

Special Lecture on Trust Law

Lecture No. 13

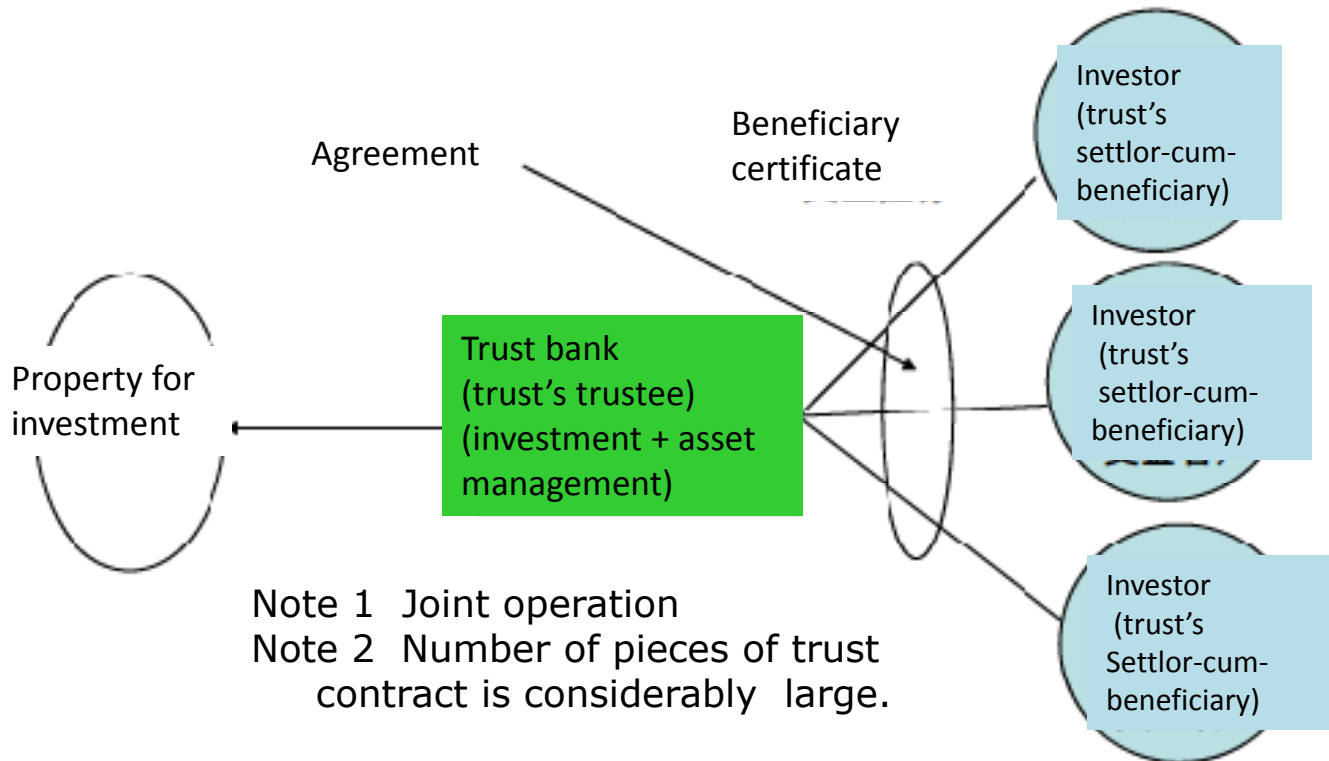
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(Part 2)

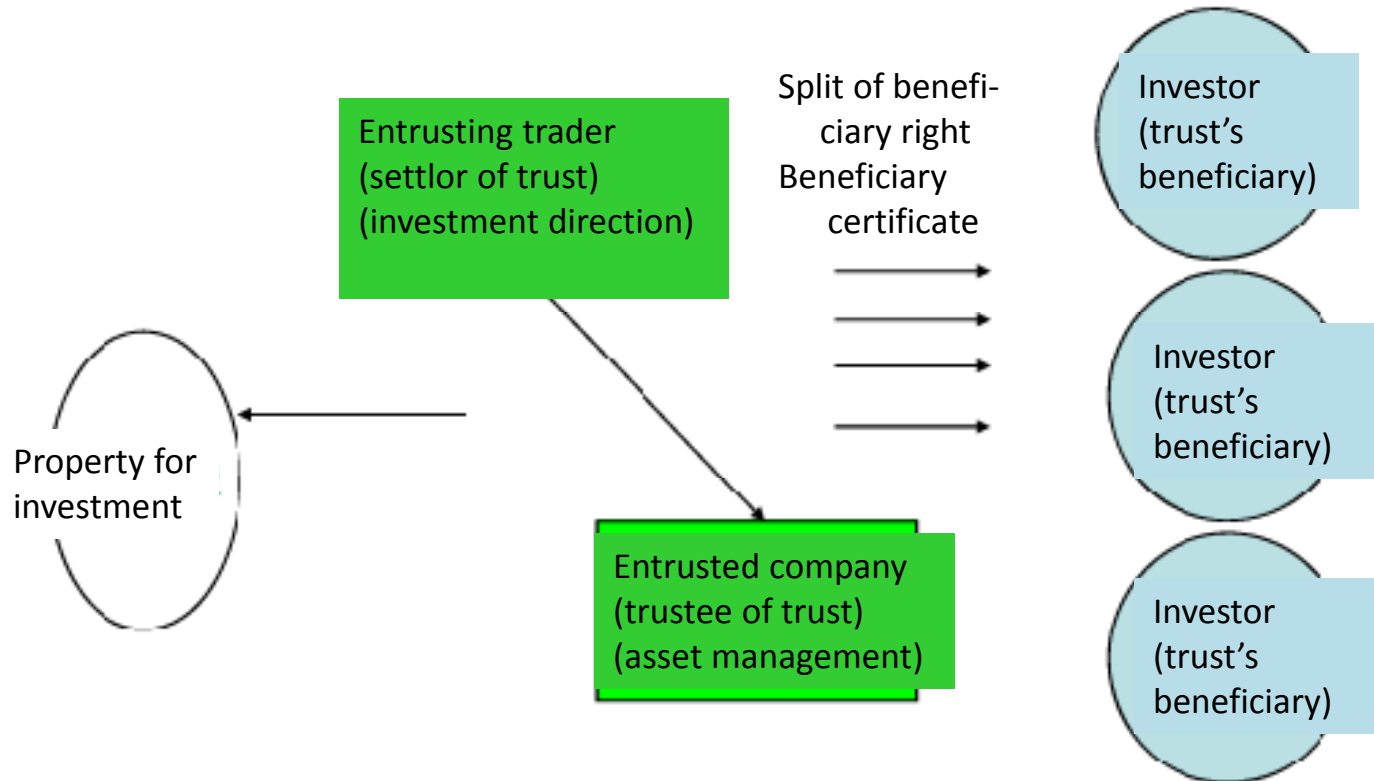
Loan Trust (re-insertion)



