

J. Y. Interpretation No.386 (September 29, 1995) \*

**ISSUE:** Is the provision of the Central Government Development Bonds Issuance Act, providing that no registration of loss or stop payment may be made for various reasons, including lost vouchers of the bond, in violation of the Constitution?

**RELEVANT LAWS:**

Articles 15 and 16 of the Constitution (憲法第十五條、第十六條); Articles 720, Paragraph 1, 725 and 727 of the Civil Code (民法第七百二十條第一項、第七百二十五條、第七百二十七條); Article 8 of the Central Government Development Bonds and Loans Act (中央政府建設公債及借款條例第八條) .

**KEYWORDS:**

bond certificates (公債債票), the central government development bond (中央政府建設公債), reporting of loss (掛失止付), the National Treasury (國庫), bona fide third parties (善意第三人) . \*\*

**HOLDING:** The first part of Article 8 of the Central Government Development Bonds Issuance Act states that: “Reporting of loss to prevent cashing by

**解釋文：**中央政府建設公債發行條例第八條前段規定：「本公債債票遺失、被盜或滅失者，不得掛失止付，並不適用民法第七百二十條第一項但

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\* Translated by Professor Wen-Yeu Wang.

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

the bearer is not allowed for any bond certificates which are lost, stolen or missing.” Thus, Articles 720, Paragraph 1, 725 and 727 of the Civil Code shall not be applicable. This prevents legal owners of government bearer bonds from protecting their rights and interests under the relevant provisions in the Civil Code governing bearer securities in the event that their bond certificates are lost, stolen or missing. In the absence of any alternative and reasonable remedies, this is contrary to the intention of safeguarding the people’s rights and interests as stated in Articles 15 and 16 of the Constitution. Hence, with effect from the date of publication of this interpretation, the above stated provision shall no longer apply to any government bearer bonds issued under the above regulations.

**REASONING:** In order to raise funds for major national construction projects, central government construction government bearer bonds are issued by means of issuing bond certificates. The National Treasury’s obligation to pay the owners of the bond certificates is in prin-

書、第七百二十五條及第七百二十七條之規定。」使人民合法持有之無記名公債債票於遺失、被盜或滅失時，無從依民法關於無記名證券之規定請求權利保護，亦未提供其他合理之救濟途徑，與憲法第十五條、第十六條保障人民權利之意旨不符，應自本解釋公布之日起，於其後依該條例發行之無記名公債，停止適用。

**解釋理由書：**國家為支應重大建設發行之無記名中央政府建設公債，係以發行債票方式籌集資金，國庫對公債債票持有人所負之給付義務，本質上與自然人或公私法人為發行人，對無記名證券持有人負擔以證券所載之內容而為給付之義務，並無不同。法律為保護

ciple no different from the obligation, as stated on the securities, to pay the owners of bearer securities issued by natural persons or public/private corporate bodies. The law protects the owners of bearer securities from any unjustified loss arising from lost, stolen or missing securities certificates by providing various safeguards and remedies [See Articles 720, Paragraph 1, 725 and 727 of the Civil Code]. This had long been established as a framework of institutional safeguards for bearer securities, maintaining fairness without affecting the rights and interests of bona fide third parties or imposing any further burdens on the issuers. However, the amendments to the first part of Article 8 of the Central Government Development Bonds Issuance Act published on July 29, 1999, which state that: "Reporting of loss to prevent cashing by the bearer is not allowed for any bond certificates which are lost, stolen or missing" (Thus, Articles 720, Paragraph 1, 725 and 727 of the Civil Code shall not be applicable.) not only prohibit the reporting of loss to prevent cashing by the bearer but also specifically exclude the substantial and pro-

無記名證券持有人，於證券遺失、被盜或滅失時，不使其受不當之損失，民法第七百二十條第一項但書、第七百二十五條及第七百二十七條本設有各種保護之規定及救濟之程序，以維持公平，不致影響善意第三人之權益，亦未增加發行人之負擔，此為對無記名證券久已建立之制度性保障。而中華民國八十年七月二十九日修正公布之中央政府建設公債發行條例第八條前段規定：「本公債債票遺失、被盜或滅失者，不得掛失止付，並不適用民法第七百二十條第一項但書、第七百二十五條及第七百二十七條之規定。」其禁止掛失止付，並特別排除上述民法對正當公債權利人實體及程序上應享有之權利，立法原意固在尊重契約自由之精神下，增進該種公債之流通性，以實現財政之目的。惟其對於國庫明知無記名證券持有人無處分之權利，或受有遺失、被盜或滅失之通知時，仍可因其給付而免責，以及限制正當權利人聲請法院依公示催告程序，宣告遺失、被盜或滅失之無記名證券無效，使依該條例發行之無記名公債債票合法持有人，無從依民法關於無記名證券之規定請求權利保護，亦未提供其他之合理救濟途徑，與憲法第十五條保障人民財產權及第十六條保障人民因權利

cedural rights enjoyed by the government bond obligees under the Civil Code. The original legislative intent was to realize the financial target by enhancing the circularity of such government bonds while respecting the freedom of contract. The National Treasury was well aware that owners of bearer securities had no right of action and that it would be exonerated from liability upon payment even if it had notification that the certificates were lost, stolen or missing. Nevertheless, it still imposed restrictions on the proper obligees applying to court to declare invalid the lost, stolen or missing bond certificates in accordance with the procedure for public summons for assertion of claim. This resulted in legal owners of government bearer bonds bond certificates issued under the above stated regulations being unable to apply for protection of their rights and interests provided in the Civil Code. No alternative and reasonable remedies were provided. This is contrary to Article 15 of the Constitution, which safeguards the people's property rights, and Article 16 of the Constitution, which provides that persons whose rights and

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interests are infringed shall be able to apply for remedies in accordance with legally stipulated procedures. Hence, with effect from the date of publication of this interpretation, the above stated provision shall no longer apply to any government bearer bonds issued under the above regulations.

Justice Chi-Nan Chen filed dissenting opinion in part.

本號解釋孫大法官森焱提出部分不同意見書。