

信托经济研究

齐佩金 著



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内 容 提 要

信托经济学是用经济学理论与方法来分析和处理信托关系的一门学科,是信托与经济学发展的产物,是信托活动演变和经济学发展在时间和空间上的巧妙结合。

本书主要从新制度经济学视角,对信托活动中如何配置信托财产权利、降低交易成本、提高信托效率问题进行分析和研究,并在商事信托成为信托发展主要形式的趋势下,探讨受托人的激励问题与信托契约的合理设计问题,以此对我国信托制度的引进与信托业的发展进行了有益的探索。全书在经济学视角下,坚持实证分析与规范分析相结合,沿着由因到果、由理论到实践的逻辑思路构造总体架构。

本书读者对象主要为经济学、法学等专业的理论研究人员,也可供从事银行、保险、证券等机构理财规划方面的工作者参考。



序

信托是源于英美法系的一种独特的财产管理制度,后来逐步为众多大陆法系国家所接受,成为当今世界最重要的理财方式之一。我国从20世纪初引进信托制度,但是信托活动在我国一直没有真正发展起来。进入21世纪,我国制定了以“一法两规”为基本框架的信托制度体系,信托活动正本清源、回归本位,以“灵活、有效”著称的信托活动开始在我国社会主义市场经济建设中显现出特有的魅力,成为我国金融市场一朵绚丽的奇葩,焕发出勃勃生机。

我国信托理论研究相对较为落后,传统的信托理论研究也多局限于法学领域。齐佩金同志的《信托经济学研究》基于新制度经济学发展的成果,从经济学角度对信托活动特别是商事信托活动进行分析和解释,视角清新,想法很好。近几十年来,经济学与信托活动都得到了迅速发展,二者沿着各自不同的发展渠道,最后走向融合,为信托经济学研究奠定了基础。由于早期信托中的利他主义思想,使得信托很难界定在经济学范畴内。商事信托以及自益信托的出现与不断发展,才使信托进入到经济学的视野,使用经济学方法解释信托关系成为可能。但是,传统的经济学“信息费用、不确定性以及交易成本都

不存在”的假设,使得以交易行为和权利配置为主要特征的信托活动一直游离于传统经济学研究之外。新制度经济学的产生与发展为信托的经济学研究提供了强有力的分析工具与范式。

本书主要从新制度经济学视角,对信托活动中如何配置信托财产权利、降低交易成本、提高信托效率等问题,以及如何保证受托人真正按照委托人的意愿管理和处分信托财产的问题进行分析和研究,并在商事信托成为信托发展的一大趋势的情况下,探讨了受托人的激励问题与信托契约的合理设计问题,以此对我国信托制度的建立与信托事业的发展进行有益的探索。

首先,本书系统运用新制度经济学的理论和方法来分析与研究信托关系。传统的信托理论研究主要集中在法学领域,信托进入商事领域后,实务操作性研究散见于各项具体的信托业务之中,而系统利用经济学理论对信托活动、信托制度进行分析研究还鲜有著述。本书突破传统信托理论偏重于法学研究和操作实务研究的局限,利用新制度经济学的发展成果,从经济学的视角,尝试着对信托活动中的交易成本进行分析界定,对信托活动中信托财产权利在不同关系人之间配置及其效率问题进行解释,并对信托契约中有关信托受托人的激励问题进行科学、严谨的说明,成为信托理论研究的一种新的探索。

其次,本书以产权思想解释了信托财产权利关系。抛开了大陆法系与英美法系之间纠缠不清的所有权概念,本书引进新制度经济学中的产权思想,把信托关系人之间的财产关系按一种权利束的形式进行配置,从而增加大陆法系国家信托制度的解释力。本书分析认为,大陆法绝对所有权的观念限制了大陆法系国家信托制度的建立与信托活动的开展,相比较而言英美法更具有灵活性和适应性。双重所有权使财产权利很容易分离设置,权利束的观念很容易形成,从而使信托产权配置更加灵活,信托活动更加有效。

再次,用信息经济学中的委托代理理论对信托契约的激励设

计问题进行分析与研究。本书在明确区分了信托与法律上的委托代理活动之间差异的基础上,认为信托活动完全符合委托代理理论中的多阶段模型和多任务模型,并据此研究和分析了信托关系中风险配置、隐性激励、固定佣金制度、剩余所有权安排以及受托人职责范围限制等问题。

