

รายการอ้างอิง



ภาษาไทย

- ชรินทร์ วงศ์ภูธร. เอกสารประกอบการสอนชุดวิชาการลงทุน สาขาวิชาวิทยาการจัดการ
มหาวิทยาลัยสุโขทัยธรรมมาธิราช พิมพ์ครั้งที่ 3, 2527
- ทวี กสิยพงษ์. การร้องขอทรัพย์สินในคดีล้มละลาย. บทบัญญัติ 2514
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- บวรศักดิ์ อุวรรณโณ. การจัดการมรดก. เอกสารการสอนชุดวิชากฎหมายแพ่ง 3: ครอบครัว-มรดก
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- ประกาศนาคารแห่งประเทศไทย เรื่อง กำหนดหลักเกณฑ์และวิธีการจัดการลงทุน : ราชกิจจานุเบกษา
ฉบับพิเศษ เล่ม 99 ตอนที่ 39 วันที่ 18 มีนาคม 2525
- ปรีชา พาณิชวงศ์. คู่มือกฎหมายล้มละลาย
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ราชกิจจานุเบกษา ฉบับพิเศษ เล่ม 96 ตอนที่ 74 วันที่ 9 พฤษภาคม 2522
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התעבורה

☐ TRUST LAW

(Law No. 62, Apr. 21, 1922)

(Definition)

Article 1. The trust within the meaning of this Law shall signify to transfer or otherwise dispose of a property right and cause another person to administer or dispose of the property in accordance with a specific purpose.

(Trust by will)

Article 2. A trust may be created by will.

(Public notice of trust)

Article 3. With regard to property rights which are to be registered or recorded, a trust cannot be set up against third persons, unless it is registered or recorded.

2. With regard to valuable instruments, a trust cannot be set up against third persons, unless in accordance with the provisions of Imperial Ordinance it is indicated on the instruments that they are trust properties, and with regard to shares and debentures, unless entries are also made in the book of shareholders or of debentures to the effect that they are trust properties.

(Management and disposal of trust property)

Article 4. The trustee shall administer or dispose of the trust property in accordance with the provisions of the act of trust.

(Trustees) ①

Article 5. A minor, a person adjudged incompetent or quasi-incompetent, and a bankrupt shall not be a trustee.

(Trust by way of business, a commercial transaction)

Article 6. The acceptance of a trust shall be a commercial transaction, when effected as a business.

(Enjoyment of benefits by beneficiary)

Article 7. A person who has been designated as a beneficiary in the act of trust shall *ipso jure* enjoy the benefits of trust, provided however, that when it is provided otherwise in the act of trust, such provision shall govern.

(Trust administrator)

Article 8. In cases where there exist beneficiaries who are indefinite or not yet in existence, the Court may, either upon demand of persons interested or of its own motion, appoint a

trust administrator, provided however, that this shall not apply if a trust administrator has been designated in the act of trust.

2. A trust administrator shall have power to do any act relative to the trust in and out of Court in his own name, on behalf of the beneficiaries mentioned in the preceding paragraph.

3. The Court may, according to the circumstances of the case, grant to the trust administrator a reasonable remuneration out of the trust property.

(Restriction on enjoyment of benefits by trustee)

Article 9. A trustee shall not enjoy the benefits of trust in the name of any person whomsoever, except where he is one of the co-beneficiaries.

(Trusts to circumvent law)

Article 10. Any person who is debarred by law from holding a certain property right shall not, as a beneficiary of a trust, enjoy the same benefits as are derived from holding such right.

(Trust for litigation)

Article 11. No trust shall be created, making it its principal object to cause acts of litigation to be done.

(Trust to defraud creditors)

Article 12. In cases where an obligor has created a trust, knowing it to be prejudicial to his obligee, the obligee may exercise the right of avoidance provided for in Article 242 paragraph 1 of the Civil Code, even if the trustee be *ona fide*.

2. The avoidance made pursuant to the provisions of the preceding paragraph shall not affect the benefits which the beneficiary shall have already received, provided however, that this shall not apply where the obligation in favor of the beneficiary is not yet due, or where the beneficiary knew, or did not know through gross negligence, at the time the beneficiary received the benefits, the fact that it would be prejudicial to the obligee.

