

Developing Trusts and Their Jurisprudences: Real Estate Trusts in Korea

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Among various types of trusts, this paper is focusing upon real estate trusts in Korea. Compared to pecuniary trusts, the other major area of the commercial trust, real estate trusts tended to invite more disputes and lawsuits in Korea: while the financial institutions engaged in structured financing via trust vehicle tended to cautiously contact regulatory authorities and legal professions, real estate developers using trust structure often proceeded with legal uncertainty. Especially a large land development projects are vulnerable to legal claim from various parties including landowners or investors. Those disputes, while unfortunate to the parties concerned, have been providing rich sources to refine Korean trust jurisprudence. Further, the real estate trusts account for 34.2% of the total assets transferred to trustee and more land development projects have become based upon trust structure. Following up the jurisprudence on real estate trust is essential to correctly understand the Korean trust law.

This paper is divided into three parts. Chapter II provides bird's eye on the Korea's real estate trust. By way of introducing trust types, performances of real estate trustee and major regulations over real estate trust in Korea, readers will get to understand the usage and major legal issues of real estate trust. Against this backdrop, the following chapters review major jurisprudence on real estate trust, issues over outside the trust and inside the trust, respectively. Issues over outside the trust are mostly associated with the protection of settlor's creditors. Under the separation of assets and the complete ownership by the trustee, settlor's creditors may not enforce their rights against trust properties. However, the inability of settlor's creditors often seems unreasonable and the Korean statutes and case laws have developed various theories tackling the status of settlor's creditors. The topics in Chapter III include ① the cancelation by settlor's creditors of fraudulent trust, ② the priority among settlor's creditors who have unsecured, secured by mortgage or secured by Trust for Security Purpose, respectively, and ③ the status of tax authority as the creditor of the settlor.

On the other hand, the issues over inside the trust in this paper are concerned with the reimbursement of expenses made by the trustee. The chapter IV has two sections: in the first section, the possibility and the range of reimbursement against trust property will be explored especially where a loan from trustee's own account to trust account has been made; in the second section, a further reimbursement against a beneficiary will be dealt with.

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Prof. Hyeok-Joon RHO got his Ph.D. at Seoul National University, Seoul, Korea. Before he joined Seoul National University School of Law in 2007, he had worked as a practitioner: as a judge of the Seoul Southern District Court for two years and as a senior associate lawyer of the law firm “Woo & Yun” for two years. He also worked in the U.K. law firm Clifford Chance LLP under the international lawyers exchange program between Korea and the U.K. In addition to his doctoral study in Seoul, he made various academic visits to law schools outside Korea: at Bucerius Law School in Germany as Humboldt research fellow, at Nagoya University School of Law in Japan as visiting professor and at Harvard Law School in the U.S. as visiting scholar.

He has worked and published extensively on corporate law and trust law. The list of his selected papers includes “New Squeeze-out Devices as a Part of Corporate Law Reform in Korea” (in English), “Invigorating Shareholder Derivatives Actions in South Korea” (co-authored in English), and “The Stock Corporation and the Business Trust: A Comparison in Terms of Asset Partitioning” (in Korean. Awarded as Best Paper of 2013 by the Korean Securities Law Association)