

# Legal Considerations for Administration of Trust with Powers to Direct

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In Japanese trust law the terms of a trust may confer upon the person other than a trustee a power to direct a trustee in matters relating to the trust.

In this thesis, a director is defined as a person or a company with the power to direct the trustee in specific actions relating to the administration or disposal of the trust properties.

The trust property may incur damages if the trustee acts in accordance with improper directions made by the director.

Under these circumstances, it is arguable that there are two parties that may be held responsible for the loss caused by the improper directions; the trustee who has the power to administrate the trust properties, and the director who has the power to direct the trustee.

However, the Japanese Trust Code has no provisions concerning whether the trustee has a duty to comply with the directions and whether the director has any obligations to the beneficiary.

Under these premises, the following two topics are discussed in this thesis with case examples of administration in real-estate trusts.

1. What action is required of the trustee who is given the directions, in order to fulfil their duty of care?
2. When the director makes improper directions, can they be held accountable by the beneficiary from the point of view of trust law?

How are the beneficiary and the trustee able to demand that the director take responsibility?

My opinion on the first question is as follows.

Firstly, powers to direct are effective only when the trustee follows the direction and fulfils his duty of care. Therefore, for trusts with power to direct to function, it is essential that the trustee should act in accordance with the directions.

Secondly, the key element of the issue is not the power balance between the director and the trustee but how the trustee should fulfil their duty of care. As the terms of the trusts require the trustee to act in accordance with the directions, their fulfilment of a duty of care should be principally judged by whether they followed the directions or not.

My opinion on the second question is as follows.

Firstly, in Japan trusts can be created by will as well as by contract, so the relationship between the director and the beneficiary does not necessarily need to be defined by contract. This means that it is possible to define this relationship as a fiduciary one, like those in common law legal systems.

Secondly, given that the director is given the power for the benefit of the beneficiary, it is fair to say that the very nature of the trust expects the director to owe fiduciary duties to the beneficiary. Additionally, the director is assumed to undertake the role similar to that of a trustee, thus they would be equally liable for a loss resulting from violation of his fiduciary duties.

Furthermore, the beneficiary and the trustee should be able to claim that the director is responsible for the loss caused by the improper directions on the basis of article 40 or 85 of the Japanese Trust Code.

In recent times, the trustee is not the only party who is given the power to benefit the beneficiary. As a result, a trustee needs to consider how to collaborate with the director.

I hope this thesis will aid future research on the trusts with power to direct governed by the trust law in Japan.