

# The Legal Effect of Creditor's Right of revocation: A Reflection on the System and the Search for a Way Out

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**Abstract.** The current market economic activities are quite active, the legal relationship of credit and debt is intricate and complex, and the malicious debt evasion behavior of some debtors brings certain hidden dangers to the safety of market economic transactions. The creditor's revocation system has become a necessary means to ensure the realization of the interests of creditors, but some defects have been exposed in the judicial practice process. In terms of the attribution of revocation effect, the currently adopted "banked principle" may cause a decrease in the enthusiasm of the revocator and eventually damage the interests of all relevant creditors; at the same time, the boundary between the legal effect of creditor's revocation and the legal effect of ordinary revocation is not clear, so it is difficult to give full play to its effectiveness. This paper analyzes that the conflict between "common interest" and "private interest" and the complexity of the litigation form caused by absolute invalidation are the deep-seated reasons for the existing defects. In this paper, the solution to the above problems is found from two perspectives: the principle of property distribution in enforcement as the basis for choosing the target position of the right of revocation and the enforcement procedure of the main claim to realize the right of revocation.

**Keywords:** creditor's revocation right; civil code; priority compensation rule; enforcement.

## 1. Introduction

### 1.1 Background and significance of the selected topic

Nowadays, various kinds of market economic activities are very active and the related legal relationships are complicated. Some of the debtors' malicious debt evasion behavior makes the relevant creditors' interests cannot be effectively protected even if they win the lawsuit, which brings hidden danger to the safety of market economic transactions. Therefore, the creditor's revocation lawsuit becomes a necessary lawsuit to ensure the realization of the interests of creditors, and the special mechanism to enforce the debtor's right of revocation is undoubtedly one of the core mechanisms for the protection of creditors. Articles 538 to 542 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") provide for the creditor revocation system, of which Article 542 provides for the legal effects of the exercise of the creditor's revocation right. However, many scholars have pointed out that the Civil Code does not specify whether the "principle of credit" or "principle of priority of payment" is used for the effect of the exercise of the creditor's right of revocation, and the legal effects such as the method of returning the property after revocation and the protection of the beneficiary's rights are also affected by the objective of the system. The legal effects such as the method of returning property after revocation and the protection of beneficiaries' rights are also affected by the objectives of the system. It is because of the critical nature of this system for the preservation of debts that its study and development is important to achieve the purpose of the legislation.

### 1.2 Literature Review

As to the attribution of the effect of creditor's revocation, it is generally accepted in academic circles that the debtor's liable property constitutes the "common security" of all ordinary creditors, and the purpose of both creditor's subrogation and creditor's revocation is to maintain the "common security" rather than to preserve the individual interests of creditors. The purpose of creditor subrogation and creditor revocation is to maintain the "common security", not to preserve the

individual interests of creditors. Therefore, some scholars believe that, the legal effect of both subrogation and revocation should be applied to the "warehousing rule". The judicial view is basically consistent with the current law that the debtor's act "shall be invalid from the beginning if it is revoked according to law". However, there are debates in the academic circles. Professor Han Shiyuan believes that in most cases, creditors do not have the right of priority, but in special occasions, creditors can obtain the practical effect of priority. Prof. Yun promoted that the effect of the exercise of the creditor's revocation right is different from the effect of the ordinary revocation right in terms of institutional function, and attention should be paid to distinguish the two. Assistant Professor Mao Shaowei argues that the systemic distinction between relative invalidity and creditor revocation in the case of malicious collusion has not been clarified.

This paper proposes some solution paths for the above controversial issues of the legal effect of creditor's revocation rights, in order to better balance the interests of creditors, debtors and third parties and promote the harmonious and orderly development of society.

## **2. Review and Reflection on the Creditor revocation System**

At present, there are some problems in the application effect of creditor's revocation rights in judicial practice, among which the effect attribution of creditor's revocation rights has aroused more attention from the academic circles. Currently, China adopts the "warehousing rule", which on the one hand is conducive to the preservation of all general creditors' claims, but on the other hand, the revocation right is limited to its own claims, but the benefits are equally paid by all creditors, which is quite unfair.