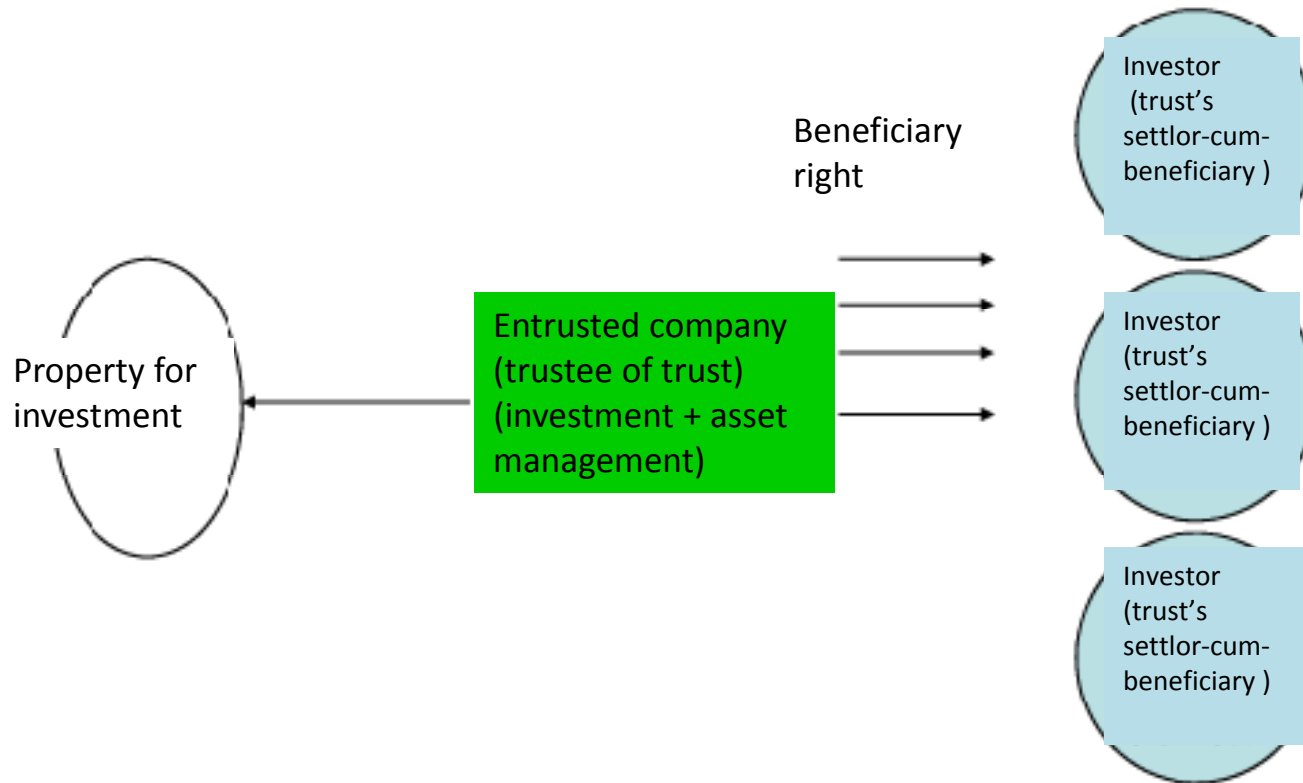
Investment Type of Commercial Trust (1): Investment Trust

- Structure (diagram)
- Special law = Investment Trust Law
- Settlor-directed type and settlor-undirected type
(others omitted)

Investment Trust: Settlor-Directed Type



Investment Trust: Settlor-Undirected Type



<Examples of questions about an investment trust>

Q10: What is a "settlor-directed type investment trust"? (cf. Art. 2, para. (1) of Investment Trust and Investment Corporation Act) [The questions through Q17 are ones pertaining to this type of investment trust.]

Q11: Who are the settlor and beneficiary in this investment trust under Trust Law?

Q12: What does Art. 3 of Investment Trust and Investment Corporation Act prescribe? (cf. Art. 4 of the same Act as well)

Q13: What is an intended meaning of Art. 7 of Investment Trust and Investment Corporation Act? Doesn't the joint-operation designated money trust invested in securities infringe these prescriptions?

