A Study of Liquidation and Securitization of Assets by Utilizing Trust

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In Japan, a trust utilized for liquidation of Assets is newly developed and has different characteristics from conventional one. For it has been the major premise that each of a settlor, a trustee and a beneficiary is one person or entity in Japanese Trust Law.

(1) Because Japanese Trust Law and its provisions cannot directly answer problems related to such trust, legal perspectives concerning associations should be introduced to adjust interests owned by an indefinite number of the trust's investors, i.e., beneficiaries.

(2) Although it is generally said that the idea to classify beneficiaries' interests is questionable, the idea is able to be consummated by a proper provision in a trust instrument about a trustee's obligation to deliver trust property because the classification of beneficiaries' interests is an aspect of the distribution mechanism of trust property. Also, the idea of senior-subordinate structure can be introduced in the same way.

(3) Japanese Trust Law grants a settlor the authority to supervise a trustee; however, to protect beneficiaries rights, it is appropriate to consider that a settlor (and also a beneficiary at the creation of the trust) implicitly waives the authority when it disposes of its interest as a beneficiary.

(4) A trustee has to supervise a person or entity managing trust affairs on behalf of it, and if it concludes that the person or entity is not qualified, it shall take appropriate measures, including discharging the person or entity.

(5) A new legislation is desirable that proride for a more convenient method for claiming trust against third parties. At the same time, an effective means of public notice should also be considered.