### **2.1 Disputes over the attribution of the effect of the creditor's revocation right**

Prior to the enactment of the Civil Code, the legal effects of the creditor's right of revocation were not directly regulated in the Contract Law of the People's Republic of China, but were mentioned in Article 25 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (I), which refers to the legal consequences of the debtor's fraudulent acts. Article 542 of the Civil Code, on the other hand, specifies the legal effect of the creditor's right of revocation after its exercise, which reflects that the legal effect of the creditor's right of revocation is the same as the legal effect of the general right of revocation. Thus, it can be seen that the legal effect of the creditor's revocation is extended in the Civil Code by the general consequence of the revocation of legal acts, i.e. the absolute invalidity theory. The absolute nullity theory asserts that once the debtor's act is revoked, it is considered null and void for any person from the beginning. The effect on the creditor is that, based on the exercise of the right of revocation, the object or right detached by the debtor reverts to the debtor as a matter of course; for the debtor and the beneficiary, the relevant legal relationship that previously occurred is thus extinguished. In the case of property, it is effective against all creditors to the extent that it restores the common security of all general claims.

Currently, there is a lot of controversy about the use of "priority" or "equality". According to the systematic interpretation, the recognition of the priority of the revocator can be regarded as the recognition of the direct payment, which is the early payment of the claim before the expiration of the liquidation period. It is true that the objection to the debtor's ownership and dominion over the returned property is a departure from the principle of the primacy of property rights over claims. However, we have to note that according to the "warehousing rule", creditors cannot be paid directly or preferentially, and the property preserved by creditors should first be vested in the debtor as a common security property to preserve the realization of all general creditors' claims, and only after that creditors can obtain it through the debtor's liquidation or through enforcement against the debtor. One of the most controversial focus of the "warehousing rule" is that in judicial practice, the revocator files a creditor's revocation lawsuit to the extent of his own claim, but the benefit is equally given to all creditors, which is unfair to the creditor who files a creditor's revocation lawsuit. It is not difficult

to guess the situation that may occur by applying the "warehousing rule": one of the debtor's creditors files a creditor's revocation lawsuit to the extent of its own claim, and spends a lot of time, money and energy, and either finally wins the lawsuit and restores the debtor's liability property, but the creditor can only distribute the property equally according to the proportion of the claim. If the creditor who filed the lawsuit loses, all the losses must be borne by itself. To a certain extent, the "warehousing rule" allows those who wait passively to get something for nothing, while those who actively exercise their rights do not get the benefits they deserve, which is not in line with the principle of fairness in civil law. If the creditors exercising the right of revocation do not have relative priority, and the property or benefit derived from the exercise of the right of revocation must be paid equally to all creditors, it may discourage creditors from exercising the right of revocation, which may ultimately harm the interests of all relevant creditors. In this way, the legal effect of the creditor revocation system will be difficult to be reflected, and the purpose of debt preservation will be difficult to be achieved.

## **2.2 The relationship between creditor revocation and ordinary revocation is difficult to be clarified**

According to the approach of textual interpretation, the legal effect of the creditor's right of revocation is the same as the legal effect of the revocation of a civil legal act, and judicial practice is largely consistent with the view of the current law.

Among the judicial cases of creditor revocation disputes in the past three years in the PKULAW.COM, there are 14 typical cases and 3 excellent cases, all of which are based on the contract law and its judicial interpretation. In China Judicial Documents website, there are 4,173 documents searched by the keywords of "creditor revocation disputes" and "civil code", and searched by the keywords of "creditor revocation disputes" and "contract law", there were 24,578 creditor revocation cases. It can be seen that most of the cases concluded since the implementation of the Civil Code are still based on the relevant interpretations and principles of the past contract law, while the number of revocation cases decided on the basis of creditor's revocation rights of the Civil Code is still relatively small. It is difficult to give full play to the creditor's right of revocation and the boundary between its legal effects and those of ordinary revocation is still blurred.

## **3. Analysis of the causes of the disputed issue of creditor's right of revocation**

Regarding the underlying reasons for the controversial issue of creditor's revocation rights, this paper analyzes it from two perspectives: substantive effect and litigation procedure. The conflict between "common interest" and "private interest" determines the choice of value orientation of the creditor's revocation system; the current theory of absolute invalidation of the effect of creditor's revocation complicates the litigation form.

