TRUST ACT

Act No. 900, Dec. 30, 1961
Amended by Act No. 5454, Dec. 13, 1997
Act No. 6627, Jan. 26, 2002
Act No. 7428, Mar. 31, 2005

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose and Definition)

(1) The purpose of this Act is to regulate the general legal relations on the trust in the private law.

(2) For the purpose of this Act, the term "trust" means a legal relation that a person who creates a trust (hereinafter referred to as a "truster"), transfers a specified property to a person who accepts the trust (hereinafter referred to as a "trustee"), or makes an other disposition, and has the trustee manage and dispose of the right to such property, in the interests of a specified person (hereinafter referred to as a "beneficiary"), or for a specified object, on the basis of a special confidence relation between the truster and the trustee.

Article 2 (Settlement of Trust)

The trust may be settled by a contract between the truster and the trustee, or by the will of the truster.

Article 3 (Public Notice on Trust)

(1) With respect to any right to property to be registered, the trust may be opposable to a third person by making a registration thereof.

(2) With respect to securities, the trust may be opposable against a third party by entering on the securities the fact that the securities are subject to trust under the conditions as prescribed by the Presidential Decree and further, with respect to stocks and corporate bonds, by registering the same in the shareholder's register or corporate bond register. *<Amended by Act No. 5454, Dec. 13, 1997>*

Article 4 (Trust Business)

If the acceptance of the trust is carried on as a business, it shall be a

commercial business.

Article 5 (Restriction on Object)

(1) The trust may not be created with a purpose contrary to the good customs and other social order.

(2) Any trust shall be null and void if its object is illegal and impossible to perform.

(3) In a case where a trust has two or more objects, and any of them is violating any of the preceding two paragraphs, if it is possible to separate only the compatible object from others, such trust shall be effective only for such compatible object: *Provided,* That even though it is possible to separate it, if it is obvious that the accomplishment of the objects which are not contrary to the preceding two paragraphs is contrary to the intention of the truster, the trust shall become null and void.

Article 6 (Prohibition of Trust Aimed at Evasion of Law)

Any person who is unable to enjoy a specified property right pursuant to Acts and subordinate statutes, may not enjoy as a beneficiary the same benefit as he has such right.

Article 7 (Prohibition of Trust aiming at Lawsuit)

Any trust which aims mainly at having the trustee proceed a litigation, shall be null and void.

Article 8 (Fraudulent Trust)

(1) If an obligor settles a trust knowing that it would be prejudicial to the obligee, the obligee may claim for the cancellation and the restoration to the original state as prescribed in Article 406 (1) of the Civil Act, even though the trustee has acted in good faith.

(2) The cancellation and the restoration to the original state as referred to in the preceding paragraph, shall not affect any benefit which the beneficiary has already obtained: *Provided,* That this shall not apply in case where the beneficiary has received the obligation which is not due, or he has known that it would be prejudicial to the obligee, or failed to know it by a gross negligence, at the time he received the benefit.

Article 9 (Succession to Flaw in Possession)

(1) The trustee shall succeed to any flaw in possession of the truster with respect to the possession of the trust property.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to any securities the object of which is to provide any money,

object or securities.

CHAPTER Ⅱ TRUST-RELATED PERSONS

Article 10 (Ability for Trust)

Any minor, incompetent or quasi-incompetent, or person declared bankrupt, may not be a trustee. *<Amended by Act No. 7428, Mar. 31, 2005>*

Article 11 (Termination of Duties of Trustee)

(1) If the trustee is dead, or declared bankrupt, incompetent or semi-incompetent, his duties shall be terminated. This provision shall also apply in a case where the trustee who is a juristic person, is dissolved.

(2) In the case referred to in the preceding paragraph, the heir, legal representative, trustee in bankruptcy, or liquidator of the trustee, shall take custody of the trust property and perform any act necessary for handing over the trust affairs, until the new trustee is able to manage the trust affairs. This provision shall also apply to the juristic person which is established by a merger, or which is existing after the merger, if juristic persons are merged.

Article 12 (Disqualification for Trustee)

For a person who becomes a trustee by an act of trust and on the basis of a specified qualification, his duties shall be terminated by losing such qualification.

