University Doctoral (PhD) Dissertation Abstract

PROTECTING ASSETS TO ENSURE THE PERFORMANCE OF LOAN CONTRACT OBLIGATIONS IN MONGOLIA

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a. Reasons, Requirements, and Scope of the Research

Due to the fact that the principles of legal relations in a market economy are universally accepted and similar to each other, it is necessary to harmonise the legal regulations of developed and developing countries and the issue of reception is becoming inevitable. Civil law is the core of economic legislation. And it is the second most important regulation of this field, which could be called as a Lesser Constitution after the Constitution itself.

Therefore, in legal systems lacking modern solutions there is a need to reform the rules governing the market economy, to eliminate legal loopholes, and to improve and develop civil legislation.

Section 19.1, Article 19 of the Constitution of Mongolia states that 'The State shall be accountable to its citizens for the creation of economic, social, legal and other guarantees for ensuring the human rights and freedoms, and shall fight the violations of the human rights and freedoms, and shall restore such infringed rights for their exercise' and provides that, – as in Article 38 of the basic law –, '"Protection of human rights and freedoms…" is a prerogative of the Government.'[1] This function is implemented by the government as a specific policy. In 2015, the United Nations approved the 2030 Agenda for Sustainable Development, which is being implemented by countries around the world. In line with this programme, the 'Mongolia Sustainable Development Concept – 2030' [2] a development policy document is being implemented. Mongolia is committed to setting 244 indicators within the scope of the 17 Sustainable Development Goals. Article 16 of these goals states: 'To develop a secure and inclusive society for sustainable development, to ensure that everyone has the opportunity to be protected by law, and to create an effective, accountable and participatory institution at all levels.' As the Government of Mongolia gradually implements the policy of legal reform, it is necessary to study the legal origins, development trends and legal reforms of the countries in the world.

In recent years, Mongolia's trade and economic relations with the European Union and its member states have expanded, and my goal is to compare the best practices of our countries to introduce European standards and to study their legal systems, legislation, and legal reforms.

[1] Constitution of Mongolia, 1992, Official State Journal of Mongolia [henceforth, Official State Journal], Toriin Medeelel, 1992 No. 1.
[2] Mongolia Sustainable Development Concept – 2030, 2016, published in the Official State Journal, Toriin Medeelel, 2016, No. 8.

In addition, Mongolians today, like people in the developed world, own real estate, use items, use the Internet with smart devices, negotiate with anyone anywhere in the world, and participate in economic and civil law relations, regularly. This is a clear example of the realisation of individual rights and freedoms, which are the main principles of today's society in the free market. This begs the question, 'On what grounds are we able to protect these rights and freedoms?' and 'Are people confident enough to exercise their rights and freedoms?' The only thing that may provide an answer is the law.[3] Depending on the fact that whether we are able to provide the legal conditions for our citizens according to rights and responsibilities they exercise, it causes us to further ask weather 'Legally reasonable rights and freedoms are being implemented'?

With the right legal system in place, human rights and freedoms will be firmly established and citizens will have confidence in justice and legal protection. As we enjoy world-class rights and freedoms, we need to focus on reflecting the world-class and internationally recognized legal protections and justifications to our legislation. This means that any case or issue will be resolved through legal means, and to the same extent, the issue will be resolved fairly and accurately, and citizens will be protected.

However, it is doubtful that the current needs of economic development and social life can be met and protected by the civil law legislation of our country.

