

The Role of Trust in Securitization, especially in case of “CARDS”

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The merits of using trust in the case of securitization are as follows. First, the asset would be changed in its character, so it could be transferable. Second, the property would be enclosed and safe from risk of creditor. Third, we could escape the risk of double-tax. In addition to these points we could use the skillfulness and knowledge of specialists in the related areas.

However, in case of securitization of credit card receivables, there remains a problem about the transferability of future debts. It is because when you want to make trust agreement, you have to fix its assets, purpose and beneficiaries. However, in the case of securitization of credit card receivables, we have to invest in future debts revolvingly. So, the assets look not to be fixed at the point when the trust is settled.

I think whether the future debts are transferable or not owe to the stability of legal aspect of fundamental relationship. Say, because the cause of debts is clear by the credit card agreements, the qualified accounts for the receivables are defined by the agreement and the trust assets consist of the receivables for certain period specified by the agreement. So if these three elements were satisfied, we can say the receivables were specified enough as the trust assets.

Furthermore we can issue the different types of certificate. The different certificate is held by the seller (i. e. seller and the preferred certificate is issued for the investor. The seller must supply credit card receivables as additional collateral in case of collateral shortage two-tire structure).

Such uneven treatments look against the principle of fairness, in treatment of beneficiaries. Japanese civil code admits to correct the principle of fairness in treatment of obligees, if all the obligees agreed and manifested clearly. Such treatment should equally be adapted to beneficiaries in trust.

The other point that we have to pay attention to is the positioning of

servicer in the scheme. Because it is crucial to investors in pool securities that loan accounts are strictly managed. Generally, the originator of the loans performs the servicing functions. Servicer manages trust asset in cooperation with trustee. Servicers are similar to deputy of trustee in Japanese Trust Law and obey to the supervision of trustee.