### **3.1 The conflict between "common interest" and "private interest"**

"Common interest" and "private interest" are two value orientations of the goal of the creditor revocation system. The "common interest" orientation is consistent with the idea of "equal compensation" of general creditors, which aims to preserve the interests of all general creditors and reflects the principle of equality of creditors. On the other hand, the "private interest" orientation is consistent with the idea of "priority compensation" of the revocator, which aims to protect and realize the personal claims of the revocator, and the revocator can enjoy the benefits of winning the lawsuit or must bear the risk of losing the lawsuit, which has an incentive effect to a certain extent. At present, the "common interest" orientation is dominant in our academic circles, but the latter is also quite reasonable. There are different degrees of conflicts and contradictions between the two in the following three specific aspects. First, Article 537 of the Civil Code recognizes that the effect of subrogation by creditors is "preferential" in most cases. The "priority" here is essentially the same as the value of "private interest" mentioned above. From the perspective of systemic interpretation, the

full adoption of "equal compensation" of creditor's revocation rights will result in the internal incompatibility of the debt preservation system; if the principle of "priority compensation" is adopted, the effect forms of subrogation and revocation will partially overlap, and to a certain extent, it may weaken the function of the revocation system. If the principle of "priority of compensation" is adopted, the effects of subrogation and revocation will overlap, which may weaken the function of the revocation system to a certain extent. Secondly, the choice between "common interest" and "private interest" is directly related to how the revocator can enjoy the successful outcome of the revocation lawsuit. Once the property is returned to the debtor's name, all creditors can apply for the distribution of the preserved property, and the revocator should be paid together with other creditors, and cannot enjoy the successful outcome of the lawsuit alone. The current "private interest" orientation is not yet compatible with the current method of liability property preservation. In addition, the scope of the right of revocation, especially whether it can be limited to the amount of the individual claim of the revocator, is also limited by the effect function of the right of revocation. If the "common interest" approach is chosen, the scope of revocation should not be limited to the amount of the personal claim of the revocator, because if the revocator has to share the liability property with other creditors, the more limited the scope of revocation is, the smaller the percentage of satisfaction the revocator can obtain, which leads to a lower incentive for creditors to exercise their revocation rights. This leads to a lower incentive for creditors to exercise their revocation rights. In contrast, it seems more reasonable to limit the scope of revocation to the amount of the revocator's personal claim while choosing "private interest".

### **3.2 Absolute invalidity complicates the form of litigation**

Absolute invalidation means that after the debtor exercises the creditor's right of revocation, the legal act between the debtor and the third party is invalidated. Since absolute invalidation is the mainstream view of the current academic community, the creditor's revocation claim is also generally regarded as a formation claim. And the formation of the lawsuit can not become the basis for implementation, the creditor can not directly from the counterparty to obtain satisfaction. If the counterparty is required to perform directly to itself, the creditor needs to exercise subrogation right again. In judicial practice, many creditors file the creditor's revocation lawsuit and the creditor's subrogation lawsuit together. This practice is supported by some courts and denied by other courts. Article 331, paragraph 2 of the Draft Civil Code Contracts (second draft) attempted to regulate this practice by providing that creditors may file creditor revocation actions and creditor subrogation actions at the same time. However, the Civil Code did not adopt this provision in the end. Some scholars have addressed the issue of the existence of the form of the action of revocation and subrogation, and proposed a number of reasons why they cannot be exercised at the same time. Undeniably, creditor subrogation and revocation as a way to preserve the claim, both make the claim effective against third parties, and allow the creditor to exercise subrogation while exercising the right of revocation, which is conducive to protecting the creditor to obtain satisfaction, and thus achieve the purpose of preserving the realization of the claim. However, the functional design of creditor subrogation and revocation are not identical, which makes them contradictory when they are applied simultaneously. Specifically, the main purpose of the creditor's right of revocation is to prevent undue reduction of the debtor's liable property and to preserve its claim by exercising the right of revocation. On the other hand, the creditor's subrogation right is to prevent the situation that the debtor's liability property should increase but does not, i.e., the creditor has the right to subrogate the debtor's claim in order to preserve its claim if the debtor neglects to exercise its claim when it is due. It is because of the different purposes of the system design, each of the two have different circumstances of application, and therefore can not be substituted for each other, and the effect of the simultaneous filing of the revocation action and subrogation action may break the boundaries of application and differences between the two, which is not consistent with the purpose of the legislation set two different systems.

