

Special Lecture on Trust Law

Lecture No. 8

December 2, 2008

Faculty of Law, University of Tokyo

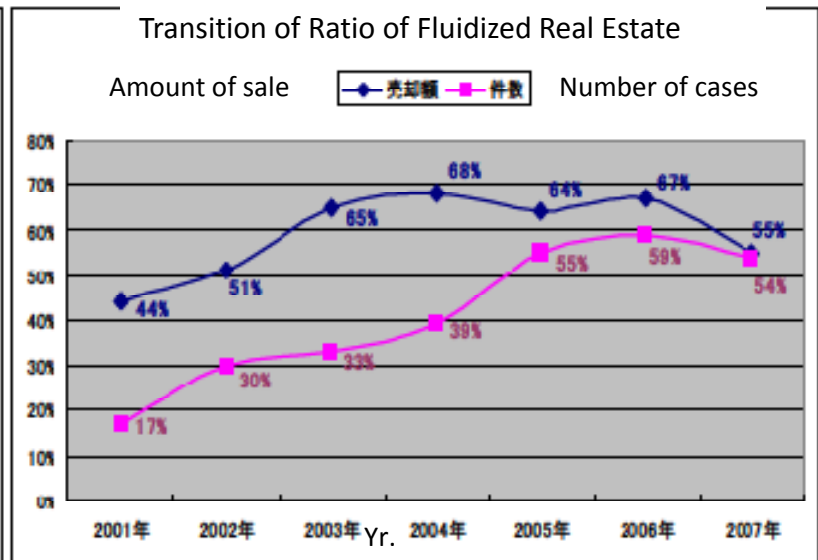
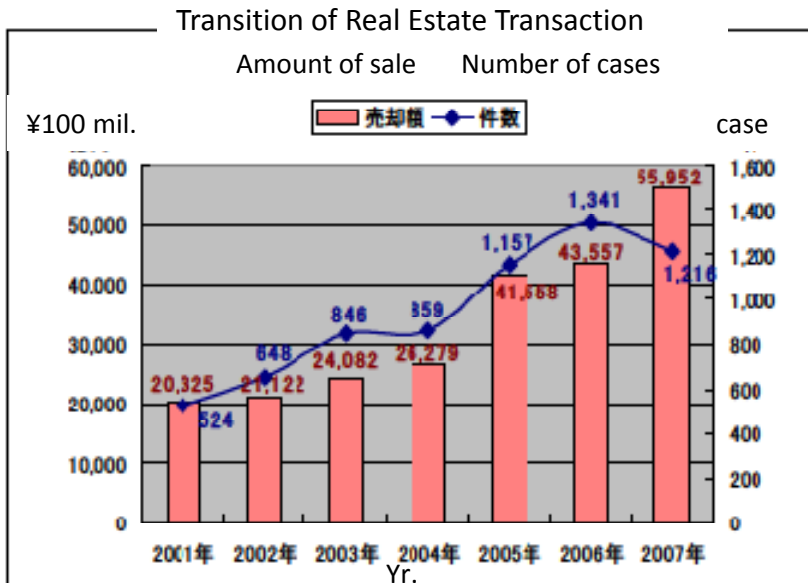
Real Estate Business and Trust

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1. Real Estate Market and Real Estate Trust Intended for Fluidization

(1) About Real Estate Market (Realities of Real Estate Trade)



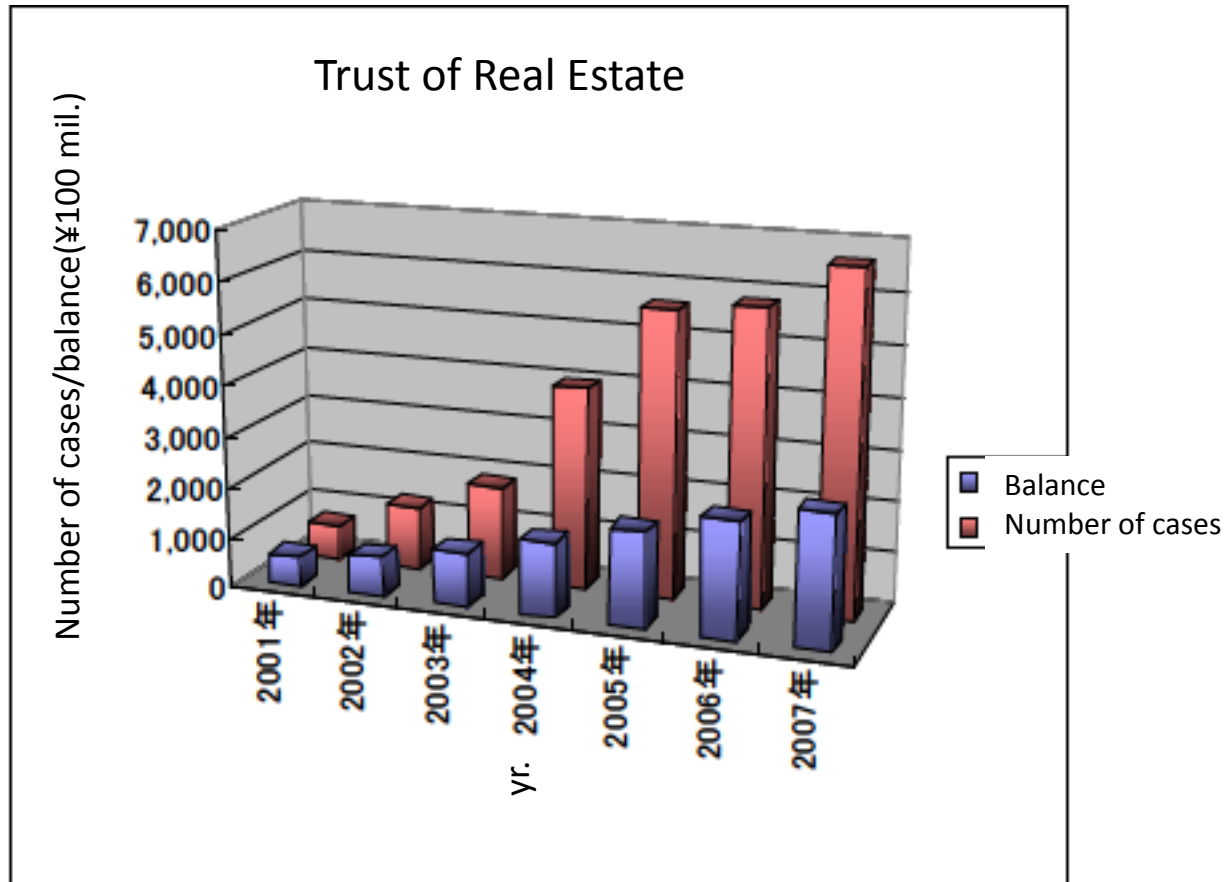
Data put together as “Research on Actual Conditions of Real Estate Trade” integrating information on transfer/acquisition of fixed assets disclosed in Tokyo Stock Exchange, and information publicized in newspapers.

“Fluidized real estate” means real estate that has been sold to such vehicles as SPC, SPT, and investment-purpose companies.

