

A Consideration on Business Transfers and Mergers of Trust and Banking Companies

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Since business transfer or merger between trust and banking companies involves numerous interested parties—a fact which makes the transfer or merger a very strenuous and time-consuming task as well as complicating relations among different claims—some legislative measures are necessary considering current needs for prompt solution. As for the transfer of trust business, one suggestion would be to amend the Financial Institution's Additional Operation of Trust Business Act (the Additional Operation Act) to the effect that a business transfer shall be regarded as recognized by interested parties after a public notice and an individual notice to each known creditor are given and a certain period of time has passed since the notification. In this case, beneficiaries can be protected by providing the right to discharge trust to those who raise an objection. As for the merger of trust and banking companies, the existing laws are becoming increasingly inappropriate for the current conditions. For example, the relation between the necessary procedure stated in the Additional Operation Act and another procedure for protecting creditors stated in the Commercial Code is not clear. Another example is that under the current legal system, Clause 2 of Article 7 of the Additional Operation Act requires a procedure for selecting a new trustee even for beneficiaries who can take measures for protection provided by Article 412 of the Commercial Code. Therefore, one suggestion in this case would be to repeal Article 6 and Clause 2 of Article 7 of the Additional Operation Act, exclude beneficiaries of trust from the coverage of Clause 3 of Article 100 of the Commercial Code

which is applied mutatis mutandis by Clause 2 of Article 412 of the same law, and instead provide the right to discharge trust to beneficiaries who raise an objection within the period stated by Clause 1 of Article 412 of the Commercial Law except in cases where there is no possibility that the beneficiaries might be damaged by the merger.

Although combination of trust is not stated in the Trust Law, if such statement is included in a trust contract or if there is consent by consignors, beneficiaries, and trust creditors with limited liability by a special agreement, it can be considered possible based on the principle of freedom of contract. In cases where two or more beneficiaries are involved, it is necessary to evaluate in fairness each beneficiary's trust property for combination and somehow reflect the evaluation to their benefit in a new contract in order to maintain fairness. As for trust contracts using a uniform contract format and with an expected dividend, it might be possible to consider them as combinable, under the condition that such combination meets certain quantitative standards, for the following reasons: based on Article 5-3 of the Additional Operation Act, if each trust contract being combined is modified to enable combination, the modification is recognized by the competent authority, and a public notice is given, then based on Clause 2 of the same article, if neither the consignors nor beneficiaries raise an objection, such modification of a trust contract is regarded as recognized; in addition, current typical uniform trust contracts include a statement that provides the right to discharge trust if an objection is raised.