For example, 53.6 percent of the total 25,429 crimes registered in the 2021 criminal statistics in Mongolia were crimes against property rights. However, 48.4 percent of property crimes were fraud crimes, accounting for the largest percentage of all crimes, and the number of such crimes has increased over the past five years.[4] The question may arise as to why I included criminal statistics into civil law research. This is because I have focused on the fact that *actio pauliana*, one of the mechanisms to protect the rights and interests of creditors in civil law or legal regulation of fraudulent transfers, is regulated by civil legislation of Mongolia and the regulation of *actio pauliana* is reflected in the civil law of European countries, as well as in some Asian countries, and related disputes are resolved by civil courts. However, when we looked at the first instance of civil case decisions from the online database of Mongolian

[3] The law is a system established by the state in order to meet the requirements of human rights, freedoms, and justice, to regulate social relationships, protected and enforced by the power of its government, and serves and regulates the rational conditions and principles of custom, law, and morality. Law is not only a legal expression of social regulation, but also a combination of commonly applied procedures. (Theory of Law by D. Bayarsaikhan, p. 20, Ulaanbaatar, 1996). Law is a system of regulating the norms of human behavior or the normative order of human relations. (H.Kelsen, Pure Theory of Law).

[4] See Chapter 7, Table 10. From Nationally registered crimes and violations statistics.

courts, there were no cases related to *actio pauliana*. In fact, the number of fraud crimes has 'increased' due to the fact that *actio pauliana*-related cases are being resolved within the framework of criminal cases.

Therefore, the issues related to civil law are resolved by criminal law, which does not properly ensure and protect civil rights and freedoms. Currently, the proper legal regulation of *actio pauliana* is not well established in civil law; there is no research on it by lawyers, or scholars and there is no common understanding, so the interests of citizens are still being neglected.

Also, in today's world where active economic and social relations with foreign countries abound, it is impossible for us to lag behind the development of civil law in other countries; it also does not meet international civil law standards, especially those in European countries. Therefore, I observed during the my research that it is important to create an optimal unified regulation of *actio pauliana* in civil law.

The civil legal environment related to *actio pauliana* also has disadvantages.

As of June 2022, 816 laws have been adopted in Mongolia by the State Great Hural (the unicameral national assembly of Mongolia). The Civil Code and its secondary rules need to legislate the regulatory basis related to *actio pauliana* in a rational and clear manner. My research shows that the Bankruptcy Law of Mongolia contains an element of legal regulation of the *actio pauliana*, but it is not implemented at all. Even the results of my small surveys among lawyers, jurists, and ordinary citizens confirm that there are no real means of regulations for the *actio pauliana* and its system in civil law.

Legal reform is the process aiming to analyse existing legislation, making modifications to the legal system, and generally improving justice and efficiency. There are four main ways to reform a law: repeal the law, create a new law, consolidate the law, and codify the law. It is our duty as lawyers to carry out this work, and it is proper to exercise the right to express one's views, to give legal opinions, to make our research known and disseminate it to others, and to exercise one's right to freedom of expression, to influence politicians, to get decisions made, and to protect the rights and interests of citizens.

Therefore, I chose this study to analyse the Civil Law of Mongolia, and to compare it the legal systems, origins, development, and reforms of other foreign countries, to help introduce and localise good practices, as well as to create new regulations, and finally to contribute to the development and improvement of civil law.

b. Research Status of the Topic

Jozsef Benke, Andre Boraine, Tuula Linna, Michiel Poesen, Tobias Lutsi, Hajime Ueno, and many other foreign scholars and researchers have studied the decisions of the *Court of Justice* of the *European* Union, current situation and future trends of legal theory and legal regulations of European and Asian countries on 'fraudulent transfers' or the problems related to the exercise of *actio pauliana* and have written articles on the issues regarding it.

The works of these scientists and researchers and their research results have become a valuable source for my research.

For Mongolia, the joint work, articles, books, and manuals of scholars and researchers, D. Naranchimeg's Гэрээний эрх зүй[5] 1, Гэрээний эрх зүй 2, B. Buyankhishig's Law of Obligations, T. Mendsaikhan's Гэрээний эрх зүй, M. Vanchigmaa's Гэрээний эрх зүй, G. Battsetseg's Improving the Legal Regulations of Non-Contractual Obligations and Ts. Munkhdelger's International Contract Law have been published. However, in these and other studies, there are no major references related to 'fraudulent transfers' or *actio pauliana*.

