

Trust Business and Regulations on Trust Business

Makoto Orihara
Trust Companies Association of Japan

Introduction

I Status Quo of Trust Business

1. Institutions engaged in trust business activities (cf. attached list "Institutions Engaged in Trust Business Activities")
 - Banks running trust business as sideline
 - Trust companies
 - Others
2. Outlook of trust business activities
 - (1) Balance of the trust property by institution in trust business operations (cf. attached "Table of Balance of Property In Trust")
 - (2) Balance of the trust property by function (cf. *Trust in Japan 2008*, p.5)
3. Classification of trust business activities
 - (1) Classification by the initial trust property (cf. attached table "Classification of Business Trust")
 - (2) Classification of monetary trust (cf. attached table "Classification of Monetary Trust")
4. Civil trust/commercial trust and relations to applicable laws (cf. attached table "Classification of Trust and Applicable Laws")

II Development of Trust Business and Legal Preparation

1. Britain and America
 - Duplicate use regarding trust in Britain
 - Improper uses into the 19th century, resulting in the trustee law instituted in 1893 →Trustee Act 2000
 - Trust system originated in Britain was subsequently transplanted in America and developed as business trust in the company system.

In the beginning, it was civil trust in New England centering around Boston. Banking system was immature to deal with a large increase in capital requirements accompanied by the change in the industrial structure in the U.S. (from agriculture/commerce to manufacturing). Trust companies entered the stage bearing the role to supplement this insufficiency.

- 1822 Farmers' fire-insurance loan company in New York
- 1830 New York Life-Insurance Trust Company
- 1853 United States Trust Company
- Into the 20th century, the ban on state banks' trust-business operations was lifted, and so was one on national banks in 1913.
- 1916 FRB's promulgation of the regulation F
- 1962 OCC's promulgation of the regulation 9
- 1996 Revision of the regulation 9
- 1999 Institution of Gramm–Leach–Bliley Act (Financial Systems Reform Law)
- 2000 Adoption of Uniform Trust Act

<Situation of Trust Business in America>

More than 90% of the trust properties are of commercial trust, not private trust.

- Private trust: disposition of inheritance (executor, administrator), trust inter vivos, conservator activity, etc.
- Commercial trust: pension trust, investment trust (mutual fund, real estate investment trust, petroleum/gas royalty trust), fluidization of property, trust under the trust certificate law, trust for regulatory compliance security (nuclear reactor trust, trust for insurance-related regulation observance/ fulfillment security)

2. Japan

- 1900 Word "trust" found in the law for Industrial Bank of Japan
- 1905 Institution of Mortgage Bond Trust Law

The trust was used to facilitate flotation of debentures and subscription for stocks which were aimed at supplying abundant funds to the industrial world based on the policies of national prosperity and defense, and the promotion of industry.

- 1906 Foundation of Tokyo Trust Co.
- 1921 488 companies in total (small and weak companies=moneylenders in substance)

- 1922 Institution of Trust Law and Trust Business Act
Zaibatsu-affiliated trust companies (Mitsui Trust in 1924, Yasuda Trust and Sumitomo Trust in 1925, Mitsubishi Trust in 1927, etc.)
- 1943 Institution of Sideline Act
- 1948 Conversion of trust companies to trust banks
- 1951 Securities Investment Trust Law
- 1952 Loan Trust Law
- 1992 Financial Systems Reform Law—entry into trust by the affiliated-company formula
- 1996 Declaration of the financial big bang
- 1998 Financial System Reform Law—introduction of the investment trust in the corporation format, Asset Fluidization Act
- 2004 Full-fledged revision of Trust Business Act
- 2006 Full-fledged revision of Trust Law

<Situation of Trust Business>

From the beginning, its hub was commercial trust, and moreover, it's the moneylending business centered on money trust.

Equipment trust in 1956, securities agency business in '58, Qualified Employee Retirement Pension trust in '62, welfare annuity trust in '66, employee stock ownership trust in '69, asset-building savings trust in '72, specified donation trust in '75, charitable trust in '77, land trust in '84, performance-based-dividend money trust in '92, employee pension trust in '99, defined contribution pension trust in 2001, defined benefit pension trust in 2002

3. Characteristics of our country's trust business and significance of revisions of the laws

(1) Characteristics of our country's trust business

Britain and America: civil trust→commercial trust (concurrent coexistence)

Japan: focused on commercial trust (money trust)→positioned as the moneylending business→growth potential also for civil trust in keeping with advancement of a mature society

(2) Significance of revisions of the laws

- ① Revision of Trust Law: modernization (comprehensive stipulation of civil trust and commercial trust)

