

J. Y. Interpretation No.488 ( July 30, 1999 ) \*

**ISSUE:** Do Articles 11 and 14 of the Regulation Governing the Supervision and Taking-Over of Financial Institutions concerning purchase and assumption exceed the scope of authority as delegated by the Credit Cooperatives Act and Banking Act, thus violating Article 15 of the Constitution for the protection of property right and being void?

**RELEVANT LAWS:**

Articles 15, 23 and 145 of the Constitution ( 憲法第十五條、第二十三條、第一百四十五條 ) ; Article 27, Paragraph 1, of the Credit Cooperatives Act ( 信用合作社法第二十七第一項 ) ; Article 62, Paragraph 1, of the Banking Act ( 銀行法第六十二條第一項 ) ; Articles 11 and 14 of the Regulation Governing the Supervision and Taking-Over of Financial Institutions ( 金融機構監管接管辦法第十一條、第十四條 ) .

**KEYWORDS:**

property right ( 財產權 ) , Credit Cooperative ( 信用合作社 ) , conservator ( 存款人 ) , purchase and assumption ( 概括承受 ) , financial institution ( 金融機構 ) . \*\*

**HOLDING:** According to Article 15 of the Constitution, the property right of the people should be protected.

**解釋文：**憲法第十五條規定，人民財產權應予保障。對人民財產權之限制，必須合於憲法第二十三條所定必

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

Any restriction on the property right can be allowed only to the extent sanctioned by Article 23 of the Constitution, as enacted by law. Delegation by the legislative branch to the executive to implement the law by ordinance should be explicit, and the implementing ordinance should conform to the legislative purpose and be within the scope of the delegation. This is clear from our previous interpretations. Article 27, Paragraph 1, of the Credit Cooperatives Act and Article 62, Paragraph 1, of the Banking Act are enacted to protect the interests of depositors and to maintain the stability of the financial system. Although Article 11, Paragraph 1, Subparagraph 3, and Article 14, Subparagraph 4, of the Regulation Governing the Supervision and Taking-Over of Financial Institutions are authorized by Article 62, Paragraph 3, of the Banking Act, delegation per se is insufficient. In the interest of protection of the people's rights, not only should the subthe Constitution, but a reasonable provision on the implementing of procedures and timely judicial relief are also required. To implement the law appropriately, an ordinance of the execu-

要程度，並以法律定之，其由立法機關明確授權行政機關以命令訂定者，須據以發布之命令符合立法意旨且未逾越授權範圍時，始為憲法之所許，迭經本院解釋在案。信用合作社法第二十七條第一項及銀行法第六十二條第一項係為保障存款人權益，並兼顧金融秩序之安定而設，金融機構監管接管辦法第十一條第一項第三款及第十四條第四款雖亦有銀行法第六十二條第三項授權之依據，惟基於保障人民權利之考量，法律規定之實體內容固不得違背憲法，其為實施實體內容之程序及提供適時之司法救濟途徑，亦應有合理規定，方符憲法維護人民權利之意旨；法律授權行政機關訂定之命令，為適當執行法律之規定，尤須對採取影響人民權利之行政措施時，其應遵行之程序作必要之規範。前述銀行法、信用合作社法及金融機構監管接管辦法所定之各種措施，對銀行、信用合作社之股東（社員）、經營者及其他利害關係人，既皆有重大影響，該等法規僅就主管機關作成行政處分加以規定，未能對作成處分前，如何情形須聽取股東、社員、經營者或利害關係人陳述之意見或徵詢地方自治團體相關機關（涉及各該地方自治團體經營之金融機構）之意見設置明文。又上開辦法允許

tive branch delegated by law should prescribe appropriate procedures when the people's rights are affected by administrative measures. The various measures contained in the abovementioned Banking Act, Credit Cooperatives Act and the Regulation Governing the Supervision and Taking-Over of Financial Institutions all materially affect the shareholders (members) of banks and credit cooperatives, managers and other interested parties, yet such Acts and Regulation provide only the administrative measures of the competent authority and are totally silent on the circumstances under which the opinions of shareholders, members, managers or interested parties may be sought or the opinions of local government (where financial institutions managed by such government are involved), are solicited before administrative decisions are made. The abovementioned regulation also permits the direct appointment of organs (institutions) or personnel as supervisors or conservators by the competent authority, allows the conservators to assume the power of management and the right to manage and dispose of prop-