Q14: What is an intended meaning of Art. 8 of Investment Trust and Investment Corporation Act? In which provision is ETF approved?

Q15: Prescribed in Investment Trust and Investment Corporation Act is the commission company's responsibility to the beneficiary; what does this mean? (cf. Art. 21)

Q16: What is an intended meaning of Art. 12 of Investment Trust and Investment Corporation Act [commission of authority] ?

Q17: What is a procedure of the change of agreements be conducted? [Art. 17 and 18 of Investment Trust and Investment Corporation Act]

Q18: What is "settlor-undirected type investment trust"? (cf. Art. 2, para. (2) of Investment Trust and Investment Corporation Act) [Hereinafter the questions are ones pertaining to this type of investment trust.] Who are the settlor and beneficiary in this investment trust under Trust Law? How many are units of trust contract?

Q19: What are intended meanings of Art. 51, 52, 53 of Investment Trust and Investment Corporation Act?

Q20: Why is the trustee's responsibility to the beneficiary prescribed in the special law (albeit the prescription in Trust Law)? (cf. Art. 56 of Investment Trust and Investment Corporation Act)

Q21: How is the relationship between Art. 55 of Investment Trust and Investment Corporation Act [entrusting of authority] and Art. 35 of Trust Law (Art. 22 and 23 [corresponding application of Art. 2, para. (1) of Sideline Act])

Law Concerning Securities Investment Trust and Securities Investment Companies (Investment Trust and Investment Corporation Act)

Art. 2, para. (1), item (i): The term a “settlor-directed-type investment trust” as used in this Act shall mean a trust whose objective is to effectively manage the investment primarily in securities and bonds, reality and other assets that are required to be easily invested as provided for by Cabinet Order (hereinafter referred to as “the designated assets”), based on a settlor’s direction (including the direction of a party provided by said Order in case the whole or part of the authority pertaining to the direction is entrusted to a party provided by said Order), and which is established based on this Act, and further, is aimed at dividing its beneficiary right for multiple persons to acquire thereof.

Art. 3: Contract for a settlor-directed-type investment trust (...) shall not be concluded unless a single financial-product dealer (...) should be set as the settlor, and a single trust company (to mean a trust company or a financial institution performing trust business...) as the trustee. (The rest is omitted.)

Art. 4, para. (1): A financial-product dealer, when intended to conclude an investment trust contract, shall in advance submit notice to the Prime Minister the contents of an agreement for a settlor-directed-type investment trust pertaining to subject investment trust contract (hereinafter referred to as ... “investment trust contract”).

Investment Trust and Investment Corporation Act (sequel)

Art. 7: No person shall, in addition to a securities investment trust, conclude a trust contract aimed to invest trust property primarily in securities and bonds, or practice a trust conducted in the method prescribed in Article 3, paragraph 3 of Trust Law. However, this shall not apply to trusts other than a beneficiary-certificate issuance trust prescribed in Article 185, paragraph (3) of the same Law, and which are not intended to let a multiple of parties obtain the beneficiary right of trust by dividing the said right.

Art. 8: ①A settlor-directed-type investment trust (except for investment trusts aimed to invest primarily in easily realizable properties, and what is prescribed in the Cabinet Order as having no risk of lacking protection of a beneficiary) shall be a money trust.

②Notwithstanding the provision of Article 151 of Trust Law, the trust property of a settlor-directed-type investment trust and the property of a trust other than a settlor-directed-type investment trust shall not be the trust property of one new trust.

③The provisions in Clause 3 of Chapter 6, and Chapter 9, of Trust Law shall not apply to a settlor-directed-type investment trust.

Investment Trust and Investment Corporation Act (sequel)

