

Trust of Personal Assets (Inheritance/Donation and Trust)

Inheritance-Related Business of Trust Bank

1. Concurrent Business by Trust Bank

(1) Testamentary execution (Grounding law: Art.1, para. (1)、 item (iv) of Sideline Act)—infra Art.1006 of Civil Law Act

Operational Flow

- ① Drawing up of an officially authenticated written will (assistance on clerical procedures for drawing up; to specify in the will a trust bank as the testamentary executor)
 - ② Custody of the will by the trust bank
 - ③ Notice of the testator's death from the successor to the trust bank
 - ④ Acknowledgment of the bank's assumption of the testamentary executor by (notice to the successor)
 - ⑤ Testamentary execution (preparation of an inventory of property and its notice to the successor, disposition/title transfer/handover of the inheritance)
- The testamentary executor is regarded as the successor's proxy (Art. 1015 of Civil Law Act), hence in a quasi-trust relationship

·A trust bank runs an inheritance business combining with a consultation on the succession to assets (accession to an enterprise) and a setup of trust.

(2) Consolidation of inheritance (Grounding law: Art. 1, para. (1), item (vii) of Sideline Act)

Operational Flow

- ①The successor's commission of a consolidation of the inheritance to the trust bank
- ②The trust bank's preparation of an inventory of the property
- ③The successor's preparation of a legacy-division conference document
- ④ Execution of the partition of the estate proceedings (disposition/title transfer/handover of the inherited property)

Art. 1, para. (1) of Sideline Act:

- (iii): Management of property (Regarding the same kind of property as that in trust, the application shall be limited to the one managed by the same method as managing the trust property stipulated in the following kind and method of trust operations.)
- (iv): Execution of a will on property
- (vi): Proxy or intermediation as to acquisition, disposition, or lending and borrowing of property
- (vii): Proxy affairs as to the matters listed in the following:
 - (a) Management of property listed in the Item (iii)
 - (b) Consolidation or liquidation of property
 - (c) Collection of debt
 - (d) Fulfillment of obligation.

2. Trust Operations (Part 1)

(1) Donation/quasi-will trust through trust contract

- ①An individual entrusts assets and appoint other party as the beneficiary. (Positive economic effect similar to donation)

Example: A person S entrusts ¥100 million appointing a nephew B, having lost his parents, as beneficiary, and T as trustee who is to apportion ¥2.5 million per annum for 20 years. (Gift tax to be paid out of the trust property)

②An individual entrusts assets and appoints a party to be the beneficiary after own death. (Positive economic effect similar to donation: property distribution is possible without legal inheritance)

Example: A person S entrusts ¥100 million appointing own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion ¥5 million per annum for 20 years. (Gift tax to be paid out of the trust property)

(2) Grounding laws for trust contract

① Trust Law: trust contract with the method prescribed in Art. 3, item (i)

②Business Act: As for the trust bank, the acceptance of trust in accordance with Art. 2, para. (2) of Trust Business Act by the financial institution approved by Art.1 of Sideline Act.

·Explanation prior to the conclusion of a contract bound by Art. 25 of Trust Business Act, and the requisites in document at the time of the conclusion of a contract bound by Art. 26

·Issuance of a report on the trust-property status bound by Art.27 of Trust Business Act

(3)Rules primarily bearing civil trust in mind

Art. 89: Permits to appoint a beneficiary, or the right to change thereof (right to appointing a beneficiary and such) by means of a trust deed

Art. 90: As to a testamentary substitution trust, a trustee in principle possesses a right to appointing a beneficiary and such.

Art. 91: Beneficiary in succession taking the so-called heir-bequeathing pattern

(4) Trust of testamentary substitution (Art. 90 of Trust Law) ⇒ to start giving a grant to the beneficiary upon the death of the settlor

Para. (1), item (i) : One becomes a beneficiary only after the settlor's death.

Para. (1), item (ii): One is a beneficiary before the settlor's death, but receives a grant only after said death. One does not possess the right of a beneficiary until the settlor dies.

Variation of (1)-(2) in above

Example 1 in relation to the item (i): S entrusts ¥100 million appointing oneself S as beneficiary until own death, and after which own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death. (Changeable to a condition for B to receive some sort of grant prior to S's death)

Example 2 in relation to the item (i): S entrusts ¥100 million appointing one's spouse A as beneficiary until own death, and after which own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death. (Changeable to a condition for A to receive some sort of grant)

Example 3 in relation to the item (i): S entrust ¥100 million appointing no one until own death, and after which own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death.

Example 1 in relation to the item (ii): S entrusts ¥100 million appointing own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death.