主管機關逕行指派機關（機構）或人員為監管人或接管人，並使接管人取得經營權及財產管理處分權，復由接管人及主管機關決定概括讓與全部或部分業務及資產負債，或與他金融機構合併，無須斟酌受接管之金融機構股東或社員大會決議之可行性，亦不考慮該金融機構能否適時提供相當資金、擔保或其他解決其資產不足清償債務之有效方法，皆與憲法保障人民財產權之意旨未盡相符。前述法規主管機關均應依本解釋儘速檢討修正。

erty; the conservators and the competent authority may also decide on the purchase and assumption, in whole or in part, the operations, assets and liabilities of the relevant financial institutions, or affect a merger with another financial institution, all without taking into account the feasibility of a resolution by the shareholders' (members) meeting, and without considering whether such financial institutions are in a position to provide appropriate funds, collateral or other effective means to meet their obligations in a timely manner. None of these is in accord with the purpose of the constitutional guarantee of the people's property rights. Therefore, the competent authority should promptly appraise and amend the abovementioned Acts and Regulation.

**REASONING:** Article 15 of the Constitution provides that the people's property right should be protected. Any restriction on the property right should be to the extent necessary as provided under Article 23 of the Constitution, and only by the enactment of laws. When explicitly delegated by the legislature, an ordinance

**解釋理由書：**憲法第十五條規定，人民財產權應予保障。對人民財產權之限制，必須合於憲法第二十三條所定必要程度，並以法律定之，其由立法機關明確授權行政機關以命令訂定者，須據以發布之命令符合立法意旨且未逾越授權範圍時，始為憲法之所許，迭經本院解釋在案（參照釋字第三一三號、

promulgated by the executive branch is constitutional only when in accordance with the legislative purposes and without exceeding the scope of delegation, which has been repeatedly interpreted by this Yuan (See Interpretations Nos. 313, 423 and 480). Article 27, Paragraph 1, of the Credit Cooperatives Act states: “When a credit cooperative violates laws, regulations, or its charter or cannot be operated soundly and tends to impair the interest of members or depositors, the competent authority may adopt the following measures: (1) annul various resolutions of legally required meetings, provided that, if the resolutions violate laws, regulations or the charter, they should be void ab initio; (2) remove managers and staff members, or order the credit cooperative to take measures against them; (3) restrict the distribution of compensation to directors or supervisors; (4) suspend or remove directors or supervisors; (5) suspend a part of the operations; (6) order the suspension of operation, taking of accounts, or a merger; (7) order the dissolution; or (8) other necessary measures.” Article 62, Paragraph 1, of the Banking Act states:

第四二三號、第四八〇號等解釋)。信用合作社法第二十七條第一項：「信用合作社違反法令、章程或無法健全經營而有損及社員及存款人權益之虞時，主管機關得為左列處分：一、撤銷各類法定會議之決議。但其決議內容違反法令或章程者，當然無效。二、撤換經理人、職員，或命令信用合作社予以處分。三、限制發給理事、監事酬勞金。四、停止或解除理事、監事職務。五、停止部分業務。六、勒令停業清理或合併。七、命令解散。八、其他必要之處置。」銀行法第六十二條第一項：「銀行因業務或財務狀況顯著惡化，不能支付其債務或有損及存款人利益之虞時，中央主管機關得勒令停業並限期清理、停止其一部業務、派員監管或接管、或為其他必要之處置，並得洽請有關機關限制其負責人出境。」上開法律均係為保障存款人權益，並兼顧金融秩序之安定而設。金融機構監管接管辦法第十一條第一項第三款規定，監管人得協助受監管金融機構辦理概括讓與全部或部分業務及資產負債，同辦法第十四條第四款規定，接管人執行職務有辦理第十一條第一項第一款至第四款事項之行為時，應事先報經財政部核准，雖有銀行法第六十二條第三項授權之依據，惟基

“When a bank, due to significant deterioration of its operations or financial condition, cannot meet its obligations or tends to impair the interest of depositors, the competent authority of the central government may order the suspension of operations and set a period for the accounting of its affairs, suspend its operation in part, appoint personnel to supervise management or appoint a conservator, or adopt other necessary measures, and may request said relevant authority to restrict the responsible persons from leaving the country.” All the abovementioned Acts are for the protection of the depositors and to maintain the stability of the financial system. Article 11, Paragraph 1, Subparagraph 3, of the Regulation Governing the Supervision and Taking-Over of Financial Institutions provides that the supervisor may assist the relevant financial institution to arrange the purchase and assumption, in whole or in part, of its operations, assets and liabilities. Article 14, Paragraph 4, of the Regulation provides that the conservator, when implementing his/her responsibility mentioned in Article 11, Paragraph 1, Subparagraphs 1 to 4 shall