Excerpted from Mizuho Trust & Banking Co., “Topics on Real Estate, May 2008”

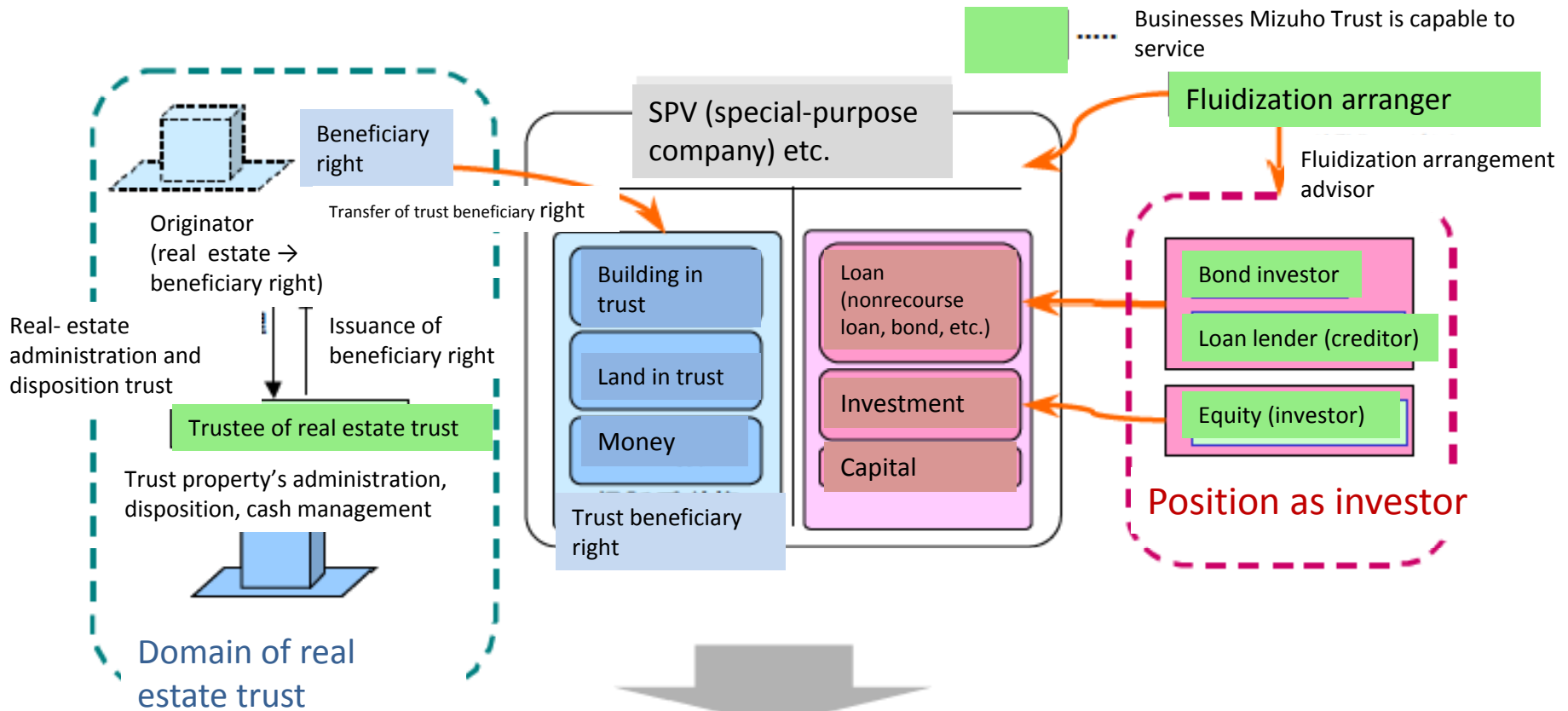
(2) About Real Estate Trust (Balance/Cases)

4.3 times (¥25.9 trillion) in the balance and 9.6 times (6,662 cases) in the number of cases over the period of 6 years



(From Investment Trusts Association's home page: Trust statistical guide/
National survey on trust property)

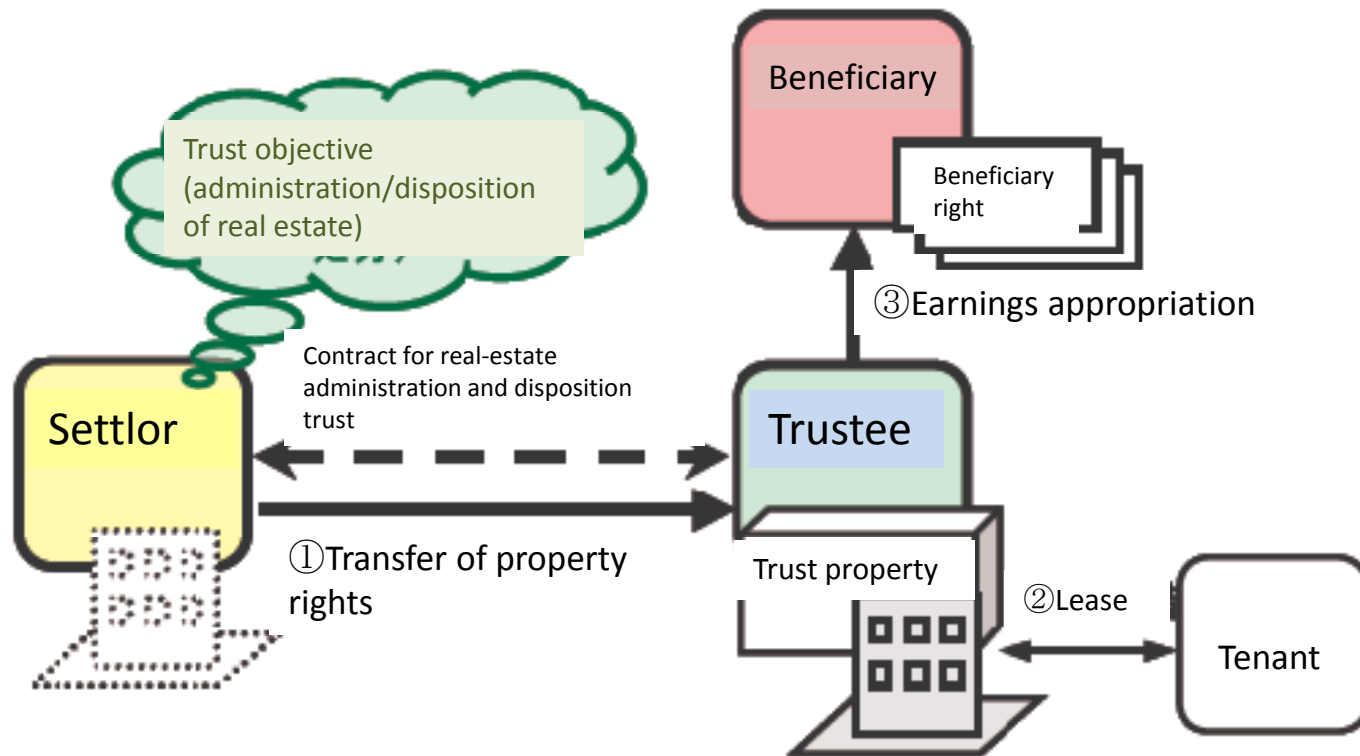
(3) About Scheme of Fluidization of Real Estate Trust



In fluidization scheme, a real estate trust is merely a vehicle most often used to wrap actual real estate with securities and bonds (trust beneficiary right).

(4) Basic Scheme of Real Estate Trust

● Real-estate administration and disposition trust



(5) Advantage of Utilizing Real Estate Trust

- ① Function of Property administration
Expectations for the trustee with a rich experience and high capacity of asset administration
- ② Bankruptcy remote function
“Independence of trust property”; high legal stability as a means of property administration
- ③ Function to convert property and condition of property rights
Real estate being a real right gets converted to the trust beneficiary right (credit)
- ④ Reduction of transfer tax (of real estate)
Registration and license tax, real estate acquisition tax.

Various functions of the trust meet investors' needs.



