

## Definition and Creation of Trusts

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Unlike existing trust law, this tentative draft expands the scope of trust property and makes it possible to entrust the operation of a business through using the trust property, as well as newly recognizes the declaration of trust. However, with respect to the draft's recognition of the declaration of trust, because of strong opposition stemming from a fear of its use as a means of evading compulsory enforcement, the draft not only limits the declaration of trust to purposes for the public benefit, for the support of others, and for the education of others, but also forbids the settlor of a declared trust from reserving, in himself, a power of revocation. Because this will be the first time that Japanese law recognizes the declaration of trust, we took care that it did not become too "drastic."

The draft, like existing trust law, also forbids trusts used for illegal purposes. Although present trust law provides a specific statutory provision which expressly forbids "trusts for litigation" (Trust Law, Article 11), we have yet to conclude whether such a provision should be abolished under the tentative draft. However, it may prove better to retain such a provision in order to prevent those not of the legal profession from so engaging in legal matters.