、625(Ⅵ)、
630(Ⅵ)、635(Ⅵ)、637(Ⅵ)、643(Ⅵ)、
645(Ⅵ)

Chi Chung（鍾騏） 667(Ⅵ)、694(Ⅶ)、702(Ⅶ)、716(Ⅶ)、
725(Ⅷ)、730(Ⅷ)、745(Ⅷ)、746(Ⅷ)

Eric Yao-Kuo Chiang（江耀國） 38(Ⅰ)、262(Ⅱ)、463(Ⅲ)、501(Ⅳ)

Cing-Kae Chiao（焦興鎧） 226(Ⅰ)、270(Ⅱ)、301(Ⅱ)、310(Ⅱ)、
365(Ⅱ)、373(Ⅱ)、456(Ⅲ)

Tze-Shiou Chien（簡資修） 242(Ⅱ)、372(Ⅱ)、374(Ⅱ)、400(Ⅲ)、
409(Ⅲ)、440(Ⅲ)、475(Ⅲ)、513(Ⅳ)、
524(Ⅳ)、676(Ⅶ)

Jyh-Pin Fa（法治斌） 161(Ⅰ)、166(Ⅰ)、178(Ⅰ)、189(Ⅰ)、
289(Ⅱ)、328(Ⅱ)、357(Ⅱ)、467(Ⅲ)、
481(Ⅲ)

Chien-Te Fan（范建得） 351(Ⅱ)、518(Ⅳ)

Hsiu-Yu Fan（范秀羽） 742(Ⅷ)、751(Ⅷ)

Spenser Y. Ho（何曜琛） 268(Ⅱ)、278(Ⅱ)、303(Ⅱ)、334(Ⅱ)、
385(Ⅱ)、397(Ⅲ)、405(Ⅲ)、412(Ⅲ)、
429(Ⅲ)、430(Ⅲ)、433(Ⅲ)、449(Ⅲ)、

	529(Ⅳ)、642(Ⅵ)、652(Ⅵ)、699(Ⅶ)、704(Ⅶ)、715(Ⅶ)、723(Ⅷ)、731(Ⅷ)
Jimmy Chia-Shin Hsu（許家馨）	756(Ⅷ)
C. Y. Huang（黃慶源）	389(Ⅱ)、406(Ⅲ)、431(Ⅲ)、472(Ⅲ)、473(Ⅲ)、493(Ⅲ)、495(Ⅲ)、496(Ⅲ)、500(Ⅳ)、504(Ⅳ)、519(Ⅳ)、537(Ⅳ)、561(Ⅳ)、578(Ⅴ)、696(Ⅶ)、705(Ⅶ)、734(Ⅷ)
Ed Ming-Hui Huang（黃銘輝）	736(Ⅷ)
Wei-Feng Huang（黃偉峯）	9(Ⅰ)、10(Ⅰ)、101(Ⅰ)、102(Ⅰ)、103(Ⅰ)、105(Ⅰ)、107(Ⅰ)、108(Ⅰ)、111(Ⅰ)、113(Ⅰ)、118(Ⅰ)、148(Ⅰ)、155(Ⅰ)、156(Ⅰ)、181(Ⅰ)、182(Ⅰ)、183(Ⅰ)、184(Ⅰ)、187(Ⅰ)、190(Ⅰ)、193(Ⅰ)、199(Ⅰ)、201(Ⅰ)、202(Ⅰ)、204(Ⅰ)、207(Ⅰ)、258(Ⅱ)、259(Ⅱ)、260(Ⅱ)、272(Ⅱ)、314(Ⅱ)、401(Ⅲ)、454(Ⅲ)、466(Ⅲ)、498(Ⅲ)、508(Ⅳ)、512(Ⅳ)、525(Ⅳ)、533(Ⅳ)、534(Ⅳ)、536(Ⅳ)、540(Ⅳ)、542(Ⅳ)、543(Ⅳ)、545(Ⅳ)、548(Ⅳ)、551(Ⅳ)、555(Ⅳ)、557(Ⅳ)、558(Ⅳ)、563(Ⅳ)、572(Ⅴ)、575(Ⅴ)、576(Ⅴ)、659(Ⅵ)、698(Ⅶ) 、719(Ⅷ)、722(Ⅷ)、728(Ⅷ)
Yuh-Kae Huang（黃裕凱）	126(Ⅰ)、211(Ⅰ)、219(Ⅰ)、281(Ⅱ)、324(Ⅱ)、402(Ⅲ)、494(Ⅲ)
Jau-Yuan Hwang（黃昭元）	31(Ⅰ)、85(Ⅰ)、261(Ⅱ)、450(Ⅲ)
Bernard Y. Kao（高玉泉）	510(Ⅳ)
Su-Po Kao（高思博）	290(Ⅱ)、295(Ⅱ)、378(Ⅱ)、485(Ⅲ)
Wellington L. Koo（顧立雄）	145(Ⅰ)、176(Ⅰ)、269(Ⅱ)、422(Ⅲ)
Hsiao-Wei Kuan（官曉薇）	689(Ⅶ)
Vincent C. Kuan（關重熙）	243(Ⅱ)、255(Ⅱ)、257(Ⅱ)、265(Ⅱ)、273(Ⅱ)、320(Ⅱ)、340(Ⅱ)、343(Ⅱ)、344(Ⅱ)、345(Ⅱ)、347(Ⅱ)、348(Ⅱ)、350(Ⅱ)、354(Ⅱ)、377(Ⅱ)、445(Ⅲ)、