- i Rationalization of contents as to the trustee's duties, etc.
- ii Advancement of effectiveness/maneuverability in the beneficiary's exercise of right
- iii Approval of a variety of configurations of the trust utilization

② Revision of Trust Business Act: deregulation

- i Annulment of the regulations on property in trust
- ii Expansion of pillars of trust business

III Trust Business and Regulations on Trust Business

1. Laws regulating trust business

(1) General regulatory laws

- ① Trust Business Act
- ② Act concerning financial institutions running the trust activity as sideline business

(2) Specific regulatory laws

- ① Law on investment trusts and investment corporations
- ② Law on the fluidization of assets
- ③ Loan Trust Law
- ④ Mortgage Bond Trust Law

2. Trust business

(1) Trust business

① Trust business

i The term "trust business" shall mean "business" to conduct "acceptance" of "trust." (Trust Business Act § 1-1)

- Acceptance of trust: Viewed from the standpoint of a trustee, in the face of a settlor's manifestation of intent to set up a trust, to indicate the trustee's intention to accept this, and to ingenerate a trust relationship.
- Business: To "repeatedly continue" with the "objective of the pursuit of mercenary profit"

② Exclusion of application

(2) Administration-type trust business

- i Settlor-directed-type administration trust
- ii Preservation-act-type administration trust

3. Regulations on trust business

Based on Trust Law, being a general private law, in order to protect the client from potential problems that might arise due to the gap in bargaining power/amount of information held by the trader and the client (settlor/beneficiary), Trust Business Act provides the following:

- ① Entry standard to set up an appropriate trader as the trustee
- ② Control over activities for the trader to properly conduct trust business
- ③ Stipulation on the supervisory regulations to check whether the trader is properly conducting trust business

(1) Regulation on entry (cf. *Trust in Japan 2008*, p.4)

- ① Investment-type trust company
- ② Management-type trust company

(2) Control over activities (to be mentioned later)

(3) Supervisory regulations

- ① Approvals of merger, split-up, transfer of business
- ② Inspection, punishment
 - Right to receive reports/data, and the authority to enter one's premises and make an inspection
 - Authority to order business improvement
 - Authorities to cancel the license, to order to suspend the business, to order to dismiss directors
- ③ Lapse of license, registration
 - Lapse of license and registration due to the dissolution of a trust company
 - Official notice of a supervisory disposition
 - Dismissal proceedings for case of a license cancellation
 - Prime Minister's opinion and such as to a trust company's liquidation

IV Control over Activities

1. Commission of trust business (cf. attached table "Commission of Trust Affairs (Trust Law) and Trust Business (Trust Business Act) to the Third Party")

- (1) Situation where the commission of trust business is possible
- (2) Responsibility of the consignee when commissioned
- (3) Responsibility of the trust company when commissioned

2. Rules to activities pertaining to the acceptance of trust
 - (1) Prohibited acts
 - ① False notice
 - ② Provision of an assertive judgment
 - ③ Provision of a special profit
 - ④ Replacement of losses and such
 - ⑤ Other acts that fall short of the protection of a settlor
 - (2) Principle of compatibility
 - (3) Corresponding application of Financial Instruments and Exchange Law pertaining to the specified trust contract
 - (4) Explanation about contents of a trust contract
 - (5) Issuance of a document at the conclusion of a trust contract
 - (6) Issuance of a status report on property in trust
3. Obligations of the trust company
 - (1) Care duty of good administration
 - (2) Duty of impartiality
 - (3) Duty of loyalty
 - (4) Duty of system preparation such as the separate management system (cf. attached table "Duty of Separate Management")
 - ① Duty of system preparation such as the separate management system
 - ② Duty to prepare other systems
4. Working rules on acts pertaining to trust property (cf. attached table "Rules on Duty of Loyalty under New Trust Law")
 - (1) Prohibited acts
 - ① Transaction under the condition to cause damage to the property in trust
 - ② Unnecessary transaction
 - ③ Information-use transaction

- ④ Other acts which might cause damage to the property in trust, or to lose credibility of trust business
- (2) Ban on the act of conflicting interests
 - ① Self transaction
 - ② Transaction between the trust properties
 - ④ Transaction as proxy for both sides
- (3) Obligation to issue a document in case the conflict-of-interests act was conducted

Summary

【Bibliography】

Kazuaki Tanaka, *New Trust Law and Trust Business Practice*, Seibunsha, Oct. 2007

Takuya Koide, *Trust Business Act: Article-By-Article Commentary*, Seibunsha, Jun. 2008