According to the "Insolvency Legal Reform and Investment Environment" survey conducted by the World Bank, Mongolia scored the lowest in the "Insolvency Resolution" indicator. The survey concluded that Mongolia needs to reform its legal framework for insolvency resolution[6]. In other words, there is no research work or basic research in our country that has made a significant contribution to the development of the legal regulations of fraudulent transfers or *actio pauliana* in the law of obligations or the civil law sub-sector.

c. Research Goals and Objectives

The dissertation aims to study the legal reform and development trends of the European Union and its member states and some Asian countries, to study and compare the legal regulations and their standards of 'fraudulent transfer' or *actio pauliana* in the law of obligations, to introduce and localise it to Mongolia and to improve the civil law regulations.

The purpose of the study is:

1. the examination of contract law, including the legal concept of loan agreement, regulatory provisions, rights and obligations of creditors and debtors (borrowers);

[5] Its meaning is 'Contract law'.
[6]Mongolbank: https://www.mongolbank.mn/file/26064cb04ee3d69323743f61af5d2270/files/20191022_05.pdf, (January 31, 2024)

2. the examination of the concept of *actio pauliana* or ‘fraudulent transfer’ and its legal regulations;
3. making a comparative study of the historical civil traditions of the European Union, its member states, and some Asian countries, civil legislations, and regulations and practices in civil law regarding *actio pauliana* or ‘fraudulent transfer’;
4. presenting the current situation of civil litigation over *actio pauliana* or fraudulent transfer;
5. proposing to improve the protection of creditors’ rights in civil law.

The objective of my research, put shortly, is to differentiate civil law institutions from institutions of criminal law, a distinction not properly made in Mongolian law today, to improve and develop civil law, to protect the creditors’ rights, to involve third parties in fraudulent transfers of assets to civil litigations, civil law relations, civil case litigations, their nature and the regularities. The subject of my research may be summarised as the legal basis and regulatory methods of civil law or law of obligations for submitting a claim against a third party who forged the transfer of properties as a means of protecting the creditor.

d.Hypotheses

In this dissertation I put forward the following hypotheses:

1. *Actio pauliana* is insufficiently applied and differentiated in Mongolian civil law.

2. There are certain practical use of court cases and disputes in relation to the *actio pauliana* in Mongolia, unfortunately it is not defined how to apply the *actio pauliana* and it still arises certain lack of clear regulation which constitutes a considerable issue.

3. In comparative law, there are various methods in terms of the usage and regulating of *actio pauliana.*

4. It will be certainly beneficial for Mongolian legislation an adoption of new amendments and introducing of the *actio pauliana*’s provisions as it were adopted in Dutch bankruptcy law, and the Act on Prevention of Unlawful Transfer of Debtor’s Assets Out of Bankruptcy Proceedings of Germany.

In the first hypothesis, I have focused on the having a clear understanding if the Mongolian civil laws regulate *actio pauliana* and, if they do, which specific laws apply. The chapters 5, 6, and 7 look more in detail into the structure and intent of the Civil Code and its

accompanying laws, with a focus on the provisions of the Civil Code and Bankruptcy Law. In the second hypothesis, attention was paid to the practical usage of how the courts of Mongolia apply the *actio pauliana*. The Chapter 7 presents an overall summary of Civil Court Decisions, verdicts and also Crime Statistics issued by National Police Agency of Mongolia. In addition to that, to find out present trends of the theory and application of *actio pauliana*, surveys were conducted among Mongolian lawyers and ordinary citizens. These surveys helped us to gain a better understanding of how *actio pauliana* is being regarded and implemented in Mongolia. Regarding to the third hypothesis, in the chapters 3 and 4 of the dissertation, it has been compared the civil laws of the European Union, some Asian countries, and its member states. Specifically, my analysis cover Germany, Hungary, the Netherlands, Japan, China, and Vietnam. And through a deep examination it allows to us to draw meaningful conclusions and insights that can help inform future legal decisions. The chapters 3, 4, 7 and the final conclusion define my fourth hypothesis. As for the fourth hypothesis, it is necessary to select the best model and adopt the *actio paulina* in Mongolia, and determine its importance, and protect the interests of the participants in civil legal relations.

e. Methods

The dissertation was approached from a historical, comparative, synthetic, analytic, and sociological perspective.

