

Estate Planning and Trust in the United States

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In the United States, so-called "estate planning" is favorable for those who think about the future succession of own estates.

And especially in estate planning, trusts are created as a method to satisfy their purposes of succession of estates.

There are mainly three reasons why trusts are often created in connection with estate planning.

The first is to avoid proceedings of probate.

The second is the fact the rights for estates of dead person to protect surviving wife or husband [dower, curtesy, system of community properties] are not enough to fulfill their needs.

And the third is the way of ownership for estates is complicated.

And then the following three examples are given as features of trusts created in the United States.

- (1) Living trusts are often created by contracts between a living person and trust institutions.
- (2) It's possible to succeed estates to some person at one time and then after his/her death to succeed the same estates to another person through trusts.
- (3) Discretion of trustees is fully used through trusts.

Trusts in the United States having the above mentioned features can be also possibly created in Japan. And especially trusts having the second feature mentioned above would be very useful and worth investigating in Japan.

But till now few such trusts have been created in Japan. We have different legal system from that of the United States. And it is not possible to create the same type of trusts. Then there are some legal problems to create such trusts in Japan.

[reporter's view]

- (1) Concerning law of trust, section 62 and 63 admit these estates are transferred from beneficiaries to the authorized person who should own the estates at last.

In the view of term of trusts, there is the rule against perpetuities, so generally trusts which are not to be ended are invalid. But the type of trusts which will be ended certainly are valid.

- (2) Concerning the civil law, there is the similar type of succession of estates to trusts in the United States. And this type of succession is invalid in a commonly accepted theory.

But when the ownership is divided to one person from another person definitely by creating trusts, it is valid against the above mentioned succession in the civil law.

In Japan, trusts similar to those in the United States, are becoming attractive for people, as people are having complicated or various purposes for the successions of own estates.

In the future, the following purposes are possibly accomplished by creating trusts in Japan.

- (1) The benefits from the estates are given to one's spouse during spouse's life, and after spouse's death estates are transferred to another person.
- (2) The dividend from the stocks are given to one's spouse during his/her life, and after spouse's death, the stocks are transferred to another person.
- (3) The benefit from the trust is given to a handicapped person during his/her life, and after his/her death, the benefit is given to the institution.