

從我國法院給付返還之觀點論替代擔保金之保證書

The judgements on repayment claims for alternative deposit guarantees from the viewpoint of Taiwan court

侯瑞瑗

Ruei-Yuan Hou

中文摘要

保證書上若記載立即照付約款，債權人之地位幾乎強化到與受領擔保金給付相同。我國最高法院就該等保證書之性質，曾一度認為屬無因的債務拘束，近年則傾向為立即照付之擔保。本文除評釋最高法院 95 年度台上字第 517 號判決、最高法院 95 年度台再字第 38 號判決及最高法院 102 年度台上字第 584 號判決外，並著重德國法的比較，深入探討保證書性質之爭議，以及在返還關係中請求給付返還所涉及之相關法律問題。關於債權人並不能終局保有擔保金所生之返還問題及擔保人(保證人) 或主債務人主張事後救濟之依據，以如何解釋保證書以釐清其性質，而有不同之處理模式。

關鍵字：無因的債務拘束、法律上原因、不當得利、保證契約、擔保契約、立即照付之保證、立即照付之擔保、舉證責任分配

Abstract

The creditor's status would be lifted to almost the same level as the deposit holders' if the bank guarantee stated payment on first demand. In recent years, Taiwan Supreme Court on the nature of these guarantees, debts that are considered to be causeless, it tends to be a guarantee of instant payment. In addition to commenting on the Taiwan Supreme Court Judgments 95 Tai Shang Tzu No.517、97 Tai Tzai Tzu No.38 and 102 Tai Shang Tzu No.584, this paper also focusing on the comparison of German law, and in-depth discussion of legal issues such as the nature of the guarantee and the return of benefits. Regarding the issue that the creditor cannot end the return of the security deposit, and the guarantor or principal debtor's claim for ex post relief, how to interpret the guarantee to clarify its nature, and there are different processing models.

Keywords : abstract promise of debt, legal cause, unjustified Enrichment, contract of suretyship, indemnity, first demand guarantee, first demand indemnity, Allocation of Burden of Proof