

An Overview of PRC Trust Law and Trust Business

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Abstract

The presentation is to give a brief introduction on PRC trust law and trust business. The PRC is the fifth civil law jurisdiction in Asia to adopt a trust law. The 2001 law, supplemented by various other laws, administrative regulations and rules, covers the creation of trust, fundamental structure of trust (independence of trust property, beneficial rights etc.), administration of trust (trustee's power and duties), modification of trusteeship and termination of trust. The law also contains a chapter on public (charitable) trust.

In PRC, trust can be created by contract, will or other written documents, and is recognized as arrangement between parties, rather than disposal of property. Most trusts in China are created by contract. Those trusts come into effect once the contract is concluded. The law, however, requires the registration of trust of which the trust property are those which the law requires registration. Those trusts won't come into effect before the registration.

Trust business in China is under the supervision of CBRC. In addition to trust companies which are licensed by the CBRC to do trust business, there are other financial institutions doing trust business in China. Asset management trust (or property trust) is not as popular as financing trust (or pecuniary trust). Collective pecuniary trusts are still dominating.

There are problems with PRC trust law, including but not limited to: (1) disallowance of self-trust; (2) uncertainty on whether title of trust property shall be transferred to the trustee; (3) trust registration system is yet to be established; (4) vagueness in trustee's duties, in particular duty of care; (5) overlapped powers of settlor and beneficiary; (6) lack of clear rules on public trust; etc.

China Trustee Association is pushing hard to have the law amended. On the meanwhile, the regulator and the judicial are doing their job in softening the rigid rules in the trust law and controlling the risks in the business, evidenced by the 2014 CBRC Guiding Opinions on Risk-regulating-and-supervising of Trust Companies, and various judgments decided by the People's Court.

While the amendments to the law won't happen in the near future, the industry is under restructuring. Compared to the previous rounds of industry reconsolidation focusing on elimination of weak institutions and restrictions on the business scope of trust company generally, the on-going reshuffle concentrates on strengthening the risk-control mechanisms for the whole industry (China Trust Security Fund) and trust companies (net capital requirements), capacity-building of the industry. It is quite possible that in the near future, trust companies in China will be licensed with different business scope according to their capacity and track record.

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Lou Jianbo had earned both a Bachelor and Master in Law from Peking University Law School and a PhD in Law from University of London (2001). He taught 5 years at University of Cambridge and is now teaching at Peking University Law School. He teaches commercial law, property law, as well as financial law. Dr. Lou published extensively in both Chinese and English, and has been consulting with various government agencies on issues about real estate law and financial law. His ongoing research projects include: (1) contract and property law issues in financial derivative transactions; (2) real property transaction law (as part of the effort to rewrite China's Urban Real Estate Administration Law); (3) title registration law (as part of the effort to unify title registration in China); (3) commercial trust.

Dr. Lou was a member of the 11th Chinese People's Political Consultative Conference Beijing Committee and is now a delegate of the 14th People's Congress in Beijing.