最后,本书创造性地构建了信托经济学研究的基本框架与体系。这项贡献主要在于两方面:一是确定了信托经济学的研究对象,认为经济历史演变后的现代信托活动是信托经济学的主要研究对象;二是选定了信托经济学的研究方法——新制度经济学包括法律经济学,是信托经济学的主要研究方法。

当然,本书在积极创新与探索的同时,也存在一些不足之处,要构建信托经济学研究完整的框架与体系还有许多工作要做。希望齐佩金同志能够在这一研究领域上再接再厉,不断进取,努力探索适合我国社会经济发展需要的信托发展之路。

孙 刚

2007年12月于温哥华



摘 要

信托是基于信任的托付。它是指委托人将财产转移给受托人,指示受托人为受益人的利益管理和处分财产的行为。通过信托活动,人们在没有能力或者不愿意亲自管理财产的情况下,可以将财产转移给自己信任并有能力管理财产的人——受托人,指示受托人将信托财产及收益全部或部分地用于受益人的利益。信托是一种灵活的、自由的财产管理方式。

现代信托起源于英国,是英美法国家财产管理的主要方式。信托的运用领域十分广泛,从家庭理财到社会共有财产的管理,从各种私人养老基金到共同基金和慈善基金会,从财产管理到金融投资等,都要利用信托原理和信托制度。本书主要从新制度经济学视角,对信托活动中如何配置信托财产权利、降低交易成本、提高信托效率问题,以及如何保证受托人真正按照委托人的意愿管理和处分信托财产的问题进行分析和研究,并在商事信托成为信托发展的一大趋势的情况下,探讨受托人的激励问题与信托契约的合理设计问题,以此对我国信托制度的引进与信托业的发展进行有益的探索。

全书共分七章。第一章导论部分主要介绍了本

书的选题及其意义,论文理论基础和研究方法,全文的逻辑思路、中心思想和理论框架。商事信托特别是金融信托的迅速发展,使信托成为与公司制并重的两大理财制度,现代信托除了社会、伦理、哲学、宗教等内涵外,更多地被赋予了经济因素,使得信托的经济分析更加具有现实意义。新制度经济学的发展为信托的经济学研究提供了有力的工具,特别是法律经济学^①的构建,引进了经济学的效率概念,使信托的研究不再局限于传统的法学领域,单纯以追求公平、公正为目标,而是以交易费用为基本工具,利用产权理论分析如何合理配置信托关系人之间的权利与责任才能使信托活动更有效率。

信任是信托的基础。第二章从信任开始入手,重点对信任的产生与功能进行经济学解释和分析。在信任基础上引出信托定义,并对信托构成要素、性质、特点进行了剖析,其中将信托与委托代理的关系分析是第五章信托契约设计的基础,也是借鉴委托代理理论的前提。信托的基本职能是财务管理,即理财,由理财活动可以延伸出融通资金、沟通和协调经济关系、提供信任、信息与咨询和社会投资等多种职能。最后,概括和总结了信托活动的历史演变趋势,即:遗嘱信托—合同信托,从身后到生前;他益信托—自益信托,从利他到利己;民事信托—商事信托,从义务到有偿;财产信托—金融信托,从泛化到分化(专业化)。正是基于这些演化,信托的经济学分析才有了意义。

信托是一种以财产为核心的多边经济关系,委托人、受托人、受益人是其主要的三方关系人,虽然信托交易关系特殊,但同样逃脱不了交易成本的困惑。第三章从信托交易界定入手,分析了信托交易成本及其构成,并由交易成本的存在导出信托制度的产生。同样,由于信托交易成本的存在,产生了对降低交易成本的效率追求,促使信托制度不断发展与演进,并促进了信托制度在世界范围

① 又称经济分析法学、法经济学、法和经济学。

的传播与发展。

大陆法系国家引进信托制度无一例外地遭受两大法系财产权利法律概念的冲突,作为财产法的基石——财产所有权,在英美法和大陆法中却有着不同的界定。源于英美法的信托,其财产的所有权在并行的普通法和衡平法当中有着完美的解释,但在大陆法中绝对所有权概念很难解释信托关系中的权利配置及信托财产独立性问题。第四章利用现代经济学当中产权的概念剖析了信托财产扫利及信托财产特征,弱化了所有权的概念,解除了大陆法系国家信托财产所有权的困惑,厘清了信托关系人之间的权利关系。

