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Edited by Lusina Ho and Rebecca Lee

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TRUST LAW IN ASIAN CIVIL LAW JURISDICTIONS

A COMPARATIVE ANALYSIS

The reception of the trust in civil law jurisdictions has generated considerable conceptual debate internationally and in East Asia. In *Trust Law in Asian Civil Law Jurisdictions*, the authors:

- provide a detailed comparative examination of trust laws in Asian civil law jurisdictions from both operational and theoretical perspectives;
- discuss the reception of the trust laws in Japan, South Korea, Taiwan and China and the challenges facing them;
- engage in in-depth comparative inquiries as to how these Asian legal systems resolve questions pertaining to the trust; and
- evaluate the distinctive features of Asian trusts and how they are moulded to suit the civilian legal frameworks within which they are situated.

The analysis intersects with the Trento trust project in Europe, but also differs from it by providing valuable perspectives on the 'Asian' approaches to trusts for researchers in Asia and the Anglophone world at large.

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PREFACE

The trust is an institution that lies at the heart of the common law system. It is also a dynamic device that provides the foundation for a wide variety of personal and commercial arrangements in the common law world. In Asia, the utility of the trust in the modern business environment has prompted civil law jurisdictions – pioneered by Japan – to introduce the trust into their domestic laws as early as the 1920s. The process was, however, not swift. On the one hand, there were conceptual challenges in understanding the nature of the trust from a civil law point of view and in accommodating the trust within indigenous civil law concepts. On the other hand, there were also practical concerns arising from the use of the trust, such as fears of tax evasion. Last but not least, there were added difficulties due to language barriers in understanding relevant English-language materials in an area of law that is predominantly derived from judicial decisions.

Nevertheless, almost a century after the Japanese innovation in 1922, most civil law jurisdictions in East Asia have enacted a trust statute of some form. Plenty of books on the domestic trust laws of many civil law jurisdictions in Asia have been written, and much research has been carried out in these jurisdictions on how best to approach this novel institution. Yet most published materials are written in their respective native languages, which renders cross-jurisdictional comparison difficult.

The aim of this book is to fill the gap of a comparative study of Asian trust laws. We believe that a book on comparative trusts in major Asian civil law jurisdictions published in English will provide invaluable insights to trust researchers in Asia and beyond. Our hope is to bring about a dialogue between trust lawyers in common law and civil law jurisdictions.

Accordingly, the approach of the book is descriptive, analytical and comparative. We have sought to provide an account of the major features of the trust laws in selected Asian civil law jurisdictions, and to highlight the controversies they encounter in transplanting the trust. At the same

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PREFACE

time, we have also attempted to provide focused cross-jurisdictional comparisons through examining the legal response of the law of each jurisdiction to concrete and specific legal issues that are raised in hypothetical scenarios. In this regard, we are greatly indebted to Professors Michele Graziadei, Ugo Mattei and Lionel Smith (see M. Graziadei, V. Mattei and L. Smith, *Commercial Trusts in European Private Law* (Cambridge/New York: Cambridge University Press, 2005) for kindly permitting us to adapt the common core methodology and follow the case studies in their Trento trust project closely (albeit adding alternative scenarios where necessary). We hope this will in turn facilitate comparison between Asian and European jurisdictions.

This book could not have been produced without the collective effort and enthusiastic support of the expert contributors from Japan, South Korea, Taiwan and China. We are extremely grateful to them for their thorough research, engaging discussions and tireless efforts. We have benefited tremendously from their generous sharing of knowledge and expertise with us. We are also grateful to Han Lulu, Chen Min, Bill Wong, Michelle Suh and Eva Yu for research assistance. We sincerely thank Finola O'Sullivan and her team at Cambridge University Press for their patience and coordination. We also gratefully acknowledge the financial support from the Research Grants Council of Hong Kong (GRF Award No. H744107).

It has been almost five years since the present book project was first conceived. During this period our two babbling babies have grown into talkative pre-schoolers. It has been a challenging journey, and we are grateful for the support and encouragement we gave each other. Needless to say, we also thank our families for their unconditional love and patience.

We have sought to state the law as at 15 August 2012. For ease of reference, we have also added the country prefix (and year of enactment where necessary) to the name of the relevant statutes under examination (for example, Japanese Trust Act, as opposed to Trust Act) even though these often do not form part of the official name of the statutes.

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