Increase in usage



Broad base of real estate trust

2. About Land Trust

(1) Basic Scheme of Land Trust

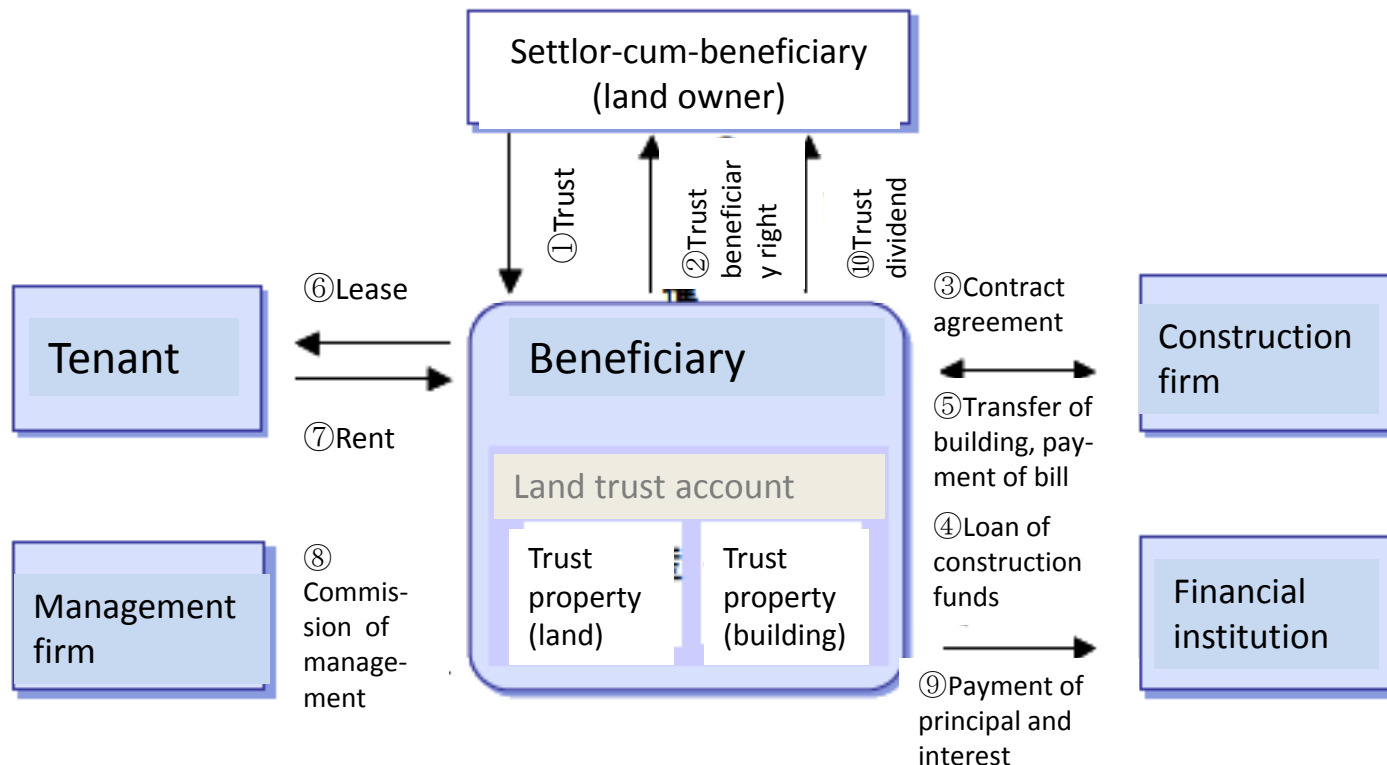
Land trust is a kind of real estate trusts and a means of effective utilization of land

- Lease-type land trust

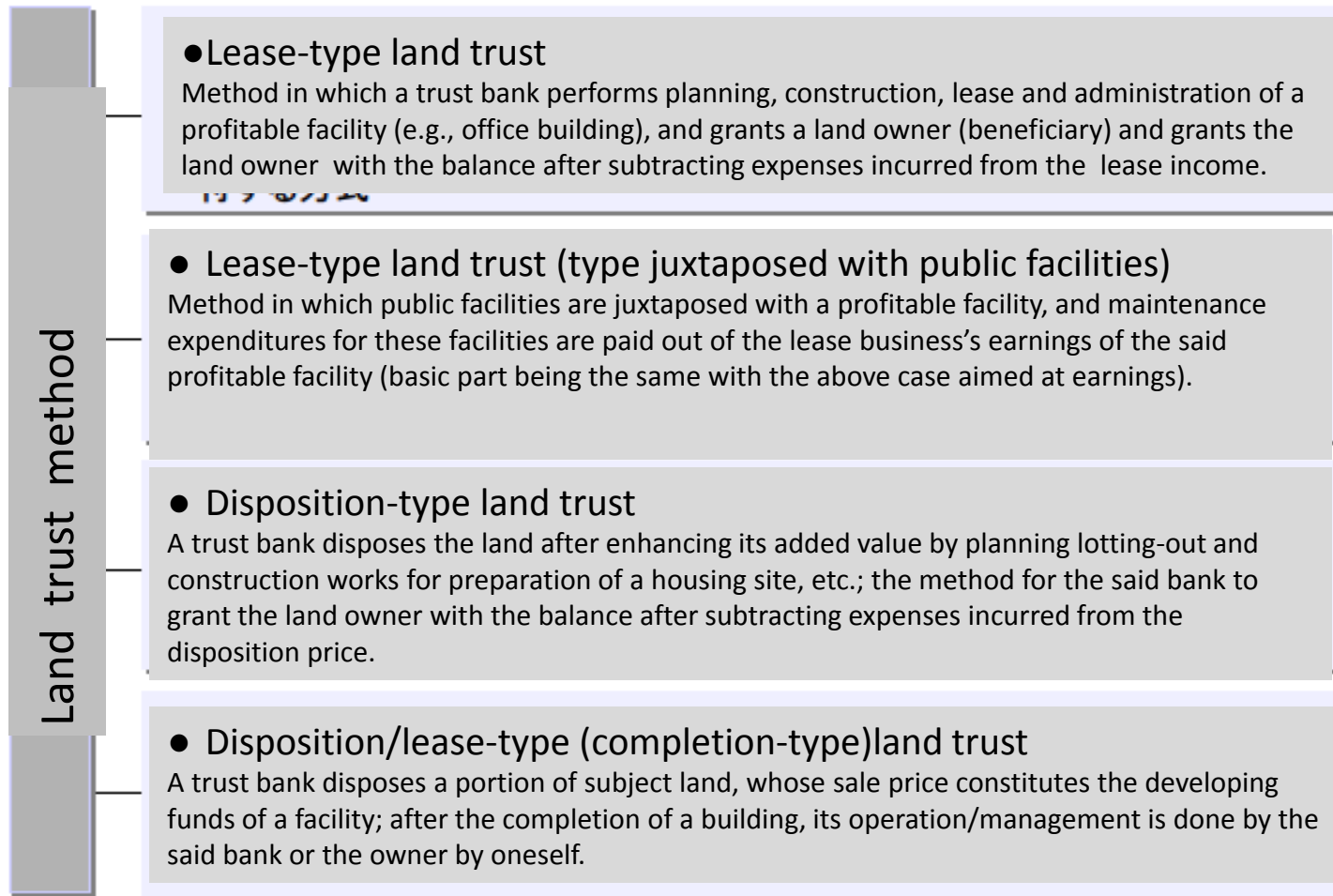
A land owner as the settlor entrusts a trust bank (trustee) with the land (①-② given below).

The trust bank performs investment/management of the trust property in conformity with a trust objective (③-⑨ given below).

And which grants the former land owner being the beneficiary with its fruit in a trust dividend, etc. (⑩ given below).