经济学将所有涉及非对称信息的交易统称为委托代理关系,委托代理理论也正是建立在这种定义之上。显然信托属于经济学的委托代理关系范畴,委托代理理论中的多阶段模型与多任务模型是信托关系的合理刻画。第五章信托契约设计就是建立在委托代理理论基础上对信托关系中的激励问题进行分析,重点分析了信托关系中的隐性激励、固定佣金制度、所有权最优安排以及受托人职责范围的限制等问题。同时,也在经济学的基础上,证明了长期发展与演变而来的信托制度的合理性。

经济增长是人类历史发展长河中的亘古之谜,各时期的经济学家们孜孜以求、不断探索人类经济发展的真正动力,于是形成了经济增长的资本积累论、技术决定论、人力资本论等增长理论。但是,制度经济学认为,不论是资本或人力资本积累,还是技术进步,它们仅仅是经济增长的表象,是经济增长本身,不是经济增长的原因。在到处充满着交易成本的现实世界里,制度是非常重要的。不同制度的安排,对行为主体的责权利限定不同,从而交易成本也迥然相异,经济效率大不一样。第六章通过对传统经济增长理论的评析,阐明制度对经济增长的重要性,并通过制度效率的工具对信托制度的绩效进行了分析。

最后一章通过对我国信托业发展历史的回顾,反思我国信托事业曲折发展的原因,剖析我国信托制度中存在的缺陷,分析我国

信托需求的现状,总结经验教训,探索我国信托业发展新方向。

全文系统地运用新制度经济学的范式,对信托活动进行经济学解释与分析,从而丰富了信托理论的内涵。信托经济学研究是信托活动与经济学发展在时间和空间上的绝妙结合:时间上信托活动的商事化发展与新制度经济学的产生不谋而合;在空间上,信托产权关系成为新制度经济学产权理论最好的例证和注解。诚然,信托经济学研究只是信托理论的一个分支,大量植根于社会学、伦理学、法学等领域的研究同样在不断发展着,即便在经济学帝国主义时代的今天,经济学也不能解释一切信托问题。以灵活、自由著称的信托活动在人类社会发展中的作用正在不断扩大,而“创设信托所要实现的目的,与法学家们的想象力一样是没有限制的”。

关键词 信托,信托交易,信托制度,信托财产权利,信托契约



ABSTRACT

Trust is based on the trustful commission, which refers to the behavior that the settlors transfer the property to the trustees who will manage and deal with the property for the benefit of beneficiaries. Through the trust activities, the people who don't have the ability or aren't willing to manage the property by themselves may transfer the property to the trustees who have the ability to manage the property and make order to the use of a part or all of the assets and the income for the benefit of the beneficiaries. Trust is a flexible free method of administering property.

The modern Trust comes of the U. K. and is the main method of administering property in the common law states. The Trust principles and institutions can be used in many fields, such as from the management of family assets to public assets, from various private pensions to mutual and charitable foundations, from the management of property to financial investment. Mainly from the point of neo-institutional economics, this book expounds how to collocate the trust

property right, reduce the transaction cost and improve the Trust efficiency and how to ensure that the trustees could manage and deal with the trust assets according to the settlors wills in the Trust activities and discusses the questions of the trustees' prompting and the rational designs of the Trust contracts when Business Trust is becoming the mainstream of the Trust development, which is good for the indraught of the Trust system and the development of the Trust industry.

This book includes 7 chapters. Chapter 1 is the introduction which introduces the background of choosing this topic, the significance of this reach, the theoretical basic, the methods of the research, and the logical train of thought, the central thought and the theory structure of the whole book. The development of the Business Trust, especially the Finance Trust, makes the Trust together with the corporate system be the two important financing systems. Except for the connotations of the social ethics, the philosophy and the religions, the Trust is endowed with economic factors, which gives the economic analysis of the Trust more practical significances. The development of neo-institutional economics offers powerful instruments for the economic researches. Especially, the use of the efficient conception of the economics of the foundation of the law and the economics makes the Trust researches not only localize in the traditional area of the law and not seek justice and justness purely but also take the transaction cost as the tool, we can analyze how to balance the rights and the obligations between the trustees and the settlors reasonably according to the property right theories, which makes the Trust activity more effective.