Example 2 in relation to the item (ii): S entrusts ¥100 million appointing own child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death. (Changeable to a condition for S to receive some sort of grant)

Example 3 in relation to the item (ii): S entrusts ¥100 million appointing own spouse A and child B, having the habit of wasting money, as beneficiary, and T as trustee who is to apportion to B ¥5 million per annum for 20 years after S's death. (Changeable to a condition for A to receive some sort of grant)

3. Trust Operations (Part 2)

(1) Trust by will

① An individual sets up a trust by means of a written will. (Positive economic effect similar to bequeathing)

Example: S entrusts ¥100 million appointing a nephew B, having lost his parents, as beneficiary, and T as trustee who is to apportion ¥2.5 million per annum for 20 years.

(2) Grounding rule for trust by will

① Trust Law: trust by will in accordance with Art. 3, item (ii) of (effectuation of a will=effectuation of a trust with the death of a testator)

Reference: The establishment of a general incorporated foundation by a will prescribed in Art. 152, para. (2) of the law concerning a general incorporated organization and a general incorporated foundation, and the application of provisions regarding bequeathing prescribed in Art. 158 of Civil Law Act

② Business Act: Same as the ones for trust contract; regulations not applicable to an explanation prior to the conclusion of a contract bound by Art. 25 of Trust Business Act, and the requisites in document at the time of the conclusion of a contract bound by Art. 26 of the same Act.

③ Characteristics of trust by will

In practical business, items stipulated in a will to be entrusted are not different from ones in a trust contract. The stipulated contents are about the disposition of assets to who to become a beneficiary and what a trustee is supposed to do.

The trust can be set up without specifying a trustee in the will.

⇒ Beneficiary's plea of the nomination of a trustee to the court (Art. 6, para. (2) of Trust Law); if no trustee for a year
⇒ Termination of the trust (Art. 163, item (iii) of Trust Law)

There is a possibility that a trustee appointed in the will does not accept the trust even after the effectuation of the will (as in the case no one assumes the role of a testamentary executor). ⇒ People interested in the trust call on a party appointed to be a trustee whether it would accept the trust within the corresponding period.

No response to the notice by the settlor's heir is regarded as no acceptance of the trust.

In practical business, a testator, with a previous consultation about specifying the trust bank as trustee before the preparation of a will, elects the trust bank as the testamentary executor, and periodically studies a need for reexamination of the will after its drawing up. Further, it is practiced to employ an officially authenticated written will in order to clarify the testator's intent.

4. Beneficiary in succession taking the so-called heir-bequeathing pattern

(1) Trust Law

Art. 91: A trust having the stipulation that, due to the death of a beneficiary, the beneficiary right of subject beneficiary becomes void, and other party acquires a new beneficiary right (including the stipulation that other party successively acquires the beneficiary right as the beneficiary dies)

⇒Applicable to the case where, after 30 years since said trust was founded, a beneficiary actually existing acquires the beneficiary right in accordance with subject regulation, and being valid until subject beneficiary dies or subject beneficiary right becomes void.

(2)Examples of trust contract's case

As beneficiary, S specifies oneself until own death, own spouse B1 after that, and own child B2 after B1's death; after B2's death, own grandchild B3 is appointed as beneficiary.

S entrusts ¥500 million with T as trustee who, after S's death, apportions ¥5 million a year to a beneficiary.

S dies within 30 years since the time of the trust contract, survived by B1, B2, and B3. B1 dies after 30 years since the contract was made. The trust is valid until the time of B2's death.

S dies within 30 years since the time of the trust contract, survived by B1, B2, and B3. B1 dies within 30 years since the contract was made. B2 dies after 30 years since the contract was made. The trust is valid until the time of B3's death.

⇒Applicable to a testamentary trust

(3)Range of application

In wording of the law, it's only "Example 1 in relation to the item (i)" in p.4 in the above. In case being a beneficiary from the beginning of a trust contract, what would happen when a corporation becomes a beneficiary?

5. Other matters on practical business

(1)Subject property

In case a trust bank assumes a trustee, property in trust is money ⇒ a joint-investment designated money trust,

securities and bonds/realty ⇒ a control trust

(2) Appropriation of trust property to beneficiary

Payment of an amount a beneficiary requires temporarily ⇒ to handle by setting up a party (like a person closely related by blood) who makes a direction to a trustee on the payment

(3) Response to distributive share (both trust contract and testamentary trust)

Property that's entrusted is a subject of the requisition for distributive-share reduction ⇒ to set up a trust within an domain not infringing on the distributive share

Possibility of a trustee to become the litigant in a lawsuit over the distributive-share requisition ⇒ The trust objective might not be maintained attributable to the repayment of the distributive share.

(4) Handover of property in testamentary trust

① Setup date of a trust and a practical commencement of a trust

While a trust gets realized with the origination of the will's validity, its administrative work begins only after the trustee's awareness of the origination of the will's validity, followed by the declaration of intent to accept a handover of the property in trust. Therefore, a practical commencement time of a trust is to deviate from the timing of the origination of the will's validity.

② Case for property to be entrusted to lay down comprehensively

There are situations where the designation of trust property becomes difficulty.

(5) Benefaction of bequeathing/donation to trust

Not considered as an additional trust, and a donator won't become a settlor. ■