

# Trust Administrators' Present Role and Potential Relationship to the Property Administration System

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## 1. Introduction

## 2. The Present State of the Trust Administrator System

According to Japan's Trust Law, trust administrators may be appointed in cases where beneficiaries are indefinite or not yet in existence, although there is no specific mention of a necessity of appointing such a trust administrator. Due to provisions in the Tax Law and the criteria of competent government office for charitable trusts, however, it is required that such a trust administrator be appointed for charitable trusts and pension trusts.

## 3. Examples of Systems Similar to Japan's Trust Administrator System

The phenomenon of trust administrators is unique to the Japanese trust system. There are, however, systems in other countries that perform functions similar to the function of the trust administrator—supervision of the trustee on behalf of beneficiaries.

For example, the United Kingdom's Attorney General acting on behalf of the Crown with respect to English charitable trusts and the U.S. Secretary of Labor acting in accordance with the Employee Retirement Income Security Act of 1974 (ERISA) perform duties similar to those of the trust administrator. There are also similar examples of systems and legal concepts in continental European law, including the German *Gegentreuhänder* and the *Liechtensteiner Protektor*.

## 4. Problems Associated with the Trust Administrator System

According to the generally accepted interpretation of present Japanese law, trust administrators may be appointed only in cases where beneficiaries are in-

definite or not yet in existence. Despite this interpretation, the Tentative Draft of the Revisions of Act of Trust (4th Draft) recognizes the appointment of trust administrators even with respect to definitely specified beneficiaries, such as physically or mentally handicapped individuals.

In general, the trust administrator is permitted to exercise all the rights of beneficiaries on their behalf, including the right to accept benefits. In the case of a definite beneficiary, however, the powers of the trust administrator should be conceived of as limited to supervision of the trustee.

The trust administrator bears a responsibility to the beneficiary similar to the responsibility of the mandate and is therefore required to exercise the care of good-management. In the case of a trust administrator's nonperformance of these requirements, the beneficiary may demand indemnification from that trust administrator.

#### 5. Potential Role of Trust Administrators in the Property Administration System

There presently exist a number of problems associated with the property management of incapacitated persons, including elderly individuals, in Japan.

Growth in the numbers of the elderly has brought about an increase in the number of incapacitated individuals in Japan. For various reasons, however, guardians are almost never appointed for these individuals. In view of this situation, there have been calls to utilize the trust system for the management of these elderly and incapacitated individuals' property. It also appears useful to utilize the trust administrator system on behalf of both the elderly and persons mentally incapacitated for reasons other than age, as trust administrators are well positioned to supervise trustees on behalf of such persons.