

DCFR and Trusts

Ying-Chieh Wu*

Abstract

The purpose of this paper is twofold. First, it examines the provisions (Book X) of the DCFR trusts. Second, it compares them with those enshrined in the Trust Act of the Republic of China (R.O.C.) and explores the possible problems contained in the latter Act. DCFR (i.e., Draft Common Frame of Reference) was published in 2009. The Draft is important and influential for those studying the current developments of European private law. From a comparative law perspective, one of the distinctive features of the Draft is that it contains provisions on trusts in Book X. This is truly rather surprising in that the Draft is based on the traditional civil law structure and trusts are traditionally considered a common law product. Having said that, it is equally noteworthy that trusts are now regarded as an important legal institution that should be considered and discussed in continental Europe. Moreover, the Draft also shows that it is viable to incorporate trusts into a Roman law-based system which is adopted in the R.O.C. Therefore, a comparative analysis between the Trust of the Republic of China and that of the DEFR is a meaningful task to perform. The paper approaches this comparative task mainly from the following four aspects: (1) the creation and constitution of trust, (2) trust fund, (3) trust duties, (4) dispositions in breach of trust.

Keywords: Trusts, Creation and Constitution of Trusts, Unilateral Manifestation of Intent, Duty of Loyalty, No-Profit Rule, Breach of Trust, Bona Fide Third Party Transferee.

* Assistant Professor, School of Law, Singapore Management University
E-mail: ycwu@smu.edu.sg