於保障人民權利之考量，法律規定之實體內容固不得違背憲法，其為實施實體內容之程序及提供適時之司法救濟途徑，亦應有合理規定，方符憲法維護基本權利之意旨；法律授權行政機關訂定之命令，為適當執行法律之規定，尤須對採取影響人民權利之行政措施時，其應遵行之程序作必要之規範。

obtain the approval of the Ministry of Finance in advance. While based on the delegation of Articles 62, Paragraph 3, of the Banking Act, in the interest of the protection of the people's rights not only should the substance of the law conform with the Constitution, but it should also make appropriate provisions for implementing procedures and timely judicial relief. Only then will the constitutional purpose of safeguarding fundamental rights be fulfilled. An ordinance promulgated by the executive branch delegated by law, for the proper implementation of the provision of a law, in particular must provide for the procedures required in adopting administrative measures which may impact on people's rights.

The abovementioned measures provided for in the Banking Act, the Credit Cooperatives Act, and the Regulation Governing the Supervision and Taking-Over of Financial Institutions seriously impact on the shareholders (members), managers and other interested parties of banks and credit cooperatives. Yet these Acts and Regulation provide only for the

銀行法、信用合作社法及金融機構監管接管辦法所定之前開各種措施，對銀行、信用合作社之股東（社員）、經營者及其他利害關係人，既皆有重大影響，該等法規僅就主管機關作成行政處分加以規定，未能對作成處分前，如何情形須聽取股東、社員、經營者或利害關係人陳述之意見或徵詢地方自治團體相關機關（涉及各該地方自治團體經

administrative measures to be adopted by the relevant authority, are totally silent on the circumstances in which the opinions of shareholders, members, managers or interested parties may be sought or the opinion of local government (where financial institutions managed by such government are involved) is solicited before administrative decisions are made. The abovementioned Regulation also allow the competent authority to appoint an organ (institution) or personnel as supervisor or conservator, without consulting the appointees, and allow the conservator to assume the power of management and the disposition and management of property, thus letting the conservator and the competent authority decide the arrangement for the purchase and assumption, in whole or in part, of the operations, assets and liabilities of the relevant financial institution, or to merge with another financial institution, without taking into account the feasibility of a resolution by the shareholders' or members' meeting of the relevant financial institution, or whether such financial institution is in a position to provide timely funding, collateral or other effective means to meet

營之金融機構)之意見設置明文。前述金融機構監管接管辦法允許主管機關逕行指派機關(機構)或人員為監管人或接管人,而不問被指派機關(機構)或人員之意願,並使接管人取得經營權及財產管理處分權,復由接管人及主管機關決定概括讓與全部或部分業務及資產負債,或與他金融機構合併,無須斟酌受接管之金融機構股東或社員大會決議之可行性,亦不考慮該金融機構能否適時提供相當資金、擔保或其他解決其資產不足清償債務之有效方法,皆與憲法保障人民財產權之意旨未盡相符。前述銀行法、信用合作社法及金融機構監管接管辦法,主管機關均應依本解釋意旨儘速檢討修正。



its solvency problem. None of these is in conformity with the constitutional guarantee of the people's property rights. The abovementioned Banking Act, Credit Cooperatives Act and Regulation Governing the Supervision and Taking-Over of Financial Institutions should be promptly reviewed and amended in accordance with this Interpretation.

To avoid the repeated occurrence of unsound management or insolvencies of financial institutions, the competent authority should review the totality of the prevailing supervisory framework to prevent any potential crisis. Insofar as the regulation of credit cooperatives is concerned, due regard should be accorded the provision of Article 145 of the Constitution on the encouragement and support of cooperative enterprises.

Justice Vincent Sze filed dissenting opinion in part.

Justice Yueh-Chin Hwang filed dissenting opinion.

Justice Tong-Schung Tai filed dissenting opinion.

為避免金融機構一再發生經營不善或資產不足清償債務之事件，主管機關允宜通盤檢討現行金融管理機制，俾使危機消弭於未然。對信用合作社之管理，並應注意憲法第一百四十五條獎勵扶助合作事業之意旨，併此指明。

本號解釋施大法官文森提出部分不同意見書；黃大法官越欽、戴大法官東雄分別提出不同意見書。