(2) Type of Land Trust



(3) Example of Land Trust

① Shinjuku First West (Shinjuku-ward's land trust business)



Outline of subject land

Address	Nishi-Shinjuku 1-come, Shinjuku-ward, Tokyo
Ground area	3,859m ²
Architectural floor	44,515m ²
Completion	2003
Our firm's role	Enterprising body (land trust beneficiary)

- Effective utilization of the site where Shinjuku-ward Yodobashi 2nd Primary School previously stood (part of business concentration district of Nishi-Shinjuku)
- Office building for lease for the purpose to secure new revenues

(3) Example of Land Trust

② Shinjuku Monolyth (Tokyo Metropolis's land trust business)



Outline of subject land

Address	Nishi-Shinjuku 1-come, Shinjuku-ward, Tokyo
Ground area	7,167m ²
Architectural floor	90,415m ²
Completion	1990
Our firm's role	Enterprising body (land trust beneficiary)

- Case of an effective utilization of the land owned by the Tokyo metropolitan government (part of business concentration district of Nishi-Shinjuku)
- First case of a land trust by Tokyo Metropolis
- Realizing stable trust dividends since the opening of business making the most of the location's distinctive quality

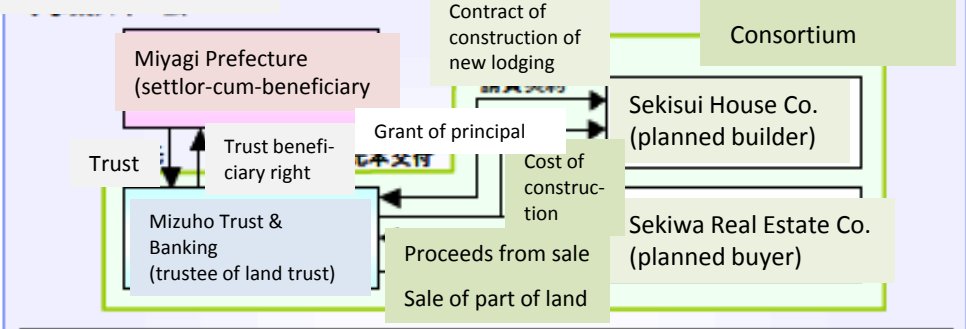
(3) Example of Land Trust

③ Miyagi Prefecture: Disposition-completion-type land trust (re-development of a lodging for staff in Tokyo)

◇ Outline of subject real estate and trust business

Settlor-cum-beneficiary	Miyagi Prefecture
Address	Yoshiimachi, Matsudo City, Chiba Prefecture
Land	1,912m ²
Building	Current lodging for staff in Tokyo (floor area at 1,036m ² , 5-storied RC bldg., built in 1962)
Classification	Common asset (lodging)
Sale estate	Part of land (1,288m ²) and whole bldg.
Bldg. planned for construction	New lodging for staff in Tokyo Structure: piled steel frame, 3-storied Total floor: 600.33m ² No. of houses: 24 Completion: Sep. 2009 (schedule)

Business scheme



- ① Miyagi Prefecture entrusts the lodging's land and building, and receives a trust beneficiary right.
- ② The trust bank, in conformity with the trust objective, sells a part of the land and the existing building to a planned buyer.
- ③ The bank places an order of construction of the new lodging with a planned builder.
- ④ The bank, after the completion of the new lodging, delivers up the land and building taken up for sale, and receives the proceeds from sale.
- ⑤ And which is applied to the payment of cost of construction and various necessary expenditures.
- ⑥ The bank delivers to Miyagi Prefecture the new lodging's land and building completed, and surplus funds, and concludes the trust.



<Merits of disposition-completion-type land trust>

- ① Enables one to formulate a business plan in view of an overall revenue and expenditure
- ② Enables one to utilize a trust bank's know-how on real estate development (ingenuity in reducing business cost, management of construction period/process)
- ③ Enables one to utilize a trust bank's know-how on the sale of real estate (pursuit of a sale price, securement of transparency, evasion of troubles, reduction of administrative burden)
- ④ Enables one to manage costs and schedule in detail
- ⑤ Enables one to raise necessary business funds flexibly (budgeting individual expenditure items not necessary)

(4) Consideration on Land Trust Beneficiary's Commission Of Trust Affairs

Commission of trust affairs in each step of land trust business

- ① From the planning to construction of a building
 - A Design of a building
 - B Contract of construction work
- ② Administration/management of a completed building
 - A Maintenance (periodical inspection of EV, boiler, water supply and drainage equipment, etc.)
 - B Administration (cleaning, tenant administration, repair, etc.)
 - C Management (tenant recruitment, etc.)

Trust Law and Trust Business Act

- ① Trust Law
 - Duty of self-execution (Art. 26 of the old Law)
 - Commission of the disposition of trust affairs to the third party (Art. 28, 35)
- ② Trust Business Act
 - Commission of trust business (Art. 22, 23 of Business Act)

(Reference) Rationalization of Provisions on Duty of Self-Execution in Trust Law

Old Trust Law

◎ Strict rules on duty of self-execution

- Impossible in principle to commission the third party with the disposition of trust affairs.

Art. 26, para. (1) of Old Trust Law

A trustee, unless otherwise provided for in the trust deed, limited to the cases with compelling reasons, may have other persons dispose trust affairs in lieu of himself.



Pointing out that the rule is not modern in contemporary society where social division of work and specialization have advanced

<Examples>

- ① Trust affairs that are more properly handled by employing a specialist of a high ability, like an investment concerning a certain foreign currency, as compared to a disposition by a trustee himself
- ② Trust affairs like a dispatching of documents to beneficiaries, which can be handled more reasonably by commissioning the third party in terms of cost and time as compared to a disposition by a trustee himself

New Trust Law

◎ Relaxation of duty of self-execution

- Expanded cases to allow commission of trust affairs to third party (Art. 28)

【Requisites for commission】

- When there is a provision in the trust deed to the effect that trust affairs are, or can be, commissioned to the third party
- In case there is no provision in the trust deed as to the commission of the disposition of trust affairs to the third party, when the commission of the disposition of trust affairs to the third party is approved to benefit in light of the trust's purpose.
- In case there is the provision in the trust deed to the effect that trust affairs shall not be commissioned to the third party, when it is approved in light of the trust's purpose that there are compelling reasons as to the commission of the disposition of trust affairs to the third party.

3. Prospect on Usage of Real Estate Trust

(1) Expectation on Trust to Put Together Businesses with Complex Relation of Rights

Turbulent real estate market

Change of tractional force (domestic firms→ foreign funds, J REIT, privately-placed funds→ ?)

① Incentive to the development of real estate with complex relation of rights

- A Firmly rooted popularity of offices and residences with favorable conditions
- B Decrease of sites for development works having good conditions for location
- C Social needs for invigoration of central city and reconstruction of timeworn buildings and condominiums

② Issues on real estate business with complex relation of rights

- A Difficult consensus formation (further fractionation along with outbreak of inheritance, etc.)
- B Co-ownership of the title floor in a joint building
 - 【Problems of co-owned floor as a lease property】
 - a) Unable to avoid separate requisition, legal stability of the lease floor is low.
 - b) Inexpungeable concerns about delay in taking action on contingency for being unable to integrate various authorities for negotiation , and lack of the concerted action on a building's management and operation like a reconditioning plan
 - Huge risk on the part of tenants
- C Impact on the business caused by bankruptcy of the developer and land owner

(2) Function of Trust Expected for Active Use in Real Estate Business

① Function to freeze an intent

Function to maintain for a long period the settlor's intent formed at the time of a trust's setup refusing to go along with changes of subjective (personal) conditions like the settlor's loss of intent capacity or death

② Function to convert the number of rightful claimants

When the core to which property rights revert is plural or a group without legal personality, the trust can change it a singular core or create a conditioner.

⇒ To singularize plural business cores is useful as a function to simplify relation of rights

【Examples of application】 J-city Tokyo (redevelopment of Jinbocho 1-chome), Roppongi Hills Mori Tower

③ Bankruptcy remote function

A Vehicle for property fluidization

B To avoid a developer's bankruptcy risk in case of employing a complete transfer method in an equivalent exchange business

【Examples of application】 Granreve Omori Soho Park

C Management of a long-term reserve fund for a major repair and demolition of the building

(3) Business Promotion Under New Trust Law (Comparison with Old Trust Law) ①

① Establishment of flexible rules for the beneficiary's decision making

Old Trust Law: Absence of proper rules on the decision making of plural number of beneficiaries

Trust administrator (Art. 8) · · “Unspecific, non-existent” are the requisites and does not address plural beneficiaries who really exist.

