J. Y. Interpretation No.675（April 9, 2010）*

ISSUE: Does the provision in the Act for the Establishment and Administration of the Financial Restructuring Fund, which prohibits distressed or non-performing financial institutions from paying out non-deposit liabilities unconstitutional ?

RELEVANT LAWS:

Article 7 of the Constitution（憲法第 7 條）; J.Y. Inter-pretation Nos. 485, 488, and 596（司法院釋字第 485、488 及 596 號解釋）; Article 5, paragraph 3 of the Act for the Establishment and Administration of the Financial Restructuring Fund, as amended on July 9, 2001 (行政院金融重建基金設置及管理條例第 5 條第 3 項，90 年 7 月 9 日制定公布); Article 1 and Article 4, Paragraph 5 of the Act for the Establishment and Administration of the Financial Restructuring Fund, amended as of June 22, 2005(行政院金融重建基金設置及管理條例第 1 條、第 4 條第 5 項 , 94 年 6 月 22 日修正公布); Article 1 & Article 15, Paragraph 1 and Article 17, Paragraph 2, of the Deposit Insurance Act (存款保險條例第 1 條、第 15 條第 1 項、第 17 條第 2 項前段), Article 62 of the Banking Act（銀行法第 62 條）; Article 5, Paragraph 1, Sub-paragraphs 2 and 3 of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第 5 條第 1 項第 2 款、第 3 項).

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* Translated by Dr. Cheng-Hwa Kwang.

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

KEYWORDS:

payout, compensate (賠付), substantive equality (實質平等), deposit insurance (存款保險), deposit liabilities (存款債務), non-deposit liabilities (非存款債務), order of financial credibility (金融信用秩序), Financial Restructuring Fund (金融重建基金), subordinated bank debentures (bonds) (次順位金融債), Financial Supervisory Commission of the Executive Yuan (行政院金融監督管理委員會).**

HOLDING: Article 4, Paragraph 5 of the Act for the Establishment and Administration of the Financial Restructuring Fund, amended as of June 22, 2005, provides that "[s]ubsequent to the promulgation of the amended Act, when the competent authority or the central competent authority for agriculture finance handles a distressed financial institution, non-deposit debts of said institution will not be paid off." It is meant to enhance the utility of the Financial Restructuring Fund of the Executive Yuan, to protect the rights and interests of the depositors of the financial institution, and to stabilize the order of financial credibility, thus carries appropriate objectives. Given that

解釋文：中華民國九十四年六月二十二日修正公布之行政院金融重建基金設置及管理條例第四條第五項，關於「本條例修正施行後，主管機關或農業金融中央主管機關處理經營不善金融機構時，該金融機構非存款債務不予賠付」之規定，就非存款債務不予賠付部分，旨在增進行政院金融重建基金之使用效益，保障金融機構存款人權益及穩定金融信用秩序，其目的洵屬正當，該手段與立法目的之達成具有合理關聯性，與憲法第七條規定尚無牴觸。

there is a reasonable nexus between the means and the accomplishment of these legislative objectives, there is no contravention to Article 7 of the Constitution.

REASONING: The Petitioner requested an interpretation on the constitutionality of Article 4, Paragraph 5 of the Act for the Establishment and Administration of the Financial Restructuring Fund of the Executive Yuan, as amended on June 22, 2005 (hereinafter disputed provision), which was applied in the civil judgment of the Supreme Court, (97) Tai Shun No. 2252 (2008)(hereinafter final judgment). The final judgment, applying the illustrations in the memorandum docketed as Gin Guan Yin (2) No. 09700095310 (April 16, 2008) and issued by the Financial Supervisory Commission of the Executive Yuan, held that, The Chinese Bank (i.e., the financial institution being taken control) should tentatively halt its compensation of nondeposit debts upon being taken over. That memorandum, in turn, also relied upon the disputed provision by indicating that, in managing the nonperforming institutions, the governing

解釋理由書：本件聲請人就最高法院九十七年度台上字第二二五二號民事判決（下稱確定終局判決）所適用之九十四年六月二十二日修正公布之行政院金融重建基金設置及管理條例第四條第五項規定（下稱系爭規定）有違憲疑義，聲請解釋。查確定終局判決認中華商業銀行（即被接管之金融機構）遭接管後，應暫停非存款債務之清償，係引用行政院金融監督管理委員會九十七年四月十六日金管銀（二）字第０九七０００九五三一０號函之說明，而該函亦係依據系爭規定，認為主管機關處理經營不善金融機構時，該金融機構非存款債務不予賠付。可見確定終局判決已援用系爭規定作為判決理由之基礎，應認系爭規定已為確定終局判決所適用，合先敘明。

authority is prohibited from paying out non-deposit debts. It follows that the final judgment has cited the disputed provision as the basis for its reasoning and the disputed provision should, thus, be deemed to be applied by the final judgment. This should be pointed out first.

