

Civil Trusts in Japan: Trends and Legal Considerations

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According to the Japan Federation of Notaries, the number of civil trusts established through notarization has doubled over the past five years, increasing from 2,223 in 2018—when data collection began—to 4,434 in 2023. The actual total of civil trusts is likely even higher, as trust agreements do not require notarization.

A common type of civil trust in Japan is the self-interest trust, where an elderly settlor places a portion of their financial assets and real estate into a trust. A family member, designated as the trustee, manages these assets during the settlor's lifetime and ultimately inherits them.

In response to the growing prevalence of civil trusts, the Japan Federation of Bar Associations has issued guidelines outlining the responsibilities of lawyers involved in civil trust services, thereby contributing to the development of soft law for effective regulation.

As the use of civil trusts has increased, so too has the number of related court cases. Legal disputes regarding the establishment of trusts frequently center on the settlor's capacity to create a trust and the validity of the trust agreement. In some cases, professionals involved in the trust's formation have faced liability for failing to fulfill their duty of explanation. Disputes arising during the trust's duration often involve the interpretation of trust provisions, including

beneficiaries' claims against the trustee in discretionary trusts. Additionally, cases related to the termination of trusts have raised questions about the enforceability of provisions requiring the trustee's consent for termination, especially in light of statutory default rules governing termination by the settlor and beneficiary.

From these decisions, four key considerations emerge: first, it is crucial to clearly explain and confirm the settlor's intent when establishing the trust; second, any provisions that limit the settlor's rights must be carefully scrutinized; third, trust agreements should be drafted to ensure consistency among their provisions; and fourth, it is important to acknowledge the potential for legal guardianship to be established after the trust's formation.

Civil trusts are often initiated by trustees who are presumed heirs, which can lead to conflicts of interest between the settlor as a beneficiary and the trustee as a successor in interest. Additionally, trustees are frequently family members with limited experience in trust administration and insufficient understanding of their obligations, while beneficiaries may be elderly or disabled, restricting their ability to provide oversight. This context sets civil trusts apart from commercial trust conflicts, revealing numerous unresolved issues regarding the interpretation of relevant laws, such as the Trust Act and the Civil Code. Addressing these challenges requires a thorough examination of legal interpretations and trust provisions in light of actual circumstances.