

The Conflicts Between Trusts and Succession Law in Taiwan: A Lesson from Japanese Trust Law

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Abstract

Both living trusts and testamentary trusts are good devices for estate planning. In civil law countries including Taiwan, there are some limits to testamentary freedom in succession law such as reserved portion, the requirement that the heir or beneficiary must exist at the moment of disposition, and the rule that the testator shall not prohibit the estate from beyond a certain period (10 years in Taiwan). As trusts are literally not wills but have the same functions as wills, whether it should follow the rules in succession law became a problem. This study firstly raised a leading case regarding testamentary trusts in Taiwan as an example in order to elaborate on this issue. Secondly, this article took research on Japanese law to receive some advice. Japan promulgated Trust Act in 1921, which was comparatively early as a civil law jurisdiction, and experienced a significant revision in 2006. In this amendment, “will-substitute trust” was introduced as a new type trust, which was originated from revocable living trusts in the United States, and expected to help transfer estates smoothly and efficiently. Furthermore, it became possible for a settlor to designate not only primary beneficiaries but also contingent beneficiaries with the limit that after 30 years of trust creation, only once interest conveyance (contingency) is allowable and the trust only last to the death of that contingent beneficiaries. This research considers that Taiwan can adopt similar rules as Japan’s choices. Frist, whether living trusts or testamentary trusts, as long as the trust interest is vested after the death of the settlor, it must obey the rules of reserved portion. While claiming the reserved portion by deducting trusts, the object should be trust property, not beneficiary rights. After

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the deduction, what the statutory heir recovered should be the ownership (i.e., fee simple or absolute) of the property, and the heir should not retain as a trust beneficiary ever after. On the other hand, the court in Taiwan did not show specific concern about the length of the trust in the above-mentioned case. In terms of the issue that creating future interests for a person who does not yet exist may not be acceptable in succession law, after carefully reviewing, it is found that a trust can solve most of these theoretical problems compared to devise. In conclusion, trusts have become a legal device which can control estates more steadily and longer than other testamentary dispositions in Taiwan. This article sees this development positively but considers that to set up some rule against perpetuities and keep the minimum limits, that is, reserved portion, to free disposition is still necessary.

Keywords: will-substitute trust / revocable living trust, contingent beneficiaries, testamentary trust, reserved portion, the requirement that the heir or beneficiary must exist at the moment of disposition, Japan Trust Act