	446(Ⅲ)、457(Ⅲ)、465(Ⅲ)、468(Ⅲ)、521(Ⅳ)、522(Ⅳ)、527(Ⅳ)、538(Ⅳ)、546(Ⅳ)、573(Ⅴ)、582(Ⅴ)、583(Ⅴ)、585(Ⅴ)、588(Ⅴ)、589(Ⅴ)、591(Ⅴ)、592(Ⅴ)、593(Ⅴ)、594(Ⅴ)、595(Ⅴ)、596(Ⅴ)、597(Ⅴ)、599(Ⅴ)、601(Ⅴ)、603(Ⅴ)、607(Ⅴ)、608(Ⅴ)、609(Ⅴ)、611(Ⅴ)、612(Ⅴ)、613(Ⅴ)、614(Ⅴ)、615(Ⅴ)、617(Ⅴ)、618(Ⅴ)、619(Ⅴ)、621(Ⅴ)、622(Ⅴ)、623(Ⅵ)、624(Ⅵ)、626(Ⅵ)、627(Ⅵ)、628(Ⅵ)、629(Ⅵ)、660(Ⅵ)
Szu-Chen Kuo（郭思岑）	748(Ⅷ)
Cheng-Hwa Kwang（鄺承華）	341(Ⅱ)、352(Ⅱ)、359(Ⅱ)、506(Ⅳ)
Lawrence L. C. Lee（李禮仲）	28(Ⅰ)、51(Ⅰ)、53(Ⅰ)、55(Ⅰ)、56(Ⅰ)、57(Ⅰ)、58(Ⅰ)、60(Ⅰ)、61(Ⅰ)、62(Ⅰ)、63(Ⅰ)、64(Ⅰ)、65(Ⅰ)、66(Ⅰ)、67(Ⅰ)、69(Ⅰ)、70(Ⅰ)、71(Ⅰ)、73(Ⅰ)、74(Ⅰ)、77(Ⅰ)、78(Ⅰ)、79(Ⅰ)、80(Ⅰ)、82(Ⅰ)、83(Ⅰ)、84(Ⅰ)、87(Ⅰ)、88(Ⅰ)、89(Ⅰ)、91(Ⅰ)、93(Ⅰ)、94(Ⅰ)、95(Ⅰ)、97(Ⅰ)、99(Ⅰ)、410(Ⅲ)、657(Ⅵ)、700(Ⅶ)、712(Ⅶ)、717(Ⅷ)
Chia-Yi Li（李佳逸）	695(Ⅶ)、707(Ⅶ)
Fuldien Li（李復甸）	276(Ⅱ)、280(Ⅱ)、497(Ⅲ)、503(Ⅳ)
Li-Ju Lee（李立如）	666(Ⅵ)
Nigel N.T. Li（李念祖）	216(Ⅰ)、239(Ⅱ)、254(Ⅱ)、264(Ⅱ)、399(Ⅲ)、407(Ⅲ)、435(Ⅲ)、664(Ⅵ)
Fort Fu-Te Liao（廖福特）	13(Ⅰ)、76(Ⅰ)、86(Ⅰ)、123(Ⅰ)、124(Ⅰ)、125(Ⅰ)、194(Ⅰ)、263(Ⅱ)、329(Ⅱ)、631(Ⅵ)、677(Ⅶ)、
Jennifer Lin（林秋琴）	283(Ⅱ)
Li-Chih Lin（林利芝）	4(Ⅰ)、5(Ⅰ)、6(Ⅰ)、7(Ⅰ)、8(Ⅰ)、

