

J. Y. Interpretation No.489 (July 30, 1999) *

ISSUE: What is the meaning of the term “other necessary actions” in Article 62-I and -II of the Banking Act and Article 27-I of the Credit Cooperatives Act?

RELEVANT LAWS:

Article 62 of the Banking Act (銀行法第六十二條) ; Article 27-I of the Credit Cooperatives Act (信用合作社法第二十七條第一項) .

KEYWORDS:

necessary actions (必要處置) , universal acceptance (概括承受) , compel windup or merger (勒令停業清理或合併) , takeover of the bank (接管銀行) , the principle of proportionality (比例原則) .**

HOLDING: Under Article 62-I and -II of the Banking Act and Article 27-I of the Credit Cooperatives Act , in the event that any credit cooperative conducts its business operation in a manner contrary to its articles or any provisions of law, or is unable to carry out its business operation in a sound manner thus harming

解釋文：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、第二項所稱主管機關對違反法令、章程或無法健全經營而損及社員及存款人權益之合作社或因業務或財務狀況顯著惡化之銀行，得分別為撤銷決議、撤換職員、限制發給理、監事酬勞或停止、解除其職務，停止業務限期清理、

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the rights and interests of its members or depositors, or any bank's business or financial affairs have significantly deteriorated, the competent governing authorities shall impose the following sanctions: quash resolutions; recall or replace employees; restrict the amount of remunerations to directors and supervisors; discontinue or release their official title; compel such cooperative or bank to cease operation and windup business within a time limit; deploy personnel for administration, takeover or merger; issue a dissolution order; revoke their permit; or take other "necessary actions". These "necessary actions" refer to reasonable measures which are necessary in the emergency circumstances whereby even the adoption of the above stated measures stipulated in the legal provisions would not be able to achieve the expected results. These actions are necessarily conducted under the premise that the preconditions stated in Article 27-I of the Credit Cooperatives Act, "In the event the credit cooperative is unable to carry out its business operation in a sound manner thus possibly harming the rights and interests of its

派員監管、接管、合併、命令解散、撤銷許可及其他必要處置。其中必要處置係指在符合信用合作社法第二十七條第一項「無法健全經營而有損及社員及存款人權益之虞時」或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」之前提下，因情況急迫，縱然採取上開法律所舉之措施，勢將不能實現預期效果時，所為不得已之合理手段而言。主管機關對財務狀況顯著惡化、無法健全經營之銀行或信用合作社促使其由其他金融機構概括承受，應合於前述要件外，尚須被概括承受之銀行或信用合作社未能適時提供相當資金、擔保或其他解決其資產不足清償債務之有效方法時，經依相關法令規定辦理概括承受之程序，始符合必要處置之意旨。

members or depositors...” and Article 62-I of the Banking Act , “In the event the bank is unable to satisfy its liabilities or could possibly compromise the interests of its depositors due to the significant deterioration of its financial and business affairs...” are satisfied. The measure of universal acceptance by other financial institutions is sometimes employed by the competent governing authorities on banks or credits cooperatives which have evidenced significant deterioration of their financial affairs or have shown an inability to conduct their business operation in a sound manner. In addition to the satisfaction of the abovementioned conditions, the measure of universal acceptance must be processed in accordance with the procedures stipulated in the relevant provisions. Further, the bank or credit cooperative which has the measure of universal acceptance imposed upon it must have failed to secure the equivalent fund or guarantee, or failed to employ other effective measures to resolve the deficiency of assets and pay off its debts in time. Only thus shall the measure of universal acceptance fall within the meaning of “neces-

sary actions”.