Trust is the base of the Trust. Chapter 2 starts from trust with the keystone to introduce the beginning and the functions from the economic aspect. Based on trust, it introduces the concept of Trust

and analyses the inscapes, characters of Trust. And the relationship between Trust and principal-agent is analyzed in Chapter 5, the base of Trust design, which is also the premise to use the principal-agent theory for reference. The basic function of Trust is financial management which is just financing. It can stretch to other functions such as financing, communication, economic relationship cooperation, trust, information and inquiry offering and social investment. At last, sum up the tendency of historical evolvement, which is the processes of Testamentary Trust to Contractual Trust, from the death to life, Other-benefited Trust to Self-benefited Trust, from altruism to egoism, Civil Trust to Business Trust, from obligation to paying, Property Trust to Financial Trust, from many faceted to specialization. Just based on these evolvments, the economic Trust analysis is meaningful.

The Trust is a multilateral economic relationship whose core is the asset. The trustees, settlers and beneficiaries are the main relative participants. Though the relationship of the Trust trade is special, we can't avoid the puzzle of the transaction cost. Beginning with the definition of the Trust transaction, In Chapter 3, the paper analyses the transaction cost and its constitution and expounds that the existence of the transaction cost educes the emergence of the Trust system, similarly, the existence of the Trust transaction cost stimulates the people to enhance the efficiency of reducing the transaction cost, which accelerates the development of the Trust system and the spread of the Trust system in the world wide.

There is a conflict with no exception to introduce the concept of Trust to the civil law states for the different definitions of property rights. As the foundation stone of property law, the property ownership right has different definitions between the common law states and civil law states. There is a perfect explanation of property own-

ership in parallel of the common law and rules of equity which is the origin of Trust. But it's difficult to explain the trust relationship of right allocation and independence of property. Chapter 4 applies the concept of property ownership in modern economics to analysis the trust property ownership and the characters of trust property which weakens the concept of ownership. So it solves the baffle of trust property ownership in civil law states, and makes the relationship of right between relevant persons clearer.

The economics calls the transactions of the asymmetrical information the principal-agent relationships collectively. The principal-agent theory is based on this kind of definition precisely. Obviously, the Trust belongs to the principal-agent relationship of the economics. The multi-stage model and the multi-duty model of the principal-agent theory depict the trust relationships reasonably. Chapter 5 which is based on the principal-agent theory analyses the prompting of the trust relationships, and emphasized the recessive promoting, the fixed commission system, ownership-first arrangement and the trustees' duty of the trust relationships and so on. At the same time, it also certifies the rationality of the Trust system which is evolved from the long-term development, which is based on the economics.

Economic development is an eternal bewilderment in the developing history of human beings. Economists in different eras probe the real power of economic development continuously. By their efforts, capital accumulation theory, technical deciding theory, human resource theory and so on are made out. But institutional economics believes that both capital and human resource accumulation and technical development are only the appearance of economic development but not the reason. In the real world with dealing cost, institution is very important. The obligation restrictions are different in different

institution's arrangements, so the difference of dealing costs makes the efficiencies much more different. Chapter 6 clarifies the importance of institution to economic development through the analysis of traditional economic development theory and analyses the Trust institution performance by the concept of institutional efficiency.

The last chapter thinks back about the cause of flexuous development of our country's Trust industry and analyses the limitations in the Trust institution through the retrospect of history of Trust institution in our country, analyses the status in quo of the Trust need, summarizes the experiences and probes the new direction for the development of our country's Trust industry.

Applied the normal formulas of neo-institutional economics all through, the paper does some explanations and analyses to Trust activities to enrich the connotation of Trust theory. Trust economic research is the excellent combination of Trust activities and economic development on the aspects of both time and space. In the aspect of time, the Trust activities evolvement cooperates with the birth of neo-institutional economics very well; in the aspect of space, trust property ownership is the best comment of ownership theory in neo-institutional economics. Indeed, Trust economic research is just a branch of Trust theory, and the parts which lay in the fields of sociology, ethnics, law and so on are developing continuously. Even in the era of economic imperialism, economics can't solve all the Trust problems in today. The use of Trust in human society development is enlarging incessantly and there will be no limitation to the aim of the foundation of Trust just as there is no limitation of the legists' imagination.

Key words Trust, Trust transaction, Trust institution, Trust property right,

Trust contract



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