→New Trust Law: Special cases of the decision-making method by 2 or more beneficiaries (infra Art. 105)

Majority decision in the beneficiaries' meeting, and room for ingenuity like a holding in writing and an imputed majority Representative of beneficiaries (infra Art. 138)

⇒Enabling flexible decision making

② Rules on the contract change turned into the discretionary provision

Old Trust Law: Regulations only by the court as to the change of an administrative method on trust property

→New Trust Law: Regulations on the change of trust (infra Art. 149)

With the unanimous agreement in principle, under a certain requisite, the change by the intent of a part of the people concerned with a trust has become possible. More flexibility with the provision in the trust deed (right to change and approval entitled to specified specialists)

⇒Enabling flexible decision making

(3) Business Promotion Under New Trust Law (Comparison with Old Trust Law) ②

③ Burden of business risk

Old Trust Law: Presence of a claim for compensation from the trustee to the beneficiary (Art. 36, para. (2) of Old Law)
→ The beneficiary virtually bore unlimited liability.

→ New Trust Law: Limited liability on the beneficiary in principle (Art. 48)
Creation of a limited liability trust (infra Art. 216)
Segregation-of-duties-type joint trust (Art. 80, para. (4) and Art. 83, para. (2))

④ Trust with no prescription of a beneficiary

Old Trust Law: Charitable trust only (infra Art. 66 of Old Law)

→ New Trust Law: Creation of the so-called special purpose trust (infra Art. 258)

(4) Active Use and Issues for Smooth Implementation of Redevelopment Projects

① Trust aimed to freeze the beneficiary's intent

- A Urban Redevelopment Law---Special provision as to the exercise of voting rights in a redevelopment association
- B Is it possible to reflect an individual and specific intent of each beneficiary?
 - Acceptance of a standard trust from the land owner in favor of the resolution to reconstruct

② Trust of the jointly-owned holdings of the titled flood

- A Tool to realize the most effective use of the real estate in a joint building
- B Comparison with the setup of a property management firm (financing in kind) by joint land owners
 - Problem of tax on deemed capital gains
- C Treatment at the termination of the trust

(4) Active Use as Method for Fund Management and its Issues

① Management of the reserve fund for a major repair plan

Repair fund of a residents' association:	¥76.65 mil. as average
Account management :	95% in a chief director's name
Effective use:	Most in bank deposits

Source: Ministry of Land, Infrastructure and Transport, *2003 General Survey on Condominiums*

- Settlement of dispersed deposits to be covered by the deposit insurance ---
Isolation from financial institutions' bankruptcy
- ⇒ Management of the reserve fund by a money trust

② Administration and management of the demolition fund of a residence along with fixed-term land leasehold

Effective usage of the demolition fund—for use in 50-60 years hence—from the beginning of lotting-out

(6) Vision of 200-year Housing and Trust ①

① Needs for usage of the trust in the Vision of 200-year Housing

LDP's Political Affairs Research Committee --- Hopes for a switch to housing policies focusing on stock

【Image of 200-year housing】

- A To separate architectural building frame (skeleton) and interior/ facilities (infill)
Desired functions: Skeleton = durability, resistance to earthquakes
Infill = variability
- B To secure simplicity in operation and maintenance
- C To secure the quality of housing worthy of handing over to the next generation
- D Systematic operation and maintenance (inspection, repair, replacing, etc.)
- E Harmony with surrounding townscapes

② Trust specialized in property management of the joint ownership space

Systematic operation and maintenance, and appropriate procurement and management of maintenance/repairing expenses based upon a medium- to long-term viewpoint

(6) Vision of 200-year Housing and Trust ②

③ Affinity with the skeleton-infill housing

- A Method of construction that separates a building's skeleton (such architectural building frame as pillars, beams, floors, etc.) and infill (interior, facilities, etc. inside of a dwelling unit)
- B For an effective use of a trust method, it is important to be able to separate the skeleton part of an apartment house as the trust property, and the infill part as an inhabitant's property.
 - i) Having secured a certain degree of freedom in fixtures for an inhabitant, which is one of the features of the skeleton-infill housing, by precluding the infill part from the trust property, troublesomeness of ledger management in the wake of fixtures' changes can be dissolved.
 - ii) The treatment in (i) in the above enhances the housing attractiveness to inhabitants as compared to the case in which both parts (spaces) are regarded as one entity of trust property.
 - iii) The trustee is able to perform an efficient property management specialized in the joint ownership space (skeleton).

C Toward actualization

Various technical preparations in advance are necessary such as making it possible to register the skeleton part only as a trust property, and a tax-system outfitting that measures up favorably to the condominium sectional ownership system.

(7) Trust of Soil-Polluted Land ①

Trust usage need in soil-polluted land

Brownfield land problem

- Isn't it possible to utilize a limited liability trust?
(limiting risks of revelation/proliferation of soil pollution, limiting risks involved in soil improvement work)

(7) Trust of Soil-Polluted Land ② Liability intrinsic to real estate trust borne by trustee (owner liability)

Liability the trustee bears, in addition to the fiduciary responsibility, for becoming a real estate owner (owner liability)

Types of owner liability

- ① Structural Responsibility (damage by accident caused by damnification of a building's outer-wall, etc.)
- ② Environmental responsibility (soil pollution, water pollution, asbestos pollution, etc.)
- ③ Management accountability (trouble, accident, etc. in facilities which the owner directly manages)

Measures to evade owner liability (Possible to tackle if the trustee properly understands problems ?)

About the building

Within a scope of confirmation obtained by visual inspection, etc., necessary advance preparation like repair works, etc. is possible. Reparations and such after the accident can be covered by a blanket insurance for the building if insured, except that some liability like asbestos pollution is not insured.

About the land

Even investigations cannot easily find out problems happening underground (soil pollution or the like).

(7) Trust of Soil-Polluted Land ③ Feature of trustee's owner liability viewed from relation to beneficiary

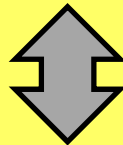
Feature of owner liability

Responsibility comes into being even if the trustee fulfill his care duty of good administration.

Existence of liability possible to arise even if there is no fault on the trustee.

External liability on the trustee being an owner and his relation with the beneficiary

Trustee: Huge responsibility if problem occurs, likely to bear duty for colossal reparations



Beneficiary: Not a direct party of liability, able to receive earnings generated from subject real estate; also, as claiming for indemnity from the trustee is limited to the scope of the property in trust according to Trust Law, the beneficiary's liability is virtually limited.

Can the trustee put up with this kind of relationship that stays the same even when the trustee commits no fault?

(7) Trust of Soil-Polluted Land ④ About trustee's liability without fault

Typical example of the trustee's liability without fault

Liability of the trustee being the owner on the soil pollution problem

【Civil liability type】

① Owner's structural responsibility (Art. 717 of Civil Law Act)

"Structure" to be the subject is not "polluted soil," but a "building and construction that discharge a contaminant."

② A claim for removal of a contaminant from the damaged land owner based on the claim for the removal of obstacles

It's debatable whether the removal of a contaminant contained in soil can be the subject.

【Administration liability type】

③ Decree on action as to soil remediation based on Art. 7 of Soil Contamination Countermeasures Law

As the trustee is the holder of a title deed of the land, it's possible he receives a decree on action from a prefectural governor.

(7) Trust of Soil-Polluted Land ⑤ Means to divide trustee's liability and its limit

Necessity for sharing of responsibility of the trustee who has been used as a vehicle for the purpose of real estate investment

Scheme in which the trustee infinitely bears liability without fault though a trust is merely a vehicle for investment

⇒ Imbalance between compensation for the service offered and risks involved in the service

Conceivable means and issues

① Burden of producing contractual documents

Liability limitation special agreement

Setup of provisions on the settlor's representation and warranty

Addition of a companion with financial resources

} Large costs and labor toward consensus formation

② Effect and limit of retainage

Estimate equivalent to cleansing costs --- Impracticable settings of a colossal sum of retainage

③ Does the trustee bear the so-called insurance obligation?

In light of its merchantability and popularity, there is no obligation for an environmental liability insurance at present.

(7) Trust of Soil-Polluted Land ⑥ Analysis on relief of trustee who bore legal liability on soil pollution

① Claim for compensation against the trust property

Possible to realize property?

