

J. Y. Interpretation No.335 (January 28, 1994) *

ISSUE: Should the Enforcement Rules of the Lodgment Act, providing that the title to unclaimed property will pass to the National Treasury notwithstanding the failure of the public lodgment office to act in compliance with the legal requirement of service or publication of a notice of lodgment, be reviewed and revised to better protect the people's property right under the Constitution?

RELEVANT LAWS:

Articles 327, Paragraph 2, and 330 of the Civil Code (民法第三百二十七條第二項、第三百三十條); Articles 8, 10, Paragraphs 2 and 3 of the Lodgment Act (提存法第八條、第十條第二項、第三項); Articles 7, first sentence, and 15 of the Enforcement Rules of the Lodgment Act (提存法施行細則第七條前段、第十五條); State Compensation Act (國家賠償法).

KEYWORDS:

lodgment (提存), lodged property (提存物), the Treasury (國庫), notice of lodgment (提存通知書), state compensation (國家賠償). **

HOLDING: Article 330 of the Civil Code provides that: "The right of the

解釋文：民法第三百三十條規定：「債權人關於提存物之權利，自提

* Translated by Raymond T. Chu.

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

creditor to the property lodged is extinguished by prescription if not exercised within ten years from the date of lodgment, and in such a case the ownership of the property lodged shall pass to the National Treasury.” Additionally, the first sentence of Article 7 of the Enforcement Rules of the Lodgment Act provides that: “The period of prescription set forth in Article 330 of the Civil Code shall begin from the day after the date of lodgment.” The above provisions are intended to determine as early as possible the status of the right to the property lodged so as to maintain a stable social order, and are not in contradiction with the Constitution. Passing the title to the property to the National Treasury, however, will affect the creditor's property right. For this reason, the party making the lodgment is required by law to notify the creditor of the fact that the property has been lodged or, alternatively, a notice of lodgment must be served upon the creditor or published by the public lodgment office. If this process is not followed, a remedial action must be taken by serving upon the creditor or publishing such a notice within a reasonable

存後十年間不行使而消滅，其提存物屬於國庫」、提存法施行細則第七條前段規定：「關於民法第三百三十條所規定之期間，自提存之翌日起算」，旨在使提存物之權利狀態早日確定，以維持社會秩序之安定，與憲法並無牴觸。惟提存物歸屬國庫，影響債權人之財產權，故提存之事實應由提存人依法通知債權人或由提存所將提存通知書送達或公告，其未踐行上述程序者，應於前述期間屆滿前相當期間內，補行送達或公告。上開施行細則應通盤檢討修正，以保障人民之財產權。

time before the expiry of the period of prescription mentioned above. Accordingly, the aforesaid enforcement rules must undergo an overall review and a revision to insure that the property right of the people will be protected.

REASONING: Article 330 of the Civil Code provides that: “The right of the creditor to the property lodged is extinguished by prescription if not exercised within ten years from the date of lodgment, and in such a case title to the property lodged shall pass to the National Treasury.” Additionally, the first sentence of Article 7 of the Enforcement Rules of the Lodgment Act provides that: “The period of prescription set forth in Article 330 of the Civil Code shall begin from the day after the date of lodgment.” The underlying reason for the legislation is that failure on the part of the creditor to take delivery of the property lodged, which he is entitled to take delivery of at any time after the lodgment, will not only leave the property in the custody of the public lodgment office for an indefinite time but also place the right in an uncertain state

解釋理由書：民法第三百三十條規定：「債權人關於提存物之權利，自提存後十年間不行使而消滅，其提存物屬於國庫」、提存法施行細則第七條前段規定：「關於民法第三百三十條所規定之期間，自提存之翌日起算」，乃因提存之後，債權人本得隨時受取提存物，若竟久不受取，不特提存所須為無期限之保管，且使權利狀態久不確定，對於社會經濟亦有不良影響。上開規定，旨在使提存物之權利狀態早日確定，為維持社會秩序所必要，與憲法並無牴觸。惟依民法第三百二十七條第二項規定，提存人於提存後應即通知債權人；提存法第八條規定，聲請提存，如係清償提存，應附具提存通知書；同法第十條第二項、第三項規定，提存所接到提存書後，認為應予提存者，應將提存通知書送達債權人，如應為公示送達而提存人不為聲請者，應由提存所公告之；同法施行細則第十五條規定，不能

for an unduly prolonged period, with adverse influence on the economy. The above provisions are therefore necessary in order to determine as early as possible the status of the right to the property lodged so as to maintain a stable social order, and are not in contradiction with the Constitution. However, the Civil Code provides, in Article 327, Paragraph 2, that the person who makes lodgment must notify the creditor promptly after the lodgment has been made. Article 8 of the Lodgment Act requires that in case of lodgment for payment of debt a notice of lodgment must be attached to the application for lodgment, and Article 10 of the same Act provides in Paragraphs 2 and 3 thereof that if the public lodgment office, upon receipt of the document of lodgment, deems it appropriate to accept the lodgment, it shall cause the notice of lodgment to be served upon the creditor or, alternatively, to have it published if service by publication is legally required but the person making the lodgment has failed to file an application therefor. Additionally, Article 15 of the Enforcement Rules of the Lodgment Act prescribes

確知孰為債權人而為提存者，提存所應將提存通知書公告之。因提存物歸屬國庫，影響債權人之財產權，故提存之事實應由提存人通知債權人或由提存所將提存通知書送達或公告，其未踐行上述程序者，應於前述期間屆滿前相當期間內，補行送達或公告。其未補行者提存物雖仍屬於國庫，但如合於國家賠償法之規定者，債權人仍得依法請求國家賠償。上開施行細則應依上述意旨並斟酌有關事項，通盤檢討修正，以保障人民之財產權。

that, in case lodgment is made because the creditor is not known for certain, the public lodgment office shall have the notice of lodgment published. Since passing the title to the property to the National Treasury will affect the creditor's property right, the Act requires that the party making the lodgment notify the creditor of the fact that the property has been lodged and that, alternatively, a notice of lodgment must be served upon the creditor or published by the public lodgment office. If this process is not followed, a remedial action must be taken by serving upon the creditor or publishing a notice within a reasonable time before the expiry of the period of prescription mentioned above. While title to the lodged property will pass to the National Treasury notwithstanding the failure of the public lodgment office to take remedial action as required, the creditor is entitled to claim state compensation under the State Compensation Act where applicable. In conclusion, the aforesaid enforcement rules must undergo an overall review and a revision based on our opinion given above and by taking into consideration other related matters, so

472 J. Y. Interpretation No.335

that the property right of the people will
be protected.