

J. Y. Interpretation No.276 ( March 8, 1991 ) \*

**ISSUE:** Is the failure of the Cooperatives Act and the Regulation for the Encouragement of Cooperative Enterprises to prescribe the requirements and procedure for dissolving a cooperative in violation of the Constitution?

**RELEVANT LAWS:**

Articles 15 and 171 of the Constitution ( 憲法第十五條及第一百七十一條 ) ; Subparagraph 6, Paragraph 1, of Article 55 of the Cooperatives Act ( 合作社法第五十五條第一項第六款 ) .

**KEYWORDS:**

cooperative ( 合作社 ) , involuntary disincorporation order ( 解散命令 ) , 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 ) .\*\*

**HOLDING:** The involuntary dissolution order of Subparagraph 6, Paragraph 1, of Article 55 of the Cooperatives Act is a disposition dissolving any cooperative. However, no clear elements and procedures of such disposition have been

**解釋文：**合作社法第五十五條第一項第六款規定之解散命令，乃解散合作社之處分，對於此種處分之要件及程序如何，該法未為明確之規定，宜由主管機關妥為檢討修正。內政部於中華民國六十九年二月二十六日修正發布之

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\* Translated by Professor Fuldien Li.

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

clarified in the said Act Therefore, the governmental authority in charge shall accordingly review and amend said Act Further, the related Regulation for the Encouragement of Cooperative Enterprises issued by the Ministry of Interior on February 26, 1980, which require the involuntary dissolution of those cooperative enterprises that were graded as E class by the regional county or city governmental authority in charge shall be reviewed and amended accordingly.

**REASONING:** It is specified in Paragraph 1, Article 55, of the Cooperatives Act that: “A cooperative may be disincorporated in any of the following circumstances: 1. A cause for disincorporation as set forth in the Constitution occurs; 2. The members’ congress determines a resolution of disincorporation; 3. There are less than seven members; 4. The cooperative is incorporated into another cooperative. 5. Bankruptcy; and 6. Order of disincorporation.” In the above paragraph, the disincorporation order of Subparagraph 6 means a disincorporation that will dissolve a cooperative and terminate its

合作事業獎勵規則，關於合作事業成績考列戊等者，由縣市合作社主管機關令飭解散之規定，應配合上開法律一併檢討修正。

**解釋理由書：**合作社法第五十五條第一項規定：「合作社因左列各款情事之一而解散：一、章程所定解散之事由發生。二、社員大會之解散決議。三、社員不滿七人。四、與他合作社合併。五、破產。六、解散之命令。」其中第六款「解散之命令」，乃解散合作社，消滅其法人人格之處分。惟此種處分之要件及程序，該法未為明確之規定，宜由主管機關妥為檢討修正。內政部於中華民國六十九年二月二十六日修正發布之合作事業獎勵規則，關於合作事業成績考列戊等者，由縣市合作社主管機關令飭解散之規定，目的雖屬正當，惟合作社法既待檢討修正，仍應配

personality accordingly. However, no clear elements and procedures of such disposition have been clarified in the said Act. We therefore believe that the governmental authority in charge of such act should accordingly review and amend such act. Further, regarding the related Regulation for the Encouragement of Co-operative Enterprises issued by the Ministry of Interior on February 26, 1980, which require the involuntary disincorporation of those cooperative enterprises that were graded as E class by the regional county or city governmental authority in charge, we confirm that the purpose of such requirement is just and reasonable. Nonetheless, it shall be reviewed and amended in accordance with the amendment of the aforementioned Credit Cooperative Association Act.

Justice Chien-Hua Yang filed dissenting opinion, in which Justice Zu-Zan Yang and Justice Geng Wu joined.

合一併檢討修正。

本號解釋楊大法官建華、楊大法官日然與吳大法官庚共同提出理由不同意見書。