(Defect in possession of trust property)

Article 13. With respect to the possession of trust property, the trustee shall succeed to any defect in the possession by the settlor.

2. The provisions of the preceding paragraph shall apply

mutatis mutandis to valuable instruments which have for their objects the delivery of money, other things, or valuable instruments.

(Scope of trust property)

Article 14. Any property acquired by the trustee through administration, disposal, destruction, damage, or other causes, shall appertain to the trust property.

(Distinct and separate existence of trust property)

Article 15. The trust property shall not appertain to the trustee's estate of inheritance.

(Ditto) ②

Article 16. No compulsory execution, provisional attachment or provisional disposition shall be levied on the trust property, nor shall it be sold by official public auction, except by virtue of a right which arose on the trust property for a cause appertaining prior to the creation of trust or a right which across in the course of management of trust affairs.

2. The settlor, his or her heir, the beneficiary and the trustee may raise objection to compulsory execution, provisional attachment, provisional disposition or sale by official public auction levied or made in contravention of the provisions of the preceding paragraph. In such cases, the provisions of Article 38 of the Civil Execution Law (Law No. 4 of 1979) shall apply mutatis mutandis.

Article 17. No set-off shall be effected between obligations pertaining to the trust property and liabilities not pertaining to the trust property.

Article 18. In cases where the trust property is a right other than ownership, the right shall not become extinct by merger, even if the trustee acquires the property forming the subject-matter of such right.

(Limited liability of trustee)

Article 19. With regard to obligations which the trustee owes the beneficiary by virtue of the act of trust, the trustee shall be liable for the performance thereof only to the extent of the trust property.

(Trustee's duty to administer)

Article 20. A trustee shall manage trust affairs with the care of a good manager in compliance with the tenor and purport of the trust.

Article 21. The manner in which moneys pertaining to the

trust property are to be administered shall be prescribed by Imperial Ordinance.

(Distinction between trust property and trustee's own property)

Article 22. A trustee shall neither make the trust property his own property nor acquire any right thereon, in the name of any person whomsoever, provided however, that this shall not apply in cases where the trustee converts the trust property into his own for unavoidable reasons, upon obtaining permission of the Court.

2. The provisions of the preceding paragraph shall not preclude the trustee from succeeding to a right on the trust property by inheritance or other universal transmission. In such cases, the provisions of Article 18 shall apply *mutatis mutandis*.

(Change in methods of administering res)

Article 23. In cases where the manner of administering trust property has become inappropriate for the benefits of the beneficiary by reason of special circumstances which could not be foreseen at the time of the act of trust, the settlor; his or her heir, the beneficiary, or the trustee may apply to the Court for alteration thereof.

2. The provisions of the preceding paragraph shall apply *mutatis mutandis* to the manner of administering trust property that had been prescribed by the Court.

(Co-trustees)

Article 24. Where there are several trustees, the trust property shall be held by them in joint tenancy.

2. In the case mentioned in the preceding paragraph, the management of trust affairs shall be undertaken by the trustees conjointly, except in cases where it is provided otherwise in the act of trust, provided however, that manifestation of intention made to any of them shall take effect against all the other trustees as well.

Article 25. Where there are several trustees, obligations owed to the beneficiary by virtue of the act of trust shall be joint and several. The same shall also apply to obligations owed in connection with the management of trust affairs.

(Delegation of trust affairs)

Article 26. Except where it is provided otherwise in the act of trust, the trustee may cause another person to manage trust affairs in his or her place, only when there exist unavoidable causes.

2. In the case mentioned in the preceding paragraph, the trustee shall be liable only with respect to the appointment and supervision of such person. The same shall apply also in cases where the trustee has caused another person to manage trust affairs pursuant to the act of trust.

3. Any person who manages trust affairs in place of the trustee shall assume the same responsibility as the trustee.

(Compensation of losses)

Article 27. In cases where the trustee has inflicted losses upon the trust property through mismanagement, or disposed of the trust property in violation of the tenor and purport of the trust, the settlor, his or her heir, the beneficiary, and other trustees may demand of the trustee indemnification of losses or restitution of the trust property.

(Administration of trust property separate from that of trustee's own property)

Article 28. The trust property shall be administered set apart from the trustee's own property and other trust properties, provided however, that with regard to moneys that are trust property, it shall be sufficient to keep separate account of them.

