

Trust Museum, Tokyo

Tomoko Nakada

Note from the Editor: To find a carefully curated trust museum in Tokyo was hard to believe. For those who assume they know a lot about trusts – which included me – this sheds a whole new light on them. I was lucky to be one of the recent visitors, and have my own Peter Rabbit picture.

About the Trust Museum

The Mitsubishi UFJ Trust and Banking Corporation Trust Museum (the Museum) was founded in October 2015 by the trust bank, Mitsubishi UFJ Trust and Banking Corporation (MUTB), to commemorate the tenth anniversary of the merger of Mitsubishi Trust and Banking Corporation and UFJ Trust and Banking Corporation to form MUTB.

The Museum is the first and the only museum in Japan dedicated to trusts. The aim is to educate the public about trusts, which are not well-known in Japan. MUTB is often asked questions, such as “What is a trust?” or “Is a trust different from a bank deposit?” These frequent questions made MUTB aware of the need to set up a place where people can learn about and become familiar with trusts through various exhibits.

The exhibits in the Museum include wall illustrations, videos, digital movies, and digital touch panels showing the world history of trusts as well as various replicas and originals of old trust documents prepared in England in the fourteenth and sixteenth centuries and in the United States in the early nineteenth century. Those who want to study more about trusts can use the Museum archives, which contain a collection of approximately 6,500 books on trusts and old trust documents from all over the world, including many written in English.

Admission is free, including an optional attraction to create a postcard from a photo of visitors with Peter Rabbit characters, which a visitor can take home as a souvenir.

At the Museum

The Museum is a small room located next to MUTB's headquarters, a three-minute walk from Tokyo Station. It is divided into three sections: Guidance Theater, Trust History Zone and Interactive Corner (photo booth with Peter Rabbit).

Guidance Theater

A tour of the Museum starts with an introductory video giving basic information about trusts. A trust refers to the act of transferring one's property to a trustworthy person for the benefit of others. Trusts have been developed based on the trust relationship between the person transferring the property (known as a 'settlor') and the person entrusted with the property (known as a 'trustee').

Trust History Zone

This section presents an overview of the long history of trusts, including their origins and the process of their development and growth, using wall displays and other materials. A trust-like concept existed in various parts of the world even in the age Before Christ, but trusts as a legal concept originated approximately 1,000 years ago in medieval England. It later crossed the Atlantic Ocean to the United States and eventually reached Japan in the early twentieth century.

Ancient times

The oldest example of a trust-like device is Uah's will, written on papyrus almost 4,000 years ago in ancient Egypt (nineteenth century BC), by the dying Uah who entrusted his properties to a guardian for the benefit of his young wife and children.

In ancient Rome (from second century BC to first century AD), a trust-like device called a *fideicommissum* was popular. Females were not legally allowed to inherit a decedent's assets at that time, but people had a strong desire to leave assets to their surviving wife and daughters. To avoid the application of the law, the *fideicommissum* was created, which allowed a person to entrust his assets to a male for the benefit of his wife and daughters.

In Japan in the ninth century AD, a trust-like device was used to educate the general public. During this time, higher education was only available to the

sons of upper-class families. In 828, in an effort to provide the general public with educational opportunities, Kukai, a Japanese Buddhist monk, established a school known as *Shugeishuchiin* at a house and on land entrusted to him by an aristocrat, who sympathised with Kukai's cause. Kukai managed the school property separately from his own property, like a modern trustee.

Medieval England

A use, an early form of a modern trust, arose out of people's desire to avoid restrictions under the feudal system, such as *male primogeniture*, which required land to descend to the eldest son by operation of law. A use allowed a landowner to transfer his property during his lifetime to third parties now called trustees, to hold the property for the landowner and his family during the landowner's life, and then upon the landowner's death to pass down the property pursuant to the landowner's directive. Even a member of the royal family, John of Gaunt, a son of Edward III and the father of Henry IV of England, wished to provide benefits to each of his many children, and created a use in his will. The Museum displays a replica of the Will of John of Gaunt (1399).

Uses were also employed to avoid *feudal incidents*, which required certain obligations to the monarchy, including tax payment, when land was descended from father to son by operation of law. To restore his income, Henry VIII tried to prohibit uses through the Statute of Uses in 1535, a replica of which is displayed in the Museum. Unfortunately for the English monarchy, people's desire for uses was so strong that they found loopholes in the Statute and began to employ another form of use (known as 'use upon use'), to which the Statute did not apply. The Museum displays a replica of a written record of the court case *Bartie v Herenden* (1558), which was an early case enforcing a use upon use. Consequently, uses were revived in England, and were eventually called trusts.

Nineteenth-century United States

The English law of trusts was brought to the colonies by the colonists, where trusts were further developed in the United States to meet commercial needs, ie a financing means. As a result, the concept of a corporate trustee developed and trusts were used in business transactions, such as equipment trusts and investment trusts.

Among the relevant exhibits in the Museum are:

- a replica of a newspaper advertisement for the establishment of the Farmers' Fire Insurance & Loan Company (1822), known as the first corporate trustee;
- the original of a railway plate of an equipment trust (1924), which was attached to a railway vehicle to identify it as a trust asset; and

- certificates of an investment trust for the Massachusetts Investor Trust (1949), the first mutual fund in the United States.