## **4. Exploring the way out of the creditor revocation system dilemma**

Based on the analysis of the existing problems, this paper discusses the way out of the creditor revocation system dilemma from two perspectives, i.e., the substantive orientation and the enforcement procedure. For the substantive aspect, i.e., the attribution of creditors' revocation rights, the principle of enforcement property distribution should be used as the basis for choosing the target orientation of revocation rights; for the procedural aspect, in order to avoid complicating the litigation form, revocation judgments should be realized by means of enforcement procedures of main claims.

### **4.1 The principle of distribution of property for enforcement should be the basis for the choice of targeting of revocation rights**

To solve the problem of attribution of revocation effect, it is inseparable from the correct positioning of the target of creditors' revocation right, which must be clear about the basis of positioning choice. Combined with the current judicial practice and academic development in China, the principle of property distribution in enforcement is a feasible idea. The property distribution system is to establish the priority principle of preservation under the participation distribution system, that is, whether in the litigation or in the process of enforcement, the creditor who takes the property preservation measures to obtain the rights of the creditor in preference to ordinary creditors, in accordance with the application of the principle of first "period of interest" to allocate the limited property of creditors. This can not only stimulate the creditors' awareness of timely protection of claims, but also shorten the execution time, reduce the execution input, improve the execution efficiency, enable the material resources to be reallocated in a short time, re-enter the circulation field, and improve the utilization rate of resources. Creditors exercise the right of revocation to preserve the debtor's liability property, ultimately to make their claims to be paid, and claims paid is usually achieved through enforcement. Since most creditors only find out that the executor has transferred the main responsible property and there is no other property available for enforcement after entering the enforcement procedure, the purpose of filing revocation action is to recover the lost property and resume the possibility of enforcement. Therefore, it is clear that the goal of revocation is actually to decide whether the executory value of the liable property should be exclusively enjoyed by the revocator or must be shared with other creditors, and this issue can be discussed and resolved through the principle of distribution of the enforced property in enforcement. There is a general view in academic circles that the goal of the revocation right should be harmonized with the principle of distribution of the enforcement property to deal with the process and result. The latter is divided into priority doctrine and egalitarianism. The so-called priority doctrine refers to the fact that when multiple creditors apply for enforcement against the same property of the debtor, the creditors who apply for seizure or attachment first are given priority to receive payment, except for those who enjoy legal priority. This helps improve the efficiency of enforcement and complements the bankruptcy system that emphasizes equitable payment. The so-called egalitarianism refers to the fact that the same property of the debtor is equally paid to all creditors in proportion to the amount of their claims, regardless of the order of application for enforcement measures. Thus, it can be seen that the egalitarianism and priority of enforcement are in essence compatible with the "common interest" orientation and "private interest" orientation of the creditor revocation system.

According to our judicial practice and the above theoretical basis, we can roughly divide the attributes of the debtor into two situation. The first one is when the enterprise legal person is insolvent and has not yet entered bankruptcy proceedings, the enforcement should apply the priority doctrine. In this case, a "private interest" orientation should be chosen to accommodate the personal claims of the revocator. The advantage of this choice is that it is not only compatible with the "priority doctrine", but also encourages creditors to curb the debtor's transfer of relevant property, while reducing the difficulty of exercising the right of the revocation owner and reducing the impact of the revocation action on the security of the transaction. The second one is when the individual or other organizations go bankrupt, enforcement should applied equalism. In this case, if the liability property to be preserved still cannot satisfy the debtor's entire debt, the enforcement of the preserved property after

the revocation action will be applied to the participation distribution system. Accordingly, the creditor's right of revocation should choose the goal of "common interest". In addition, according to Articles 508 and 509 of the Judicial Interpretation of the Civil Procedure Law of the People's Republic of China, the prerequisite for the application of the "common interest" orientation and its legal effect is to limit the creditor to the extent that it is proven that the basis for enforcement has been or will be obtained and it is determined that it will participate in the enforcement of the distribution of the liable property.

