

J. Y. Interpretation No.88 (December 21, 1960) *

ISSUE: Is the “non-registrable loss” provision of the Act Governing the Issuance of Short-Term Government Bonds of 1959 exclusive of the application of the public notice procedure as provided in the Civil Code?

RELEVANT LAWS:

Article 725 of the Civil Code (民法第七百二十五條); Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959 (中華民國四十八年短期公債發行條例第三條) .

KEYWORDS:

The proceeding of public summons (公示催告程序), register loss (掛失), issuer (發行人), possessor (持有人) .**

HOLDING: Article 725 of the Civil Code provides that a proceeding of public summons is to ensure the interests of confidentiality of those who legally possess security. Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959 had only stipulated the circumstance of a person who

解釋文：民法第七百二十五條所定之公示催告程序乃以保障無記名證券合法持有人之利益。中華民國四十八年短期公債發行條例第三條僅有「不得掛失」之規定，自不能據以排除上開民法條文之適用。

* Translated by Li-Chih Lin, Esq., J.D.

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

is “unable to register loss.” Nevertheless, it shall not supersede the contents of the former Civil Code.

REASONING: The phrase “unable to register loss” means that the loss of security confidentiality should not be reported to the security issuer. As a proceeding of public summons is necessary when security confidentiality has been lost, the court may, on the application of the latest possessor, declare that such possessor may register his or her security rights to the court by a proceeding of public summons; after receiving the invalidating judgment, the possessor may reclaim the right which depends on the security issuer, so there is a difference between a proceeding of public summons and the registration of loss. Based upon the former reason, the stipulation of inability to register loss in Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959 only means that the security issuer is not responsible for registering the loss incurred by the possessor. Since the Act has not superseded Article 725 of the Civil Code, the stipula-

解釋理由書：查所謂「不得掛失」係指不得向無記名證券發行人掛失止付而言，至公示催告係指無記名證券之最後持有人於喪失其所持之證券時，得聲請法院以公示催告權利關係人向法院申報權利，經除權判決後得對發行人主張證券上之權利，故掛失與公示催告有別，根據前開理由，中華民國四十八年短期公債發行條例第三條「不得掛失」之規定，應祇能據以認定發行人對持有人不負掛失止付之義務，該條例既無排除民法第七百二十五條之明文，自難祇據該條例「不得掛失」之規定，遂謂持有人不得聲請公示催告。

tion that the possessor is unable to register his or her loss with the issuer shall not deny the possessor his or her right for registration of loss.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋金大法官世鼎提出不同意見書。