Article 13 (Resignation of Trustee)

(1) No trustee may resign his post without the consent of the beneficiary and the truster, unless there are any special provisions in the deed of trust.

(2) Notwithstanding the provisions of the preceding paragraph, the trustee may resign from his post with the permission of the court, in case where there is any justifiable reason.

Article 14 (Continuation of Management by Trustee)

Any trustee whose duties are terminated under Article 12 or 13 (1), shall have the right and duty as trustee, until a new trustee is able to manage the trust affairs.

Article 15 (Dismissal of Trustee)

If a trustee violates his duties, or there is any justifiable reason, the court may dismiss the trustee upon request of the truster, his heir or beneficiary.

Article 16 (Disposition of Court for Appointment, etc. of Property Custodian)

If a trustee resigns or is dismissed under Article 13 (2) or 15, the court may order an appointment of a trust property custodian and other necessary dispositions.

Article 17 (Appointment of New Trustee)

(1) If the duties of a trustee have ceased, the interested person may request the court to appoint a new trustee.

(2) The provisions of the preceding paragraph shall be applicable *mutatis mutandis* in case where a person designated as trustee by a will fails to take over the trust, or is unable to take it over.

(3) The provisions of the preceding two paragraphs shall not be applicable in a case where the trust deed includes any special provisions.

(4) The court may pay a proper remuneration to the appointed trustee from the trust property, according to circumstances.

Article 18 (Trust Administrator)

(1) If a trustee is not determined, or does not exist, the court shall appoint a trust administrator upon a request by interested persons or *ex officio*: *Provided,* That this shall not apply in a case where the trust administrator is designated by the deed of the trust.

(2) Any appointed trust administrator shall be entitled to do any judicial or extra judicial act as to the trust, in his name, for the beneficiary, as referred to in the preceding paragraph.

(3) The provisions of Article 17 (4) shall be applicable *mutatis mutandis* to the trust administrator.

CHAPTER Ⅲ PROPERTY IN TRUST

Article 19 (Real Subrogation)

Any property obtained by the trustee due to the management, disposal, destruction or damage of the trust property, or other cause, shall belong to the trust property.

Article 20 (Prohibition of Offset)

Any claim belonging to the trust property and any debt not belonging to it, shall not offset each other.

Article 21 (Prohibition of Compulsory Execution)

(1) No compulsory execution or public auction may be made to any trust property: *Provided,* That this shall not apply in case where it is based on any right arising from a cause already existing prior to the creation of trust, or in the course of management of the trust affairs.

(2) The truster, his heir, the beneficiary and trustee, may file an objection against any compulsory execution or public auction rendered in contravention of the provisions of the preceding paragraph. The provisions of Article 48 of the Civil Execution Act shall apply *mutatis mutandis* to such case. *<Amended by Act No. 6627, Jan. 26, 2002>*

Article 22 (Bankruptcy and Trustee's Property)

The trust property shall not be a part of the bankruptcy foundation except those which become the assets of the trustee.

Article 23 (Non-Confusion of Trust Property)

In a case where the trust property is a right other than ownership, even if the trustee acquires the property which is the object thereof, such right shall not be extinguished by confusion.

Article 24 (Adjunction, Confusion and Specification)

If there exists any adjunction, confusion or specification in the trust property, each trust property and own assets shall be considered to belong to a different owner, respectively, and be subject to the provisions of Articles 256 through 261 of the Civil Act: *Provided,* That in case of the person who makes the specification in bad faith, even if the increment of the value by such specification is more than the value of the source materials, the court may have the object created by the specification revert to the owner of the source materials.

Article 25 (Independence of Trust Property)

The trust property shall not belong to the inherited property of the trustee.

Article 26 (Transfer of Trust Property)

(1) If a trustee is replaced, the former trustee shall transfer without delay the trust property to the new trustee.

(2) In a case where there are several trustees, if the duties of one of them are terminated, the trust property shall be reverted to the other trustees.

Article 27 (Continuation of Compulsory Execution)

The procedure of a compulsory execution or public auction against any

trust property under the proviso of Article 21 (1), may be continued against the new trustee.

CHAPTER Ⅳ RIGHT AND DUTY OF TRUSTEE

Article 28 (Liability of Trustee for Settlement of Trust Affairs)

The trustee shall manage or dispose of the trust property with the care of a good manager in accordance with the principal objective of the trust.

