

J. Y. Interpretation No.292 (February 28, 1992) *

ISSUE: The Judicial Yuan directive requires that in case of bankruptcy, the proceeding for enforcement against the debtor's bankruptcy estate, except for the exercise of exclusionary rights, shall be stayed until the creditors are notified. Is the said directive unconstitutional?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條); Article 98, 99 and Article 108, Paragraphs 1 and 2 of the Bankruptcy Act (破產法第九十八條、第九十九條、第一百零八條第一項、第二項); Article 18, Paragraph 1 of the Compulsory Enforcement Act (強制執行法第十八條第一項); Rule 9(1) of the Judicial Yuan Directive on Precautionary Matters on Handling Compulsory Enforcement, as amended on October 18, 1982 (司法院中華民國七十一年十月十八日修正之辦理強制執行應行注意事項第九則(一)) .

KEYWORDS :

bankrupt (破產、破產人), debtor (債務人), creditor (債權人), claim in bankruptcy (破產債權), bankruptcy proceeding/procedure (破產程序), bankruptcy estate (破產財團), adjudication of bankruptcy (破產宣告), right of exclusion (別除權), compulsory execution enforcement (強制執行), stay (停止執行).**

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

HOLDING: Article 99 of the Bankruptcy Act providing that “a right of claim in bankruptcy may be exercised only in pursuance of bankruptcy procedure” is intended to enable all creditors of the bankrupt to receive pro rata distribution of the property of the bankruptcy estate unless otherwise provided by law. In case one of the creditors petitions for commencement of or for continued enforcement against such property in a compulsory execution proceeding, the right of the other creditors to pro rata distribution will be impaired. Thus, it is necessary to set a restriction on such petitions, and such a restriction is essential to preventing interference with the exercise of right by other persons and is permissible under Article 23 of the Constitution. Rule 9(1) of the Judicial Yuan Directive on Precautionary Matters on Handling Compulsory Enforcement, as amended on October 18, 1982, prescribes that “where the debtor is adjudged bankrupt, the proceeding for enforcement against any property of the debtor that shall be included in the bankruptcy estate, with the exception of property in which right of exclusion has been

解釋文：破產法第九十九條規定：「破產債權，非依破產程序不得行使」，乃使破產人之全體債權人，除法律別有規定外，得就屬於破產財團之財產，受平均之分配。債權人對於此種財產開始或續行民事強制執程序，有礙他債權人公平受償，自應予以限制。此項限制，係防止妨礙他人行使權利所必要，為憲法第二十三條規定之所許。司法院於中華民國七十一年十月十八日修正之辦理強制執行事件應行注意事項第九則(一)規定：「債務人如受破產之宣告，其屬於破產財團之財產，除債權人行使別除權者外，應即停止強制執程序，並通知債權人」，乃提示首開法律及同法第一百零八條規定之意旨，並未就人民權利之行使增設限制，與憲法尚無牴觸。

claimed by a creditor, shall be stayed, and the creditors shall be notified accordingly.” Said rule is intended to be a reminder of the essence embodied in Article 99 of the Bankruptcy Act quoted above and Article 108 thereof rather than an imposition of any additional restriction on the exercise of the right of the people and is therefore not in conflict with the Constitution.

REASONING: While a creditor has the right to request the State to compel the debtor to perform in order to materialize his right of claim, the exercise of such right must be carried out according to legal procedures and is subject to legal restrictions in circumstances specified by Article 23 of the Constitution. The property of the debtor is a common security for the claims of all creditors. If the debtor is adjudged bankrupt because his property is insufficient for payment of all debts, all claims against the bankrupt established prior to the adjudication of bankruptcy, with the exception of those with the right of exclusion, shall be claims in bankruptcy under Article 98 of the Bankruptcy

解釋理由書：債權人為實現其債權，雖有請求國家強制債務人履行之權利，惟此項權利之行使，須依法定程序為之。如有憲法第二十三條規定之理由，並得以法律限制之。債務人之財產，為全體債權人債權之共同擔保，如不足清償債務而受破產宣告時，依破產法第九十八條規定，對於破產人之債權，在破產宣告前成立者，除有別除權者外，均為破產債權；同法第一百零八條第一項、第二項規定：「在破產宣告前，對於債務人之財產有質權、抵押權或留置權者，就其財產有別除權」。「有別除權之債權人，不依破產程序而行使其權利」。又依強制執行法第十八條第一項規定：「強制執行程序開始後，除法律另有規定外，不停止執

Act. The Act further provides in Article 108, Paragraphs 1 and 2, that “a person who has a pledge, mortgage, or right of retention on the property of the debtor created or acquired prior to the adjudication of bankruptcy shall have the right of exclusion in respect of such property” and that “a creditor with the right of exclusion is entitled to exercise his right without being subject to the bankruptcy procedure.” Furthermore, the Compulsory Enforcement Act prescribes in Article 18, Paragraph 1, thereof that “unless otherwise provided by law, a compulsory enforcement proceeding shall not be stayed after commencement thereof.” Conversely, such provisions do not apply where the law says otherwise. Thus, Article 99 of the Bankruptcy Act provides that “a right of claim in bankruptcy may be exercised only in pursuance of bankruptcy procedure” and the provision is intended to enable all creditors without the right of exclusion to receive pro rata distribution of the property of the bankruptcy estate. In case one of the creditors petitions for commencement of or for continued enforcement against such property in a

行」。反之，如法律另有規定，則不在此限。故破產法第九十九條規定：「破產債權，非依破產程序不得行使」，乃使無別除權之全體破產債權人得就屬於破產財團之財產，受平均之分配，債權人對於應屬破產財團之財產開始或續行民事強制執执行程序，有礙他債權人公平受償，自應予以限制。此項限制，亦為上述強制執行法所稱「法律另有規定」之法定停止執行事由，係防止妨礙他人行使權利所必要，為上開憲法規定之所許。司法院於中華民國七十一年十月十八日修正之辦理強制執行事件應行注意事項第九則(一)規定：「債務人如受破產之宣告，其屬於破產財團之財產，除債權人行使別除權者外，應即停止強制執执行程序，並通知債權人」，乃提示上開破產法及強制執行法各規定之意旨，並未增加人民行使權利之限制或增加人民之義務，與憲法尚無牴觸。

compulsory execution proceeding, the right of other creditors to pro rata distribution will be impaired. Such a restriction provides a statutory cause for a stay of the enforcement proceeding and is essential to preventing interference with the exercise of right by other persons and is permissible under Article 23 of the Constitution. Rule 9(1) of the Judicial Yuan Directive on Precautionary Matters on Handling Compulsory Enforcement, as amended on October 18, 1982, prescribes that “where the debtor is adjudged bankrupt, the proceeding for enforcement against any property of the debtor that shall be included in the bankruptcy estate, with the exception of property in which right of exclusion has been claimed by a creditor, shall be stayed, and the creditors shall be notified accordingly.” Said rule is intended to be a reminder of the essence embodied in the above articles of the Bankruptcy Act and the Compulsory Enforcement Act rather than an imposition of any additional restriction on the exercise of the right of the people or an increase in any obligation of the people, and is therefore not in conflict with the Constitution.