The method of historical research determines the circumstances, time, causes and factors that influenced the origin of the object under study. It is also important to review what stage of development it has gone through, how it has changed, what stage the phenomenon is at today, and according to which trends it will change. Therefore, the study of the legal framework and history of the countries selected in the study provides an understanding of the current *Actio pauliana* standards and future trends. Furthermore, it is important to define the historical significance of development in determining the causal relationship between the current legal framework and past experience of the law of obligations in some countries.

Regarding to the research, the civil laws and legislations of Hungary, the Netherlands, the Federal Republic of Germany as members of the European Union and the People's Republic of China, the Socialist Republic of Vietnam, and Japan from Asia are analysed. As a result, it is important to find the best practices of *actio pauliana* regulations in other countries, to localise them in the law of obligations of Mongolia, to develop them further, and to improve the Mongolian law of obligations in general. The study of the European Union Court's

decision also provides the opportunities to understand and gain insight into the nature of the *actio pauliana*'s legal framework.

In addition, the decisions of the Civil Court of First Instance of Mongolia, the reports of the Supreme Court of Mongolia, and the statistics and information of the police were processed and analysed.

A short survey among Mongolian lawyers, law enforcement officers, researchers and citizens on the topic of my research was conducted and the results analysed and included in the dissertation. Moreover, the works and research articles of foreign scientists and researchers related to *actio pauliana* were used as a source.

f. Findings of the research

The first and second chapters of the dissertation explore the legal theory of contract law and loan agreements, with a focus on providing a theoretical definition of contracts and *Actio Pauliana*. I have structured my research into the following main parts, where I compared and analyzed various legal frameworks, ultimately drawing conclusions and recommendations.

Civil law of the European Union

This section explores the civil law framework of the European Union (EU), highlighting its foundational treaties, legal documents, and the various types of acts issued by its governing bodies. The primary sources of EU civil law include treaties, regulations, directives, decisions, recommendations, and opinions, which collectively shape the legal landscape across member states. Regulations are binding and directly applicable in all member states, while directives require compliance but allow states discretion in implementation. Recommendations and opinions serve advisory roles without imposing legal obligations. The Court of Justice of the European Union (CJEU) plays a crucial role in interpreting these laws and establishing case law as an indirect source of EU civil law. Additionally, the Principles of European Contract Law (PECL), developed by a group of experts, aim to harmonize contract law across Europe but do not specifically address *actio pauliana*. The European Insolvency Regulation also touches on cross-border insolvency issues without detailing *actio pauliana*.

This case-law is also an indirect source of European civil law. That's why I've focused on the decisions of the CJEU.

Case law

In the European Union, civil law does not codify legal provisions that govern remedies for fraudulent asset transfers that harm creditors. These cases are typically resolved through court precedents. For instance, I identified around ten decisions from the European Court of Justice (ECJ) regarding *actio pauliana* claims, such as cases C-115/88 and C-394/18. Most of these rulings concluded that such claims did not fall under international jurisdiction.

I compared five specific disputes—two involving family members and three related to corporate transactions, including bankruptcies. My analysis focused on whether European norms regulate *actio pauliana* and which specific regulations the Court of Justice of the European Union (CJEU) relied upon to settle these disputes.

The court decisions referenced various EU laws, including the Brussels Convention and different EU regulations, to resolve jurisdictional issues. For example, in case C-337/17, the court relied on Regulation (EU) No. 1215/2012. However, there is no direct European regulation on *actio pauliana*, leaving it uncodified at the EU level. In practice, national laws of member states often fill this gap.