Article 29 (Prohibition of Enjoyment of Benefit by Trustee)

No trustee may enjoy any benefit of the trust in the name of any person, except in a case where the trustee is one of the common beneficiaries.

Article 30 (Liability of Trustee for Separate Management)

The trust property shall be managed separately from the personal assets of the trustee or other trust property: *Provided,* That if the trust property is money, it shall be sufficient to make clear the accounts belonging to the trustee's own assets and those belonging to other trust property.

Article 31 (Restriction on Acquisition of Right by Trustee)

(1) The trustee shall not make the trust property his own assets, or acquire any right thereto, even under a name of another person: *Provided,* That if it is obvious that it is favorable for the beneficiary, or if there is any justifiable reason, he may make the trust property as his own assets with the permission of the court.

(2) Notwithstanding the provisions of the preceding paragraph, the trustee may succeed to the right of the trust property by an inheritance or other general succession. The provisions of Article 23 shall apply *mutatis mutandis* to such a case.

Article 32 (Limited Liability)

The trustee shall be liable for performance of any obligation to the beneficiary arising from the trust deed, to the extent of the trust property.

Article 33 (Liability for Keeping of Books)

(1) The trustee shall keep books, and clarify the management affairs and the accounts pertaining to each trust.

(2) The trustee shall prepare the list of inventory of each trust when he takes over the trust, and at a specified time once every year.

Article 34 (Inspection of Documents)

(1) Any interested person may request at any time an inspection of the documents as prescribed in the preceding Article.

(2) The truster, his heir and beneficiary may demand an inspection of the documents pertaining to the management of the trust affairs, or an explanation on the handling of the trust affairs.

Article 35 (Management Method of Money)

Except as determined otherwise by the trust deed, any money belonging to the trust property shall be managed by the following method:

1. Subscription for, underwriting or purchase of, any national and local bonds, and debentures of any company established pursuant to the special Act;
2. Loan secured by the national bonds and other securities as referred to in the preceding subparagraph;
3. Postal savings; and
4. Deposit in banks.

Article 36 (Change of Trust Property Management Method)

(1) If the management method of the trust property becomes unsuitable for the interest of the beneficiary, under any special circumstances un-anticipated at the time of the trust deed, the truster, his heir, beneficiary or trustee, may request any change thereof to the court.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to the management method as determined by the court.

Article 37 (Delegation of Trust Affairs)

(1) Except as provided otherwise by the trust deed, the trustee may have another person manage the trust affairs in lieu of himself, with the consent of the beneficiary, only when there is any justifiable reason.

(2) In the case as referred to in the preceding paragraph, the trustee shall be liable only for the appointment and supervision. This provision shall also apply in a case where the trust affairs are managed by another person by the trust deed.

(3) Any person who manages the trust affairs in lieu of the trustee, shall bear the same liability as the trustee.

Article 38 (Liability of Trustee for Compensation for Damages)

If the trustee destroys, loses or reduces the trust property, or inflicts any loss on it, through inadequate management, or he disposes of the trust property in contravention of the principal objective of the trust, the

truster, his heir, beneficiary and other trustees may claim any compensation for damages or a restoration of the trust property to the original state.

Article 39 (Violation of Responsibility for Separate Management)

(1) The provisions of the preceding Article shall be applicable *mutatis mutandis* in a case where the trustee manages the trust property in contravention of the provisions of Article 30.

(2) In the case referred to in the preceding paragraph, if any loss in the trust property is incurred, the trustee may not be exempted from the liability due to any *force majeure*, unless he proves that even though he would manage it separately, the loss should have been incurred.

Article 40 (Liability of Director of Trustee Corporation)

If a corporation which is a trustee violates its duties, the directors or equivalent persons who participate in it, shall assume a joint and several liability for it.

Article 41 (Remuneration)

Except in a case where a trustee accepts the trust as business, unless there is any special stipulation, he may not receive any remuneration.

Article 42 (Expenses and Claim for Damages of Trustee)

(1) In receiving any compensation for any tax, public charges and other expenses and interest which are borne in connection with the trust property, or any damages incurred in the course of managing the trust affairs without any negligence, the trustee may exercise his right with preference to other persons having the rights, by selling the trust property.

