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我國建構 「監護學信託併用制度」 之必要性

On the Necessity of Developing a Legal Framework for the Combined Use of Adult Guardianship and Trust in Taiwan

邱怡凱 Kyle-Yikai Chiu*



摘要

我國已成為超高齡社會,隨著高齡人口增加,因欠缺意思能力而須受監護宣告之人數亦將上升。實務上,法院為監護宣告時,多選任親屬任監護人。如何避免親屬監護人濫權動用受監護人之財產,成為重要問題。本文先考察我國法院實務併用監護與信託之做法,再介紹日本為防杜親屬監護人濫權而設之「監護制度支援信託」,並與我國實務做法加以比較後,認為我國現行實務做法仍有諸多待解問題,並進而主張我國有建構「監護與信託併用制度」之必要。

Taiwan has become a super-aged society. As the elderly population increases, the number of individuals who lack

*執業律師 (Attorney at Law)、大阪大學學學博士 (S. J. D., The University of Osaka)

關鍵詞:信託(trust)、意思能力(mental capacity)、監護(guardianship)、 監護制度支援信託(guardianship support trust)、監護宣告

(commencement of guardianship)

DOI: 10.53106/241553062025080106003



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mental capacity and therefore require the order of the commencement of guardianship is also expected to rise. In practice, courts in Taiwan often appoint family members as guardians. However, how to prevent such family guardians from misusing the ward's assets has become a critical issue. This article first examines current judicial practices in Taiwan regarding the combined use of adult guardianship and trust. It then introduces Japan's "Guardianship Support Trust," a system designed to prevent financial exploitation by family guardians and compares it with the Taiwanese approach. The analysis reveals that the current practices in Taiwan still face numerous unresolved challenges. Accordingly, this article argues for the necessity of establishing a legal framework for the combined use of adult guardianship and trust in Taiwan.

壹、前言

我國民法第15條規定:「對於因精神障礙或其他心智缺陷,致不能為意思表示或受意思表示,或不能辨識其意思表示之效果者,法院得因本人、配偶、四親等內之親屬……或其他利害關係人之聲請,為監護之宣告」,此為監護宣告之法律依據。上開條文所謂「因精神障礙或其他心智缺陷,致不能為意思表示或受意思表示,或不能辨識其意思表示之效果」,簡言之,即為「欠缺意思能力」1。又「意思能力」係指正常的識別能力,亦即理解其行為所具意義之能力2。對於欠缺意思

¹ 鄧學仁,台灣成年監護之現況與課題,全國律師,17卷5期,2013年5月,6頁。

² 黃詩淳,無意識或精神錯亂中所為之意思表示,月旦法學教室,153期,2015年7月,15頁。