② Claim for compensation against the beneficiary

An individual compensation contract is necessary under New Trust Law.

③ Claiming for indemnity against the settlor

Handling by the examination/representation and warranty on default liability

④ Claiming for indemnity against a party causing pollution

Difficult to pursue responsibility for a tort
limited scope with a right to indemnity under Soil Contamination Countermeasures Law

⑤ Claiming for indemnity against a party with the right to direct

Difficult to pursue responsibility for a tort

There's a possibility for the trustee to bear privately although he has properly executed the trust setting and management of the trust property.

Reference: Feasibility of Trustee's Claiming Analyzed From 3 Viewpoints

1. Availability of funds to claim for indemnity

- ① In case of a trust property, there's no way to convert, thus no value.
- ② In case a beneficiary is SPV, the asset is the trust beneficiary right(=trust property) = no value.
- ③ In case of a settlor, in consideration of the situation for the one to have transferred the beneficiary right, funds are unlikely to stay.
- ④ In case of a party causing pollution, it's highly likely that the one was a user quite a long time before, thus possibly unfound.

2. Validity of methods to claim for indemnity having a broad claiming scope

- ① In case by the right to claim for compensation against a trust property, no value in a trust property (same as 1.① given above)
- ② In case by the warranty clause against a beneficiary, a scope of claiming for indemnity depends on contractual contents.
- ③ Claiming for indemnity against a settlor: no grounding stipulations in Trust Law. The reason to pursue default liability is limited.
- ④ Claiming for indemnity against a party causing pollution: difficult to pursue responsibility for a tort in negligence. The scope is narrow under Soil Contamination Countermeasures Law.

3. Cases not easily influenced by the prescription by term of exclusion as to right to indemnity

- ① In case by the right to indemnity against a trust property, no value in trust property. (same as 1. ① given above)
- ② In case of claiming for indemnity by Soil Contamination Countermeasures Law, a scope of the claiming is narrow.

(7) Trust of Soil-Polluted Land ⑦ About restricted liability trust

① Limited liability trust means:

"A trust for which a trustee bears responsibility for its execution only with the property that belongs to the trust property as to all of the responsible debt burdens* for the trust property of subject trust." (Art. 2, para. (12))

*Except the debt concerning the right listed in Art. 21, para. (1), item (viii)

② Extension of targets for the trustee's external liability limitation

Limited liability between those having no business relations (difference from a liability limitation special agreement)

③ In the wake of trust affairs disposition, in case of a gross negligence in bad faith, the trustee bears the responsibility for damages incurred by the third party. (Art. 224)
If no negligence by the trustee, the one's responsibility is limited?

④ Extent of acts that fall under Art. 21, para. (1), item (viii) of Trust Law

"Right that has come into being due to a wrongful act which a trustee conducted as to disposition of trust affairs"

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(7) Trust of Soil-Polluted Land ⑧ Relations between soil pollution and restricted liability trust

● Limited liability trust means:

"A trust for which a trustee bears responsibility for its execution only with the property that belongs to the trust property as to all of the responsible debt burdens* for the trust property of subject trust." (Art. 2, para. (12))

※Except the debt concerning the right listed in Art. 21, para. (1), item (viii)

● Extent of acts that fall under Art. 21, para. (1), item (viii) of Trust Law

"Right that has come into being due to a wrongful act which a trustee conducted as to disposition of trust affairs"

- | | | |
|---|---|-----------|
| ① Owner's structural responsibility (Art. 717 of Civil Law Act) | → | unapplied |
| ② A claim for removal of a contaminant based on the claim for the removal of obstacles | → | ? |
| ③ Decree on action as to soil remediation based on Art. 7 of Soil Contamination Countermeasures Law | → | ? |

It is not clear to what extent legal liability for soil pollution will be restricted.

(7) Trust of Soil-Polluted Land ⑨ What would happen if damage exceeded property in trust?

① Decline in asset values of the property in trust

② Who is to rescue the victims?

Victims will face the same situation as the trustee's limit on claiming for indemnity.

③ Reputational risks to the trustee

Social liability in case the trustee is a company (trust bank)

↔ Although the trustee acts for the interests of others (beneficiaries), isn't the burden too much for the trustee in terms of compensation to victims with the trustee's inherent property?

It is questionable whether a social consensus could be obtained as to an effective usage of a limited liability trust concerning soil pollution that is difficult to anticipate, or, is heavy.

(7) Trust of Soil-Polluted Land

⑩ Future issues on soil pollution and limited liability trust

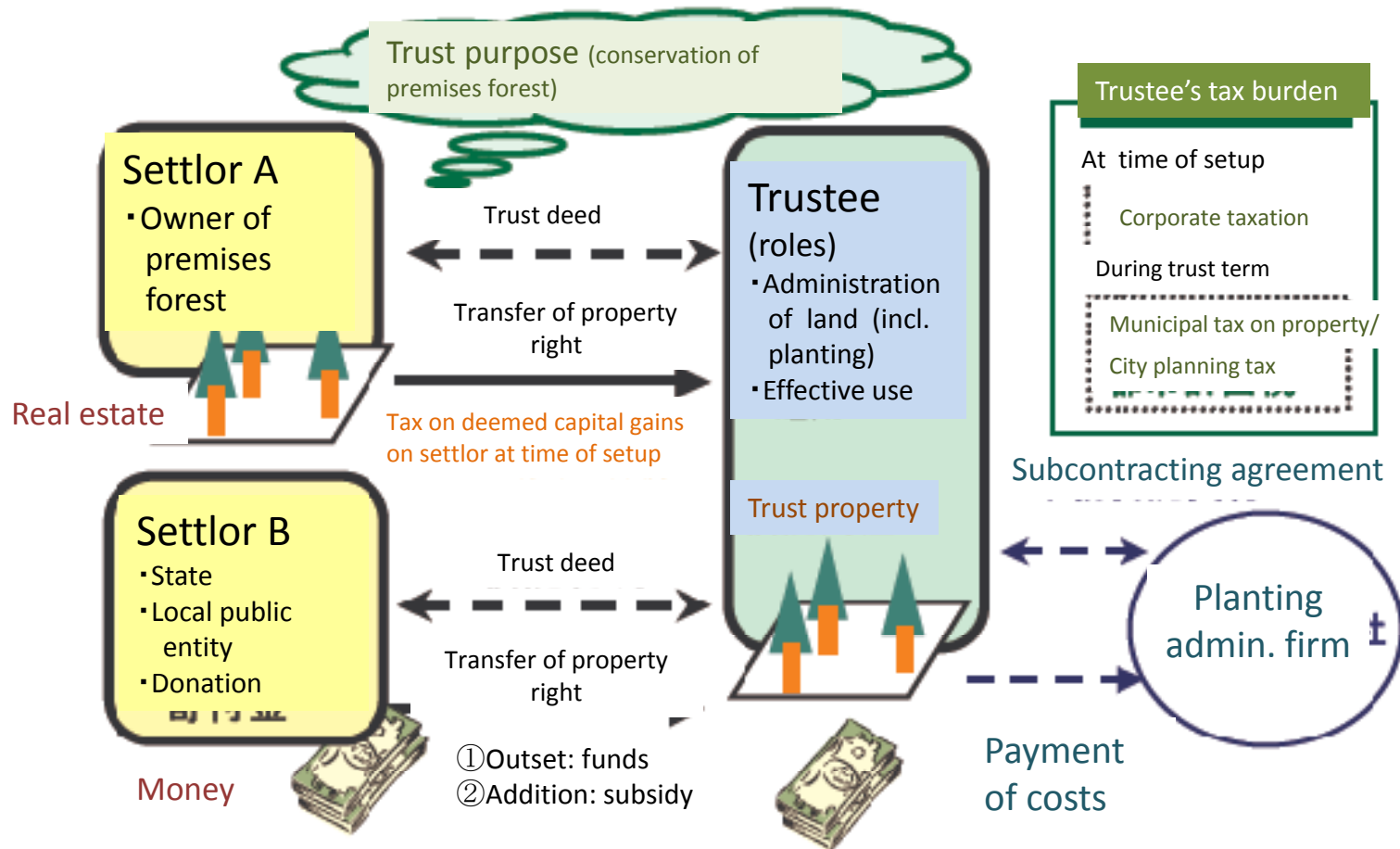
① Limitation on personal liability of trustee for violation of environmental law
—Section 1010-(b) of American Uniform Trust Act —
“A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.”