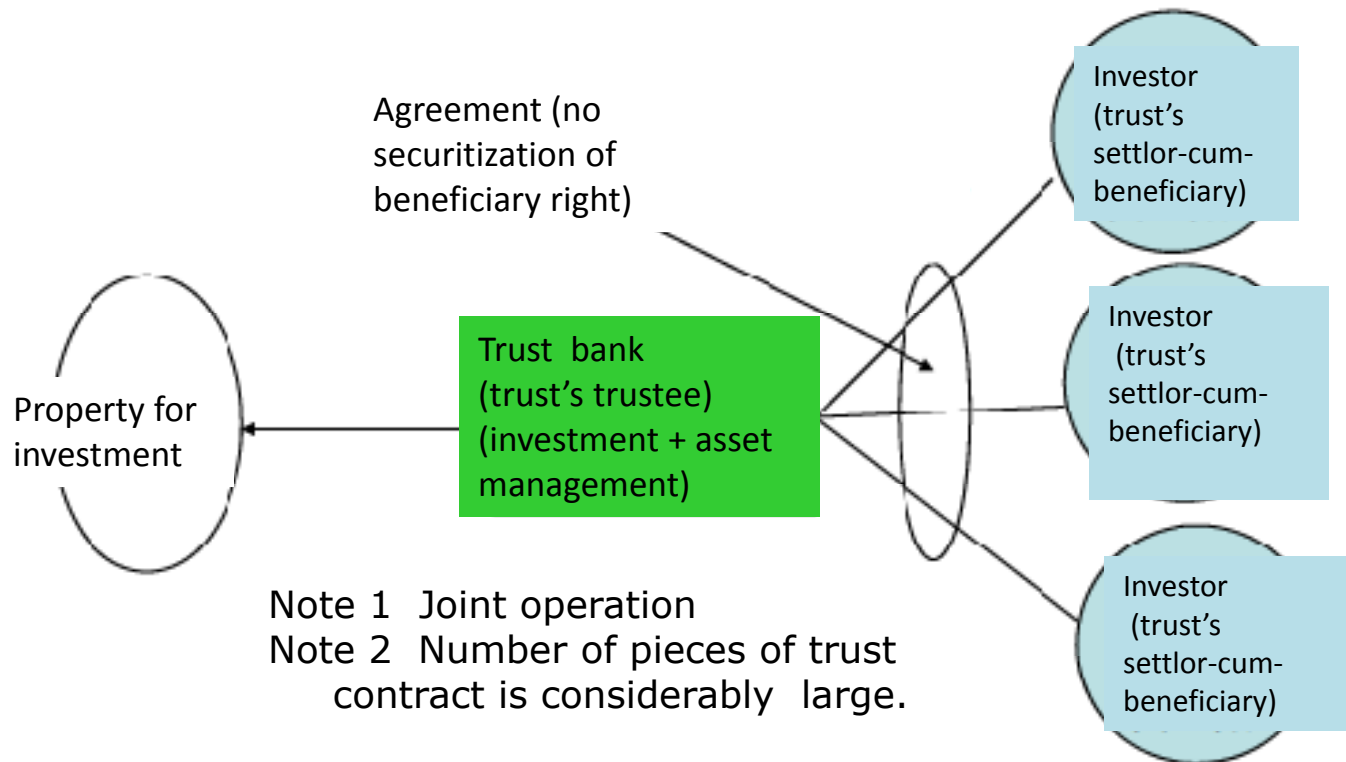
Art. 21: An investment trust commission company (including the party provided by the Cabinet Order set forth in Art. 2, para. (1) who has been entrusted with the whole or part of the authority pertaining to the direction on investment by said investment trust commission company), when inflicted a loss to the beneficiary of an investment trust property who executes the direction on investment attributable to the company's negligence of the task, shall jointly take a responsibility of compensation for damage to said beneficiary.

Art. 12, para. (1): An investment trust commission company shall entrust, as for all settlor-directed-type investment trusts on which said company performs investment directions, the entirety of the authority pertaining to subject directions to a person provided in the Cabinet Order prescribed in Article 2, paragraph (1) and other persons.

Investment type of commercial trust (2): Joint-Operation Designated Money Trust

- Structure (diagram): comparison with an “investment trust”
- Agreement: no special law
- Some points at issue
 - Impossible to convert beneficiary right into securities?
 - Change of an agreement (no special law: Sideline Act only—examples being existent)
 - Others, omitted

Joint-Operation Designated Money Trust



<Examples of questions about joint-operation designated money trust>

Q22: Where are differences from a loan trust in terms of the scheme? Why isn't there any special law? Who are the settlor and beneficiary under Trust Law?

Q23: Can beneficiary right be converted into securities in a joint-operation designated money trust?

Q24: What sorts of procedure are necessary to be taken in order to change an agreement in a joint-operation designated money trust? What should be done when some beneficiary raises an objection? When buying up beneficiary right, with which should it be purchased, inherent property or trust property?

<Joint-operation designated money trust>

Q22: Where are differences from a loan trust in terms of the scheme? Why isn't there any special law? Who are the settlor and beneficiary under Trust Law?

- As there is no special law, Sideline Act is an occupation law. An investor (fund provider) is identical to a beneficiary (the same as in loan trust in this point).

Q23: Can beneficiary right be converted into securities in a joint-operation designated money trust?

- Albeit no special law, it can be done under Trust Law, but...

Q24: What sorts of procedure are necessary to be taken in order to change an agreement in a joint-operation designated money trust? What should be done when some beneficiary raises an objection? When buying up beneficiary right, with which should it be purchased, inherent property or trust property?

- Apply Art. 5 of Sideline Act. Faced with an objection from a beneficiary, buy up with trust property. (Beneficiary right becomes void.)

Art. 8 of Sideline Act

- ①When a financial institution performing trust business plans to change an agreement of a standard trust contract (except for a trust contract pertaining to a loan trust or investment trust) that involves a large number of persons as beneficiaries, the said institution may employ the method, in addition to the method to obtain the consent of all settlors and beneficiaries involved with subject standard trust contract, with the approval of the Prime Minister, to give a public notice to the effect that those settlors or beneficiaries who are opposed to subject changes should express dissent within a certain period of time.
- ②The period in the preceding clause may not be shorter than one month.
- ③When no settlor or beneficiary expresses dissent within the period prescribed in the para. (1), subject settlors or beneficiaries shall be considered to have accepted the changes of subject contract.
- ④Those beneficiaries who have expressed dissent within the period prescribed in the para. (1) may request the financial institution performing trust business to buy out subject beneficiary right at a fair price which would have been set if such changes had not taken place.
- ⑤The stipulations provided in Art. 103, para. (7) and Art. 104 shall apply correspondingly when the request provided for in the preceding clause is made. In this case, the term "decision making as to changes of the trust deed or subject important trust" in the proviso in the paragraph (11) of the same Article shall be deemed to be replaced with "an agreement of a standard trust contract," and the term "paragraph (1) or (2) of the preceding Article" in paragraph (12) of the same Article to be replaced with "Article 5, paragraph (4) of Sideline Act," and, the term "decision making as to changes of the trust deed or subject important trust" in the proviso in the same paragraph" to be replaced with "an agreement of a standard trust contract."

