

The Trust Business Act and the Trust Act

Susumu Yoshitani

(Mitsubishi UFJ Trust and Banking)

1. Scope of trust property especially with regard to information as trust property

The Trust Business Act does not govern the scope of trust property that a trust company is able to be transferred by a settlor. Information may become trust property while the information has the value of holding, use, or exchange. However, it is not proper to administrate all information in relation with trust affairs. And there are two ways to consider information as property, the first is that the information is considered to be property, and the second is that the right to information is considered to be property.

Nevertheless, as information is difficult to treat as property, it is appropriate to entrust such information for the future after developing practice through delegation, etc. and acquiring practical work.

2. Comparison of the Trust Business Act and the Trust Act

Article 24 to Article 26 of the Trust Business Act are the disciplines as regard to soliciting trust and acceptance of trust, and there are no items falling under the Trust Act. And there are other differences.

3. The Duty of Explanation and Testamentary Trust

Article 24-2 to Article 26 of the Trust Business Act and Article 30, item (i) of the Regulation for Enforcement of Trust Business are provisions concerning a trust agreement, and do not apply to

testamentary trust.

A trust company or a trust bank is providing information to and soliciting a settlor for a will, and the will contains a provision designating the trust company or the trust bank to be the trustee, and testamentary trust may not be supervised by the settlor in the administration of trust processes by a trustee.

So a trust bank will voluntarily check whether the terms and conditions of the testamentary trust are appropriate, at the time of preparing and keeping a will, and after the settlor's death.

Article 24, paragraph (2) of the Trust Business Act is deemed to provide for the principle of suitability that includes both the smallest and broad terms, but is the provision of client protection including content other than suitability with respect to investment, in the running of the operations that are not only at the time of the arrangement but also at the time of the administration. It also applies to the solicitation of a testamentary trust.