Article 29. The provisions of Article 27 shall apply mutatis mutandis in cases where the trustee has administered the trust property in violation of the provisions of the preceding Article.

2. In the case mentioned in the preceding paragraph, if losses have been inflicted upon the trust property, the trustee shall not be relieved of his or her responsibility by reason of causes beyond his or her control, unless it is proved that the losses should have been inflicted even if it were separately administered.

(Union, mixture, and processing of trust property)

Article 30. In case there has been uniting together or mixture with, or work performed on, trust properties, the trust properties and the trustee's own properties shall each be deemed to belong to different owners, and the provisions of Articles

242 to 248 inclusive of the Civil Code shall apply.

(Breach of trust duties)

Article 31. In cases where the trustee disposes of the trust property in contravention of the tenor and purport of the trust, the beneficiary may avoid such disposal as against the other party or subsequent acquirers, provided however, that this shall apply only in case there has been registration or recordation of the trust, or in cases where, with respect to trust properties that are not to be registered or recorded, the other party and sub-acquirers, had known or failed to know because of gross negligence that the disposition in question was in contravention of the tenor and purport of the trust.

Article 32. Where there are several beneficiaries, the avoidance effected by one of them pursuant to the provisions of the preceding Article shall have its effect also in behalf of the other beneficiaries.

Article 33. The right of avoidance provided for in Article 31 shall become extinct unless exercised by the beneficiary or the trust administrator within one month of the time when they became aware of the cause of avoidance. The same shall apply also in cases where one year has elapsed from the time of the disposal.

Article 34. In cases where a juristic person which is the trustee has acted against its duties as such, any directors or similar officers thereof who have participated in the act shall also be responsible conjointly with the juristic person.

(Trustee's claims)

Article 35. The trustee shall not be entitled to remuneration unless there exists special stipulation to that effect, except when the trust has been accepted as a business.

Article 36. With regard to the taxes, public dues, and other expenses which the trustee has borne with respect to the trust property, or with regard to the compensation of losses which the trustee has suffered in connection with the management of trust affairs without negligence on his or her part, the trustee may sell the trust property and satisfy his or her claim in preference to other claimants.

2. The trustee may demand of the beneficiary either reimbursement or indemnification, or furnishing of reasonable

security, with respect to the expenses and losses mentioned in the preceding paragraph, provided however, that this shall not apply in cases where the beneficiary in question is not yet *in esse*.

3. The provisions of the preceding paragraph shall not apply in cases where the beneficiary has waived his or her rights.

Article 37. The provisions of the preceding Article shall apply *mutatis mutandis* to remunerations payable to the trustee, in case the trustee is entitled to receive it out of the trust property. The same shall apply also where the trustee is to receive remuneration from the beneficiary.

(Restriction on claim)

Article 38. The trustee's rights of claim provided for in Article 36 and also in the preceding Article shall not be exercised until after the trustee shall have performed the duty of indemnification of losses or of restitution of the trust property in accordance with the provisions of Article 27 or Article 29.

(Keeping books)

Article 39. The trustee shall keep books and make clear as to each of the trusts the management of its affairs and accounts.

2. The trustee must, at the time of acceptance of trust and also regularly once a year, prepare the inventory as to each of the trusts.

(Inspection)

Article 40. Any person interested may at any time demand inspection of the documents mentioned in the preceding Article.

2. The settlor, his or her heirs, and the beneficiary may demand inspection of the documents relative to the management of trust affairs and explanations as to the management of trust affairs.

(Supervision by Court)

Article 41. Except where the acceptance of trust is effected as a business, trust affairs shall be subject to the supervision by the Court.

2. The trustee shall prepare inventories of each of the trusts, of its own motion, inspect the management of trust affairs, appoint inspectors, and issue any other necessary orders.

(Termination of office of trustee)

Article 42. When a trustee dies, or is declared bankrupt,

incompetent or quasi-incompetent, his or her duties shall thereby terminate. The same shall apply in case a juristic person which is a trustee is dissolved.

2. In the case mentioned in the preceding paragraph, the heir of the trustee, his or her legal representative, the administrator in bankruptcy, the guardian, the curator, or the liquidator shall keep in custody the trust property and do such acts as are required for taking over affairs of the trust until a new trustee becomes able to manage the trust affairs. The same shall also apply, in cases of amalgamation of juristic persons, with respect to the juristic person which is formed by amalgamation or the juristic person which continues to exist after amalgamation.

