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**Summary of PhD thesis entitled:
"Actions to avoid acts detrimental to creditors in cross-border insolvency".**

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1. OBJECTIVES OF THE THESIS AND CURRENT STATE OF RESEARCH

The primary objective of the conducted research is to determine the scope of application of Article 16 of Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), (Official Journal of the EU L 2015 No. 141, p. 19). The issues addressed in the dissertation include: the scope of avoidance actions in the course of cross-border insolvency proceedings, its impact on existing contractual relations between the insolvent debtor and the party to the action to avoid acts detrimental to creditors, the law applicable to avoidance actions and the jurisdiction of the court to hear such cases. The analysis also examined whether Article 16 of the Regulation allows one party to block the effects of an avoidance action taken by the other party involved in the disputed transaction.

The second objective of the study was to assess the effectiveness and efficiency of the solution adopted by the European legislator.

The scope of the research also includes an analysis and evaluation of the regulations on the actions to avoid acts detrimental to creditors in the national legal systems of Poland and Germany, both at the level of regulations relating to domestic insolvency proceedings, as well as those with a foreign element. The above was intended to present similarities and differences in the indicated legal systems in terms of substantive regulations and conflict of laws rules.

It should be pointed out, however that the primary research objective of the dissertation is to confirm that subjecting avoidance actions in cross-border insolvency to the law applicable to the initiation of insolvency proceedings, is an effective and efficient solution, since it enables the administrator of such proceedings to apply the law known to him efficiently and without undue obstacles in order to carry out the functions of insolvency proceedings. The European Commission's proposal to harmonize insolvency law with regard to the issue of the avoidance procedure confirms the assessment presented above. This is due to the fact that harmonization is to concern only substantive law in view of the existing differences in the national legislation of individual Member States, while harmonization will have the character of minimum harmonization, introducing a set

of minimum legal requirements, subject to implementation by Member States. As a result, the existing solutions for the actions to avoid acts detrimental to creditors in a cross-border insolvency, based primarily on conflict of laws rules, will continue to be the main legal tool in the issue under study.

The assessment of the adopted solution's effectiveness and efficiency prompted a consideration of whether the option to raise an objection by the opposing party to the contested legal action, based on jurisdiction under another law and its non-contestability, provides a satisfactory guarantee for safeguarding its rights. This includes the protection of the continuity of the legal relationship and legal certainty.

To address the research hypotheses, the author of the dissertation needed to analyze both EU and national regulations pertaining to cross-border insolvency proceedings. In order to comprehensively understand the concept of avoidance actions, it was necessary to examine the relevant national regulations that effectively establish the rules, procedures, and prerequisites for such actions. Considering this, the author of the dissertation justifies including national legal systems in the research, specifically focusing on Polish and German law. By adopting this approach, the research was able to present the impact and assessment of both the EU regulations and the national regulations applicable in Poland and Germany.

According to the author, the research conducted in the dissertation has the potential to be valuable for both the process of creating new laws and the practical application of existing laws.

The topic of actions to avoid acts detrimental to creditors, including the application of *Actio Pauliana*, has long been a subject of extensive interest in both Polish and foreign legal literature. However, it is worth noting that the domestic literature primarily focuses on specific aspects of avoidance procedures in cross-border insolvency cases. None of the available studies fully cover all the issues addressed in this thesis. Moreover, there is a need to assess the existing solutions in light of recent court decisions. Considering these factors, this thesis represents the first comprehensive study on avoiding actions harmful to creditors in cross-border insolvency, based on the analysis of Polish legal literature.

2. CONSIDERATIONS CONTAINED IN THE WORK

The dissertation is structured into several sections, including an introduction, four chapters that delve into important aspects related to the topic of the dissertation, and concluding remarks.

The initial chapter of the dissertation focuses on examining the historical evolution of the actions aimed at avoiding acts harmful to creditors, which originated from the *Actio Pauliana*, in relation to the advancement of international

insolvency proceedings. Additionally, this chapter will explore the concept of the avoidance procedure from both national and international viewpoints.

The second chapter of the dissertation examines the actions aimed at avoiding acts harmful to creditors in light of the legal provisions established by the European legislator in the current Regulation No. 2015/848. This analysis is preceded by a historical overview of the preceding legislation. The chapter provides a comprehensive overview of the scope of application of Regulation No. 2015/848, considering its material, subjective, temporal, and territorial dimensions. The focal point of this chapter is a detailed analysis of the legal provisions governing the actions to avoid acts harmful to creditors, particularly in relation to Article 16 of Regulation No. 2015/848. Specific attention is given to understanding the role of the *lex fori concursus* in determining actionability, establishing the applicable law for the legal actions of insolvent debtors, defining the scope and prerequisites for applying the solutions established by the EU legislature, and assessing their legal nature.

The third chapter presents the issue of the actions to avoid acts detrimental to creditors from the perspective of national solutions between Polish and German legislation. The chapter presents legal instruments existing in both countries for challenging legal acts regulated by national insolvency laws, which have been supplemented with selected rulings of national courts.