Civil laws of selected EU Member States

This study examines the legal framework of the European Union with a focus on introducing the *actio pauliana* claim—an essential legal mechanism for protecting creditors' rights in loan contracts—into the Civil Code of Mongolia. By enhancing the role and significance of this legal doctrine, the aim is to improve Mongolian civil law. The research employs a historical and comparative analysis of the Civil Codes of several EU member states, specifically Hungary, the Netherlands, and Germany. These countries were selected due to their diverse legal histories: Hungary's transition from socialism, the Netherlands' foundations in French and Roman-Dutch law, and Germany's blend of socialist and capitalist systems following reunification in 1990. Each country's legal system has evolved independently, reflecting its unique political and social context. For instance, The Netherlands and Hungary regulate *Actio Pauliana* within their civil codes, while Germany has adopted and implemented it as a distinct, specialized law. Despite variations in terminology and legal systems, universal principles such as the protection of ownership and enforcement of promises are shared across cultures and legal traditions. Rooted in Roman law, *actio pauliana* continues to play a vital role in safeguarding creditor rights in modern EU civil law.

Civil laws of selected Asian countries

This study examines the legal frameworks of major civil law systems in Asian countries, specifically focusing on the People's Republic of China, the Socialist Republic of Vietnam, and Japan, all of which are influenced by continental law. Despite their nominal socialist status, both China and Vietnam have embraced free market principles and economic reforms that necessitate legal modernization. In contrast, Japan boasts a long-standing Civil Code, originally enacted in 1896, which continues to govern its legal landscape. The research highlights the significant legislative developments in these countries regarding property protection against fraudulent transfers, particularly the introduction of *actio pauliana* as a mechanism to ensure the fulfillment of obligations. The Chinese Civil Code, passed in 2020 after multiple attempts since 1949, and Vietnam's revised Civil Code from 2015 both align with European legislation in regulating *actio pauliana*. However, Vietnam and China do not have provisions for personal bankruptcy, unlike Japan, which regulates both individual and corporate bankruptcy. The study further reveals that Vietnamese laws effectively mirror European standards concerning fraudulent transactions and mandates judicial annulment of such transfers during bankruptcy proceedings. Japanese civil law uniquely encompasses a broader definition of fraudulent transfers, extending beyond tangible assets to include intangible properties like shares and future income. This comparative analysis underscores the evolving nature of civil law in these Asian jurisdictions and highlights the necessity for continued legal reform to address contemporary challenges in creditor protection.

Mongolia’s Legal Framework and Challenges

In Mongolia, the legal provisions concerning *actio pauliana* are highly ambiguous. Although the Bankruptcy Code (Section 19.1) includes an *actio pauliana* regulation, this provision has never been applied.

From 2017 to 2021, Mongolia resolved 114,919 civil cases under the Civil Code, 8,952 of which (38.2%) were related to loan contracts. During the same period, 91 cases were resolved under the Bankruptcy Law. However, only one case involving a loan contract from Mongolia's court decision database included a possible *actio pauliana* claim. In this case, the debtor transferred assets through a sham agreement. A lawsuit was filed to invalidate the agreement, but the claim was rejected.

Meanwhile, police crime statistics reveal a steady increase in fraudulent crimes, suggesting that cases involving credit contracts may be handled under criminal law rather than civil law.

Surveys and Public Understanding

To explore this further, I conducted two online surveys: one among Mongolian lawyers and legal scholars, and another among the general public, excluding legal professionals. The findings show that *actio pauliana*—the doctrine of fraudulent transfers in civil law—is not well-known or studied in Mongolia. In practice, fraudulent asset transfers are more often reported as criminal matters to the police. Thus, Mongolia's legislative system tends to classify fraudulent transfers as criminal acts, rather than as civil disputes under *actio pauliana*.

Conclusion and Recommendations

In the hope of ensuring the performance of credit contract and protecting the rights and interests of the creditor, I have studied *actio pauliana* doctrine and its application, a process which has led to the following conclusions.