Japan

Trusts were incorporated in Japan in the 1900s, where the legal system is based on civil law, instead of common law as is the case in England and the United States.

In Japan, trusts developed primarily through trust banks in the area of commercial trusts, particularly since the end of World War II.

Introduction of trusts to Japan

The concept of trusts was first introduced in Japan when the Secured Bond Trusts Act was enacted in 1905. During this time, the Japanese government needed to raise foreign capital for economic reconstruction after the Russo-Japanese War (1904–1905) and tried to issue bonds in London. These bonds were secured by certain property and the secured rights were held by a trustee as the trust property for the benefit of the bondholders. That led the Japanese government to introduce a trust structure for secured bonds. The 1905 Act recognised trusts for this limited purpose, but did not contain a general definition for trusts.

As many as 488 companies whose name contained the word 'trust' existed by the end of 1921, likely because of the attractiveness of the new buzzword 'trust' derived from western countries. These companies were not necessarily involved in the trust business, but rather conducted other miscellaneous business such as lending and real estate brokering. Some of the companies were merely a façade for a loan shark business, and did not actually have sufficient financial strength to maintain their business. Therefore, to regulate these companies, the Japanese government enacted the Trust Business Act in 1922, requiring companies that offered trust services to obtain a licence from the government. The old Trust Act of 1922 was enacted simultaneously, and was modelled on the California Civil Code, the Indian Trust Act and England's case law. This Trust Act finally stipulated a general definition for the term 'trust', so trusts could be better regulated.

Trust banks as trustees and trusts as long-term savings mechanisms

From around 1922, Japanese trust companies offered wealthy families trust services to manage their money, monetary receivables, securities and real estate, but their financial conditions deteriorated during World War II. In 1943, the Act on Concurrent Operation of Trust Business by Ordinary Banks was enacted, allowing ordinary banks to conduct the trust business for long-term financing. This in turn resulted in

mergers between ordinary banks and trust companies, as the latter's business had encountered difficulties in accumulating long-term funding due to inflation after World War II. By 1948, all the trust companies had merged with ordinary banks to form trust banks operating under the 1943 Act. Consequently, only trust banks have historically served as trustees in Japan (at least until 2004), and the banking business has had a great impact on trusts in Japan.

In 1952, the Loan Trust Act introduced the concept of a loan trust, whereby trust banks could invest funds raised from a great number of settlers, mainly in long-term loans to key industries, including electricity, shipbuilding, and steel and transportation. The profit on the invested principal would then be paid to the settlers twice a year in due course. This profit was also known as an expected dividend rate, which was disclosed to customers beforehand. It was different from the actual profit, which applies to ordinary trusts. Therefore, loan trusts became widely popular among the general public as a long-term savings method with a guaranteed principal and a high dividend rate; their economic function was thus similar to bank deposits. Loan trusts had been a top-selling trust product until the 1980s. Consequently, ordinary Japanese people have the strong impression that trusts are a kind of long-term bank deposit.

Meeting the demands of the times

Since the 1980s, increasingly diverse needs have appeared in the area of commercial trusts for new investments and financial schemes, which have fuelled greater demand to accommodate such

commercial needs. Accordingly, to meet these new demands, the new Trust Business Act was enacted in 2004, allowing certain trust companies to engage in the trust business, and the new Trust Act was enacted in 2006, which substantially amended the old Trust Act of 1922. The latter also included several improvements to facilitate the use of trusts for family or succession purposes.

Fiduciary duty

The Museum has a corner focused on fiduciary duty. A fiduciary is a person entrusted with the management of someone's property. It entails a strict legal duty not to betray that trust. The Museum shows a video message by Professor Tamar Frankel, a Professor Emerita at the Boston University School of Law, and displays her autographed book entitled *Fiduciary Law*.

This corner of the Museum is particularly close to me because MUTB asked me to get her autograph when I revisited Boston, where my son was born, and met Professor Frankel. She kindly invited me to her house in the summer of 2014, gave my children lemonade and autographed copies of her book for me. I have been working as an outside counsel for MUTB's Will and Estate Division for 16 years, and my father has also been working as an outside counsel for MUTB for more than 40 years.

The Museum offers the opportunity to learn about landmark cases on fiduciary duty, including *Keach v Sandford* (1726 in England), which addresses the 'non-profit rule' that a trustee may not profit from the trust; and *Harvard College v Amory* (1830 in the United

At the Trust Museum (The author is on the far left next to Barbara Hauser)



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States), which addresses the ‘prudent investor rule’ that trustees should invest trust assets faithfully, prudently and with sound discretion. These cases are explained in plain words with charts and related pictures, enabling visitors to easily understand the issues the respective court had to rule on.

Special exhibitions

The Museum also holds special exhibitions twice a year in an effort to continually convey the benefits of trusts to the general public. The most recent special exhibition showed some interesting examples of trusts from various countries, including civil law countries and mixed law countries. For example, in certain countries aeroplanes and ships as well as railway vehicles can be trust assets. Furthermore, trusts can be used for a public interest purpose, for example to preserve the Galapagos giant tortoise.

