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New Types of Trusts in Securitization Available Under the New *Trust Law*

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The new *Trust Law* (Law No. 108 of 2006), which was passed on December 8 2006 and promulgated on December 15 2006, will fundamentally reform the trust system under the former Trust Law (Law No. 62 of 1922). The new law will come into force within a year and a half from its promulgation date and, under the new law, some types of trusts previously not permitted have become available.

Self-entrustment

The new law permits a trust in which a trustor entrusts its own assets by becoming trustee itself. This is a legal mechanism similar to a declaration of trust under US and British trust law and is generally called self-entrustment. Under the old law, it was unclear whether these trusts were permitted. In securitizations, the possibility of (i) a trustor securitizing its own assets by entrusting them to itself and becoming the trustee, and (ii) using self-entrustment in order to exclude so-called commingling risks, can be explored.

Business entrustment

Under the new law, a trustee can undertake liabilities borne by a trustor as trust assets bearing liabilities at the beginning of establishing a trust and, accordingly, it is considered that a so-called business entrustment is permitted. Although there are many unresolved issues, from both legal and practical perspectives, business entrustments can be considered an effective method for a whole business securitization.

Security trust

Under the old law, it was unclear whether a so-called security trust could be generally established. Under the new law, establishing a trust by creating a security interest is expressly permitted and, therefore, it is possible to establish a security trust under which a security interest is created by allowing the obligor to act as the trustor, the security holder as the trustee and the claimers as the beneficiaries. A security trust could be used in order to manage and execute a security interest in an integrated fashion under an asset-backed loan scheme in which there are a number of investors.

Purpose trust

The new law also permits the establishment of a trust for which no beneficiary is provided, called a purpose trust. Under the old law, a trust for which there is no beneficiary was permitted only as a public trust that required the authorization of the competent authorities. In securitization, it was considered possible to establish a trust similar to a charitable trust under US and British trust law by using a purpose trust as a means for establishing bankruptcy remoteness. However, because certain rights are granted to the trustor under a purpose trust, it is necessary to consider ways to eliminate the influence of the trustor in order to use a purpose trust for bankruptcy remoteness.

Beneficial certificate issuing trust

Except for those cases permitted pursuant to special laws, beneficial interest was not represented on securities under the old law. Under the new law, the legal mechanism of a "beneficial certificate issuing trust" has been created and establishing a trust under which beneficial certificates representing beneficial interest can be issued is now permitted. Disclosure regulations pursuant to the *Financial Instruments and Exchange Law* will be applied to beneficial certificates and the book-entry transfer system is available to them. If a beneficial certificate issuing trust is used for securitization, it is supposed that the liquidity of the beneficial interest could be increased as beneficial certificates.

Limited liability trust

In principle, not only trust assets but also a trustee's own assets bear responsibility for the liabilities of a trust, and this precept exists in both the old and new laws. However, under the new law, the legal mechanism of a limited liability trust has been established, under which the trustee bears responsibility for the liabilities of the trust only to the extent of the assets belonging to the trust. Trust banks and the like that become trustees can therefore engage in transactions more safely by using a limited liability trust.

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