1. The hypothesis that '*Actio pauliana* is insufficiently applied and differentiated in Mongolian civil law.'

Regulation on *actio pauliana* or fraudulent transfer is referred to indirectly in Article 19 Clause 19.1 of the Bankruptcy Act of Mongolia. However, this regulation has not been applied in Mongolia, as evidenced by court decisions and verdicts in the electronic database of Mongolian court decisions. In addition, *actio pauliana* doctrine and methodology in the contract law in the field of civil law relationships, its application, system and legal regulation have not been studied by Mongolian scholars and researchers so far, and the term has not been defined at the theoretical level. In fact, a civil lawsuit matter or dispute is taken as criminal activity, as evidenced according to a survey taken from lawyers, researchers, citizens, and fraud statistics made by police.

2. The hypothesis that 'There are certain practical use of court cases and disputes in relation to the *actio pauliana* in Mongolia, unfortunately it is not defined how to apply the *actio pauliana* and it still arises certain lack of clear regulation which constitutes a considerable issue.'

In the Civil Code and its secondary legislation *actio pauliana*, or fraudulent transfer is not covered by the documentation, and there have been no lawsuits against third parties alleging fraudulent transfers of properties in Mongolian civil courts.

3. The hypothesis that in comparative law, there are various methods in terms of the usage and regulating of *actio pauliana*.

In terms of the research work, it was studied and conducted using a comparative method covering the civil legislation of Hungary, the Netherlands, the Federal Republic of Germany from the European Union and its Member States, the People's Republic of China, the Socialist Republic of Vietnam, Japan.

The legal systems of the countries studied were based on continental law, which allows us to use the comparison method. In addition, I've studied and determined what stages of legal development the countries have gone through and how they have changed so far, and what level of development *actio pauliana* is nowadays and what trends and any changes will be in the future. Therefore, it is important to find the best practical experience in regulating the *actio pauliana* of the various countries, to adopt and introduce it into Mongolia, further to implement it and clarify in detail the Civil law of Mongolia.

The doctrine developed by Julius Paulus, a Roman lawyer of the 3rd century AD, 'a creditor's claim against a third party for the transfer of a debtor's concealed property' is now known as fraudulent transfer or fraudulent conveyance and continues to be used in civil law relationships. *Actio pauliana* is a mechanism to protect the interests of the creditor and to prevent the loss of assets that should fall into his possession.

This doctrine, in particular, is used by the member states of the European Union in their modern civil legislation, preserving its basic form, and remains one of the main regulations of contractual legal relations. The regulation of *actio pauliana* in the Dutch Civil Code and Bankruptcy Code, the 2015 amendments to the Hungarian Insolvency Act, and the German AnfG 1994 attest to this.

European Union civil law, on the other hand, does not directly codify the legal action to be taken in the event of a fraudulent transfer of property to a creditor for the purpose of causing damage to creditors, but is subject to the laws of the Member States. The court's decision to resolve this civil case, which protects the interests of creditors, remains a topic of controversy among European lawyers to this day.

Regulations on *actio pauliana* in civil law has attracted the attention of foreign lawyers and researchers, as well as theoretical and practical research, and its usage is growing as evidenced from recent amendments to several of the studied countries' civil law.

Among selected Asian countries, China, Vietnam, and Japan, in the course of their historical legal developments, have carried out civil law reforms, and then added and changed the provision on fraudulent transfers in civil law and enforced it. The regulations and Civil laws

of Japan, Vietnam and P.R.China are as same as other countries and also it is being upgrading the *actio pauliana* as the most European countries where debtor's fraudulent transfer act annulation.

Thus, *actio pauliana* which I studied in the civil law of the three Asian countries is intended to protect the creditor's properties and is regulated in the same way as in the civil law of the Member States of the European Union.

4. The hypothesis that 'It will be certainly beneficial for Mongolian legislation an adoption of a new amendments and introducing of the *actio pauliana*'s provisions as it were adopted in Dutch bankruptcy law, and the Act on Prevention of Unlawful Transfer of Debtor's Assets Out of Bankruptcy Proceedings of Germany.' was supported.

Utmost importantly, by resolving civil cases based on the principles of civil law, we are going to ensure the protection of civil rights and freedoms. Furthermore, this will not only align with civil law standards across Europe and Asia, but it will also create a favourable legal environment. We must prioritise the principles of civil law to promote justice and fairness for all.