(2) The trustee may claim to the beneficiary the compensation of expenses or damages referred to in the preceding paragraph, or may have him offer a proper security: *Provided,* That this shall not apply in case where the beneficiary is not specified, or there is no beneficiary.

(3) The provisions of the preceding paragraph shall not be applicable in a case where the beneficiary waives his right.

Article 43 (Claim for Remuneration)

In a case where the trustee receives any remuneration from the trust property, the provisions of the preceding Article shall apply *mutatis mutandis* to such remuneration. This provision shall also apply in case where the trustee receives the remuneration from the beneficiary.

Article 44 (Requirements for Exercise of Right)

The right of the trustee as prescribed in the two preceding Articles, may not be exercised, unless he fulfills the liability for compensation of damages and restoration of trust property to the original state as prescribed in Article 38 or 39.

Article 45 (Joint Trustees)

(1) If there are several trustees, the trust property shall be under their co-ownership.

(2) In the case referred to in the preceding paragraph, except as provided otherwise by the deed of trust, the trustees shall manage jointly the trust affairs: *Provided,* That any declaration of intention made to one of them, shall have the effect to other trustees.

Article 46 (Joint and Several Liability of Joint Trustees)

If there are several trustees, the obligation borne by them to the beneficiary pursuant to the trust deed, shall be a joint and several liability. This provision shall also apply in case where any obligation is assumed in relation with management of trust affairs.

Article 47 (Claim for Damages by New Trustee)

The right as prescribed in Articles 38 and 39 may be exercised by any new trustee.

Article 48 (Succession to Liability by New Trustee)

(1) If a trustee is replaced, the new trustee shall succeed to the obligation assumed by his predecessor to the beneficiary under the deed of the trust.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to the case as prescribed in Article 26 (2).

(3) Any claim created in relation to the management of trust affairs, may be exercised to the new trustee to the extent of the trust property.

Article 49 (Right of Pre-trustee to Compulsory Execution)

(1) The pre-trustee may carry out a compulsory execution or public auction to the trust property on the basis of the right to receive the expenses or damages as prescribed in Article 42 (1), or the right to receive the remuneration as prescribed in Article 43.

(2) The pre-trustee may seize the trust property to exercise the right as referred to in the preceding paragraph.

Article 50 (Transfer of Affairs)

(1) If the trustee is replaced, the pre-trustee and other persons concerned

shall render the accounts of the trust affairs, and hand over the affairs in the presence of the beneficiary or the trust administrator.

(2) When the beneficiary or trust administrator approves the accounts as referred to in the preceding paragraph, the liability of the pre-trustee to the beneficiary as to the transfer of trust affairs, shall be considered to have been exempted therein, except in a case where there is any wilful misconduct.

CHAPTER V RIGHT AND DUTY OF BENEFICIARY

Article 51 (Enjoyment of Interest by Beneficiary)

(1) Any person who is designated as beneficiary by the deed of trust, shall be presumed to have consented to an enjoyment of the trust benefit, and shall enjoy it: *Provided,* That if the deed of trust includes any special stipulation, it shall be subject to such stipulation.

(2) If the beneficiary right bears any burden, there shall be a declaration of intention that the person designated as beneficiary will enjoy the trust benefit.

(3) The beneficiary may waive the right to benefit.

Article 52 (Revocation of Disposition Act Contrary to Trust)

(1) If the trustee disposes of any trust property the trust of which is notified publicly under Article 3, in violation of the principal objective of the trust, the beneficiary may revoke such disposition against the other party or subsequent purchaser.

(2) With respect to any trust property for which the method of public notice on the trust as prescribed in Article 3 is not determined, the revocation as referred to in the preceding paragraph may be made only when the other party and the subsequent purchaser know the fact that the disposition is contrary to the principal objective of the trust, or they fail to know it by a gross negligence.

Article 53 (*idem*)

If there are several beneficiaries, the revocation made by one of them under the preceding Article, shall also have the effect for other beneficiaries.

Article 54 (Period within which Revocation Right should be Exercised)

The right to revocation as prescribed in Article 52 shall be terminated, unless it is exercised within one month after the beneficiary or trust administrator knows that there exists a cause for revocation. This provision shall also apply in a case where one year elapses after the disposition is made.