	11(Ⅰ)、17(Ⅰ)、21(Ⅰ)、22(Ⅰ)、23(Ⅰ)、41(Ⅰ)、42(Ⅰ)、44(Ⅰ)、59(Ⅰ)、72(Ⅰ)、81(Ⅰ)、90(Ⅰ)、92(Ⅰ)、96(Ⅰ)、98(Ⅰ)、104(Ⅰ)、109(Ⅰ)、120(Ⅰ)、122(Ⅰ)、127(Ⅰ)、131(Ⅰ)、134(Ⅰ)、137(Ⅰ)、143(Ⅰ)、146(Ⅰ)、152(Ⅰ)、157(Ⅰ)、158(Ⅰ)、159(Ⅰ)、160(Ⅰ)、162(Ⅰ)、175(Ⅰ)、191(Ⅰ)、206(Ⅰ)、284(Ⅱ)、376(Ⅱ)、404(Ⅲ)、414(Ⅲ)、417(Ⅲ)、476(Ⅲ)、486(Ⅲ)、531(Ⅳ)、541(Ⅳ)、544(Ⅳ)、547(Ⅳ)、577(Ⅴ)、641(Ⅵ)、646(Ⅵ)、654(Ⅵ)、661(Ⅵ)、662(Ⅵ)、 691(Ⅶ)
David T. Liou（劉宗欣）	325(Ⅱ)、342(Ⅱ)、418(Ⅲ)、421(Ⅲ)、474(Ⅲ)
Lawrence S. Liu（劉紹樑）	282(Ⅱ)、322(Ⅱ)、323(Ⅱ)、331(Ⅱ)、338(Ⅱ)、380(Ⅱ)
Yen –Chi Liu（劉晏齊）	758(Ⅷ)、759(Ⅷ)
Edmund Ryden（雷敦穌）	747(Ⅷ)
Amy H.L. Shee（施慧玲）	147(Ⅰ)、171(Ⅰ)、502(Ⅳ)、587(Ⅴ)、590(Ⅴ)、620(Ⅴ)、671(Ⅶ)
Jer-Shenq Shieh（謝哲勝）	149(Ⅰ)、153(Ⅰ)、163(Ⅰ)、164(Ⅰ)、172(Ⅰ)、286(Ⅱ)、326(Ⅱ)、336(Ⅱ)、425(Ⅲ)、444(Ⅲ)、532(Ⅳ)、598(Ⅴ)
Ching P. Shih（史慶璞）	203(Ⅰ)、205(Ⅰ)、208(Ⅰ)、210(Ⅰ)、212(Ⅰ)、214(Ⅰ)、215(Ⅰ)、220(Ⅰ)、222(Ⅰ)、223(Ⅰ)、232(Ⅰ)、233(Ⅰ)、235(Ⅱ)、604(Ⅴ)、605(Ⅴ)、651(Ⅵ)、739(Ⅷ)
Amy H.L. Shee（施慧玲）	656(Ⅵ)
Yen-Tu Su（蘇彥圖）	744(Ⅷ)
Andy Y. Sun（孫遠釗）	2(Ⅰ)、3(Ⅰ)、14(Ⅰ)、15(Ⅰ)、18(Ⅰ)、19(Ⅰ)、20(Ⅰ)、24(Ⅰ)、25(Ⅰ)、26(Ⅰ)、27(Ⅰ)、29(Ⅰ)、33(Ⅰ)、36(Ⅰ)、39(Ⅰ)、40(Ⅰ)、

