

The Collaboration of Guardianship and Trusts

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A statistic shown in 2009 by the Taiwan Alzheimer's Disease Association told us there were about 150 thousand people over 65 years old suffering from Dementia; and the number occupied 6.08% of the total population of elderly people. As the elderly population is increasing and the family care given becomes decreasing, the care and estate planning for the elderly people as well as the people having physical/mental disease have become significant issues for the country. In order to protect elderly people from unfair transactions, help them preserve their property, moreover, enjoy a stable life after their retirement, a number of legal devices could be considered by them: *i.e.*, guardianship, lasting power of attorney (which has not yet been enacted) and trusts.

Under the law of guardianship provided for by the Civil Code, guardians can be appointed to make decisions for the ward. Those decisions are concerned with property management and health care. Currently over 90% of the guardians in Taiwan are family members, who are not necessarily skilled at property management and familiar with the **professional** ethics required. Therefore, in addition to guardianship, it will be more beneficial to set up a trust so that the property management could be separated from guardianship and carried out by professional trustees. Thus, guardians will only need to be responsible for the management of daily expenses and health care; this will inevitably alleviate the burden of guardians. However, in order to combine the two legal regimes, some further issues need to be examined, and they are as follows: how to properly combine guardianship and trust; how to theoretically harmonize the two mechanisms; how to put them into practice; when and under what circumstances should public authorities (*i.e.*, administrative sectors and courts) intervene; who should be appointed as trustee and so on. The project is intended to give suggestions for them by referring to the relevant studies and legal approaches of the two neighboring countries, *i.e.*, Japan and South Korea.

As to the academic contribution, the work, by comparing the legal approaches adopted by both Japan and South Korea in respect of the harmonization of guardianship and trust, will enrich and broaden the width of the relevant studies in Taiwan. As to the contribution to the society, the suggestions made in this work regarding the harmonization of guardianship and trust will involve both practicability and workability, which are expected to provide our policy makers with some useful information to refer to

in the legislative process of this country.