Article 43. Except in cases where it is provided otherwise in the act of trust, a trustee shall not resign from his office unless the beneficiary and the settlor consent thereto.

Article 44. If a person, who has become a trustee because of a special qualification pursuant to the provisions in the act of trust, loses such qualification, his or her duties shall thereby terminate.

Article 45. Any person, whose office or duties have terminated pursuant to the provisions of Article 43 or of the preceding Article, shall still have the rights and duties of trustee until a new trustee becomes able to manage affairs of the trust.

Article 46. Where there exist unavoidable reasons, a trustee may resign from his office upon obtaining permission of the Court.

(Dismissal)

Article 47. In cases where a trustee commits a breach of his duties or where there exist other important reasons, the Court may, upon application of the settlor, his or her heirs, or the beneficiary, dismiss the trustee from his office.

(Appointment of administrator, etc.)

Article 48. In cases where a trustee has resigned or been dismissed from his office pursuant to the provisions of Article 46 or the preceding Article, the Court may appoint an administrator of trust property and issue any other necessary orders.

(Appointment of new trustee)

Article 49. In cases where the duties of a trustee have terminated, any person interested may apply to the Court for

the appointment of a new trustee.

2. The provisions of the preceding paragraph shall apply mutatis mutandis when a person, who has been designated in a will to be a trustee, fails to accept the trust or is unable to do so.

3. The provisions of the preceding two paragraphs shall not apply where it is provided otherwise in the act of trust.

4. The provisions of Article 8 paragraph 3 shall apply mutatis mutandis to a trustee.

(Transmission of trust property)

Article 50. In cases where there has been a substitution of trustees, the trust property shall be deemed to have been transferred to the new trustee at the time the duties of the former trustee terminated.

2. In cases where there are several trustees, if the duties of one of them have terminated, the trust property shall ipso jure vest in the other trustees.

(Transmission of duty to indemnify losses)

Article 51. The rights provided for in Article 27 or Article 29 may also be exercised by a new trustee.

(Transmission of rights and duties)

Article 52. In cases where there has been substitution of trustees, the new trustee shall succeed to the duties and obligations which the former trustee owed the beneficiary by virtue of the act of trust.

2. The provisions of the preceding paragraph shall apply mutatis mutandis to the case mentioned in Article 50 paragraph 2.

3. Any obligation which has accrued in the management of trust affairs may also be exercised against the new trustee to the extent of the trust property.

(Continuation of compulsory execution and official auction) ②

Article 53. The procedures of compulsory execution, execution of provisional attachment or provisional disposition or official public auction levied or being carried on the trust property may be continued as against the new trustee.

(Ditto) ②

Article 54. The former trustee may levy compulsory execution, provisional attachment or provisional disposition upon, or sell by official public auction, the trust property as against the new trustee by virtue of the right to receive costs or compensation of losses as

provided for in Article 36 paragraph 1, or of the right to be paid remuneration mentioned in Article 37.

2. The former trustee may retain the trust property for purposes of exercising the rights mentioned in the preceding paragraph.

(Taking over affairs)

Article 55. In the case of substitution of trustees, account shall be made of trust affairs and the affairs shall be taken over in the presence of the beneficiary or of the trust administrator.

2. If the beneficiary or the trust administrator has approved the account mentioned in the preceding paragraph, the responsibility toward the beneficiary in question of the former trustee for taking over of the affairs shall be deemed to have been relieved by such approval, provided however, that this shall not apply where there has been any dishonest act.

(Termination of trust)

Article 56. When the causes specified in the act of trust have taken place, or where the object of trust has been attained or has become impossible of attainment, the trust shall thereby terminate.

(Revocation of trust)

Article 57. In cases where the settlor is entitled to the whole of the benefits of a trust, the settlor or his or her heirs may at any time revoke the trust. In such cases, the provisions of Article 651 paragraph 2 of the Civil Code shall apply mutatis mutandis.

Article 58. Except in the case mentioned in the preceding Article, if in cases where the beneficiary is entitled to the whole of the benefits of a trust, it is impossible to fully perform the obligation unless resorting to the trust property, or there exist any other unavoidable reasons, the Court may, upon application of the beneficiary or of persons interested, order revocation of the trust.

