

Practical Issues of Article 40 Paragraph 1 of Japanese Trust Act

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Article 40 paragraph 1 item 1 of Japanese Trust Act provides: If a trust property suffers any loss as a result of a trustee neglecting his/her duties, a beneficiary may demand the trustee to compensate for the loss. Article 40 paragraph 1 item 2 provides: If a trust property suffers any change as a result of a trustee neglecting his/her duties, a beneficiary may demand the trustee to restore the change.

Even though the Act sets different provisions for a loss and a change, actual cases often contain both of them. It is interpreted that a beneficiary can demand either compensation for a loss or restoration of a change when a trust property suffers a loss and a change at the same time.

In practical trust bank business affairs, a trustee voluntarily compensates for a loss or restores a change even without a demand of a beneficiary. In the practice, there is a question for a trustee how to behave when a beneficiary demands the trustee to compensate for a loss after the trustee voluntarily restores a change. Also, there is a question for a trustee how to behave when one beneficiary demands the trustee to compensate for a loss and another beneficiary demands the trustee to restore a change.

In this thesis, I discuss the following issues; (1) Whether a trustee should obey a beneficiary or not when the beneficiary demands the trustee to compensate for a loss after the trustee voluntarily restores a change, (2) How a trustee should restore a change of a trust property

when the trustee is obligated to do so. (3) Which beneficiary a trustee should obey when one beneficiary demands the trustee to compensate for a loss and another beneficiary demands the trustee to restore a change.

In conclusion, my opinion is as follows; (1) A trustee does not have to compensate for a loss in the case the trustee already restores a change voluntarily since there is no loss after the trustee restores a change in accordance with a trust contract, (2) A trustee should restore a change of a trust property into the condition which a trust contract claims the trustee to restore a change at the time of the trustee taking an action of the restoration (3) When one beneficiary demands a trustee to compensate for a loss and another beneficiary demands the trustee to restore a change, the trustee may restore a change.