REASONING: Article 27-I of the Credit Cooperatives Act states: “In the event that any credit cooperative conducts its business operation in a manner contrary to its articles or any provisions of law, or is unable to carry out its business operation in a sound manner thus possibly harming the rights and interests of its members or depositors, the competent governing authorities shall impose the following sanctions: a) quash resolutions passed in any types of statutory meetings; although any resolutions which are contrary to any law or articles are obviously invalid; b) recall or replace managers or employees, or order the credit cooperatives to impose the necessary sanctions; c) restrict the amount of remunerations to directors and supervisors; d) discontinue or release the official title of the directors and supervisors; e) suspend part of its business operation; f) compel windup or merger; g) order its dissolution; or h) any necessary actions. Article 27-II states: “Sanctions a) to d) shall be directly handled by the district (municipal) govern-

解釋理由書：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。」第二項：「前項第一款至第四款由縣（市）政府或省（市）政府財政廳（局）逕行處理，並報中央主管機關備查，第五款至第八款應轉請中央主管機關處理。」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。」第二項：「中央主管機關於派員監管或接管時，得停止其股東會、董事或監察人全部或部分職權。」各該法條所定之諸多措施顯係分別授權

mentor the provincial (municipal) department of finance and shall be reported to the central governing authority. Sanctions e) to f) shall be handled by the central governing authority.” Article 62-I of the Banking Act states: “In the event a bank is unable to satisfy its liabilities or could possibly compromise the interests of its depositors due to the significant deterioration of its financial and business affairs, the central governing authority shall compel the termination of its business and windup within a time limit, suspend parts of its business operation, deploy personnel for the administration or takeover of the bank, or any other necessary actions. The central governing authority shall also request the relevant authorities to restrict the persons responsible from leaving the country.” Article 62-II states: “While in the process of administering or taking over the bank, the central governing authority shall suspend, completely or partially, the authority of the shareholders, directors or supervisors.” The measures stipulated in these various provisions authorize the respective competent governing authorities to, after considering the

各級主管機關衡量實際情況，依照比例原則，選擇足以達成維持金融秩序之目的，而社會成本最低並兼顧保護人民財產權之手段。其中所謂必要處置係指在符合信用合作社法第二十七條第一項「無法健全經營而有損及社員及存款人權益之虞時」或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」之前提下，因情況急迫，縱然採取上開法律所舉之措施，勢將不能實現預期效果時，所為不得已之合理手段而言。主管機關對財務狀況顯著惡化、無法健全經營之銀行或信用合作社促使其由其他金融機構概括承受，應合於前述要件外，尚須被概括承受之銀行、信用合作社未能適時提供相當資金、擔保或其他解決其資產不足清償債務之有效方法時，經依相關法令規定辦理概括承受之程序，始符合必要處置之意旨。

actual circumstances and in accordance with the principle of proportionality, select the measures sufficient to achieve the goal of maintaining the financial order while incurring the minimum social cost and safeguarding the people's property rights. The "necessary actions" refer to reasonable measures which are necessary in the emergency circumstances whereby even the adoption of the above stated measures stipulated in the legal provisions would not be able to achieve the expected results. These actions are necessarily conducted under the premise that the preconditions stated in Article 27-I of the Credit Cooperatives Act , "In the event the credit cooperative is unable to carry out its business operation in a sound manner thus possibly harming the rights and interests of its members or depositors..." or Article 62-I of the Banking Act , "In the event the bank is unable to satisfy its liabilities or could possibly compromise the interests of its depositors due to the significant deterioration of its financial and business affairs..." are satisfied. The measure of universal acceptance by other financial institutions is sometimes employed by the

competent governing authorities on banks or credits cooperatives whose financial affairs have significantly deteriorated or which are unable to conduct their business operation in a sound manner. In addition to the satisfaction of the abovementioned conditions, the measure of universal acceptance must be processed in accordance with the procedures stipulated in the relevant provisions. Further, the bank or credit cooperative which has the measure of universal acceptance imposed upon it must have failed to secure the equivalent fund or guarantee, or employ other effective measures to resolve the deficiency of assets and pay off its debts in time. Only thus shall the measure of universal acceptance fall within the meaning of “necessary actions”.