

Reform of Trust Law : Trends in Japan and Other Countries

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Reform of trust law has been a popular trend around the world. In the United States, the Restatement of the Law of Trusts has been revised several times and the Uniform Trust Code was released in 2000. In the United Kingdom, the Trustees Act was revised in 2000 after 70 years. In Europe, the Hague Trust Convention was adopted in 1984, and to ratify it, several countries have attempted to revise their substantive law, typically by newly introducing trust law. In France and Italy, such legislation has not been successful as yet, but in Luxemburg, new legislation recognizing trusts was enacted in 2003. Also, in 1999, a group of academic experts proposed "the Principles of European Trust Law." In Asia, China enacted Trust Law in 2001, following South Korea and Chinese Taipei.

The trend of trust law reform has two aspects: modernization and internationalization. First, in many countries, trust law reform has been coupled with the reform of trust business regulation, which now forms an important part of the financial system. The financial system as a whole has been undergoing large-scale reform to cope with drastic change in the social and economic environment. Second, globalization has required countries not having trust law to recognize trusts.

The importance of these two aspects applies equally in Japan. Indeed, it is understood that a reform of trust law is necessary to allow the scheme of trusts to play a vital role in Japan, where the economy is becoming more globalized and the society is becoming aged. More specifical-

ly, the reform of trust law must accompany two sets of reforms. First, the law of “commercial trusts” must play a greater role in financial markets where the entire financial system of Japan is subject to continuous change. Second, the law of “private trusts” must respond to the increasing need in Japan for inter-generational succession and administration of wealth.

The major proposals in my article include the following.

Regarding commercial trusts:

- 1) Minimize the power of the settlor;
- 2) Recognize limited liability of the trustee and the beneficiary;
- 3) Recognize the flexibility of the trustee’s duty;
- 4) Provide clear rules for trusts with many beneficiaries;
- 5) Permit securitization of beneficial interests; and
- 6) Provide clear rules on combinations and divisions of trusts.

Regarding private trusts:

- 1) Recognize “beneficiary successive trusts”;
- 2) Provide clear rules for distinguishing principal and income in beneficiary interests (by clearly defining the amount of the principal);
- 3) Permit the creation of trusts for all kinds of property; and
- 4) Recognize exemptions from the forced heirship rule in “life security trusts.”