★Additional Question:

What is a rule as to the change of a trust agreement in Trust Law? (Art. 149 [attention to para. (1) and (4)] , Art. 103 ["important" matters only] , Art. 105, etc. of Trust Law) How is this related to Art. 29-2 [attention to para. (4)] of Trust Business Act, and Art. 5 of Sideline Act? What is the meaning of Art. 29-2, para. (5)?

- ⇒When the number of the trust contract is one and that of the beneficiary is one → Art. 149 of Trust Law; when that of the trust contract is one and that of the beneficiary is plural → Art. 149 + Art. 105 of the same Law; when that of the trust contract is many and the trust property is in a joint management (types like loan trust and Joint-Operation Designated Money Trust) → No provisions under Trust Law, handled by Art. 29-2, para. (5)
- ⇒The change of a trust contract, in general, is possible under the provisions of Trust Law (Art. 149, 105), and Art. 29-2 of Trust Business Act (provided para. (4) of said Art.). Further, [for the case of a financial institution additionally operating trust business] the change of a trust contract is possible under the provisions of Art. 5 of Sideline Act.
- ⇒When the number of the trust contract is many and the trust property is in a joint management, and when intended to change a trust contract by a majority vote under Trust Law, how should these be laid down in a trust contract? (cf. Art. 149, para. (4) of Trust Law)

Art. 29-2 of Trust Business Act

①A trust company, when intended to conduct an important change of a trust, or a merger of trusts, or a partition of a trust, except when it is obvious that these are not against the purpose of subject trust and are in conformity With interests of the beneficiaries, and other situations prescribed by the Cabinet Office Ordinance, shall give out a public notice as to the following pursuant to the provision of the Cabinet Office Ordinance, or especially notify The beneficiaries (...):

- (i) To the effect that an important change of the trust is intended
- (ii) To the effect that beneficiaries who are opposed to subject change should express dissent within a certain period of time
- (iii) Other matters prescribed by the Cabinet Office Ordinance

②The period in the item (ii) of the preceding paragraph may not be shorter than one month.

③When the number of units of the beneficiary rights of the beneficiaries involved in subject trust who have expressed dissent within the period provided in the item (ii) of the preceding paragraph exceeds one half of the total number of beneficiary rights of subject trust (...), the important change of subject trust in the same paragraph shall not be implemented.

④The provisions in the preceding 3 paragraphs shall not apply when the matter falls under any of the following item:

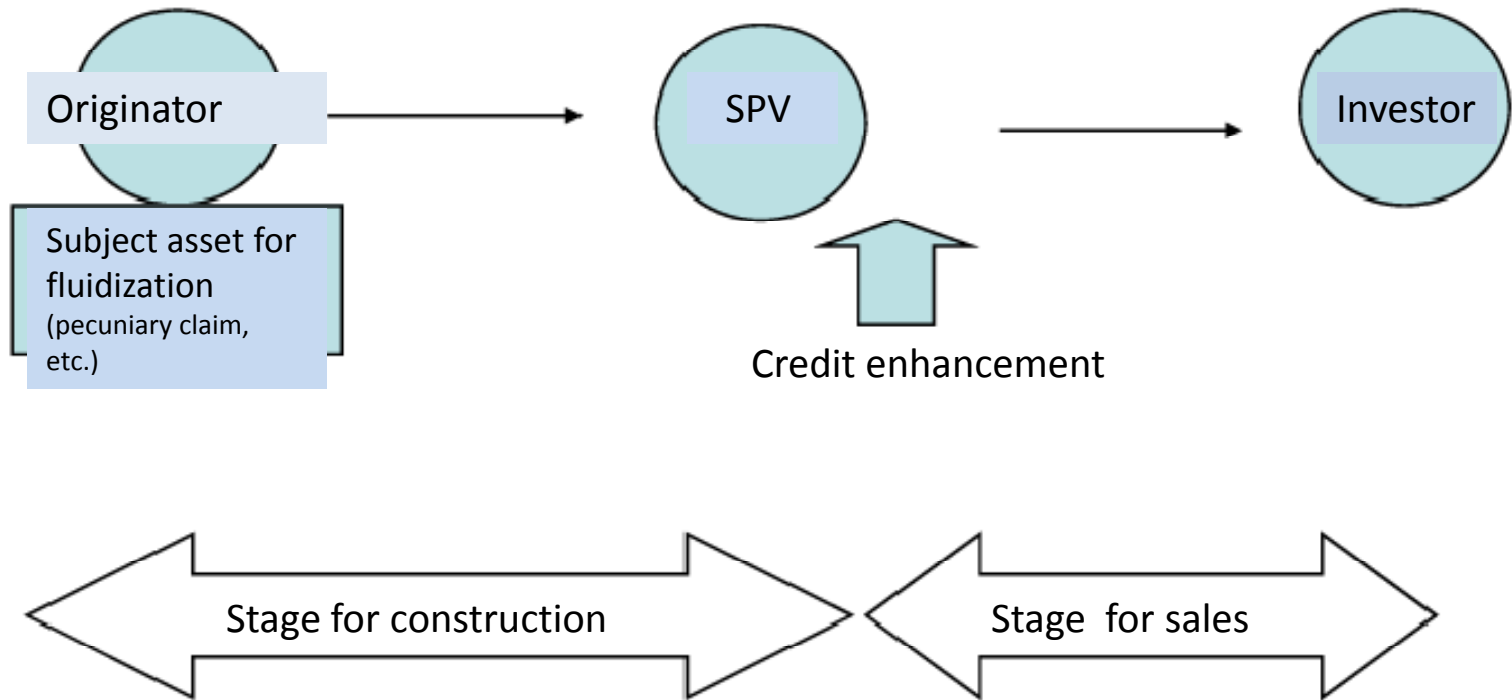
- (i) When there is a provision in the trust deed to the effect of a majority decision in a beneficiaries meeting
- (ii) By the method other than the one provided in the paragraph (1), when the matter has obtained an approval of the beneficiaries whose holding number of beneficiary rights exceeds one half of the total number of the beneficiary rights (...) of subject trust
- (iii) (omitted)

⑤In case of the trust contract which a trust company concludes between a large number of settlors based on one piece of trust contract , the trust pertaining to subject trust agreement is deemed as one trust pursuant to the prescription of subject trust contract, and the provisions of each preceding paragraph shall apply.

