

On the Duty to Act Personally and the Employment of Trustee's Proxy

Kiyomichi Kawakita (Nippon Trust Bank Limited)

The trustee is indispensable to employ the expert and the assistant in order to carry out the affairs of the trust. However the trustee reposed in the duty to act personally. Therefore it become a subject of discussion concerning to employ of others and the duty to act personally. By the way, the proxy has authority of fundamental judgment on the affairs of the trust. But the agent has not authority of fundamental judgment instead of acting the trustee. The proxy can deal with the trust property in fact. There is a great difference between the proxy and the agent. So, I think that a minor, a person adjudged in incompetent or quasi-incompetent or a bankrupt cannot become a proxy because the proxy deal with the affairs of the trust instead of acting of the trustee. But the proxy has not transfers the ownership of trustee's name. And in respect of compensation for taxes, official impositions or any other expenses which the proxy has assumed regarding the trust property, or for damages which he has sustained without any fault on his part in managing the affairs of the trust, he may not sell the trust property and exercise his rights in preference to other entitled persons. In view of this, there is a great difference between the proxy and the trustee. The trustee shall be responsible only in respect of the appointment and for the supervision. But I think that depending on circumstances the trustees are released from his responsibility of the appointment and the supervision.