

Trust Law Reform and Trust Business

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The reform of the Trust Law which is presently being discussed in the Trust Law Subcommittee of Legislative Council of the Ministry of Justice (the "Trust Law Subcommittee") is a thorough and major reform aimed at the "modernization of the Trust Law", the goal of which is to establish rules to enable the Trust business to better meet present and future economic and social demands.

The latest reform proposal submitted by the Ministry of Justice to the Trust Law Subcommittee is composed of: 1) deregulation of some mandatory statutes and setting up of default rules in accordance with the principle of freedom of contract; 2) establishing rules for decision making among multiple beneficiaries and delegation rules on behalf of beneficiaries to accommodate collective investment schemes; 3) emphasizing bankruptcy remoteness from the trustee; 4) establishing provisions for modification to a Trust Deed, consolidations of trusts, and divisions of trusts, as well as consolidations and divisions of trustees, neither of which is specified in the present Trust Law; 5) introducing new trust models, such as business trust, security trust, declaration of trust, purpose trust, limited liability trust, securitization of beneficial interest, bonds backed by trust funds, and so on, which are not able to be implemented under the present Trust Law and which will have significant effect on the trust business in Japan.

Most of the proposed rules, such as duties of loyalty, outsourcing of trust administrative operations, the method for decision-making among multiple beneficiaries, right to acquire the interest of dissenting benefi-

ciaries, limits on a sole beneficiary's interest, establishment of trust administrators, trustee's duties of administration of trust property separate from that of trustee's own property, public notice of trust, failure to segregate trust fund assets from trustee's own assets (excluding the acquisition of an interest in violation of duties of loyalty and the obligations to disgorge the interest acquired by such violation) are considered to be well-balanced and reliable systems from the view point of "protection of beneficiary interests", "flexibility of trust business" and "legal stability and security of transactions".

A trust can be considered to contain the three completely different functions of 1) a financing system, 2) administration and succession of property, and 3) providing vehicles for business. Although the latest reform proposal is aiming to establish one unified rule to accommodate these three different functions, there is some question whether the regulation of such totally diverse functions is possible. Certainly it is important to make a single trust law based in a uniform concept, but in the case where contradictions are sure to arise under a single rule, it seems like more strands are required.

In regard to the new systems like declaration of trust, purpose trust, limited liability trust, and others not available under present Trust Law, these will have both benefits and detriments, and in order to prevent harm without impeding the flexibility of trusts, it seems prudent to single out the functions demanded by society and the economy and structure special regulations separate from the general Trust Law in each case.