Article 59. Notwithstanding the provisions of Article 57 and of the preceding Article, if it is provided otherwise in the act of trust with regard to the revocation of trust, such provisions shall prevail.

Article 60. A revocation of a trust shall be effective for

the future.

(Vesting of trust property after termination of trust)

Article 61. In cases where the trust has been revoked pursuant to the provisions of Article 57 or of Article 58, the trust property shall vest in the beneficiary.

Article 62. If, upon termination of a trust, there is no person designated in the act of trust in whom the trust property is to vest, the trust property shall vest in the settlor or his or her heirs.

(Continuation of trust)

Article 63. In the case of termination of a trust, the trust shall be deemed to continue to exist until the trust property is transferred to the person in whom it is to vest. In such cases, the person in whom the trust property is to vest shall be deemed to be the beneficiary.

(Compulsory execution and official auction)

Article 64. The provisions of Articles 53 and 54 shall apply mutatis mutandis in cases where the trust property has, because of termination of trust, vested in the beneficiary or other persons.

(Final statement of account upon termination of trust)

Article 65. Upon termination of trust, the trustee shall make a final account of trust affairs and obtain approval thereof by the beneficiary. In such cases, the provisions of Article 55 paragraph 2 shall apply mutatis mutandis.

(Charitable trusts)

Article 66. Any trust, the object of which consists in worship, religion, charity, science, the arts, and other public benefits, shall be charitable trusts, and the provisions of the next following six Articles shall apply to the supervision of such trusts.

(Supervision of charitable trusts)

Article 67. Charitable trusts shall be subject to the supervision by the competent government office.

Article 68. In order to accept a charitable trust, the trustee shall obtain permission of the competent government office.

Article 69. The competent government office may at any time inspect the management of affairs of a charitable trust and issue orders for deposit of properties or any other necessary

measures.

2 The trustee shall regularly once a year give public notice of the state of trust affairs and of properties.

(Change of terms of trust)

Article 70. If special circumstances, which would not have been foreseen at the time of the act of trust, arise with respect to a charitable trust, the competent government office may change the terms of trust in so far as the change does not contravene the tenor and purport of the trust.

(Resignation of trustee)

Article 71. The trustee of a charitable trust may resign from his office upon permission being granted by the competent government office, only in cases where there exist unavoidable reasons.

(Powers vested)

Article 72. With regard to charitable trusts, the powers of the Court provided for in Article 8 paragraphs 1 and 3, the proviso to Article 22 paragraph 1 and Articles 47 to 49 inclusive shall vest in the competent government office, provided however, that the powers provided for in Articles 47 and 49 may be exercised of the government office's own motion.

(Continuation of trust)

Article 73. If, upon termination of a charitable trust, there exists no person in whom the trust property is to vest, the competent government office may cause the trust to be continued for a similar purpose, which is not contrary to the tenor and purport of the original trust.

SUPPLEMENTAL PROVISIONS:

The date of coming into force of this Law shall be prescribed by an Imperial Ordinance. (The Law came into force on January 1, 1923, by virtue of Imperial Ordinance No. 512 of 1922).

SUPPLEMENTARY PROVISIONS (Law No. 223, Dec. 22, 1947):

①

Article 29. This Law shall come into force as from January 1, 1948.

SUPPLEMENTARY PROVISIONS (Law No. 5, Mar. 30, 1979): ②

(Enforcement date)

1. This Law shall come into force as from the enforcement date of the Civil Execution Law (Law No. 4 of 1979) (October 1, 1980).



ประวัติผู้เขียน

นางสาวสุนันทา ประกอบกิจ เกิดเมื่อวันที่ 7 กันยายน 2509 สำเร็จการศึกษาชั้นมัธยมศึกษาตอนปลายจากโรงเรียนราชวินิตบางแก้ว ในพระบรมราชูปถัมภ์ และสำเร็จการศึกษานิติศาสตรบัณฑิตจากจุฬาลงกรณ์มหาวิทยาลัย เมื่อปี พ.ศ. 2532 ปัจจุบันปฏิบัติหน้าที่เป็นผู้ช่วยหัวหน้าส่วน สำนักงานทรัพยากรบุคคล สำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์