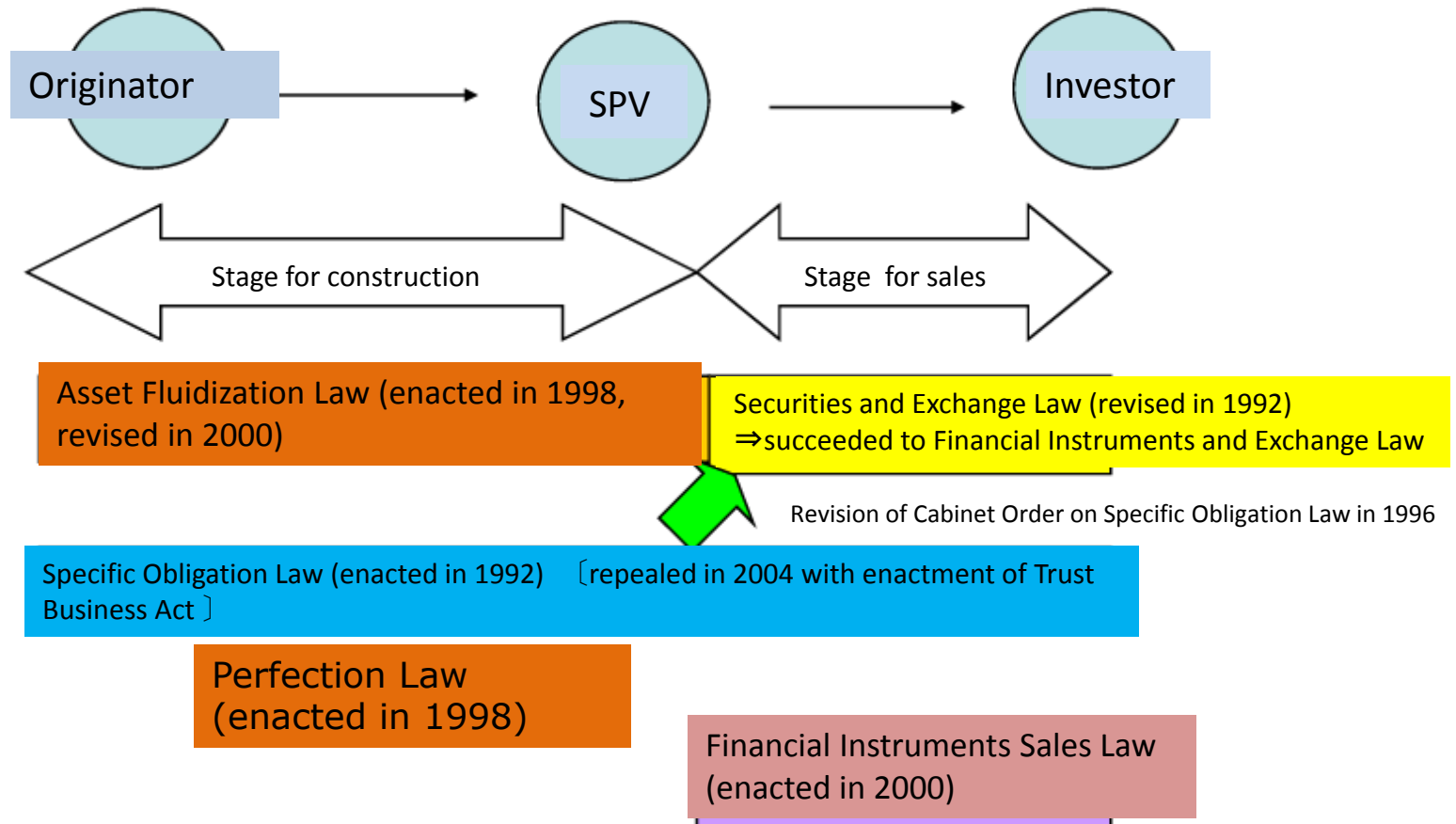
Fluidization of Asset

- Structure (diagram): comparison with an “investment trust”
- Case to which Asset Fluidization Act applies and one the Act doesn't apply to
- Handling under Financial Instruments and Exchange Law
- Other special law: Perfection Law
- Agreement
- Some points at issue:
 - Scheme (who to become the settlor)
 - Securitization of beneficiary right
 - To make beneficiary right multilayered
 - Change of trust contract
 - Trust as a “vehicle” (passive trust?)