Interactive corner (photo-booth with Peter Rabbit)

A must-do attraction for visitors to the Museum is to enjoy the world of *The Tale of Peter Rabbit* in a photo booth. A visitor can choose which way to go, for example McGregor’s garden, and take a photo with Peter Rabbit in the selected scene. The photo will be printed out on a postcard for the visitor to take home as a souvenir.

One might ask how Peter Rabbit is related to the Museum.

The answer is simply that MUTB adopted Peter Rabbit as its mascot 30 years ago, because Peter Rabbit is a symbol of trusts thanks to the efforts of Beatrix Potter, the author of *The Tale of Peter Rabbit*. She loved the beautiful scenery of the Lake District in England, which inspired her book. She acquired more than 4,000 acres of land in her lifetime using the royalties on her Peter Rabbit stories and her inherited assets. She bequeathed that land to a charity called the National Trust upon her death to preserve the scenery forever, for everyone to enjoy. Thanks to Ms Potter, the same beautiful scenery of the Lake District in England and the world of *The Tale of Peter Rabbit* can still be enjoyed today as it was 100 years ago.

Trusts and estates attorneys from around the world at the Museum

In May 2019, when the annual meeting of the International Academy of Estate and Trust Law

(TIAETL) was held in Tokyo with the participation of many trusts and estates attorneys from around the world, including myself as a local member, I invited the attendees to visit the Museum and more than 40 people from England, the United States, Canada, Australia, Austria, Denmark, France, Israel and South Africa joined the tour.

Together with Mr Yoshinobu Tomomatsu, the Chief Secretary of the Museum, we toured the Museum and took commemorative photos (see above).

At the tour’s outset, I requested Mr Tomomatsu to ask the visitors, “It seems that no other country in the world has this kind of trust museum. If you know any other trust museum, would you raise your hand?” Everyone laughed in response to the question, but no one raised their hand. It is possible therefore the Museum is the only trust museum of its kind anywhere in the world.

Some of the visitors had never even heard that trusts were developed in Japan.

An attorney from London, who attended the tour with his wife, said to me, “As trusts were created in England, I never imagined to find a trust museum in Japan!” Surprisingly, I was told that his wife is a great-granddaughter of Robert Fleming, who is known as the father of the investment trust. His wife was pleased to find a portrait of her great-grandfather in the digital touch panel and took a photo with the portrait.

Some visitors were also fascinated to find the replicas and originals of old trust documents on display.

Another participant of the tour (actually Barbara Hauser) was excited to find her book *Trusts in Prime Jurisdiction* in the Museum archives, exclaiming, “I did not expect to find my book here in Japan!” In this regard, Mr Tomomatsu constantly makes efforts to find books about trusts written in English and purchases as many of them as possible, budget permitting. The corner for newly acquired books displays the latest books about trusts published in foreign countries.

I was pleased the participants eagerly listened to my explanation about trusts in Japan. The final enjoyment for these Museum visitors was the opportunity to take pictures with Peter Rabbit, as described above. The photo booth is a very popular

kind of print club machine known as a *purikura* in Japan, but it was a novelty for the foreign attorneys. They were quite excited, crouching down to take pictures with four or five people in a frame. The resulting souvenir postcards with these pictures will make lasting memories.

Later, the book by Ford and Lee, *Principles of the Law of Trust*, was donated to the archives by Professor William Anthony Lee, one of the authors who learned about the Museum through an Australian attorney, fellow member of TIAETL, who had visited with me in May 2019. Mr Tomomatsu told me he was so honoured and grateful for this donation from the author of such an authoritative book about Australian trust law.

Currently, the Museum does not have an English website, because it does not provide English translations for the majority of the exhibits. Some information is available in English (including subtitles on the videos) and a visitor may receive an

English pamphlet, upon request. Mr Tomomatsu can usually be available to give guided tours of the Museum with advance notice.

The Museum would happily consider providing English translations in the future, if many foreign visitors visit the Museum.

Address: The Industry Club of Japan Hall, 1st Floor, 4-6 Marunouchi 1 Chome, Chiyoda City, Tokyo 100-8212, Japan.

Contact: +81-3-6214-6501.

Directions: 3 minute walk from the Marunouchi North exit of JR Tokyo Station.

1 minute walk from exit M10 of Tokyo Station on the Marunouchi Line/Tokyo Metro.

Hours: 10:00-18:00 weekdays (closed Saturday, Sunday and public holidays) Visitors must enter by 17:30.

Please drop in to the Museum when you visit Tokyo!

Ms Tomoko Nakada is an attorney-at-law admitted in Japan and New York. She is an International Fellow of the American College of Trust and Estate Counsel (ACTEC) and an academician of the International Academy of Estate and Trust Law (TIAETL). She obtained an LLM from the New York University School of Law and studied as a visiting researcher at Harvard Law School. Her long career includes working as a Tokyo District Court Judge, as a member of a three-judge panel.

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