

ANDERSON MORI

Financial Services & Capital Markets Group

PROPOSED AMENDMENTS TO THE TRUST BUSINESS LAW

In an effort to respond to a changing business environment, in line with commercial reality, on July 28, 2003, a working group in the Financial Council of Japan submitted an interim report (the “**Report**”) suggesting several fundamental changes to the Trust Business Law of Japan (Law No. 65 of 1922, as amended) (the “**TBL**”), the Trust Law of Japan (Law No. 62 of 1922, as amended) (the “**TL**”) and other related laws and regulations. It is currently anticipated that a bill to amend the TBL and related laws and regulations will be submitted to the regular diet session to be held early next year.

Trusts have been said flexible enough to accommodate a variety of purposes, however, such flexibility may not have been fully utilized mainly because of the restrictions under the TBL, when conducted in the course of business. Amendment to the TBL and related laws and regulations will be welcomed to give more flexibility to trusts businesses in Japan.

This letter is intended to provide you an outline of possible amendments to the TBL based on the Report.

Entrustable Assets	Currently, Article 4 of the TBL defines the scope of entrustable assets ¹ (assets permitted for entrustment to trust companies ²) to encapsulate the following: <ul style="list-style-type: none">• Trusts of money;• Trusts of securities;• Trusts of monetary claims;• Trusts of movable property;• Trusts of lands and their fixtures (such as buildings); and• Trust of surface rights and land leases.
Lifting of Restricted Scope	The Report suggests that the restrictive scope of entrustable assets be lifted and any and all property rights (including, intellectual property rights) be included as entrustable assets. <i>Implications:</i> If the scope of entrustable assets are expanded, a variety of assets will be able to enjoy the benefits of trust structures as intended by the TL. For example, with the recent enacted legislations making easier the transfer of university technologies to

¹ Please note that assets comprising of intellectual property rights are not currently permitted as entrustable assets under the TBL .

² Currently, as a matter of common practice in Japan, trust businesses are mainly carried out by banks that are licensed to conduct trust businesses, pursuant to the Law Concerning the Concurrent Undertaking of Trust Business by Financial Institutions (Law No. 43 of 1943, as amended).

	the private sector, trust companies will be able to act in Technology Licensing Organization projects.
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In addition to the suggested expansion of the defined scope of entrustable assets, the Report advocates the liberalization of other formerly restricted areas of the TBL and the TL.

Trust License	The Report recommends that trust licenses should be enjoyed by a broader range of entities (other than by banks and other financial institutions) and that the prescription of trust licenses should be made more flexible. Conditions such as minimum standards of capital and man power requirements should also be relaxed, taking into account the type of trust business to be undertaken.
Classification of Trust Business	<p>The Report classifies types of trust business into the following three categories:</p> <ul style="list-style-type: none"> • Maintenance & Administration Focused (where the discretion of the trustee is restricted); • Securitization Focused (where main purpose of the trust is for asset securitization activities); and • Management & Administration Focused (where the trustee is given a wider discretion pertaining to management and disposal of asset issues) <p><i>Implications:</i> Depending on the type of trust business undertaken, the minimum standards for applications will differ. The general tendency is that the wider the discretion of the trustee, the stricter the minimum standards for applications will be. Trust licenses will only be granted to those entities that satisfy the requirements and capabilities for the type of trust business to be conducted.</p>

In addition, the Report mentions the introduction of a new type of trust license requiring minimal conditions imposed, thus enabling applicants to act as trustees limited to the ambit of the relevant trust agreements in which the trustor, trustee and the beneficiary belong to the same group of companies.

Duties & Liabilities of Trustees	<p>Since trust arrangements are based on the fiduciary relationship between the trustor and the trustee, fundamentally, the trustee owes the following duty of care vis-à-vis the trustor and the trust beneficiaries:</p> <ul style="list-style-type: none"> • Duty of care of a good manager; • Duty of loyalty (including the avoidance of conflicts of interests);
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	<ul style="list-style-type: none"> • Duty of good separation of trust assets; and • Duty to manage and administer the trust assets by itself. <p>In ensuring the perseverance of the trustor – trustee relationship, with precise responsibilities being determined and upheld, the Report suggests that detailed regulations and guidance, with respect to the above said duties & liabilities of trustees, be outlined. Code of conduct to avoid conflicts of interests, which is part of the duty of loyalty, will also be prescribed.</p>
Other Improvements	<p>Certain other improvements are also outlined in the Report, such as:</p> <ul style="list-style-type: none"> • Continuing discussions on the extension of corporate forms of trust companies (in addition to that of licensed <i>Kabushiki Kaisha</i> type corporations, other types of corporate forms, such as <i>Yugen Kaisha</i>, partnerships, natural persons, etc.); • The limitation of the permitted scope of the business of trust companies to that of the entrusted business and other ancillary business (without hampering its core competencies); • Establishment of clear and precise regulations concerning the accountability of trust companies, restrictions on unfair solicitation and other relevant rules; • Improvement on disclosure requirements of trust companies (relating not only to the trust companies’ business, but also its activities as a trustee); and • Introduction of intermediary businesses relating to the trust business to be conducted by a broader range of entities that would provide new channels of entrustment activities available to customers.

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FURTHER INFORMATION:

This memorandum is intended solely to provide general guidance concerning the possible amendments to the law and not to provide detailed analysis or advice regarding any particular legal issues. If you have any further questions or require specific advice in regard to such matters, please get in touch with your usual contact at Anderson Mori or with any of the partners of the firm’s Financial Services & Capital Markets Group.

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