② Broadening of the institution pertaining to the whole soil pollution problems

- A Promotion of soil improvement undertaking--- Tax exemption for costs of soil improvement projects and such
- B Perspective on the relief of victims

(8) Urban Green Space Conservation

① Special Purpose Trust Method



(8) Urban Green Space Conservation

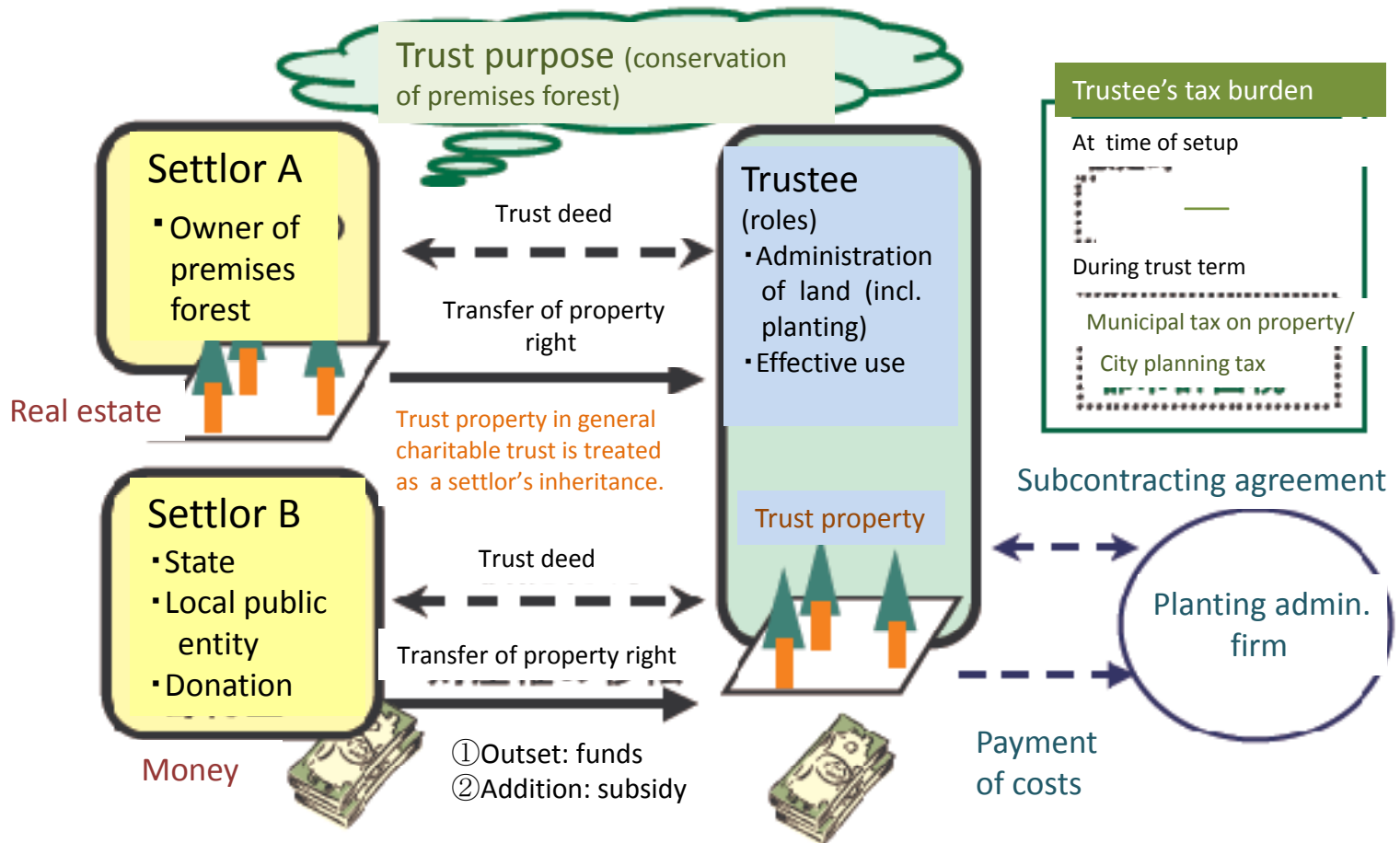
① Special Purpose Trust Method

Issues directed toward actualization

- ① Constraint on the term of trust
 - The term of a special purpose trust cannot exceed 20 years (Art. 259)
- ② Tax burden at the time of a trust setting
 - A Settlor (tax on deemed capital gains)
 - B Trustee (tax on donated profits)
- ③ Tax burden during the term of trust
 - Trustee (corporate taxation)
- ④ Owner liability
 - A Structural responsibility (proviso of Art. 717 of Civil Law Act)
 - B Management accountability in case the facilities are open to the public

