

# Problems Concerning Final Account of Trust

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Article 65 of the Trust Act provides that (i) upon termination of trust, the trustee shall make a final account of trust affairs and obtain approval thereof by the beneficiary, and (ii) if the beneficiary has approved the final account, the responsibility of the trustee toward the beneficiary shall be deemed to have been relieved by such approval. However, since the specific contents of the above Article are not made clear in the text of the Law, this essay has chosen to examine the contents of the above Article in concrete terms while referring to actual practice.

## 1. Obligation of the trustee to make final account

(1) Making final account and providing statement of such account to the beneficiary as set forth in the first part of Article 65 is a fundamental obligation of a person who administers another person's affairs.

On the other hand, the text of the Article reads: "shall obtain approval thereof." Considering the possibility of the beneficiary unreasonably withholding this approval, the above text should be interpreted as a provision stipulating obligation to request approval rather than obligation to obtain approval.

(2) In practice, contents of the statement of final account differ widely according to the type of trust in question. In the case of trusts created for the purpose of moneymaking on behalf of the general public such as loan trusts, the statement is usually simple and brief, while in the case of land trusts, an extensive report is generally prepared.

(3) Specific manners in which to provide the statement or report and obtain approval may be decided at the discretion of the concerned parties in the contract of trust within a reasonable limit. However, in order to ensure that the beneficiary is able to exercise his or her judgment properly, proper procedures

must be established for such purposes.

(4) Regarding the length of period covered by final account, submission of a statement covering only the final accounting period should be deemed proper for a long-term trust: provided that a regular statement has been presented periodically.

## 2. Release of the trustee from responsibility

After reviewing the history of the provision and theories concerning the release of the trustee from responsibility, and similar or related provisions in the Civil Code, Commercial Code, Bankruptcy Act and the Restatement of the U. S. Trust Laws, this essay examines (i) the legal nature of the release from responsibility, (ii) the scope of the responsibility so released, and (iii) the contents of "dishonest act" to which release from responsibility shall not be applicable.

(1) Similar provision in the Commercial Code (provision concerning release of directors from responsibility) was deleted by the amendment of 1981. On the other hand, in the case of trust, since majority rule has never been introduced even for collective trusts, there is no necessity to conclude that the provision concerning the release of the trustee from responsibility must be eliminated as was the case for the Commercial Code.

(2) The substantive nature of the release from responsibility is the effect of the beneficiary's approval of the fairness of procedures and results of the management of trust affairs.

(3) Considering the substantive nature of the release from responsibility, the scope of responsibility so relieved is limited to facts described in the statement of final account and matters which may usually become known from such facts. However, it seems more reasonable to extend this scope to all matters which have been properly disclosed and reported to the beneficiary rather than to limit it to what has been formally included in the final account statement.

(4) Willful or malicious violation of obligations as a highly illegal act falls under "dishonest act." Responsibility associated with gross negligence should be determined based on the contents of the report concerning the relevant act.

3. In line with the sophistication of the trust system, the responsibility of the trustee of a trust accepted as a business has been increasingly reinforced and made rigorous. Proper balance concerning the trustee responsibility should be realized by promoting prompt extinction of the responsibility upon the beneficiary's approval of the management of trust affairs by the trustee.