

Avoidance Proceedings in the Insolvency Law

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Abstract

This article examines the avoidance right in insolvency proceedings as compared to the creditors' right to revoke fraudulent transfers in Taiwan's Civil Code, while also undertaking a pro and con comparison with German Law. In addition, avoidance of transactions in international Insolvency is also treated by discussing a concrete case. Because avoidance criteria and the suspect period for avoidable transaction differ country by country, the international jurisdiction and choice of law are important issues in international insolvency cases.

The purpose of the avoidance actions in insolvency law and creditor's revoking right (Article 244 of civil code) are both to preserve assets of the estate for creditors, however there are some differences between the former and the latter. The latter is conducted by a specific creditor to make sure his own claims can be satisfied, the former is conducted by the insolvency administrator to satisfy all creditors. But the implementation of "the principle of equal treatment of creditors" combined with "the principle of legal protection on basis of good faith" and "the principle of legal certainty", protect the interests of the opponent of the avoidance.

There are some amendments for the avoidance rules in Consumer Insolvency Law and the draft of Insolvency Law, in which are both more complete than current Bankruptcy Law, but still more concise than German Law. There is no need to sue the debtor as a dependant, which makes the insolvency administrator's work progress more smoothly. In the structure, "prejudice toward the rights of the creditor" is taken as a general constitutive element, and then distinguished into two types: voidable fraudulent transfers and voidable

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preference.

Keywords: Bankruptcy Law, Consumer Insolvency Law, Insolvency Law, avoidance proceedings, creditor's right to revoke, avoidable transactions, fraudulent transactions, preferential transactions, principle of equal treatment of creditors, international insolvency