

J. Y. Interpretation No.334 (January 14, 1994) *

ISSUE: Shall the broad definition of the term “bond” have the same meaning as the term “bond” defined under the Central Government Development Bonds Issuance Act, and shall it be further stipulated pursuant to the laws?

RELEVANT LAWS:

Articles 2 and 6 of the Central Government Development Bonds Issuance Act (中央政府建設公債發行條例第二條、第六條); Article 34 of the Act Governing the Allocation of Government Revenues and Expenditures (財政收支劃分法第三十四條); Articles 7, Paragraph 1, Subparagraph 1 and 13, Paragraph 1 of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第七條第一項第一款、第十三條第一項) .

KEYWORDS:

bond (公債), development bonds (建設公債), public debts (公共債務), upper limit of borrowings (舉債之上限), treasury bill (國庫券), fiscal crisis (財政危機).**

HOLDING: The broad definition of the term “bond” shall include any governmental borrowings for each and every

解釋文：廣義之公債，係指包括政府賒借在內之一切公共債務而言。而中央政府建設公債發行條例所稱之公

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public indebtedness, while the term “bond” under the Central Government Development Bonds Issuance Act shall mean the issuance of development bonds by way of bonds and bills pursuant to law. In order to maintain national fiscal soundness, it is suggested that the upper limit of all borrowings for the State be stipulated in accordance with the laws after taking into account the totality of circumstances involved.

REASONING: In connection with the application of Article 2 of the Central Government Development Bonds Issuance Act, the Legislative Yuan and Executive Yuan have adopted different views ex officio and have petitioned the Judicial Yuan for a uniform interpretation, which they hence will accept in accordance with Article 7, Paragraph 1, Subparagraph 1, of the Constitutional Interpretation Procedure Act. Furthermore, pursuant to Article 13, Paragraph 1, of the Constitutional Interpretation Procedure Act, the Judicial Yuan has informed the applicant, the Legislative Yuan, and the relative party, the Executive Yuan, to ap-

債，則指依法以債票方式發行之建設公債。惟為維護國家財政之健全，國家全部舉債之上限，宜綜合考量以法律定之，併予指明。

解釋理由書：本件係立法院因與行政院間，就其職權上適用中央政府建設公債發行條例第二條所持之見解，彼此有異，聲請本院統一解釋，符合司法院大法官審理案件法第七條第一項第一款之規定，應予受理，並經本院依同法第十三條第一項通知聲請機關立法院及關係機關行政院指派代表，於中華民國八十二年十二月二十三日到場，在憲法法庭行言詞辯論，並邀請財經學者到庭陳述意見，合先說明。

point designated representatives to attend hearings and argue before the Constitution Court on December 23, 1993, and has invited financial economics scholars to appear at the said Court to express their opinions on this matter. The allegations of the applicant are briefly summarized as follows:

Article 2 of the Central Government Development Bonds Issuance Act sets forth the total residual amount of the issuance of debts, which nature is the upper limit of indebtedness, a burden undertaken by the government, which has promised such ceiling to the people. The said purpose is to prevent any heavy tax burden upon citizens and to avoid a fiscal crisis. If the more-than-one-year borrowing of the government is not included in the abovementioned non-payable total residual amount, the upper limit restriction as stated in such Act will be pointless, the governmental expenditures will be without limitation and consequently the government may evade the supervision of the Legislative Yuan. As far as Article 34 of the Act Governing the Allocation of Gov-

本件聲請解釋機關主張略稱：現行中央政府建設公債發行條例第二條對公債發行總餘額設有限制，性質上乃政府就其債務負擔對人民承諾之上限，旨在防止人民稅負過重及避免政府之財政危機。如政府一年以上之賒借，不列入上述條例之公債未償總餘額內，則將使法律設限之規定，形同具文，政府支出亦將因此而漫無限制，且得以逃避立法機關之監督。至於財政收支劃分法第三十四條之規定，係強調各級議會之職權，不得作為一年以上賒借之法源依據，政府支應建設及軍事採購等支出，而向銀行賒借一年以上之借款數額，應受中央政府建設公債發行條例第二條上限規定之限制等語。

ernment Revenues and Expenditures is concerned, it is to emphasize the authority of every level of council and shall not be the source of law for more-than-one-year borrowings; thus, such more-than-one-year bank loans shall be governed by the limitation under Article 2 of the Central Government Development Bonds Issuance Act.

The response of the relative party is in the following:

The term “bond” under the Central Government Development Bonds Issuance Act, pursuant to the legislative purpose and construction of its literal meaning, shall refer to the bonds issued in accordance with such Act. The upper limit so set forth therein only applies toward these development bonds, exclusive of those from borrowings. Bonds and more-than-one-year borrowings are separately listed under Article 34, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures, which clearly indicates that they shall not be commingled. Accordingly, more-than-one-year borrowings of the Central Gov-

關係機關主張略稱：中央政府建設公債發行條例所稱之公債，依立法意旨及文義解釋，當然係指依該條例發行之公債而言。其所設上限，自亦僅對此種建設公債有其適用，並不及於賒借。且財政收支劃分法第三十四條第一項，將公債與一年以上賒借並列，亦足見兩者不可混為一談，中央政府一年以上賒借即係依該法規定編入預算與公債收入分列科目，一併送請立法院審議，並無不受立法機關監督或藉故規避之情形等語。

ernment shall be compiled under the item of budget and separate from revenue arising from bonds, and as such shall be submitted to the Legislative Yuan for review. Every situation will be supervised by the Legislative Yuan and there will not be any attempt to evade the aforesaid supervision.

