

Ownership of Trust Property in China : A Comparative and Social Capital Perspective

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「中国における信託財産に対する所有権の所在：比較法及びソーシャル・キャピタルの観点から」

区 分 : 甲

論 文 内 容 の 要 旨

The location of ownership of trust property has been a heated debated issue among Chinese scholars since Chinese Trust Law was enacted in 2001. Almost every possible interpretations as to this issue has been represented by Chinese lawyers. Under the frustrating circumstances regarding this issue in China, this thesis describes various conventional interpretations of Chinese Trust Law submitted by legal scholars, and compares diverse approaches regarding the location of ownership of trust property provided by jurisdictions globally. In order to resolve this question, instead of directly answering the question “who is the owner of trust property in China?” this thesis develops a new but more practical way to explain why Chinese trust business has expanded in spite of the uncertainty of Chinese Trust Law regarding the location of ownership of trust property, using a social capital perspective. This thesis also further tries to forecast what conditions would enable and make it desirable for China to clarify the location of the ownership of trust property.

By employing those sociological concepts often employed to depict and analyze the society - particularly social capital, social *trust*, and social network - this thesis outlines the structure of Chinese trust business and related social relations in different stages, i.e. the stage before the Trust Law, the current rapid develop stage, and the potential transformation stage in the near future. The data used to analyze the relevant part of Chinese society is collected through an empirical study of Chinese trust industry, specifically through two sorts of sources: (a) statistical data from industrial reports, and (b) targeted in-depth interviews.

The research from the perspective of social capital and *trust* suggests that social *trust* has substantial value in establishing commercial relationship between businesses and consumers. This thesis focuses on how specific structural features of Chinese trust industry social network affect the behavior of actors (such as the settlor, the trustee, and the beneficiaries) within the relevant society. It addresses a possible justification of the openness of Chinese Trust Law regarding the location of the ownership of trust property. At the time when the trust law was drafted, it was estimated by the legislators that the potential consumers of trust products have very low degree of social *trust* in trust institutions. Moreover, China trust business is deemed to be activities among relatively small group of people or institutions. The network of such trust business is submitted to be a dense network. The high embeddedness of dense network in Chinese trust industry generates social *trust* between actors that allows the trust business to flourish. In addition, this thesis predicts

that the network of Chinese trust business in the near future is likely to transform towards a more sparse network. In a sparse network, actors are more likely to reserve their ownership rights rather than put themselves into risk, unless institutionalized *trust* is built between service providers and potential consumers. It is proposed in this thesis that the location of trust property ownership in Chinese Trust Law needs to be clarified at this stage, in order to build the institutionalized *trust* in the sparse network. A further conclusion of this thesis is that Chinese trust companies would be obliged to build social *trust* from potential consumers over time. Only if consumers' *trust* in trust companies reaches a certain degree, is the time ripe for the clarification of Chinese Trust Law.