

A Trust for Commercial Use and the Reform of Trust Law

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While a trust is a widely used legal form for commercial arrangements in major countries, many questions remain unanswered. For instance, why is the trust form so popular, compared with other competing legal forms? Why is a trust used for certain commercial arrangements, and not for others?

In Japan, a trust is often used for various commercial arrangements. But most popular types of commercial trusts -- loan trusts and money trusts -- do not exist in the U.S. or the U.K. Why?

Two tentative arguments can be presented. First, the advantage of using the trust form for a particular commercial arrangement depends on the costs of private law and regulation associated with using other distinctive legal forms, such as a corporation, and while many of the legal and regulatory attributes provided to a trust are recognized to a corporation and other rivals, those other forms are often subject to additional (and sometimes stricter) laws and regulations, so that a trust is often an unexpected winner in the race among organizational forms.

Second, developments in the general trust law reflect this race. More specifically, developments in trust law in recent years show departure from the traditional model of a family trust. They show a trend toward recognizing more flexibility that makes the trust form more attractive in the competition with corporate and other organizational forms for commercial use.

