

Key Issues/Trends in Family Trust

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The number of family trust contracts have continued to grow rapidly, since 2017. Although, there are no accurate statistics, there are estimated to be around 2000 to 3000 contracts, based on, the number of trust bank accounts, opened at financial institutions.

The most common type of family trusts is an asset-management trust, for the elderly, as preparation for their incapacitation. With this type of trust, a person who has reached an advanced age, becomes the settler, and the beneficiary of the trust he has created, and generally appoints a trusted family member, to serve as his/her trustee.

However, due to the fact that family trusts have just begun to be used, some of the trust agreements are inappropriate, such as not having the minimum requirements of the trust law. There are also, various legal issues with family trusts. For example, under the trust business law, the Prime Minister's approval, or registration, is required to start a business as a trustee, but, there are some cases where a corporation serves as a trustee, without obtaining or registering the license. In addition, the system for preventing misappropriation, or misconduct, by trustees, is not efficient enough. Moreover, there are some cases in which the legal matters may have been handled incorrectly, such as, confusion between the trust's property, and the trustee's individual property.

Taxation is also an issue to be addressed. In trusts, where the trustee is given discretion regarding benefits for multiple beneficiaries, there is hesitation in using such trusts, because the taxation of gift tax and inheritance tax, for each beneficiary, is unclear.

It is expected that, the use of trusts will continue to increase, as people recognize their usefulness as a means of property management, and asset succession. Despite these legal and tax issues, as detailed above, I hope that, practitioners and scholars will collaborate, to deepen our discussions on family trusts, so that, these family trusts can be developed soundly, and that stable practices can be established, in Japan.