

Comments from the Perspective of Private Trusts

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In this comment I have suggested trusts as a method for managing the assets of the elderly or disabled, and examined some concrete examples of their use. I believe that it is vital to enable trusts to respond to varied individual needs. Trusts are ordinarily individual matters, and should center on personal trusts. However, thus far in Japan the focus of the trust business has been collective trusts, and unfortunately the current situation makes it difficult to claim that personal trusts have sufficiently developed. In light of the future aging society, it is desirable that the trust business attempts to move towards personal trusts. In order to accomplish this change it is necessary not only to reform the awareness of the trust banks that carry out trust business, but also to launch a debate about the best way to regulate the supervisory authorities.

Although trusts are a system for managing assets, they are not a system for personal affairs, so we must bear in mind the danger that using trusts will cause the personal welfare aspect of asset management to be neglected. It is difficult in personal trusts to distinguish between asset management and personal affairs. But it is unnecessary to do so. For example, the purpose of a special donation trust is "contributing to the stable life" of the beneficiary who is a person with special disabilities. But the concept of "contributing to the stable life" is not purely a matter of asset management; it is also a matter of personal affairs. It is unnecessary for the trustee to take direct responsibility for the care of the beneficiary, but because the personal welfare matters are inevitably linked with the asset management of the trust, a forward-looking stance of acceptance is essential for the future popularization of personal trusts.

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At the very least, it should be entirely possible (for example, through coordination with adult guardianship under civil law) to position trusts within the system of support, including personal affairs, that is provided for all aspects of the lives of the elderly people who are the beneficiaries.

Furthermore, in order to popularize personal trusts, Japan must establish an awareness of paying appropriate trust fees. The notion that "welfare is a benefit provided by the government" needs to be eradicated and a change of perception is required in which users will understand more about "buying" personal trusts. This will doubtless correspond with the increasing tendency for the trust business to be a fee-paying business. Of course, there will naturally be a need for settlors to enthusiastically build up their knowledge about personal trusts as fee-paying trusts, and give that knowledge back to users. Finally, in order to popularize personal trusts, it will be necessary to nurture corporate trustees that will be able to execute the trusts in an appropriate manner.

There have been new movements regarding personal trusts, as I will illustrate with the two examples. The first is the education fund donation trust. This is a new form of trust designed to transfer assets of the elderly to the younger generations and support education and human resources. It was introduced pursuant to the tax exemption measures on donations relating to one-off education fund donations, in tandem with the revisions to the taxation system in 2013. For example, in the event that grandparents create a trust and appoint a trust bank as trustee for educational funds, of which the beneficiary will be a grandchild, and entrust the bank with cash, sums of up to 15 million yen would be exempt from donation tax. Trusts like this are a typical personal trust, and are often mentioned at the start of the representative British and American textbooks on trust law.

The second type of trust uses special contract cash trust schemes to help systematically distribute funds for everyday life. The settlors deposit cash for their day-to-day life funds in a cash trust and receive regular payments to cover their living costs as the beneficiaries (self-

benefit trusts). When the settlor begins to inherit, the recipient of the one-off payment (the second beneficiary), designated by the settlor from among the heirs presumptive, receives the one-off payment. After the settlor has begun to inherit, the person designated by the settlor from among the heirs presumptive to receive the residual funds (the second beneficiary) receives the residual funds of the trust.

These two types of trust represent a significant contribution to the development of personal trusts in Japan, and their future direction merits close attention.