(8) Urban Green Space Conservation

② General Charitable Trust Method



(8) Urban Green Space Conservation

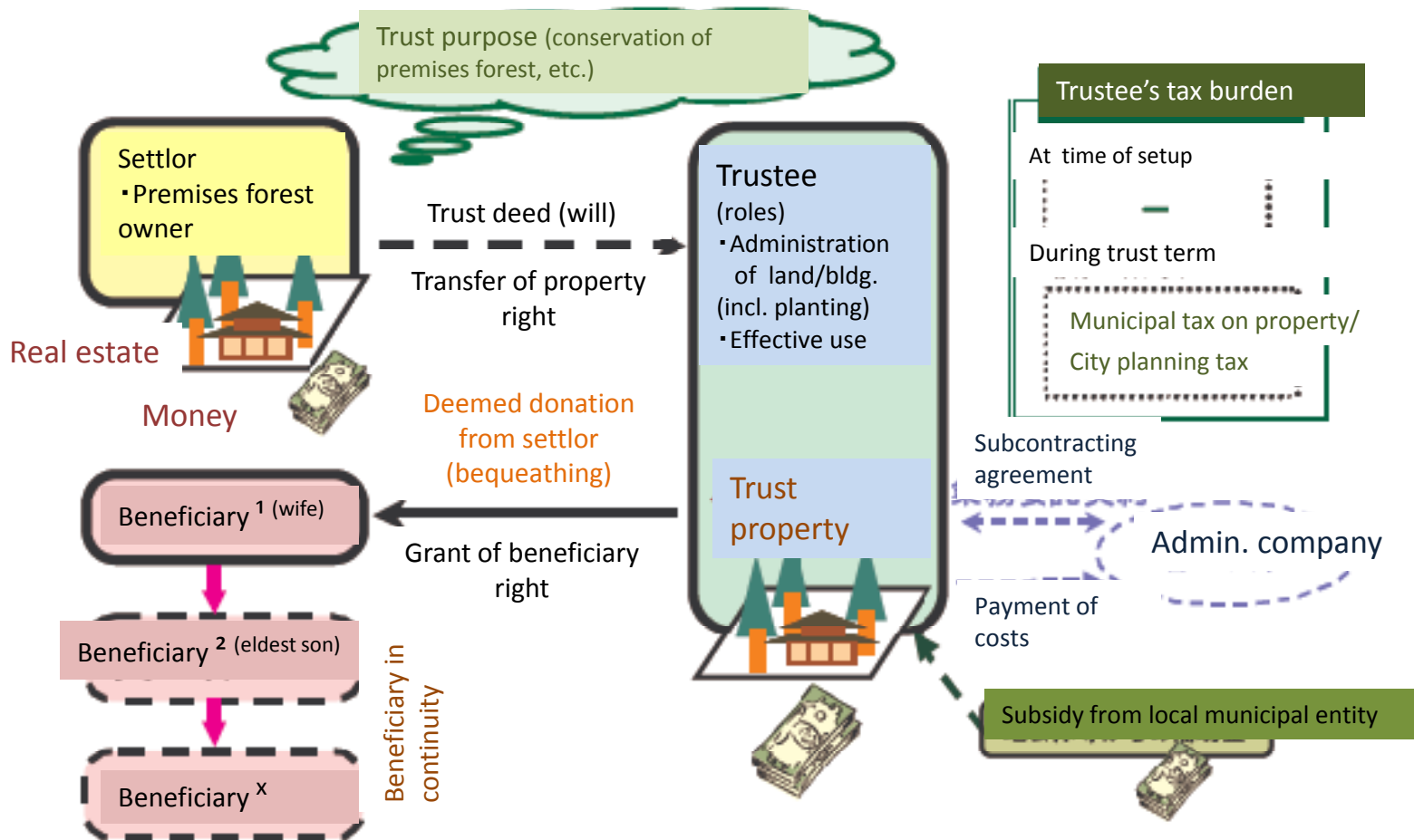
② General Charitable Trust Method

Issues directed toward actualization

- ① Screening standards for taking on a charitable trust
 - A Authorization act for a charitable trust
 - To be the payment in funds or kinds in principle
 - B Trust property
 - Following kinds of property shall not takes up a sizable portion: property of unstable value, one that is difficult to evaluate objectively, or one involving excessive burden.
- ② Trust fee
 - “That which does not exceed personnel expenses required for the disposition of trust affairs and other expenditures necessary”
- ③ Owner liability
 - In the same problematic status as the case of a special purpose trust

(8) Urban Green Space Conservation

③ Trust Method of Successor-bequeathing-type Beneficiary in Continuity



(8) Urban Green Space Conservation

③ Trust Method of Successor-bequeathing-type Beneficiary in Continuity

Issues directed toward actualization

- ① **Property appraisal method for an inheritance tax on the beneficiary right**
Property appraisal method for an inheritance tax on the beneficiary right is the same as an inheritance of outright proprietary rights.
⇒ In case conversion of a trust property is prohibited because of the trust's purpose, funds are separately needed to pay an inheritance tax.
- ② **Beneficiary's burden of tax payment**
In case a burden of tax payment is huge, the choice to abandon the beneficiary right is possible.

4. About Real Estate Registration (Trust Catalogue)

(1) About trust registration and trust catalogue of real estate

Trust registration and trust catalogue of real estate

“A registrar, in order to clarify matters listed in each item of the paragraph (1), may execute a trust catalogue pursuant to the provision of Ordinance of Ministry of Justice.” (Art. 97, para. (3) of Real Property Registration Law)

Each item of the paragraph (1):

- ①Name or designation and address of the settlor, trustee and beneficiary
- ②Conditions concerning the appointment of a beneficiary, or when there is a provision as to the method to appoint a beneficiary, its provision
- ③When there is a trust administrator, its name or designation and address
- ④When there is a beneficiary representative, its name or designation and address
- ⑤When a trust is a special type of trust such as a beneficiary-certificate issuance trust, a purpose trust, or a charitable trust, its specification
- ⑥Purpose of a trust
- ⑦Management method of a trust property
- ⑧Ground to terminate a trust
- ⑨Other terms of a trust

Reference: Legal effectiveness of trust registration in our country

- ①Counter-requisite for assets that belong to a trust property (Art. 14 of Trust Law)

The acquisition/loss or change of rights to certain types of asset, such as real estate, vessels and construction machinery, unless registered, cannot be protected against the third party.

- ②Beneficiary’s right to rescind a trustee’s offense against the authority (Art. 27 of Trust Law)

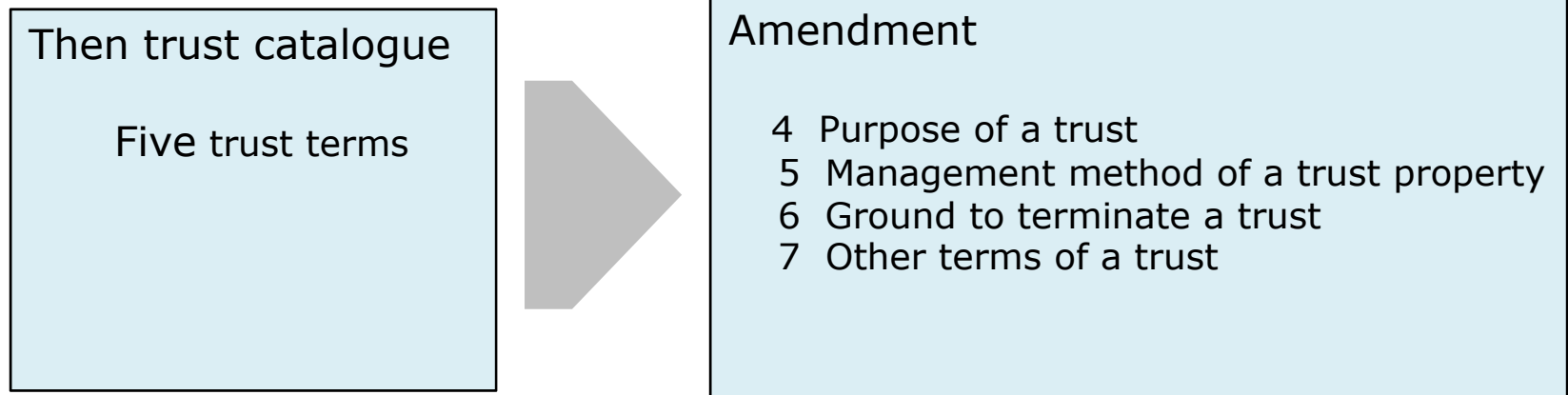
Its subject is an act a trustee performed beyond the one necessary for the administration/disposition of a trust property and for the achievement of other purposes of a trust.

2) About the proposal on trust catalogue, on which opinions were invited from the public in 2007

Art. 97, para. (1), each item of Real Property Registration Law:

- ① Name or designation and address of the settlor, trustee and beneficiary
- ② Conditions concerning the appointment of a beneficiary, or when there is a provision as to the method to appoint a beneficiary, its provision
- ③ When there is a trust administrator, its name or designation and address
- ④ When there is a beneficiary representative, its name or designation and address
- ⑤ When a trust is a special type of trust such as a beneficiary-certificate issuance trust, a purpose trust, or a charitable trust, its specification
- ⑥ Purpose of a trust
- ⑦ Management method of a trust property
- ⑧ Ground to terminate a trust
- ⑨ Other terms of a trust

Proposal of Ordinance of the Ministry to revise a part of the real property registration rules in 2007



(3) Critical mind as to fractionalizing entries in trust catalogue

In case a trust was set up based on the will as given below, and when an application was made for the registration of the trust with respect to the real estate (one's home and a house for rent) being the trust property, is it possible to execute a trust catalogue by properly separating the content into the following?: ①purpose of the trust, ②management method of the trust property, ③ground to terminate the trust, ④other terms of the trust.

“After my death, for the sake of my daughter's life and happiness, I entrust Mr. xx with all of my property. When she dies, as for the remaining property, I ask Mr. xx to distribute to suitable persons till it dries up.”

(4) New Trust Catalogue

Item (v) of the separate notation (concerning Art. 176, para. (2) and Art. 197, para. (2), item (v))

4 Terms of trust	3 Matters on beneficiary	2 Matters on trustee	1 Matters on settlor
Spare	4 Terms of trust		

Future of Trust

- An epoch anyone can use a trust in
- “A trust can be set up for any purpose. Should there be something to restrict it, that must be a lack of imagination of a lawyer and businessperson.”

—Kazuo Shinomiya—

This material is what this informer has compiled for the purpose of the lecture at University of Tokyo, and is not related to the organization he belongs to.
Further, this is not aimed at specific transactions or inducement of products.