

# Pursuit of Responsibility Against the Trustee after the Death of the Settlor Who Is Also the Beneficiary in Civil Trusts

Kenichi Chigira (Sumitomo Mitsui Trust Holdings, Inc.)  
Atsuko Baba (Sumitomo Mitsui Trust Holdings, Inc.)

## 1. Introduction

In civil trusts where the settlor's family or relatives act as the trustee and the beneficiaries, it is common to specify the death of the settlor, who is also the initial beneficiary, as a termination of the trust or a cause for extinguishment of the initial beneficial interest. However, there is a risk of instances where the trustee's supervision during the settlor and beneficiary's lifetime was insufficient, resulting in the discovery of the trustee's negligence or other failures after the death of the settlor and beneficiary.

In light of this problem, this report examines specific hypothetical two cases to determine whether legal heirs of the settlor and beneficiary, other than the trustee, can pursue actions against the trustee if it is revealed that the trustee neglected their duties during the trust period after the death of the settlor and beneficiary.

## 2. Hypothetical case 1 (Responsibility of the Trustee in a One-Generation Trust)

First, we consider a case involving a one-generation trust that terminates upon the death of the settlor and beneficiary (referred to as the "Trust Case 1"). Specifically, if the trustee (the son B of beneficiary A) fails to provide the necessary funds for medical and caregiving expenses to beneficiary A during the trust period, and Trust Case 1

terminates due to the death of beneficiary A, we examine whether the legal heir of beneficiary A, her daughter C, can exercise ( i ) the right to demand the fulfillment of the unpaid beneficiary claims (referred to as the "Unpaid Beneficiary Claims") against the liquidating trustee (son B), and ( ii ) the right to access the books and other documents to determine the amount of Unpaid Beneficiary Claims under Article 38, Paragraph (1) of the Trust Law (referred to as the "Law"), the right to request approval for the settlement of accounts under Article 184, Paragraph (1) of the Law, and the right to request a report on the status of administration of trust affairs under Article 36 of the Law (collectively referred to as the "Rights to Access Books").

Regarding this issue, because daughter C will inherit the already accrued Unpaid Beneficiary Claims, and because the beneficial interest including the Rights to Access Books will continue to exist even after the termination of Trust Case 1, and daughter C will inherit such beneficial interest, we believe that daughter C, as the legal heir of beneficiary A, falls under the definition of "beneficiary" in Article 38, Paragraph (1), Article 184, Paragraph (1), and Article 36 of the Law. Therefore, daughter C can access the books and records, determine the amount of Unpaid Beneficiary Claims, and demand the liquidation trustee (son B) to fulfill the obligation.

### 3. Hypothetical case 2 (Responsibility of the Trustee in a Continuous Beneficiary Trust)

As the next case, we consider a trust known as a Continuous Beneficiary Trust in Article 91 of the Law, which provides for the succession of the beneficial interest to designated individuals upon the death of the beneficiary. In this scenario, assuming that the legal heirs of the settlor and beneficiary A include not only the son B and daughter C but also a second son D, if beneficiary A's death leads to

the extinction of his beneficial interest, and the settlor's second son D acquires a new secondary beneficiary right, in a trust (referred to as the "Trust Case 2") that terminates upon the death of beneficiary A and his second son D, we examine whether daughter C can pursue actions similar to those in Trust Case 1 against trustee B.

For this issue, in our opinion, the phrase "the beneficial interest held by the beneficiary is extinguished" in Article 91 of the Law does not mean that all supervisory rights against the trustee cease to exist. Instead, it is believed that the supervisory rights necessary to secure the Unpaid Beneficiary Claims continue to exist to the extent required, and daughter C, as a legal heir, can inherit and exercise these rights. Therefore, in Trust Case 2, daughter C can demand the fulfillment of Unpaid Beneficiary Claims against trustee B and exercise the Rights to Access Books under Article 38, Paragraph (1) of the Law and the right to request a report on the status of administration of trust affairs under Article 36 of the Law.

#### 4. Conclusion

Based on the analysis of the hypothetical cases mentioned above, our view is that it is evident that the trustee is not absolved from its responsibility simply because negligence or other failures are not discovered before the termination of the trust. This underscores the importance of strengthening the supervision of trustees in civil trusts, which is essential for the development of a healthy civil trust system. We hope that this report can contribute in some way to the future expansion and development of civil trusts.