

# Some Issues of the Judging Criteria of the Approval of Establishing and Control of Charitable Trusts

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A charitable trust functions in the society by designating a trustee to whom the asset of a settler is transferred for the purpose of the public benefit in the promotion of arts and science, education, welfare, protection of nature and international exchange. The trustee is responsible for attaining the giving objective in the public benefit by managing and operating the transferred assets. A charitable trust is defined by Article 66 of the Trust Law, and its function in the society is almost equivalent to that of non-profit and public benefit corporations, especially incorporated foundations, as defined by Article 34 of the Civil Code which stipulates the system for offering a private asset to attain a given public benefit objective. The difference between the two is whether the organization is legally a juridical person or a trust.

Although the Law of Trust which defines charitable trusts was enacted in 1922, they were not actually put into practice for approximately fifty years. It was in May, 1977 that the first two charitable trusts were approved from the ministries of Foreign Affairs and Construction respectively. It has been 15 years since the first charitable trusts were established, and there are altogether 400 charitable trusts as of the end of March, 1992. The breakdown is: 391 trusts trust banks designating as trustees (7 trusts have ended) one trust designating an individual as a trustee, and 8 trusts designating community chest associations as trustees. There are more than 20 trusts established every year on average, and the total trusted assets were about 35 billion yen. Charitable trusts are beginning to perform a major role in the field of private public benefit activities.

When establishing a charitable trust, the trustee must submit to the competent government office for official approval as well as the non-profit and

public benefit corporation (Article 68 of Trust Law, Article 34 of Civil Code). After establishing the charitable trust, it submit to the competent government office for its control as well as the non-profit and public benefit corporation (Article 67 of Trust Law, Article 67 of Civil Code).

We have the uniform judging criteria for the approval of establishing and control for the running of a non-profit and public benefit corporation. But there is no uniform judging criteria for the approval of establishing and control for the running of the charitable trust. I think that it is necessary to have the uniform judging criteria in order to ensure fairness in each charitable trust. Because if each competent government office has each judging criteria and do the approval of establishing the charitable trust for its own convenience, it will become to be unfair.

And I would like to investigate some issues of the judging criteria for the approval of establishing and control of a charitable trust about three phases, establishing, running and termination.