The principle of equality prescribed under Article 7 of the Constitution is not meant to be equality only in form nor in an absolute and mechanical sense. Rather, it aims to guarantee the substantive equal protection under the law. The legislative body, based on the value system of the Constitution and the purpose of enactment, may naturally consider the diversity of the regulated subject areas and provide reasonable differential treatment (*see* J. Y. Interpretation Nos. 485, 596).

The original Article 5, Paragraph 3 of the Act for the Establishment and Administration of the Financial Restructuring Fund, as amended on July 9, 2001, provided: "The Central Deposit Insurance Corporation, in compliance with Article 15, Paragraph 1 and Article 17,

憲法第七條規定，中華民國人民在法律上一律平等，其內涵並非指絕對、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區別對待（本院釋字第四八五號、第五九六號解釋參照）。

九十年七月九日制定公布之行政院金融重建基金設置及管理條例第五條第三項原規定：「中央存款保險公司依存款保險條例第十五條第一項、第十七條第二項前段規定辦理時，得申請運用本基金，全額賠付經營不善金融機構之存款及非存款債權……。」此規定於

Paragraph 2 of the Deposit Insurance Act, may apply for and dispose of this Fund to pay out in full the deposit and non-deposit liabilities of the distressed financial institution….” This provision was amended on June 22, 2005 and became Article 4, Paragraph 5: “Subsequent to the promulgation of the amended Act, when the competent authority or the central competent authority for agriculture finance handles a distressed financial institution, nondeposit debts of said institution will not be paid off.” Thus the scope of the coverage by the Financial Restructuring Fund of the Executive Yuan (hereinafter Restructuring Fund (Resolution Trust)) for distressed or non-performing financial institutions was revised from the original full compensation for deposit and non-deposit liabilities to nondeposit debts only. Hence, for non-deposit liabilities incurred after the 2005 amendment to the above provision, they will no longer be compensated. That the disputed provision, reverted to the system of deposit insurance and provided differential treatments between deposit non-deposit debts is meant to enhance the utility of the Financial Restructuring Fund of the

九十四年六月二十二日修正公布為第四條第五項：「本條例修正施行後，主管機關或農業金融中央主管機關處理經營不善金融機構時，該金融機構非存款債務不予賠付。」將行政院金融重建基金（下稱重建基金）賠付債務之範圍，由原規定全額賠付經營不善金融機構之存款及非存款債務，改為僅就存款債務予以賠付，對上開條例於九十四年修正施行後發生之非存款債務不予賠付。系爭規定回歸存款保險制度，就存款及非存款債務是否予以賠付作差別待遇，旨在增進重建基金之使用效益，保障金融機構存款人權益及穩定金融信用秩序（存款保險條例第一條及行政院金融重建基金設置及管理條例第一條規定參照），其立法目的洵屬正當。

Executive Yuan, to protect the rights and interests of the depositors of the financial institution, and to stabilize the order of financial credibility.(*see* Article 1 of the Deposit Insurance Act and Article 1 of the Act for the Establishment and Administration of the Financial Restructuring Fund), thus carries appropriate objectives.

Whether the scope of compensation for the Restructuring Fund should be limited to deposit liabilities or should also cover non-deposit liabilities involves the issue of how to effectively appropriate and utilize the Restructuring Fund. The legislative body may indeed make proper decisions after examining the financial condition of the state and the necessity to maintain the order of the financial market. Besides, the nature of deposit liabilities is different from that of non-deposit liabilities after all. The establishment of the Restructuring Fund is to ensure depositors' confidence in financial ins-titutions, so as to stabilize the order of financial credibility. In considering the limited scale of the Restructuring Fund and to reduce its burden so that the Restructuring Fund can be

重建基金賠付之範圍究應限於存款債務，或尚應包括非存款債務，既涉及重建基金應如何有效分配與運用之問題，立法機關自得斟酌國家財政狀況及維護金融市場秩序之必要性，而為適當之決定。況存款債務與非存款債務之法律性質究屬不同，且重建基金之設置，在於確保存款人對於金融機構之信心，以穩定金融信用秩序。立法機關考量重建基金規模有限，為減輕該重建基金之負擔，使重建基金之運用更有效率，系爭規定乃修正就非存款債務不予賠付，該手段與立法目的之達成具有合理關聯性，與憲法第七條規定尚無牴觸。

operated more effectively, the legislative body amended the disputed provision in the Act to exclude payout for nondeposit liabilities. Given that there is a reasonable nexus between the means and the accomplishment of these legislative objectives, there is no contravention to Article 7 of the Constitution.

