

On the trust for the seriously handicapped in Japan

—with priority given to the inheritability
and the alienability of the beneficiary's interest—

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1. Introduction

The trust for the seriously handicapped was established in the trust banks in May of 1975 as a private instrument to promote social welfare.

The purpose of the trust is to aid in maintaining support for the seriously handicapped. This trust, as prescribed by law, is created by the agreement between the author of the trust and the trustee for the seriously handicapped. Upon signing the contract, the beneficiary may demand his life expenses and medical treatment fees from the trustee.

This trust is such that the beneficiary is other than the author of the trust. In such a trust, a gift tax is imposed upon the beneficiary. But, in this trust, if the trust agreement satisfies the necessary legal conditions, the beneficiary is exempted from the gift tax, to the extent of 30 million Yen.

I think that the inheritability and the alienability of the beneficiary's interest from this trust should be strictly limited, in distinction from those of ordinary trusts, because the beneficiary of this trust is limited to those seriously handicapped mentally or corporeally.

The inheritability of the beneficiary's interest is limited indirectly by sec. 8 of the trust instrument. Also, the transfer and the pledge of the beneficiary's interest is prohibited by sec. 12 of the trust instrument. Moreover, the alienability by distress of the beneficiary's interest is not laid down in any section.

2. Parties to the trust

(1) The author of this trust is limited to individuals such as the beneficiary's consanguinity or a benevolent person.

(2) The trustee of this trust is limited to the trust bank.

(3) The beneficiary of this trust is limited to the seriously handicapped such as lunatics, those suffering from corporeal disorders, those wounded in war, those affected by the radiation of atomic bombs, the bedridden who are receiving intensive medical care, and the aged.

3. Trust property

Trust properties which the trustee can accept are as follows :

(1) money, (2) securities, (3) money claims, (4) real estate.

4. Necessary conditions for the creation of the trust

(1) This trust should terminate six months after the beneficiary's death.

(2) No party to this trust can rescind or revoke the trust, and the author of the trust cannot make alterations in the termination of the trust, nor can he change the beneficiary.

(3) The amount to be paid to the beneficiary is limited to the amount of trust property which is in fact necessary for the maintenance of the beneficiary's livelihood.

(4) The trustee should have charge of the trust property to assure moderate earnings.

(5) The beneficiary cannot transfer or put in pledge the beneficiary's interest.

5. Inheritability and Alienability of the beneficiary's interest of this trust

(1) Inheritability

(Can the beneficiary's interest come to the heirs by inheritance?)

The beneficiary's interest from this trust is of a personal nature, because this trust is established to aid in maintaining the beneficiary's livelihood. Therefore, I think that the beneficiary's interest would not come to the beneficiary's heirs by inheritance, and such a trust would terminate at the beneficiary's death.

However, this trust does not terminate at the beneficiary's death, but continues for six months after the beneficiary's death.

I think that this six months' duration is to be used for the paying of the beneficiary's debts and the transferring of remains to the beneficiary's heirs and devisees or

legatees. Namely, it is a period for liquidation established by law.

(2) Transferability

(Can the beneficiary of this trust transfer the beneficiary's interest to others?)

The beneficiary of this trust cannot transfer his interest to others, because this trust is established to aid in maintaining the beneficiary's livelihood. In other words, the author of this trust creates the trust laying stress upon the benefit of the beneficiary. For that reason, a requirement is provided such that the beneficiary cannot transfer his interest. This provision serves as a warning.

(3) Alienability by pledge

(Can the beneficiary of this trust put in pledge the beneficiary's interest?)

It can be said that the beneficiary cannot put in pledge the beneficiary's interest which is not transferable. Thus, this trust requires that the beneficiary not put in pledge the beneficiary's interest.

But, I think that there should be some cases in which the beneficiary of this trust can put in pledge the beneficiary's interest with the intention of maintaining the beneficiary's livelihood. For example, the beneficiary may be able to put in pledge the beneficiary's interest for an advance of a necessary expenditure from the trust money, without being deprived of the beneficiary's interest.

Except for such cases, the beneficiary's interest should not be pledged.

I think that the aforesaid clause is a warning.

(4) Alienability by distress

(Can the beneficiary's creditors distress the beneficiary's interest?)

In this trust, the beneficiary's creditors cannot receive the beneficiary's interest, since the trust is established to aid in maintaining the beneficiary's livelihood. In other words, the author of this trust creates the trust laying stress upon the benefit of the beneficiary.

The separate payments derived from the trust property correspond to the alimony or other continuous proceeds given by a benevolent person.

The above are excluded from seizure in part under the provision of the Code of Civil Procedure.

However, I think that the beneficiary's interest is not always excluded from the distress. There would be some cases in which the beneficiary of this trust is com-

petent to manage his own affairs. In such cases, he would have powers and chances to profit considerably. I think that there is no reason why his creditors should not be able to obtain the beneficiary's interest.

6. Current business situation

At the end of February 1979, the number of beneficiaries of this trust was 120 people, and the outstanding balance of this trust was 1,571 million Yen, consisting of 1,178 million Yen in money, 74 million Yen in securities, 207 million Yen in money claims and 112 million Yen in real estate.

Finally, I hope for the popularization of trusts whose purpose is to promote social welfare and for an increase in the number of trusts for the handicapped in Japan.