CHAPTER VI TERMINATION OF TRUST

Article 55 (Termination of Trust)

When the cause as provided by the deed of trust takes place, or the object of the trust is attained or becomes unattainable, the trust shall be terminated.

Article 56 (Cancellation of Trust)

The trust the benefits of which are enjoyed wholly by the truster, may be cancelled at any time by the truster or his heir. In this case, the provisions of Article 689 (2) of the Civil Act shall apply *mutatis mutandis*.

Article 57 (*idem*)

In case where the beneficiary enjoys the whole of the trust benefits, if it is impossible to perform in full the obligation with the trust property, or if there is any justifiable reason, the court may order a cancellation of the trust upon a request of the beneficiary or interested person.

Article 58 (*idem*)

Notwithstanding the provisions of two preceding Articles, if the deed of trust provides any special stipulation as to the cancellation of the trust, it shall be subject to such stipulation.

Article 59 (Reversion of Trust Property after Termination of Trust)

If the trust is cancelled under Article 56 or 57, the trust property shall be reverted to the beneficiary.

Article 60 (*idem*)

In case where the trust is terminated, if the rightful person to whom the trust property is reverted, is not determined by the deed of trust, the trust property shall be reverted to the truster or his heir.

Article 61 (*idem*)

In a case where the trust is terminated, the trust shall be considered to be continued until the trust property is transferred to the rightful person to whom it is reverted. In this case, the rightful person to whom

the trust property is reverted, shall be considered the beneficiary.

Article 62 (*idem*)

The provisions of Articles 27 and 49 shall apply *mutatis mutandis* in case where the trust property is reverted to the beneficiary or another person due to the termination of trust.

Article 63 (Account by Termination of Trust)

In case where the trust is terminated, the trustee shall perform the last accounts on the trust affairs, and obtain the approval of the beneficiary. In this case, the provisions of Article 50 (2) shall be applicable *mutatis mutandis*.

CHAPTER Ⅶ SUPERVISION OVER TRUST

Article 64 (Supervision of Court)

(1) The trust affairs shall be supervised by the court, except in case where the acceptance of the trust is carried on as business.

(2) The court may order, upon a request by interested person or *ex officio,* any inspection of the trust affairs, appointment of an inspector, and other necessary measures.

CHAPTER Ⅷ TRUST FOR PUBLIC INTEREST

Article 65 (Trust for Public Interest)

Any trust aimed at the arts and sciences, religion, ancestral rites, charity, crafts and other public interests, shall be a trust for public interest, and the supervision thereof shall be subject to the provisions of Article 7.

Article 66 (Acceptance)

The trustee shall accept the trust for public interest with the permission of the competent authorities.

Article 67 (Change of Clauses)

If any special circumstances pertaining to the trust for public interest, which are unanticipated at the time of the trust deed, take place, the competent authorities may order the change of the trust clauses, unless

it is contrary to the principal objective of the trust.

Article 68 (Resignation of Trustee)

The trustee of the trust for public interest may resign from his office with the permission of the competent authorities, only in case where there is any justifiable reason.

Article 69 (Supervision)

The trust for public interest shall be supervised by the competent authorities.

Article 70 (Inspection and Public Notice)

(1) The competent authorities may, if necessary, order at any time an inspection on the management of the affairs concerning the trust for public interest, deposit of property, and other necessary measures.

(2) The trustee shall report once each year the situation of the trust affairs and property as of a specified time, to the competent authorities.

Article 71 (Authority of Competent Authorities)

The authorities concerning the trust for public interest, as prescribed in Articles 15, 17, 18 (1) and (2), and 31 (1)(proviso), shall belong to the competent authorities: *Provided*, That the competence as prescribed in Articles 15 through 17 may be exercised *ex officio*.

Article 72 (Continuation of Trust for Public Interest)

In case where the trust for public interest is terminated, if there is no rightful person to whom the trust property is reverted, the competent authorities may make the trust continue for the similar objective in accordance with the principal objective of the trust.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Article 2 Omitted.

ADDENDUM *<Act No. 5454, Dec. 13, 1997>*

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDA *<Act No. 6627, Jan. 26, 2002>*

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

Articles 2 through 7 Omitted.

ADDENDA *<Act No. 7428, Mar. 31, 2005>*

Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation.

Articles 2 through 6 Omitted.