Eventually, a legal element of regulations on *actio pauliana* or fraudulent transfer in Mongolia is not clearly defined so far. This doctrine, derived from Roman law, has not been studied or applied to Mongolian civil law relations based on the continental legal system. While many countries around the world are settling the civil disputes under regulations on fraudulent transfers, on the contrary my country Mongolia continues to regulate by criminal law and violates civil rights and freedoms, in my opinion.

With the widening of the fraudulent methods of the debtors, the *actio pauliana*'s mechanism will continue to expand. Hence, it is necessary for us to keep pace with the stages of social and economic development, learn from the legal experience of foreign developed countries, and constantly carry out private legal reforms while we take part in civil law relationships with citizens of the world every day.

By developing the *actio pauliana* doctrine and legal framework, the field of civil law will be enriched with new concepts, and the contractual or private law system will be similar to the law of many other countries in the world.

Last of all, I am confident that my insights and suggestions can be of great value in improving the situation as following and I have a few recommendations.

I. For the introduction and development of the *actio pauliana'*s doctrine into Mongolian law and its reasons I propose:

1. to name *actio pauliana* as modern terms of action against fraudulent transfers;

2. to define 'fraudulent transfer of assets' as a meaning of the act of dissimulating the debtor's transfer to a third party by a sham contract in order to evade the debt and conceal the assets, causing damage to the creditor;

3. to consider the doctrine of fraudulent transfer of assets in relation to civil law, especially to contract law and the law of obligations in general;

4. to divide the scope of the rules, to refer to persons who e.g., by sham contracts fraudulently transfer assets into individuals and legal entities and to classify them as solvent and insolvent;

5. to study the possibility of applying the doctrine of fraudulent transfer of assets to branches of law other than contract law, for example, to the field of tax law, and to expand the scope of theory and practice;

6. to organise trainings, seminars, discussions and advocacy activities in stages for legal scholars and researchers on theoretical knowledge and skills of the *actio pauliana*;

7. to add the subject of the *actio pauliana* doctrine into the bachelor's and master's degree civil law study programme for law students.

II. Amendment to the Civil Code of Mongolia with the *actio pauliana* doctrine and improve the legal framework:

1. To amend the regulation on the *actio pauliana* in the Civil Code of Mongolia (to amend and add the following sub-chapter 'Fraudulent transfer of assets' with the following meaning to Chapter 15 – Contract Law – of Part II – Obligations – of the Civil Code of Mongolia):

- A contract concluded for the purpose of partial or complete concealment of the debtor's properties with or without a charge to a third party shall be invalid. This provision shall not apply if the third party was unaware of the purpose of concealing the debtor's properties.

- A contract concluded by a debtor in order to issue the following priority rights to either of the creditors and to harm other creditors shall be invalid. This provision shall not apply if the preferred creditor is unaware that other creditors will be harmed.

a. In case of transfer of funds in excess of the compensation to be received by the preferred creditor;

b. In case of guarantee of performance of obligations not yet completed, unclaimed compensation and debt guarantee.

- If the debtor is an individual, the transfer agreement concluded with the following related individuals or third parties shall be considered valid.

a. Family members[7], grand relatives[8] and relatives[9] of the debtor.

b. Either independently or as a spouse or any of the other persons referred to in paragraph 1 of this article, owning not less than half of the share capital issued by the defendant together with one of them directly or indirectly as a shareholder.

- If the debtor is a legal entity, the transfer agreement concluded with the following related individuals, or third parties shall be considered valid.

a. In case of a member of the Board of Directors or the Supervisory Board of the debtor, or a family member or relative of the member.

b. If a debtor himself or either of the persons specified in paragraph 1 of this Article independently or together with his/her spouse or one of the other persons directly or indirectly participates as a shareholder share at least half of the share capital issued by the respondent.

c. If a member of the debtor's family or a relative participates independently or jointly, or directly or indirectly as a shareholder at least half of the share capital issued by the debtor.