The third chapter of the dissertation explores the topic of actions to avoid acts detrimental to creditors, focusing on the national solutions provided by Polish and German legislation. This chapter examines the legal tools available in both countries to challenge legal acts governed by national insolvency laws. Additionally, it includes relevant case law from national courts to provide further insights into the topic.

The final chapter of the dissertation addresses the issue of the avoidance procedure in relation to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on cross-border bankruptcy. This chapter examines the fundamental aspects of the Model Law and its specific provisions directly relevant to the actions aimed at avoiding acts detrimental to creditors. Furthermore, it discusses the implementation of these norms in national legal systems.

3. CONCLUSIONS

The research conducted in this study has led to the following conclusions:

- a) The evolution of the actions aimed at avoiding acts detrimental to creditors is closely tied to a shift in the approach towards international insolvency law, particularly concerning the determination of the impact of insolvency in jurisdictions other than the country where the insolvency proceedings were

initiated.

- b) Embracing the jurisdiction of the law and the court of the state where the debtor's main center of business operations is located should be regarded as a contemporary and effective procedure. This approach ensures the establishment of judicial jurisdiction and the application of national law that is most closely connected to the debtor's actual headquarters.
- c) The application of the conflict of laws rules, specifically the *lex fori concursus*, is not without limitations. However, Article 16 of Regulation No. 2015/848 provides an exception to this principle. It allows a party involved in an action to avoid acts detrimental to creditors to raise an objection regarding the jurisdiction of a law other than the law of the insolvency proceedings' commencement. This provision enables the party to demonstrate the impossibility of challenging the action under that law. This provision serves as a safeguard against absolute subjection of such acts to the jurisdiction of the law governing the initiation of insolvency proceedings, ensuring proper protection for the party involved.
- d) The interpretation and application of Article 16 of Regulation No. 2015/848, as well as its scope, have become more predictable following the judgment of the Court of Justice on 16.04.2015, C-557/13 in the case of Hermann Lutz vs. Elke Bäuerle.
- e) There were reasonable doubts surrounding the determination of the applicable law for challenged legal actions in accordance with Article 16 of Regulation No. 2015/848. However, the current Article 6(1) of the Regulation definitively establishes the concentration of jurisdiction for such cases as *vis attractiva concursus*. As a result, the determination of the applicable law for the challenged legal act will be based on the private international law (conflict of laws rules) of the country where the insolvency proceedings were initiated.
- f) When assessing the effectiveness and efficiency of the existing legal solution for avoiding acts detrimental to creditors, regulated by Article 16 of Regulation No. 2015/848, it is important to consider that the introduced solution is optimal and provides a suitable mechanism for improving the position of all creditors of the insolvent party. The European legislator chose not to introduce a uniform substantive insolvency law that would apply uniformly across all member states, considering the diverse regulations of individual states. Instead, the legislator focused on incorporating conflict-of-law provisions, determining the applicable law for insolvency proceedings and their consequences (*lex fori concursus*). The decision to adopt a regulation as the legal instrument is significant as it does not require specific implementation by member states, as it

is directly applicable in their respective legal systems.

- g) The European Commission is currently working on drafting a Directive of the European Parliament and of the Council aimed at harmonizing certain aspects of insolvency law. The goal is to harmonize the rules governing actions to avoid acts detrimental to creditors in each member state. However, this harmonization will take the form of minimum harmonization, establishing a basic framework that must be met by the national laws of each member state.
- h) The provisions of Polish insolvency law deviate from the principle of subjecting the effects of insolvency proceedings to the law of the state where the proceedings were initiated. Specifically, Polish law grants jurisdiction over the effects of declaring insolvency to Polish law for the assets of the insolvent debtor located in Poland and for liabilities that arose or are to be fulfilled in Poland. This also applies to the issue of actions to avoid acts detrimental to creditors. The current legal solution does not include a mechanism to block the jurisdiction of Polish law in cases where a party demonstrates the jurisdiction of foreign law and the lack of contestability under it.
- i) The German Insolvenzordnung (Insolvency Act) incorporates the same legal solutions as the European legislator in Regulation No. 2015/848. It subjects insolvency proceedings and their effects to the law of the country where the proceedings were initiated, regardless of the location of the assets or the place where the obligation arose or was performed. This also applies to the issue of contesting legal acts of a bankrupt that were detrimental to creditors. The Insolvenzordnung states that an act may be contested if the grounds for contestation are determined according to the law of the country where the insolvency proceedings were initiated. Furthermore, it includes a mechanism that balances the interests of the parties and protects the other party involved in the contested legal action. This mechanism blocks the jurisdiction of the law governing the initiation of bankruptcy proceedings if the party proves that another state's law is applicable to the contested legal action and that under this law, the action is not contestable in any way.
- j) It is recommended to modify the wording of Article 403(1) and (2) of the Bankruptcy Law to align with the approach of subjecting bankruptcy proceedings and their consequences to the law of the country where the proceedings were initiated. This modification would also cover the issue of contesting legal actions performed to the detriment of creditors. Additionally, it is suggested to introduce a blocking mechanism in the form of the possibility for a party involved in such an action to file a plea.