With regard to the question raised by the Petitioner alleged that his property right and the freedom of contract was infringed by the governing authority's taking control over the distressed or nonperforming financial institution under Article 62 of the Banking Act, no specific illustrations were provided on how his rights protected by the Constitution was infringed. Furthermore, with regard to the Petitioner's request for supplementary interpretation to J.Y. Interpretation No. 488, since the final judgment that causes the present petition did not apply that Interpretation, no supplementary interpretation is permitted. Thus this part of the petition is deemed to be not in conformity with Article 5, Paragraph 1, Sub-Paragraph 2 of the Constitutional Interpretation Pro-

至於聲請人主張銀行法第六十二條關於主管機關接管經營不善之金融機構有侵害其財產權及契約自由之疑義，其並未具體敘明上開規定有如何侵害其受憲法所保障之權利；而聲請人就本院釋字第四八八號解釋聲請補充解釋部分，查本案原因案件之確定終局判決並未適用上開解釋，尚不得對之聲請本院補充解釋。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符，依同條第三項規定，均應不受理，併此指明。

cedure Act and is hereby dismissed in accordance with Subparagraph 3 of the same Act.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Chi-Ming Chih filed dissenting opinion in part, in which Justice Pi-Hu Hsu joined.

本號解釋葉大法官百修提出協同意見書；黃大法官茂榮提出協同意見書；池大法官啟明、徐大法官璧湖共同提出部分不同意見書。

EDITOR'S NOTE:

Summary of facts:The Petitioner in 2006 purchased from The Chinese Bank, in three respective terms, subordinated bank debentures (bonds), which in their sequence provided an "Essential Points on the the Issuance of Financial Bonds (hereinafter Essential Points). Article 6 of this Essential Points provided the method for the accrual of interests and the repaying of the principal.

編者註：

事實摘要：聲請人於民國 95 年間，分別向中華商業銀行購買 3 期次順位金融債券，並依序訂有各該期次「金融債券發行要點」（下稱要點），於該要點第 6 條規定付息及償還本金之方式。

Subsequently, the holding company of the bank filed for reorganization due to a financial crisis, which caused a bank run. As a result, the Financial Supervi-

嗣該銀行母公司因財務危機聲請重整，引發存款擠兌，行政院金融監督管理委員會乃指定中央存款保險公司予以接管，並辦理資產標售，以完成經營

sory Commission of the Executive Yuan designated the Central Deposit Insurance Corporation to take control and arrange auction sales of the bank assets to complete the withdrawal of the nonperfoming financial institution.

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Considering The Chinese Bank was in effect bankrupt, subject to liquidation or reorganization, provided that the bank did not pay the interests in accordance with Point 6 of the Essential Points even after numerous summon attempts, the Petitioner then filed suit to request the cancellation of the contract and the return of principal in accordance with Article 234 of the Civil Code and Point 10 of the Essential Points.

聲請人認為此時中華商業銀行已形同公司破產、清算或重整，且該行亦未依要點第 6 點給付利息，經催告多次未果，乃依據民法第 234 條及要點第 10 點規定，起訴請求解除契約及返還本金。

The case was dismissed by the Taiwan Taipei District Court and on appeal, the Taiwan High Court, applying the disputed provision, also dismissed the case. The Supreme Court in civil judgment (97) Tai Shun No. 2252, again affirmed and finalized the decision. The Petitioner then requested an interpretation on the ground that the disputed provision violated the

本案經臺灣臺北地方法院駁回，復經臺灣高等法院以行政院金融重建基金設置及管理條例第 4 條第 5 項「非存款債務不予賠付」規定（下稱系爭規定）予以駁回，最高法院 97 年度台上字第 2252 號民事判決駁回確定，聲請人爰以系爭規定違反憲法第 7 條平等權保障，聲請解釋。

equal protection of rights under Article 7 of the Constitution.