

J. Y. Interpretation No.106 (February 12, 1965) *

ISSUE: To what extent shall the restrictions imposed by Articles 16 and 18 of the National General Mobilization Act apply?

RELEVANT LAWS:

Article 16 and 18 of the National General Mobilization Act (國家總動員法第十六條、第十八條); the Relief Order for Important Businesses (重要事業救濟令).

KEYWORDS:

to exercise the right of claims (行使債權), to perform obligations (履行債務), specific area (特定地區), specific kind of businesses under certain circumstances (特定情形之某種事業). **

HOLDING: The restrictions of people's freedom authorized by Articles 16 and 18 of the National General Mobilization Act means that, whenever necessary, the government not only can impose restrictions on all persons, banks, corporations, and manufacturers to exercise the right of claims or to perform obligations, but also can impose the same restrictions

解釋文：國家總動員法第十六條、第十八條所得加以限制之規定，並非僅指政府於必要時，祇能對全體人民或全體銀行、公司、工廠之行使債權履行債務加以限制，亦得對特定地區或特定情形之某種事業為之。行政院依上開法條規定頒發重要事業救濟令，明定凡合於該令所定情形，及所定種類事業之股份有限公司，均得適用，尚難認為於

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on a specific area, or on specific kinds of businesses under certain circumstances. In accordance with the above-mentioned provisions, the Executive Yuan has issued a Relief Order for Important Businesses. The order provides relief for certain limited-shares corporations when the prescribed conditions are met. It cannot be said that this has exceeded the authority conferred by law. As to the range of restrictions for exercising the right of claims or performing obligations, although from a practical point it is hard to set a concrete standard, nevertheless it should still be confined within the limits necessary to carry out said Act.

REASONING: Articles 16 and 18 of the National General Mobilization Act do not confine the government's ability to restrict people's freedom to exercise the right of claims or to perform obligations only to all persons or all banks, corporations and manufacturers. It may also do this to some banks, corporations and manufacturers in a limited area, or under certain circumstances. The Outlines for the Implementation of the National Gen-

法有違。至對於債權行使及債務履行，所加限制之範圍，雖應按實際情形處理，難有具體標準，然應以達成該法所定任務之必要者為其限度。

解釋理由書：國家總動員法第十六條及第十八條並非限定政府於必要時，祇能對全體人民或全體銀行、公司、工廠之行使債權履行債務加以限制，亦得對特定地區或具有某種情形之銀行、公司、工廠為之，國家總動員法實施綱要對此亦有闡明。行政院依據上開法條，所頒重要事業救濟令，規定股份有限公司組織之重要生產、公用、或交通事業，其產品或服務為國內所需要，或確有外銷市場者，倘因事故，有

eral Mobilization Act have expressly provided this, too. In accordance with the above-mentioned provisions, the Executive Yuan has issued a Relief Order for Important Businesses. The executive order provides that a limited-shares corporation whose business is in important production, public utilities, or transportation, whose products or services are indispensable to domestic life, which has a proven export market, and which is liable to be shut down during catastrophes, yet is worth rebuilding, may apply to the agency supervising its business for relief. The executive order also provides that when relief is granted, the government may incidentally restrict the applicant's right of claims and obligations. Any limited-shares corporation that meets the conditions and kinds specified is qualified to apply. It cannot be said that this has exceeded the authority conferred by law. As to the range of restriction placed by the government on exercising the right of claims or performing obligations, although from a practical point it is hard to set a concrete standard, nevertheless it should still be confined within the limits necessary to carry out said Act.

停工之虞，但有重建可能及價值者，得向事業主管機關請求救濟，以及政府於救濟時，得附帶限制其債權債務。凡合於該令所定情形及所定種類事業之股份有限公司，均可有其適用，尚難認為於法有違。至政府對於行使債權履行債務所得加以限制之範圍，雖按實際需要情形而異，殊難有具體標準，然應以達成國家總動員法所定任務之必要者為其限度。

Justice Fan-Kang Tseng filed dissenting
opinion.

本號解釋曾大法官繁康提出不同意
見書。