After considering the points asserted by the applicant and the relative party as well as opinions rendered by the scholars, this Court has found the following:

If deficit and imbalance of the budget should occur, for the fiscal needs and the term promise to pay the principal and premium, the broad definition of the term “bond” shall include any borrowings from individuals, commercial entities, financial institutions, foreign governments or international organizations, while the narrow definition of the same term shall mean the raising of funds from the issuance of bonds and bills. Different countries have various systems for governing of fund-raising methods as well as those rules and regulations public debts should be subject thereto. With respect to the issuance of

本院斟酌聲請機關及關係機關之主張暨學者陳述之意見，作成本解釋，其理由如左：

按政府在預算收支上發生入不敷出，不能平衡時，基於財政上之需要，並於承諾定期還本付息之條件下，向個人、商業團體、金融機構、外國政府或國際組織借款，均屬廣義之公債，而狹義之公債，則指以發行債票方式之募款而言，政府舉債方法以及應受之法律規範各國有其不同之制度。我國關於公債之發行，訂有中央政府建設公債發行條例及其他為特定建設制定之公債發行條例（例如中央政府興建台灣北部區域第二高速公路建設公債發行條例）；國庫券之發行，除國庫法外，尚有國庫券發行條例；對國外借款則另行制定政府發展經濟社會向國外借款及保證條例；一

bonds here, there are the Central Government Development Bonds Issuance Act and other statutes of issuing bonds for special constructions (for instance, the Act for Issuing Second Freeway Development Bonds in the Northern Taiwan Region by the Central Government); the issuance of treasury bills can be found not only in the Treasury Act, but in the Act for the Issuance of Treasury Bills as well; and in regard to foreign borrowings, there is the Act Governing Foreign Loans and Guarantee for Government to Develop Economy and Society; as to borrowings for more than one year, they are regulated by the Act Governing the Allocation of Government Revenues and Expenditures. Among the above, the Central Government Development Bonds Issuance Act is set forth to issue, pursuant to law, bonds or bills, bearer or registered, or other receipts for the purposes of raising development capitals for the Central Government (as per Article 6 of such Act). According to said Article 2, the so-called “non-payable total amount” shall mean the residual unpaid total sum of such development bonds which are issued in ac-

年期以上之賒借，則見諸財政部收支劃分法之規定。其中中央政府建設公債發行條例係專就中央政府為籌集建設資金，而依法發行之無記名式或記名式債票或其他憑證（該條例第六條參照）所設規定，該條例第二條所稱「未償總餘額」，自係指根據上述方式發行之建設公債未償總餘額，並不包括中央政府依其他法律發行之短期債票或聲請解釋機關所指政府向銀行賒借一年以上之借款在內。惟賒借與發行公債均屬政府之公共債務，其為政府財政之工具實質上並無差異，而政府發行建設公債、短期債票或向國外借款均有特為制定之法律加以規範，並訂有最高額度或依年度總預算訂有比例上之限制。中央政府一年以上之賒借，雖係依財政收支劃分法第三十四條第一項之規定，編列預算送由立法院審議，完成法定程序後，向銀行等機構借貸，但賒借最高數額既不適用中央政府建設公債發行條例上限之規定，又無其他法律之限制，將使中央政府建設公債發行條例上限之規定，形同具文，與前述政府其他舉債須受不同法律限制之情形相較，亦有失均衡。此項一年以上之賒借僅以編列年度預算方式，接受立法機關之審議，難免有捨發行公債以規避法律限制之情形。為維護國家

cordance with the above mentioned method, but shall exclude those short-term bonds or bills issued pursuant to other laws by the Central Government, or the debts, greater than one year, loaned by the banks to the government as indicated by the applicant herein. However, either loan or issuance of bonds will fall under the public debts of the government, which in substance makes no difference as and for governmental fiscal instruments. There are specific laws or regulations that prescribe the issuance of development bonds, short-term bonds or bills, or foreign borrowings, wherein the maximum amount or upper limit pursuant to the annual total budget is set forth. As for those more-than-one-year loans arranged by the Central Government, Article 34, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures stipulates the preparation of the budget for scrutiny by the Legislative Yuan, and once the legal procedures have been concluded, then loans from the banks and other institutions can be arranged. Provided that the lending limit is not applicable in accordance with the ceiling set forth

財政之健全，國家全部舉債之上限，宜綜合考量以法律定之，併予指明。

in the Central Government Development Bonds Issuance Act and there is no other law so regulated, the upper limit restriction as stated in said Act will be pointless, which is unbalanced in comparison to the other governmental borrowings mentioned above that have to be limited by several other laws. The above more-than-one-year borrowings only need to be included in annual budgeting and be subject to the review of the Legislative Yuan, which process to avoid the issuance of bonds will be hard to say without evasion of law. Therefore, in order to maintain fiscal healthiness, it is suggested that the upper limit of all permissible debts for the State be prescribed in accordance with the laws after taking all circumstances into consideration.

Justice Chien-Tsai Cheng filed dissenting opinion, in which Justice Tieh-Cheng Liu joined.

本號解釋鄭大法官健才、劉大法官鐵錚共同提出不同意見書。