In summary, the objective of the creditor's revocation right should be coordinated with the principle of property distribution for enforcement. When the principle of distribution of property is applied and the subjects expected to participate in the distribution are clear, the "common interest" orientation should be applied, while in other cases, the "private interest" orientation is appropriate.

#### **4.2 Realization of revocation judgments by means of enforcement proceedings of main claims**

Based on the formation nature of the revocation right, the transfer of property between the debtor and the counterparty will be "not legally binding from the beginning" after the revocation judgment becomes effective. However, there is a dispute as to whether the invalidity of the transfer means that the transferred property rights vest directly in the debtor. If the revocation judgment has the effect of automatically restoring the property rights, the transferred property will revert to the debtor by virtue of the judgment and the property in question will be the property subject to enforcement, which can be enforced by the court. However, in this case, the avoiding party is also the applicant for enforcement, and the enforcement procedure is based on the principle of "first come, first served". If more than one creditor implements enforcement proceedings against the debtor at the same time when the revocation judgment becomes effective, it will constitute a competition for enforcement, and more than one creditor can directly enforce the transferred property. Direct enforcement allows the preservation of the debt and the satisfaction of the debt to be achieved together and does not violate the "warehousing rule" of the property obtained by exercising the right of revocation. The revocation judgment is not exclusively for the confirmation of property rights, and its direct reversionary effect may also indicate that the creditor can directly enforce the transferred property without the need for the counterparty to return the property to the debtor and then for the debtor to pay itself. Therefore, in the case where the enforcement of the main claim has been granted, the revocation judgment does not require a separate procedure, and the creditor can apply for the enforcement of the relevant liable property by presenting the revocation judgment to the enforcement court, making it possible to combine the preservation and the satisfaction of the debt.

In addition, consolidation of the different suits on the basis of subjective overlapping adaptations can help solve procedural problems. If the use of litigation consolidation, the content of proof of the right of withdrawal litigation need not involve the content and scope of the return of the opposite party, while the subrogation part must improve the relevant proof, the two in the content of proof is not completely overlapping. The defendant and the lawsuit request are different, the lawsuit request actually exists in succession, and the first revocation lawsuit request is the prerequisite of the second return lawsuit request. In judicial practice, in considerable revocation cases, the revocator will request the court to revoke the relevant legal acts and at the same time will usually file the return of the original property, and some creditors' revocation cases also have the creditor at the same time to put forward the revocation and return of the original property claims. Thus, this combination is in line with the general psychology and habits of creditors. It has also been approved by the Supreme People's Court because it creates the possibility of resolving revocation litigation disputes together.

## **5. Conclusion**

Through the review and reflection on the judicial practice process, the problems exposed by the current creditor revocation system have attracted the attention and discussion of the academic community. Firstly, in the controversy of attribution of revocation effect, the current applied

"warehousing rule" makes the revocation claim filed by the revocator to the extent of his own claim but the benefit is equally paid by all creditors, which may discourage the creditors' enthusiasm to exercise the revocation right and eventually damage the interests of all relevant creditors; secondly, in judicial practice, the legal effect of creditor's revocation rights is usually regarded as the same as that of general revocation, and the difference between them is ambiguous, so it is difficult to reflect the actual value and role of creditor's revocation rights when applying.

Based on this, this paper proposes two paths to try to solve the above problems. First, the key to the attribution of the effect of creditor's revocation rights lies in how to correctly position the goal of creditor's revocation rights, and this paper believes that the idea of the principle of property distribution should be adopted in enforcement, that is, whether in litigation or in the process of enforcement, the creditor who takes the property preservation measures obtains the right that is superior to that of ordinary creditors. The creditor's limited property is allocated according to the principle of "term benefit" which is applied first, and with the specific situation of "private interest" or "common interest" orientation, to ensure the realization of the right of revocation and the satisfaction of claims. Second, in the procedural enforcement of the revocation action, the article believes that in the case of the main claim has been allowed to be executed, the revocation judgment does not need a separate procedure, the creditor can apply for the enforcement of the relevant liability property by presenting the revocation judgment to the enforcement court, so that the preservation and the satisfaction of the debt can be completed together.

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