

A trust is an independent legal entity?

Description

It is actually quite a predominant view that a trust is often considered to be an independent legal entity or in other words, a trust once settled, has come to have its own legal personality capable of engaging to legal activities such as owning properties or entering into contracts.

But it is not correct. Recent case rulings by American courts have confirmed that it is wrong to regard the trust itself as a legal person. [pdf-embedder url="http://www.sinoblawg.com/wp-content/uploads/2017/04/Taking-Title-to-Trust-Assets.pdf"].

I. What is a Legal Entity/Person?

This is not an easy question when it comes to a non-natural-person entity, or an artificial person at law. To be considered as a legal entity or legal person, the "entity" is said to have legal personality.

There is a common misconception in China legal arena that a legal person is thought to have its own assets and more importantly the capacity to assume legal liabilities on its own without recourse to others (for instances, the shareholders of a corporation), thus, organizations like partnerships are generally not regarded as legal person. This deep-trenched concept carries its life into China newly enacted General Principles of Civil Code.

An organization or entity is conferred upon legal personality for a good reason. Most obvious example is a company. A company is generally (not universally in other countries) considered as a legal person because it is too much a hassle or trouble to have the shareholders behind the corporate veil to act collectively with others in conducting the company's businesses, so to ease the problem of collective acts by many, it is more convenient and efficient to enable the company to act towards others as ONE person itself. This is where the legal personification for an organization or for a group of individuals is necessary.

Whether an organization or group of people should be given the legal status of being a legal person shall be an issue of the law. In other words, unless expressly prescribed by the law, an organization or groups of people cannot avail themselves of the legal person status.

II. A Trust is not a Legal Person

A trust is nothing but a way to dispose of assets or properties (the trust corpus), and this disposal is generally simple and straightforward so long as the trustee follows the trust document creating the trust. A trustee is typically not given too much power to manage and administer the trust property for profits as a for-profit company does. A trustee is more in a position to preserve the value of the trust properties than to maximize returns or income thereon.

In a family trust context, typically there is only one or two trustees engaged in the management of the trust properties, easy to coordinate, unlike a corporate organization where there could be multiple and

dozens of or even hundreds of shareholders which is impossible to coordinate. Thus, there is practically no need to confer upon the trust a separate legal personality.

In reality, trust affairs are conducted by the trustees and the legal title of the trust properties is vested in the trustees, and if there is any dispute in the course of the management of the trust properties, it is the trustees who will sue or be sued at courts, not in the name of the trust.

So despite that it is a common phenomena in legal parlance and discussion to call the trust in a way as if it were an independent legal person, it is just a way of easy addressing and naming. One shall not be confused.

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