Structure of Asset Fluidization



System of Laws on Asset Fluidization



<Examples of questions about fluidization (securitization)>

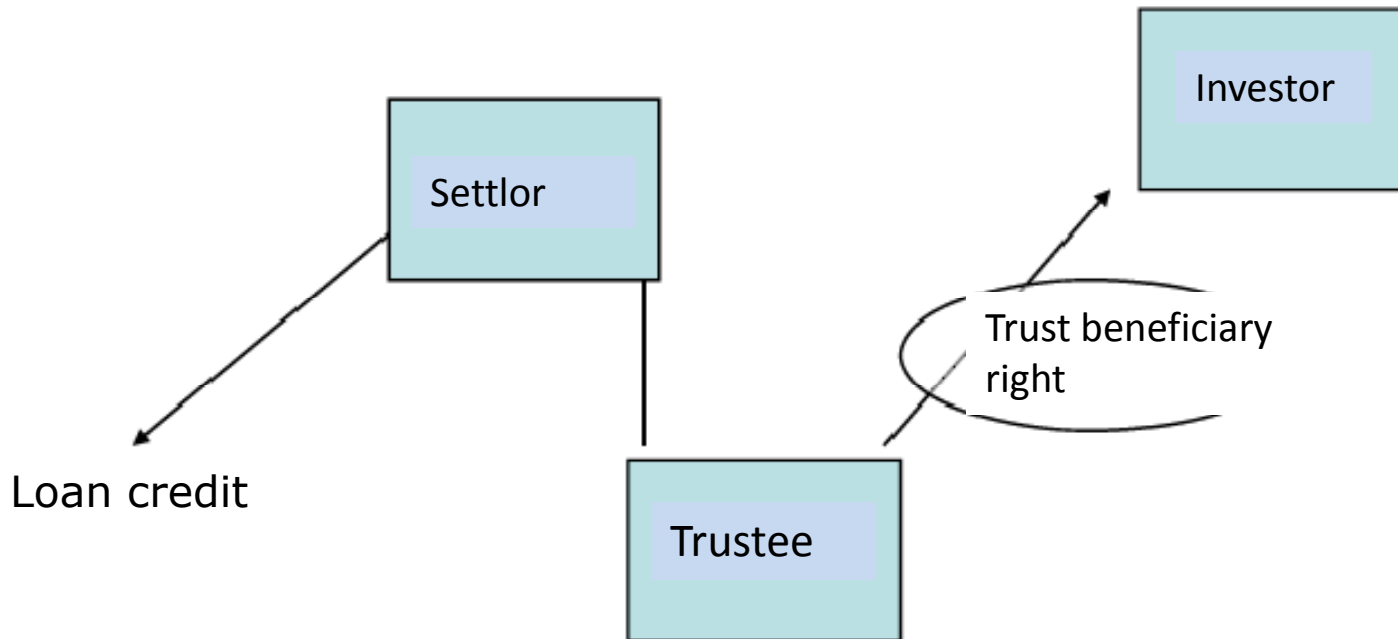
- Q25: What are regulations on “stage of construction” and “stage of sales” in fluidization?
- Q26: When using a trust in fluidization, what kind of regulation is there? Who are the settlor and beneficiary under Trust Law?
- Q27: What are characteristics of the structure of a trust [e.g., trust of loan credit] prescribed in Article 2, paragraph (2), item (i) of Financial Instruments and Exchange Law? Under this Law, who is the “floater” to bear the duty of disclosure, what are imputed securities, and at what point in time do they get floated?
- Q28: What is a specific equity trust prescribed in Asset Fluidization Act?
- Q29: What is a special purpose trust prescribed in Asset Fluidization Act?
- Q30: Regarding a special purpose trust, about what points in Trust Law’s rules does Asset Fluidization Act lay down special regulations?

Fluidization Using Trust

2 Routs

- Usage of Asset Fluidization Act
- No use of Asset Fluidization Act (Trust Business Act and Sideline Act being applied)
- Application of Financial Instruments and Exchange Law at the stage of sales

Fluidization: Structure Using Trust (General)

