

A Contemporary Perspective on the Choice-of-Law Rules for Trusts in Japan (Summary)

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The Act on General Rules for Application of Laws (Act No. 78 of June 21, 2006) does not refer to trusts in express terms, and the way this Act should be interpreted when determining what law governs the formation and effect of a trust has never been contested in court cases in Japan. In this context, academic discussions play a central role in clarifying how Japanese private international law should determine the law applicable to a trust. However, as existing theories developed by the academic discussions so far have chiefly been based on traditional trust practices, there is a need to examine the adequacy of each theory in light of contemporary practices. This paper reviews the existing theories in view of today's trust practices with the aim of suggesting how the Act on General Rules for Application of Laws should be interpreted in international trust cases.

There have been conflicting theories as to whether a trust should be characterized as a unilateral juristic act or a contract under the Act on General Rules for Application of Laws. On this issue, this paper argues that a trust should be characterized as a contract in view of the active role played by the trustee in the creation and management of a commercial trust these days. The major results of taking this approach can be summarized as follows.

When it comes to the provisions on the party autonomy principle, in the interpretation of Article 7 or 9 of the Act on General Rules for Application of Laws, the law governing a trust can be chosen at the outset or *ex post facto* changed by agreement between the settlor and the trustee. Also, where the trust contract is concluded between a consumer and a business operator, there is a possibility to apply the special provision on consumer contracts (Article 11 of the Act on General Rules for Application of Laws).

Where there is no choice of applicable law by the parties, the most closely connected law objectively determined under Article 8 of the Act on General Rules for Application of Laws applies. If a trust is settled over real property, the law of the place where the property is situated shall be presumed to be most closely connected with the trust, pursuant to Article 8 (3) of the Act on General Rules for Application of Laws. However, in the event that the real properties constituting the trust asset are located in more than one jurisdic-

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tion, Article 8 (3) does not apply. When Article 8 (3) does not apply, the presumption of Article 8 (2) applies, pursuant to which the law of the habitual residence of the trustee shall be presumed to be the law with which the trust is most closely connected.