- If the debtor is a legal entity, the transfer agreement concluded with the following related legal entity or third party shall be considered valid.

a. if either of these legal entities is a member of the Board of Directors of the other;

b. if an individual who becomes a member of the Board of Directors of one of these legal entities is a member of the Board of Directors of another legal entity, or a family

[7] Clause 3.1.4 of Article 3 of the Family Code of Mongolia, 1999: 'Family member' means a spouse, a person born, a stepchild, an adopted child or a relative living with them., published in the Official State Journal, Toriin Medeelel, 1999 No. 30

[8] Clause 3.1.5 of Article 3 Article of the Family Code of Mongolia, 1999: 'a grand relative' means a spouse's parents, grandparents, grandchildren, nieces, nephews, and their children.

[9] Clause 3.1.6 of Article 3 of the Family Code of Mongolia, 1999: 'Relative' means a spouse, brother, sister, aunt, uncle or their children.

member of this member, or a relative is a member of the Board of Directors of another legal entity;

c. if a member of the Board of Directors, Supervisory Board or individual of one of these legal entities, or a family member or relative of this member participates directly or indirectly as an independent or joint shareholder of at least half of the share capital issued by the other legal entity;

d. if the same legal entity or the same individual, or their family member or relative is a direct or indirect shareholder of at least half of the share capital issued by both legal entities.

- To set and amend the term of the debtor's contract with a third party for the period specified in Article 19 Clause 19.1 of the current Bankruptcy Law of Mongolia.

Amendments to the Civil Code will regulate the 'Fraudulent Transfer' relationship, which is an agreement concluded to conceal a debtor's assets, except in the event of insolvency or insolvency of an individual or legal entity.

2. To make the following amendments to the Bankruptcy Law of Mongolia

- It is advisable to amend Clause 1.1 of Article 1 of the Bankruptcy Law with the current text 'The purpose of this law is to govern relations in connection with starting and settling a bankruptcy case, rehabilitation and liquidation of an insolvent business entity' to state as follows 'The purpose of this law is to govern relations in connection with starting and settling a bankruptcy case, rehabilitation and liquidation of an insolvent individual and legal entity' and to expand the regulation for regulating not only the bankruptcy of business entity but also the bankruptcy of individuals and other legal entities.

- In addition, I propose that Article 19 of the Bankruptcy Law should be amended in the same way as the above-mentioned amendment to the Civil Code, as well as the legal regulation of fraudulent transfer in the Dutch Civil Code.

3. Also, by amending Article 19 of the Bankruptcy Law, and then without amending the Civil Code, a proposal is made to draft and approve a new "Law on Avoiding Fraudulent Transfer of Debtor's Assets Outside of Bankruptcy Proceedings" based on Germany's experience.

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First Author Publications (6)

1. **Otgongerel, J.**: Actio Pauliana in EU Court Practice.
   Mongolian J Law. 91 (5), 92-100, 2022.
2. **Otgongerel, J.**: Decisions of the Court of Justice of the European Union in actio pauliana disputes.
   Eur Integr Stud. 18 (2), 24-32, 2022.
   DOI: http://dx.doi.org/10.46941/2022.e2.24-32
3. **Otgongerel, J.**: Sustainable development and the loan contract in Mongolia.
   Gèmt âvdaltaj tèmcèh asuudal. 75 (1), 123-133, 2021.
4. **Otgongerel, J.**: Does Mongolian Civil Law have the Regulation of the Actio Pauliana, is there a Regulation of the Actio Pauliana?
   Mongolian J Law. 80 (5), 96-105, 2020.
5. **Otgongerel, J.**: Legal regulation for loan contract in Mongolia.
   Gèmt âvdaltaj tèmcèh asuudal. 71 (1), 101-111, 2020.
6. **Otgongerel, J.**: Historic Traditions of Civil Law In Mongolia and Its Regulation and Principle.
   Gèmt âvdaltaj tèmcèh asuudal. 70 (4), 76-88, 2019.

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