	43(Ⅰ)、45(Ⅰ)、46(Ⅰ)、47(Ⅰ)、48(Ⅰ)、49(Ⅰ)、50(Ⅰ)、133(Ⅰ)、150(Ⅰ)、154(Ⅰ)、168(Ⅰ)、169(Ⅰ)、370(Ⅱ)、391(Ⅱ)、419(Ⅲ)、477(Ⅲ)、499(Ⅳ)、520(Ⅳ)、553(Ⅳ)、567(Ⅳ)、632(Ⅵ)、644(Ⅵ)、649(Ⅵ)、650(Ⅵ)、738(Ⅷ)
Chen-En Sung（宋承恩）	749(Ⅷ)、750(Ⅷ)
Dennis T.C.Tong（湯德宗）	382(Ⅱ)、462(Ⅲ)、491(Ⅲ)
Alex C. Y. Tsai（蔡欽源）	266(Ⅱ)、332(Ⅱ)、363(Ⅱ)、679(Ⅶ)
Tsai Chiou-ming（蔡秋明）	238(Ⅱ)、245(Ⅱ)、346(Ⅱ)、669(Ⅵ)
Huai-Ching Robert、Tsai（蔡懷卿）	1(Ⅰ)、30(Ⅰ)、75(Ⅰ)、106(Ⅰ)、110(Ⅰ)、114(Ⅰ)、115(Ⅰ)、116(Ⅰ)、117(Ⅰ)、119(Ⅰ)、121(Ⅰ)、236(Ⅱ)、241(Ⅱ)、250(Ⅱ)、392(Ⅱ)、640(Ⅵ)、647(Ⅵ)、653(Ⅵ)、668(Ⅵ)、701(Ⅶ)、714(Ⅶ)、720(Ⅷ)
Jaw-Perng Wang（王兆鵬）	68(Ⅰ)、129(Ⅰ)、371(Ⅱ)、384(Ⅱ)、471(Ⅲ)、523(Ⅳ)、636(Ⅵ)
Roger K. C. Wang（王國傑）	574(Ⅴ)、678(Ⅶ)、693(Ⅶ)
Wen-Yeu Wang（王文宇）	287(Ⅱ)、296(Ⅱ)、349(Ⅱ)、386(Ⅱ)、489(Ⅲ)
Joe Y. C. Wu（吳永乾）	294(Ⅱ)、505(Ⅳ)、509(Ⅳ)、539(Ⅳ)
Pijan Wu （吳必然）	246(Ⅱ)、307(Ⅱ)、312(Ⅱ)、319(Ⅱ)、432(Ⅲ)、453(Ⅲ)、461(Ⅲ)、487(Ⅲ)、516(Ⅳ)
David H.J. Yang（楊鴻基）	128(Ⅰ)、142(Ⅰ)、144(Ⅰ)、274(Ⅱ)、277(Ⅱ)、299(Ⅱ)、570(Ⅳ)、571(Ⅴ)
Jiunn-Rong Yeh（葉俊榮）	165(Ⅰ)、479(Ⅲ)、490(Ⅲ)
Chi-Chang Yu（游啟璋）	12(Ⅰ)、32(Ⅰ)、34(Ⅰ)、247(Ⅱ)、248(Ⅱ)、253(Ⅱ)、436(Ⅲ)、443(Ⅲ)、452(Ⅲ)
Syue-Ming Yu（余雪明）	434(Ⅲ)、447(Ⅲ)、455(Ⅲ)、464(Ⅲ)、483(Ⅲ)、488(Ⅲ)、526(Ⅳ)
BAKER & McKENZIE	279(Ⅱ)、396(Ⅲ)、403(Ⅲ)、408(Ⅲ)、

（國際通商法律事務所）	415(Ⅲ)、420(Ⅲ)、424(Ⅲ)、427(Ⅲ)、442(Ⅲ)、459(Ⅲ)、469(Ⅲ)、470(Ⅲ)、
FORMOSA TRANSNATIONAL、ATTORNEYS AT LAW（萬國法律事務所）	177(Ⅰ)、185(Ⅰ)、375(Ⅱ)、388(Ⅱ)
LEE & LI、 ATTORNEYS-AT-LAW（理律法律事務所）	16(Ⅰ)、35(Ⅰ)、37(Ⅰ)、52(Ⅰ)、54(Ⅰ)、112(Ⅰ)、130(Ⅰ)、140(Ⅰ)、224(Ⅰ)、313(Ⅱ)、692(Ⅶ)
TSAR & TSAI LAW FIRM（常在國際法律事務所）	151(Ⅰ)、167(Ⅰ)、195(Ⅰ)、231(Ⅰ)、234(Ⅱ)、237(Ⅱ)、298(Ⅱ)、316(Ⅱ)、398(Ⅲ)、439(Ⅲ)、458(Ⅲ)、478(Ⅲ)、480(Ⅲ)、484(Ⅲ)