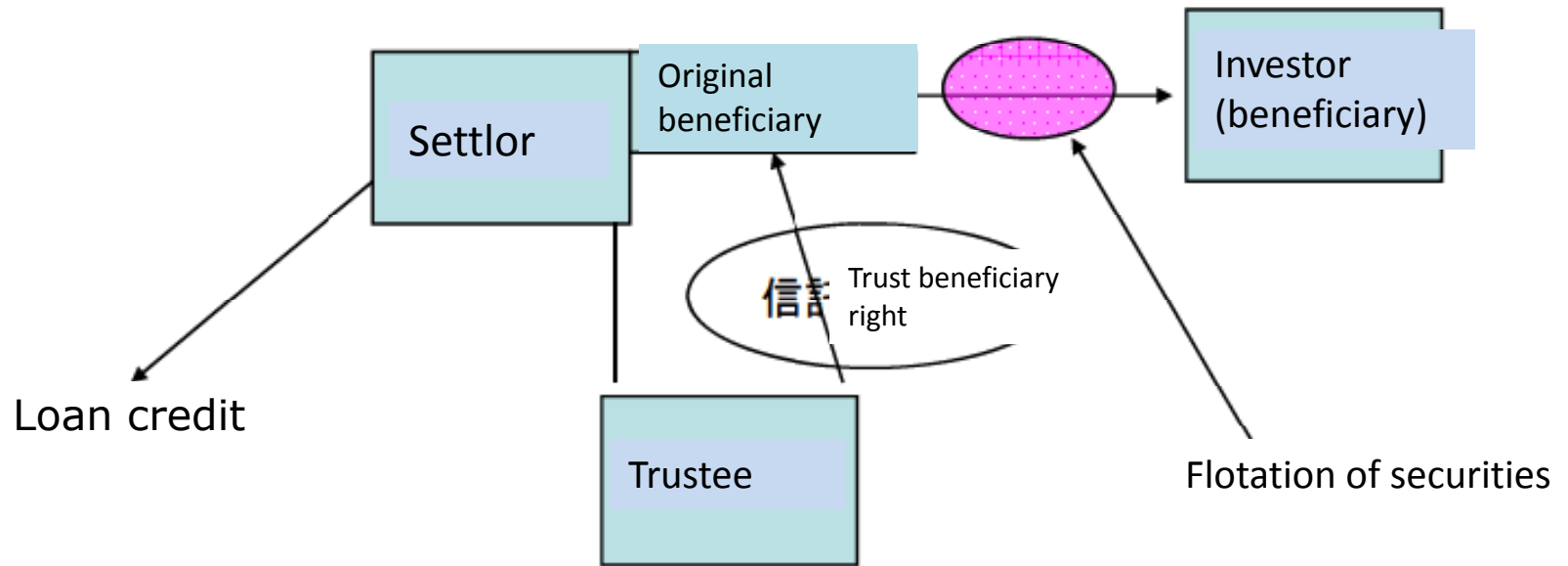


- (Questions) ①Securities?
②Who is the floater?

Case of Art. 2, para. (1) of Financial Instruments and Exchange Law
Case of Art. 2, para. (2) of Financial Instruments and Exchange Law

Fluidization: Structure Using Trust

Example of Art. 2, para. (2), item (i) of Financial Instruments and Exchange Law = Trust of loan credit by financial institution



- (Questions) ①Securities?
②Who is the floater?

Financial Instruments and Exchange Law: Art. 2, para. 5

The term a "floater" in this Law shall mean a person who floats or intends to float securities (as for the securities prescribed in the Cabinet Office Ordinance, a person prescribed in the Cabinet Office Ordinance), and as for the right other than the right that should be indicated on bills or certificates and is deemed as securities pursuant to the provision in the paragraph (2), a person for each kind of right prescribed in the Cabinet Office Ordinance shall be deemed to float subject right as securities at the time prescribed in the Cabinet Office Ordinance.

"Cabinet Office Ordinance as to the definition provided in Art. 2 of Financial Instruments and Exchange Law": Art. 14

①The securities provided in Art. 2, para. (5) of the Law and prescribed in the Cabinet Office Ordinance shall be beneficiary certificates of a special purpose trust, and beneficiary certificates, mortgage bonds and ...of a beneficiary-certificate issuance trust.

②A person who floats or intends to float the securities provided in Art. 2, para. (5) of the Law, and who is prescribed in the Cabinet Office Ordinance, shall be a person prescribed in each subject item in pursuance of classification of securities listed in each item:

- (i) Beneficiary certificates of a special purpose trust...the original settlor and trustee of a trust pertaining to subject securities
- (ii) Beneficiary certificates of a beneficiary-certificate issuance trust (except these listed in the following item) and ... a person prescribed in the following in pursuance of classification listed in the following:
 - (a) When the administration or disposition of trust property is performed only under the direction of a settlor or a person who has been entrusted with the authority on direction (limited to the case of a person other than one listed in each item of Art. 2 of the enforcement ordinance for Trust Business Act; same shall apply to the para. (3), item (i)-(a)): the settlor of a trust pertaining to subject securities.
 - (b) Case other than the case listed in (a) above (limited to the case in which a beneficiary is the settlor when the trust deed pertaining to subject securities comes into effect, and money is the property in trust): the trustee of a trust pertaining to subject securities.
 - (c) Case other than the cases listed in (a) and (b) above: the settlor and trustee of a trust pertaining to subject securities.
- (iii) Securities-trust beneficiary certificates: the person who floats or intends to float safekeeping securities pertaining to subject securities
- (iv) (The reset is omitted)

“Cabinet Office Ordinance as to the definition provided in Art. 2 of Financial Instruments and Exchange Law”: Art. 14 <sequel>

③A person who is prescribed in the Cabinet Office Ordinance to be deemed as the one who floats securities under each kind of right provided in Art. 2, para. (5) of the Law at the time prescribed in the Cabinet Office Ordinance, shall be the person prescribed in each subject item in pursuance of classification of rights listed in the following each item:

- (i) Rights listed in Art. 2, para. (2), item (i), and ...of the Law: the person prescribed in each of the following in pursuance of classification of cases listed in the following:
 - (a) When the administration or disposition of trust property is performed only under the direction of a settlor or a person who has been entrusted with the authority on direction : the settlor of a trust pertaining to subject right.
 - (b) Case other than the case listed in (a) above (limited to the case in which a beneficiary is the settlor when the trust deed pertaining to subject right comes into effect, and money is the property in trust): the trustee of a trust pertaining to subject right.
 - (c) Case other than the cases listed in (a) and (b) above: the settlor and trustee of a trust pertaining to subject right.
- (ii) (The rest is omitted)

④The time prescribed in the Cabinet Office Ordinance that is provided in Art. 2, para. (5) of the Law shall be the time prescribed in each item in pursuance of classification of rights listed in the following each item:

- (i) Right listed in Art. 2, para. (2), item (i), and ...of the Law: the time prescribed in each of the following in pursuance of classification of cases listed in the following:
 - (a) In the case in which a beneficiary is the settlor when the trust deed pertaining to subject right comes into effect (excluding the case of a trust in which a trust contract is based on one piece of trust contract, and the administration or disposition of trust property pertaining to subject trust contract is performed jointly with the administration or disposition of trust property pertaining to trust contract which the trustee concludes between other settlors based on subject trust contract): the time the settlor of a trust pertaining to subject right hands over subject right (except one the settlor has obtained by transfer).
 - (b) Case other than the case listed in (a) above : the time the trust pertaining to subject right comes into effect
- (ii) (The rest is omitted)