

# **Revocation of a Taiwan Trust**

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## A. Article 6 of the Trust Law

A significant character of trust property is that the trust property is separated from the other property of the settlor and thus protected under the Trust Law. Under Article 12 of the Trust Law, no trust property shall be subject to compulsory execution unless the subject of the execution is a right in the property that exists before the trust is established (e.g. a mortgage), or a right that arises from the administration of trust affairs (e.g. the fee for repairing the trust property).

However, we have to note that Article 6 of the Trust Law provides for an extraordinary way for the settlor's creditors to revoke the trust: Article 6 paragraph 1 of the Trust Law states: *"A settlor's creditor whose rights are impaired by a trust act shall have the right to apply to the court for the revocation of the trust."*, and paragraph 3 further provides as clarification: *"A trust act shall be assumed to be detrimental to a claim if the settlor or his estate is adjudicated bankrupt within six months of the establishment of the trust."*

To be more exact, paragraph 3 and its specific circumstance is a clause to release the creditor from burden of proof. When the settlor has the condition provided for in Paragraph 3, the trust will be assumed to be detrimental to the creditor's rights, unless the settlor disproves the assumption. If the settlor does not have the condition aforesaid, the creditors shall have to prove that the trust impaired their rights.

## B. Court decisions regarding "creditors' rights are impaired"

A basic conception of "creditors' rights which are impaired by a trust" is as follows: A settlor (debtor) does not perform his obligations to a creditor, but transfers his property to a trustee. The claims of the creditor cannot be satisfied because the residual property of the settlor is insufficient for the claims.

Further, below please find some existing opinions of the courts regarding determination of impairment by a trust:

1. To determine whether the trust impairs the creditor's rights, "all creditors' interests/ benefits" shall be examined, as the debtor's property shall be jointly secured for the claims of all creditors. If the trust act weakens the debtor's solvency and the residual property is unable to satisfy the claims of all creditors, the trust may be deemed as detrimental to the creditors' rights. We shall not hastily presume that the trust is detrimental, if the trust act only impacts the rights of part creditors.

Example: Company A sets up a trust for their employees. The salary of the employees may be satisfied by the trust property. One of the settlor's creditors filed a lawsuit to revoke the trust. The court holds that the trust does not impair the creditor's rights, because the settlor obtains passive benefit by the trust, i.e. the value of Company A's total property (including assets and debts), which may serve as security for the claim of the creditor, does not decrease.

2. The fact that the trust impairs the creditors' rights shall exist both when the trust is established AND when the creditor applies for revocation of the trust, i.e. the status "Assets < Debts" shall exist both when the trust is setup and when the creditor files the lawsuit.

Example: In 1998, Plaintiff A offered a loan to Defendant B. The due date of repayment was Oct. 25<sup>th</sup>, 1999. On Oct. 20<sup>th</sup>, 1999, B setup a real estate trust. On Oct. 27<sup>th</sup>, 1999, A agreed to postpone repayment. However, since Nov. 1999, B has not paid interest nor repaid the loan. The value of B's other property decreased and could not satisfy A's claim. A filed a lawsuit to revoke the trust. The court holds that when the trust was established, B had other property to secure the claim of the creditor. And the trust was established before A agreed the postponement. Although the other property's value decreased afterwards, the trust did not impair the creditor's rights.

3. With regard to how to prove the status “Assets < Debts”, besides the evidences provided by both parties, the court may refer to reports rendered by the (Taiwan) tax authorities and the (Taiwan) Joint Credit Information Center.
4. A creditor of the settlor may apply for revocation of the trust when the claim of the creditor cannot be satisfied, while formal compulsory execution proceedings against the creditor are not necessary. As to how to decide whether the claim cannot be satisfied, this is a question of fact. The debtor considers himself to be insolvent or ceases performing obligations can be possible methods of proof.

### C. Conclusion

The purpose of Article 6 of the Trust Law is to avoid a debtor to transfer his assets through establishing a trust and circumvent the obligations to existing creditors.

Therefore, as long as the trust is setup **prior** to the creditors’ claims, or the settlor’s total assets are larger than his total debts when the trust is established, the trust will not be deemed as detrimental to the creditors’ rights and the trust cannot be revoked.

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